The Language of Law and the Law of the Language

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THE LANGUAGE OF LAW AND THE LAW OF THE LANGUAGE

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DIEGO VALADÉS

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Entrance speech to the Academia Mexicana de la Lengua
August 25, 2005

Replied by
MIGUEL LEÓN-PORTILLA

UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO
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CONTENTS

EDITORIAL NOTE

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NOTA EDITORIAL

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EXPLANATORY NOTE

On August 25, 2005, I had the privilege of joining the Mexican Academy of Language, corresponding to the Royal Spanish Academy, as a full member. On that occasion I read a speech that synthesized the text that appears here. With the kind permission of Don Miguel León-Portilla, I include the generous words of his reply.

ENTRANCE SPEECH TO THE MEXICAN LANGUAGE ACADEMY

Mr. José G. Moreno de Alba,
Director of the Mexican Language Academy;
Mr. José Luis Martínez,
Perpetual Honorary Director;
Academic Ladies, Academic Gentlemen, Ladies, Gentlemen.

Over the years, no longer a few, I have accumulated pleasant and unforgettable debts of gratitude. I am grateful to those who educated me and taught me, with those who gave me their trust in affection and in work, with those who have allowed me to take, by their side, the beautiful journey of life. To this lush acknowledgement chapter, I add, today, one more; I express it to those who had me as an admirer and now, also as a partner. Sitting next to you, academic gentlemen, is a fascinating experience. On the 26th of the previous August, I began to attend the wonderful fortnightly sessions that the Academy holds. The only thing that has changed for me is that before I admired them from afar, and now I do it up close.

Your wisdom, gentlemen, is known in the country and abroad; but your generosity is not inferior, and to prove it, I am here. To whom I have expressed my gratitude on previous occasions, I have also said that in their judgment of me they have been wrong, but I cannot dispute it because you have done it in my favor. I say the same now to you, and to the sponsors of this, such a splendid event: Mrs. Clementina Díaz and de Ovando, Mr. Eulalio Ferrer, Mr. Miguel León-Portilla and Mr. José Pascual

Buxó. You are all exceptional protagonists of the Mexican cultural endeavor, as is the scholarly writer whom I cannot replace but I do have the honor of succeeding: Mr. Gabriel Zaíd.

Five eminent Mexicans preceded Don Gabriel. Ignacio Mariscal, jurist, poet, forged in the storm of our history, introduced in Mexico the concept of public ministry; Enrique Fernández Granados, whose "serene life" and deep wisdom, his successor praised, and of whom José Emilio Pacheco has said, accurately, that he is one of "those irreplaceable poets without whom there would be a hole in the whole of our life."; Alejandro Quijano, who knew, like few others, the secrets of law and the depths of the word, and for whose moral virtues he was recognized as a "tireless self-giver"; Celestino Gorostiza, exceptional animator of the national theater and author of deeply Mexican plots and dramas , described by his successor as a "stately gentleman of letters and life"; Antonio Acevedo Escobedo, "owner of a graceful, penetrating and loose prose", as Mauricio Magdaleno said of him.

I am, like so many others, a reader and admirer of Zaíd's poetry. It is not for nothing that he is justly considered one of our great poets. Taking verses at random, one can compose a bouquet that illustrates the filigree of his word: "Living leaves an invisible trail"; "The light that is guarding / the ruins of oblivion"; "The sun bursts / and collapses / to refresh itself in your joy"; "The water becomes birds / against the blue stone"; "I am not the voice or the throat / but what is sung." And so, I could continue with my personal Zaíd anthology; but I must remember that this is not the territory of my specialty. I have also followed, closely and profitably, the powerful essayist over the decades.

As with any other intelligent author, one may or may not coincide, but there are very particular characteristics in his essay work that make Gabriel Zaíd one of the most suggestive contemporary Mexican thinkers. It is impossible to read him without affirming or denying, without taking a position, without understanding how questionable his own opinion can be as much as

your own. He is not reserved for half-truths. He says, directly and harshly, exactly what he thinks, what he knows, what he believes in his limpid and uncompromising prose is a fascinating example.

Zaíd does not seem to have worried about being considered part of a school, nor does he give the impression of wanting to have one of his own. His sense of independence dominates a work full of ideas, images, harsh judgments, and seductive proposals. Zaíd will never have indifferent readers: he will have those who agree or disagree, but not that ignore him. His words make an effect; they shake, persuade, or dissuade you; they are not neutral.

Zaíd's extensive work begins, in poetry, with *Seguimiento* (1964), later integrated into *Cuestionario*). In *Cuestionario* (1976) he also included *Campo nudista* (1969) and *Práctica mortal* (1973). Then came *Sonetos y canciones* (1992) and *Reloj de sol* (1995).

In another moment, his formidable anthology emerged, *Ómnibus de poesía mexicana* (1971 and more than twenty successive editions), which was followed by *La poesía indígena de México* (in Serbian, 1977), *Asamblea de poetas jóvenes de México* (1980), and *Los poetas del mundo azteca* (in Japanese, 1996).

Although any attempt at classification runs the risk of being arbitrary, I consider it possible to group his essays into two main areas: those of criticism, and those referring to political, economic, and literary culture. The former includes *Ensayos sobre poesía* (1993) which, to facilitate their location and reading, incorporate *La poesía en la práctica* (1985), *La máquina de cantar* (1967), *Leer poesía* (1972), and *Tres poetas católicos* (1997).

As for the latter, in *Critica del mundo cultural* (1999) he included *Los demasiado libros* (1972) and *Cómo leer en bicicleta* (1975). Along with *Los demasiados libros* (1988), his essays *El progreso improductivo* (1979), *La economía presidencial* (1987), followed by *La nueva economía presidencial* (1994), and *Hacen falta empresarios creadores de empresarios* (1995) became contemporary classics. His work *Adiós al PRI* (1995) was premonitory.

To this remarkable production he adds ten booklets, eleven editions of works, fourteen prologues, fifty-three book chapters. His poems have been collected in more than a hundred anthologies, in fourteen countries (Germany, Brazil, Canada, Colombia, Spain, United States, France, Great Britain, Italy, Mexico, Portugal, Czech Republic, Sweden, Venezuela).

When reading Gabriel Zaíd, context must be taken into account. In the midst of the Sibylline traditions, his prose was a counterpoint; he broke into a Mexico dominated by verticalism and interrupted the placidity of routine, of acquiescence.

In this constricted circumstance, I cannot even attempt a summary of Zaíd's many ideas; I want, however, as a personal tribute, to make his idea of a law of the book my own. This project of his, detailed and precise, is also part of the general theme that I will address next, the law of the language. Years ago, Zaíd wrote about the usefulness of a law of the book. His arguments do not demand reinforcement; they just require more wills to take them up. Guided by the need to support authors, readers and publishers, inspired by his devotion to culture and motivated by the conviction that reading transforms society, Zaíd is convinced and convinces of the convenience of legislating in this matter.

Zaíd's prolific, erudite and intelligent work has received wide national and international recognition. Fortunately, he is an author who is still in full production; from him we can expect, and will obtain, new results of ingenuity, new creations that will be added to an already formidable and exemplary work. His fruitful time at this Academy has left admiring memories, which I collect and multiply.

I have a generational veneration for the Academy and for its emblematic work, the *Diccionario de la Lengua Española*. Dictionary reading has always captivated me. Maybe it's a familiar atavism. In the middle of the 19th century, my great-great-grandfather, for example, overcame his evening lethargy, in our tropical Mazatlán, reading and rereading the Dictionary of the Royal Academy. From him descended an uncle, Adrián, a regional historian,

another uncle, of the same name, grammarian and style corrector, one more, Edmundo, who literally lived from The Tale, and my father, a historian. All were also proud to count among their ancestors a singular friar, whose name I bear, who in the 16th century made rhetoric a trade and benefit.

As for me, there is no other reason that explains the hospitality that academic gentlemen give me than my legal training. I arrive, therefore, as a lawyer eager to participate in the daily work of this worthy institution, coming from another institution also committed to the destiny of Mexican culture. By training and vocation, I owe myself to the Universidad Nacional Autónoma de México. There I studied and also developed professionally. In it I found the paradigms of my life. Guided by my teachers, accompanied by my colleagues, inspired by my students, I have had the privilege of working for the cause of law, a perennial concern of all peoples.

Although I am not the only lawyer who is part of this Academy today, I am the only one who only works on legal issues. In its venerable history there are several men of law that the Academy has incorporated. Salvador Azuela, Isidro Fabela, Luis Garrido, Antonio Gómez-Robledo, Ignacio Mariscal, Alfonso Noriega, Alejandro Quijano, Emilio Rabasa, illustrate the wide list of jurists who have been part of this institution.

I understand the magnitude of the commitment that I make to my colleagues, and, by way of oath, I make a formal promise to do my best to honor the cultural responsibility that means sharing, at your side, the destinies of this institution.

Mr. Miguel León-Portilla has been generously willing to respond to these words. Mr. Miguel knows well how much I admire his work, of deep Mexican roots, of intense human sense and of supreme intellectual elevation. To him the universal letters owe that text, now classic, which offers us the *Visión de los vencidos* (Vision of the Vanquished); but his findings on Nahuatl philosophy are no less important, which among other things include a careful analysis of diphrasism *in quállotl in yécyotl* (what is appropriate,

what is right), as the prehispanic foundation of ethics and law;* his dazzling work on *Tiempo y realidad en el pensamiento maya*; the fascinating systematization of *Literaturas de Mesoamérica*; the beautiful translation, with erudite annotations, of *Quince poetas del mundo náhuatl* , and "*Los antiguos libros del Nuevo Mundo, Códices*", with which the historian, philologist and philosopher leads us to the intimacy of our past. These, and many other studies, make up his major contribution to the art of knowing, saying, and thinking.

The relationships between the law and the literary work have long been examined through the perception that novelists, poets, playwrights, and essayists have had of the characters and legal episodes. More recently, barely four decades ago, a new approach began in the studies of law and literature,** of which there were traces since the beginning of the 20th century. That systematization tries to apply the foundations of literary theory to the analysis of legal and jurisprudential texts. Neither of these two aspects is the one I will address next. Instead, I will refer to other links between the word and the norm: the importance of legal repertoires (the language of law) and the necessary legal defense of languages (the law of language).

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* Although there are not many sources, the knowledge of pre-Hispanic law has been possible, as indicated by León-Portilla (*La filosofía náhuatl*, México, UNAM, 1993, p. 231) thanks to the pioneering work, in this matter, of fray Bernardino de Sahagún and Alonso de Zurita; more recently, of Lucio Mendieta and Núñez, Carlos H. Alba and Alfredo López Austin. There was an archaic state where taxes were collected and where the construction work of great works (such as the pyramids) was organized. It is very likely that, for the most part, the rules were only customary, but their validity cannot be doubted.

** See especially Boyd White, James, *The Legal Imagination*, Chicago, University of Chicago Press, 1985 (first edition, 1973). However, the relationship between language and social sciences was earlier than that. *Cfr*. Morris, Charles, Signs, *Language and Behavior*, New York, G. Braziller, 1955.

THE LANGUAGE OF LAW AND THE LAW OF THE LANGUAGE[1]

Preliminary Remarks

Surely the deepest link between law and the arts occurs through literature. Those links have also existed over the centuries with music[2], the plastic arts[3] and recently with cinematogra-

[1] For Saussure, language is a set of signs, and language is a broader phenomenon, which includes language and speech. *Cfr.* Saussure, Ferdinand, *Escritos sobre lingüística general*, Barcelona, Gedisa, 2004, pp. 119 et seq., and Lázaro Carreter, Fernando, *Diccionario de términos filológicos*, Madrid, Gredos, 1953, pp. 210 and 211. The *Diccionario de la Lengua Española* (Dictionary of the Spanish Language), of the Royal Academy, defines "language (parole)" as: "2. Verbal and almost always written communication system, typical of a human community", and "language (langue)" as:" 2. Language (parole) (verbal communication system)". This is obviously a subject in the domain of philologists in which there is not yet a rule when it comes to legal language (langue). The dominant expression in this area is the one that refers to language (langue) (e.g., legal analysis of language (langue). Although it seems that the appropriate thing would be to speak of the language of law and the law of language (in reference to languages (parole) in particular), I have considered that, in light of the accepted meanings, I am not overstating the adoption, as a subject for this dissertation, "The language of law and the law of language". For reasons that the reader will be able to see, on several occasions I will use the words "language (parole)" and "language (langue)" interchangeably.

[2] Especially in the operatic repertoire and in the lyrics of the national anthems that often allude to the values of justice.

[3] By way of examples, famous themes can be recalled that gave rise to exceptional works, such as that of *Salomón*, treated by Rubens and Doré; the *Juicio de Juana de Arco*, by Ingres; *Susana y los viejos*, of which Tintoretto, Titian and Rembrandt left wonderful canvases; *La corte de Justiniano*, in the Basilica of San Vitale, in Ravenna; the representation of *Justice*, by Rafael or Orozco; or the

phy[4]; but none like the one that is represented through the language of the word; shared by literature and law.

In the year commemorating another centenary of his imperishable work, I offer Miguel de Cervantes one more testimony of admiration. The laws and government of men were not alien to him; hence one of the wise advices that Don Quixote transmitted to Sancho, and incidentally to legislators, governors and lawyers was:

> Make not many proclamations (laws); but those thou makest take care that they be good ones, and above all that they be observed and carried out; for proclamations that are not observed are the same as if they did not exist; nay, they encourage the idea that the prince who had the wisdom and authority to make them had not the power to enforce them; and laws that threaten and are not enforced come to be like the log, the king of the frogs, that frightened them at first, but that in time they despised and mounted upon.

In the broad field of literary creation, concerns associated with justice, equity, freedom, and the exercise of people are very frequent, sometimes even judicial and legislative functions. All of them, implicitly or expressly, are related to law. Although it is an

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autos de fe played by Berruguete or Goya. The painterly scenes of *Despacho de Abogados* by Van Ostade and, of course, the supreme representations of lawyers due to the sometimes inclement irony of Hogarth, Doré and Daumier are also memorable. Not minor for their aesthetic interest are the illustrated editions of Henry Bracton's, *On the Laws and Customs of England* (1268); or the *Mirror of Saxony* (1300), the wonderful *Conjugal Law*, (c. 1400), *La coutume de Normandie* (1450), or the representations of the beautiful Códice Huejotzingo.

[4] Here the list is also very broad, but the importance of films such as *Anatomy of a Murder,* by O. Preminger; *Inherit the Wind* and Judgment at Nuremberg by S. Kramer; Twelve Angry Men by S. Lumet; Paradine Case, by A. Hitchcock; Witness for the Prosecution by B. Wilder; Compulsion, by R. Fleisher; The Trials of Oscar Wilde, *by K.* Hughes; To Kill a Mockingbird, by R. Mulligan; The trial, by O. Welles; Paths of Glory by S. Kubrick, and Z by C. Gavras can be underlined.

increasingly explored territory, the links between literature and law constitute an invaluable source for reflection that progressively summons a greater number of scholars.

The literary works have reflected the environment and have preluded political and therefore legal change. Today, very clearly, literary issues of legal review prefer the themes of what we could call "micro-law" (crime, corruption, enrichment, media), and have abandoned the "macro-right" (political systems, public freedoms), very frequented when the dominant concern was centered on the figure of tyrants and dictators: when the repressive state flagelled society.

The motivations of writers and jurists are not exclusive. Creators have a privileged perception of reality. They often show in it what for many goes unnoticed, or they denounce what others also warn but remain silent and even hide. Their expressions of phenomena may not help to rectify things, but at least they help to identify them. For jurists, literary knowledge is not a diversion, nor an imposture of scholarship; it is a way of specifying the content and intent of words. The word is the working instrument of writers and jurists.

In the construction of the legal language of our time and of the previous times, literature has an axial role. Shin-equi-unninni had it with the epic of Gilgamesh, Homer had, centuries later and continue to have, to this day, the tireless builders of the literate city, as Jean Franco calls it, of the democratic city, as Manuel Vázquez Montalbán designates it, or of the just city, which we could also say.

The problems of justice, seen from the writer's perspective, often take on shocking tones. The description of the prisons made by Tolstoy in *Resurrection*, or by Wilde in the *Ballad of Reading Gaol*; the sordidness of the courts and the bailiffs bequeathed to us by Victor Hugo in *Les Misérables*; Dickens' voracious and dark lawyers in *Bleak House*; the caricatured keys to injustice identified in *Robinson Crusoe* by Defoe or in Gulliver's *Travels by Swift*; exclusion, which Ibsen denounces in *A Doll's House*; the tormented disinte-

gration of reality in *The Trial* by Kafka; injustice as desolation, in *The Grapes of Wrath* by Steinbeck, are some examples of the writer's deep gaze on legal institutions. Also, sometimes, the *jocundo* illustrates, such as the scene (*Man and Superman*) that Bernard Shaw places in the mountains of Granada, in which two characters exchange greetings. One of them says: "I am a bandit, and I live by stealing from the rich"; his interlocutor replies: "I am a gentleman, and I live by stealing from the poor."

In the common homeland of the shared lengua, it is not possible to omit Pérez Galdós (*Episodios nacionales*) and Valle-Inclán (*Tirano Banderas*) to mention only two emblematic Spanish figures who, from different angles and with amazing prose, addressed the issues and problems of justice. And what about the abundant Mexican literary creation, in the revolutionary period and in our time, as well as the Latin American one.

The list is not endless, but it is abundant. What has changed in each epoch is the dominant issue, although there is an almost circular recurrence. The literature has a double role as far as justice is concerned: the same that corresponds to the relationship between the stimulus and the consequence. Oppression, abuse and exaction are the situations denounced; in turn, non-conformity, protest, insurrection, are the actions announced.

This is, without a doubt, a quarry of multiple and rich veins. The literary work of justice, freedom, courts, lawyers, scribes, oppressors and liberators is a reason for long dissertations, to which I refer here only to underline one more point of contact between the word and the law. It is an issue to which, from the schools of literature and law, attention must be paid. The literary analysis of law, and the legal analysis of literature are subjects that call for study.

Even in the biographical order it is possible to identify how these two forms of use of the word have become intimate. Over the centuries there are many lawyer-writers, or writer-lawyers, if you prefer. In the same Mexican Academy, as in those of other

countries, there are and have been those who personify, brilliantly, that fruitful duality.

I. The Language of Law

It is common to attribute to lawyers an unfaithful use of language. Although in many cases this is a resounding truth, there are others in which the lawyer is not understood simply because his expressions do not correspond to those of daily use. Without intending to make a sociology of the Mexican legal profession, I can highlight two major historical problems that my colleagues have suffered: living under an endemic authoritarianism and overcoming the narrowness of an environment where variants of illiteracy have made it difficult for society to know its rights.

Mexican lawyers have been caught between those who do not serve them and those who do not understand them. An old aphorism goes that ignorance of the law does not excuse its fulfillment; the bad thing is that the opposite also happens: the ignorance of the law does prevent its exercise. The paradox is that no one can claim, to their advantage, what others can invoke to their detriment. The unknown norm does not empower, but it does oblige.

Law is a cultural phenomenon. Legal culture is one of the keys for the ruler to be more modest and the ruled less shrunken. Without a legal culture, some run over, even unintentionally, and others are run over, even without knowing it. In such an environment, men of law seem to be an extravagance, whose language seems to be a great and vain form of speech. To make legal institutions known there are many possible actions. Some are transmitted by oral tradition, others by individual and collective behavior, some more because there are programs to spread the information, education and training whose purpose is to publicize what the law confers, allows or orders.

As a cultural phenomenon, law is as stable or as dynamic as the language through which it is expressed. There are institutions that endure, usucapion is an example; others that evolve, such as property; some more that are transformed, such as the monarchy; and many that are resulting from new realities, such as electronic contracts. Something similar happens with the language. Sometimes the institutions and concepts have a synchronous relationship; this is usually the case with legislated law.

In others, this nexus is diachronic, and the institution precedes the concept; this is the case with customary law. Now, institutions only stand in solidarity when their concepts cause state.

In a way, the language of law is the most universal and the oldest of all those that exist. Latin is the official language of the Vatican City State[5], but was replaced by vernacular languages in Catholic religious practice. However, Latin that is still used in certain legal formulas predates any of the living languages. Even in several formalisms and aphorisms, legal Latin is a kind of lingua franca preserved by legal praxis in much of the world, including the countries of common law.

1. *The Word "Law"*

It is understandable that medieval jurists have sought a voice that would differentiate Roman *ius*, from the new customary law, which prevailed in Europe towards the middle Middle Ages. The option was offered by late Latin. *Directum*[6], from "straight" (al-

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5 *Cfr.* Apostolic Constitution Pastor Bonus on the Reform of the Roman Curia, June 28, 1988, Article 16.

6 The Indo-European root is *reg.* For Edward A. Roberts and Bárbara Pastor (*Diccionario etimológico indoeuropeo de la lengua española*, Madrid, Alianza, 1996) means "to move in a straight line", "to conduct"; for Calvert Watkins (The American Heritage Dictionary of Indo-European Roots, New York, Houghton Miflin Co., 2000) it also means "to lead, to govern". Also identified, is the root *regtos*, which for X. Delamarre (*Le vocabulaire indo-européen, Paris, Jean Maisonneuve Suc., 1984*) means "direct", "in order". From it, derives *rasto* [direct], in avesta;

ready used by Paul in the sense of adequate, just, or "legal").[7] In 660, for example, Marculfo alluded to the "*recto tramite secundum legem et consuetuninem...*".[8]

The most distant precedent of the use of the "right" voice that I have located, appears among the Visigoths. Alaric (between 484 and 507), appointed a commission of Roman jurists who, in 506, presented the Breviarium, a compilation of norms, in the introduction of which reference is made to "the books of the law".[9] It is possible that the expression "law" was used, in its beginnings, as a synecdoche of "books of law", while the expression ius was used throughout the Middle Ages to refer to the branches of law (*ius civile, ius gentium, ius italicum, ius sacrum, ius naturale,* etc.), or to subjective rights (*ius utendi, ius abutendi, ius fruendi,* etc.).

"Law" would have been, in the beginning, the voice used to identify the texts ("books") in which studies and legal norms were contained (ius). Ius was identified with what was straight, and the texts concerning the different legal conceptions, were held for what was straight or correct. It must be considered the classical identification between law and morality and, also, that the Roman distinction between *ius* (as the right of the city) and *fas*[10] (as the right of the deity), disappeared as the Christianization of the empire developed.

The propagation of the voice may have been due to the expansion of the law schools which must have been many, judg-

orektos [straight], in Greek; *rex* [king] in Latin; *reiks* [king] in Gothic; *riks* [king] in Old High German. They also come from the same root, king, rector, royal, kingdom, raja, rich, rule, regulation, regular, regent, region, beg, abrogate, repeal, and some military voices, such as regiment, etc. In turn, the Indo-European root of *ius* is *yewes* (Roberts and Pastor; and Watkins) or *yewos* (Delamarre). It means "law", "to purify". *Yoh*, in Sanskrit, is also "health," "healthy," and *yaozdadaiti*, "pure," "purifier."

7 *Digest, 39.3.17.1.*

8 Savigny, Carl von, *Histoire du droit Romain au Moyen Age*, Paris, Ch. Hingray, 1839, t. I, p. 96.

9 *Ibidem*, t. II, p. 26.

10 *The Oxford Latin Dictionary* indicates that its etymology is doubtful.

ing by an edict of Justinian, of 533[11]. The emperor decreed the disappearance of all the schools of law existing to date, with exception to that established in Beirut (from where his chief advisers come), that of Constantinople, founded in 425, and that of Rome. The decision must have been taken because it was considered that the multiplication of schools, especially between the Goths and the Visigoths, could generate interpretative currents that would affect the legal unity of the empire. He must also have feared interpolations that would distort the solidity of the law that Justinian insisted on systematizing in order to preserve the centralized structure of power.

2. *The Words of Law*

The key word of the law is "norm". Whatever its formal aspect (constitution, law, code, jurisprudence, regulation, directive or any other), any provision adopted by the power, susceptible to coercive imposition, is a norm. Its origin (*nomoi*) is Greek. As for the voices adopted to identify the instruments that systematize the norms —Constitution, law and code— they are those that have traditionally had the greatest significance. In addition, with the consolidation of the courts as fundamental organs of the Constitutional State, another concept became similarly important: jurisprudence.

Unlike law and code, which come from Roman antiquity, the other two voices: constitution and jurisprudence, are of Latin stamp, but their current meaning is relatively recent. The modern concept of constitution corresponds to the Enlightenment and that of jurisprudence to liberalism.

Code comes from the Latin *caudex*, which meant "assembly of many pieces of wood". This was a constructive procedure of the ships to such an important point that Claudius Appius (third

11 *Ibidem*, t. I, p. 295.

century), one of the consuls who most enthusiastically promoted navigation, was nicknamed Caudex[12], precisely because he related it to Roman development. By extension, texts inscribed in assembled tables, and later in other types of support, were named in the same way. Before it was given a strictly legal connotation, codex, or caudex was book equivalent. Then, it was reserved only for books that contained the words of the law. Today, making codes, codifying, has nothing to do with that old carpentry technique or, necessarily, with its book appearance. A Code is a relatively long text through which some previously dispersed legal provisions are systematized or are normative repertoires that regulate a series of institutions of particular relevance and complexity. In turn, the codicil is a diminutive of code; in Roman antiquity this voice was used to refer to petitions addressed to emperors, or to posthumous instructions, whether or not incorporated into wills. At present, this last meaning is the one that remains.

The association between law and culture appears, since ancient times, through the voices of code and law. Code, for its original meaning of book; Law, due to its relationship with the Greek and Latin lexis voices (*pa- labra*, discourse, language)[13]. As for law, its multiple derivations lead us to the keys of the state: legitimacy, legality, legislation. Some Latin derivations were lost in Spanish, such as *legiferer*, which nevertheless subsists in English, French, Italian and Portuguese, and what a good need we do to allude to the normative activity (not always legislative) of the state. Other voices were completely truncated; it is the case of *legerupa* (infringer, ungodly) and *legerupio* (infringement, violation, or alteration of the norm).

The use has distorted the meaning of some voices derived from the law. For example, "*leguleyo*" is today a discussor or an ignorant of the laws, but Cicero defined it as a specialist in legal

12 See Seneca, *De la brevedad de la vida*, XIV.

13 See the difference between logos and lexis in Collinge, N. E. (ed.), *An Encyclopaedia of Language*, London, Routledge, 1990, p. 790.

technique, "cautious and sharp, a preacher of actions, a singer of formulas, a stalker of syllables..."[14]

The verbalization of institutions corresponds to the social assumption of their relevance. Parliament, for example, appeared as a political and legal reality rather than as a word that represents it: there was talk of parliamentarians and parliamentarism before these voices appeared in the lexicons. Its inclusion, whose historical trace allows us to notice the cultural construction of the institutions, serves to denote that the norm acquired the character of a social regularity thanks to its verbal enunciation. Dictionaries are, in this sense, the scale of the cultural significance of institutions. That is why I consider that identifying the legal terms of use is a useful exercise to measure one more of the deep links between law and culture. This is, among others, one of the functions of general dictionaries, and also of specialized vocabularies, repertoires or lexicons.

The illustrious members of this Academy and of the related institutions of the hemisphere, managed to incorporate into the *Diccionario de la lengua española* numerous and until recently questioned voices from Spanish-speaking America. Therefore, Academics on both sides of the Atlantic shore deserve a wide recognition. As for words concerning the law, their new meaning was more discreet, as befits the slow changes in legal systems. Certainly, there are not so many variations in this field as to generate a significant current. However, there are issues and problems that are being addressed by legal institutions, whose impact on social life is already being felt. At this point, the synergy between philosophers, scientists and jurists presents possibilities not yet imagined a few decades ago.

For example, there is currently an interesting relationship between certain biological, clinical and legal issues that makes it possible to envisage a new discipline: biolaw, as a specialty that involves aspects of constitutional law (public freedoms, funda-

14 *De Oratore*, I, 236.

mental rights), administrative (registration and control systems, public services), civil (succession, filiation, parental authority, personality rights), criminal, procedural, labor, social security, industrial property and patents, as well as international, commercial, environmental and insurance law. These norms affect the guarantees for privacy, dignity, non-discrimination, the autonomy of the family structure, the right to health protection, among other issues. It is in this generation that we begin to talk about reproductive rights, which also make up this new legal branch that is already emerging.

Just as in the second half of the previous century concepts emerged, already consolidated, such as bioethics, today it is perceptible the gestation of a legal discipline that transcends the existing ones because it invokes a wide range of problems and requires an also extensive series of answers that touch on many of the traditional disciplines. Biolaw will include, among other aspects, the regulation of genomic medication, which even in its current phase is generating intense legal activity (legal, jurisprudential, and doctrinal) in much of the world. Research, diagnosis, and treatment related to the genome require an original regulatory apparatus, alien to the traditional concepts of law. The advances already achieved, and the perspectives of neurosciences suggest a profound impact on public and private law (mental faculties to act, effects of emotions)[15]. Pharmacology demands new forms of defense for women and for minority ethnic groups, who are generally not considered in the proportion required for clinical experiments.[16]

Research protocols include issues with which few jurists were familiar before our time. It is clear that original responses will have to be constructed, which reconcile the values of freedom

15 See Garland, Brent and Franckel, Marrk, *Neuroscience and the Law*, New York, Dana Press, 2004, esp. pp. 51 and et seq.

16 *Cfr. Science* Editorial, Washington, June 10, 2005, vol. 308, No. 5728, p. 1517.

and human dignity and legal security, with the new horizons that science is opening.

Other legal institutions, which will also be involved in this broad structure of biolaw, are linked to problems such as the therapeutic cruelty and what is colloquially called a living will or a living will. If we lag behind, this contradictory expression will eventually be consolidated. Therapeutic cruelty and testamentary dispositions in the case of terminal states are phenomena already standardized in some Spanish-speaking countries. In both cases, the conditions that must be met are regulated for people to determine what to do when they are not capable of making a decision, and do not wish that, against their will, or without it, third parties or the holders of the organs of authority prolong an unwanted treatment or a painful terminal phase.

Preparing a concept does not mean adopting an institution; but if legislation is ever to be made in this area, it is desirable that it be done with neatness of style. In Spain, this expression begins to make its way into some laws; it is the way to address, academically, the semantic question.[17]

At this point it is necessary to continue with the healthy practice of welcoming the neologisms of a new scientific and legal reality. This happened, for example, with the voice "privacy", admitted in the *Diccionario de la Real Academia*, in its last issue. Numerous rules of law that reconcile the exercise of freedom and the protection of dignity are based on the recognition of a private sphere legally protected. The fundamental right to privacy is the result of a long struggle for privacy to be guaranteed by legal law. The inclusion of this new voice corresponds to the emergence of a new right.

Other neologisms await consideration. Social demands and judicial functions have also led to the emergence of new voices, in Spanish and in other languages. It's the case of the *performa-*

17 *Cfr.* Valadés, Diego, "Debate sobre la vida", *Eutanasia*, Mexico, UNAM, 2001, pp. XIII and et seq.

tive adjective, created in 1956[18] by philosopher John L. Austin to denote a situation that cannot be considered from the point of view of its truth or falsehood; performative is a statement that indicates that a legally relevant action is being carried out (in the case of "I take this person as my wife"). In Argentina, the jusphilosopher Genaro R. Carrió has translated it as "performative", which seems very reasonable to me because it follows the cases of other adjectives, such as "striking", "healing", "rotary" or "imaginative". The important thing is that, in the course of time, the English voice has acquired new dimensions, particularly in jurisprudential matters.

Another voice that still has no correlate in Spanish is the English verb *to empower*, which means "to invest legally or formally with power or authority"[19]. In some cases, the voice "*empoderar*" is already used, although there is a strong and explainable resistance to its adoption. Interestingly, the verb "to empower" already has the meaning of "to become powerful or strong", which today is considered outdated; archaism would allow the neologism to be circumvented.[20]

The language of law has been elaborated and polished for centuries; its charm is in its versatility. Among the many paradoxes that culture produces, one of the most fascinating is the one represented by that equivocal, or at least polysemic, language

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18 The date recorded in the *Oxford English Dictionary*, 2a. ed., is 1962, corresponding to the publication of the essay "How to Do Things with Words"; however, Austin employed it in a programmed broadcast by the BBC in 1956. *Cfr.* Austin, John L., *Ensayos filosóficos*, Madrid, Alianza, 1989, pp. 10, 217 and et seq.

19 The oldest record of this voice corresponds to 1654. *Cfr. Oxford English Dictionary*, 2a. ed. According to this same dictionary, in the nineteenth century began to be used, moreover, the voice *empowerment*, which is usually translated as "empoderamiento".

20 The fifth edition of the *Diccionario* de la Real Academia of 1791, included for the first time, as a second meaning of "apoderarse", "to become powerful or strong, or to prevent oneself from power". By then, however, this meaning was already considered archaism.

that the law uses. The key voices of the law are pure polysemes. Throughout time and throughout geography, the voices of law have maintained certain constants and have said, at the same time, different things. A few concepts, of changeable intelligence, have served as well to found freedom as to repress it; to circumvent the punishment than to impose it; for allowing the insurrection of men than to placate them; to sow peace or to wage war.

The core legal voices, in our time, are the state, the law, the justice. Of these, the state is of relatively new stamp, as it is only five centuries old. The others, on the other hand, come to us from further afield. The oldest, without a doubt, is justice, rightly associated with the concept of *ius*. Interestingly, the old voice *ius* only transcended through the voices linked to justice (to judge, judge, jurisprudence, etc.), but not in those related to law.

As stated above, law comes from the Vulgar Latin *derectum*, which in turn derives from the classical *directum*. In Italian it generated *diritto*, in Portuguese *direito*, and, in German, French and English, it gave rise to *recht, droit* and *right*, due to the contraction *drectus*[21]. In France and England, these voices are identified in the literature of the ninth century; in Spain it was used in Latin, in documents of 1075,[22] in the oath of fidelity to the king of Castile, in 1162,[23] and in the Seven Games, in the thirteenth century,[24] for example.

Call it ius or law, the concept has been discussed for well over twenty centuries; the same happens with justice. The state,

[21] See Corominas, Joan, *Diccionario crítico etimológico, Madrid, Gredos, 1976*. Corominas identifies the contemporary use of the voices "dretamente" and "drechamente" in the Aragonese area. In the anteclassic period, the use, in Spanish, of the voice "drecho" is also recorded. Although it is not a meaning related to the legal use of the voice, Lope de Rueda says: "Putting plants here and plants acullá, from here to twenty-five or thirty years ternéis an olive grove made and drained" (cit. by Cuervo, R. J., *Diccionario de construcción y régimen de la lengua española*, Bogotá, Instituto Caro y Cuervo, 1994, t. II, p. 920).

[22] *Cfr.* Cuervo, *cit*., note 21.

[23] García Gallo, Alfonso, *Textos jurídicos antiguos*, Madrid, s.p.i., 1953, p. 297.

[24] *Ibidem*, p. 309.

named for Machiavelli in 1513, is not a peaceful concept either. In eight years, we will celebrate the first five hundred of coming by discussing what, exactly, that singular voice means.

The age of the controversy has not detracted from the issues discussed. Furthermore, these are not issues whose effects remain on the threshold of speculation; determining the content and scope of these three voices has direct consequences on the lifestyle of individuals and communities. The theory of law, the theory of justice and the theory of the State have given rise to democratic and totalitarian systems; to the defense or restraint of fundamental rights; the secrecy or transparency of public life; to the distinction or confusion of the forms of power; to competitive or hegemonic processes to form elites; to the inclusion or exclusion of segments of society, sometimes even the majority; to the probity or to the corruption of the bureaucracies; to the concentration or distribution of wealth.

The state is the product of a process of secularization of political power. Paradoxically, the state has also unleashed phenomena of idolatry and dogmatism. All forms of exercise of power suffer from a Faustian proclivity; Identifying, recognizing, and tempering it is one of the most fascinating challenges for law.

The quality of social life is related to the type of institutions that govern it; these result from the principles that shape them, and the principles of the theoretical constructions that precede them. For this reason, law, justice, and the state are controversial categories of singular abundance. The richness of language is exemplified by three words, whose combination of subtleties illuminates or overshadows the most found systems. The institutional sea that generates the variation and the interaction of each of these concepts, is perceptible by the copious bibliography that documents its long-standing controversy, as well as by the variety of constitutional designs that today the world is populated.

The practical significance of legal voices was noticed very early. One of the summits of law is, without a doubt, the *Corpus iuris civilis*.

The decision to develop it allowed Justinian to lay the foundations of a cultural empire; the Corpus represents the bridge between classical antiquity and the world of today. The influence that this exceptional set of principles and rules has exerted for centuries is unparalleled in the history of institutions. The different families of law that exist today have been grouped following more or less convergent criteria. Due to its cultural influence and its geographical extension, the Romano-Germanic family, constituted by codified law, is present in most of Europe, in all of our America, in a large portion of Africa, in the Near East, in Japan and Indonesia[25]; the family of common law, or common law, is based on jurisprudential elaborations and has been adopted by most of the more than 40 States that have English as their official language.[26]

Now, although both families have a different structure, they have one fact in common: they both descend from Rome: one, for joining the codification of Justinian law; another, for having updated the old Roman tradition, which has been identified as "the law of jurists", little legislated and based on the argument from authority, which was even what Justinian codified.[27]

The language was so relevant to Roman law that the penultimate title of the *Digest* deals with the meaning of words. In this part, for example, Paulo's comment about *munus* is reproduced, which sometimes means gift (from which "munificent" comes

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25 See David, René y Jauffret-Spinosi, Camille, *Les grands systèmes de droit contemporains*, 11th. ed., Paris, Dalloz, 2002, pp. 25 and et seq. y 221 and et seq.

26 English is the national language in South Africa, Antigua and Barbuda, Aruba, Australia, Bahamas, Barbados, Belize, Bermuda, Botswana, Brunei, Cameroon, Canada, United States, Ethiopia, Fiji, Philippines, Gambia, Ghana, India, Cayman Islands, Ireland, Israel ("auxiliary official language"), Jamaica, Kenya, Liberia, Namibia, Nigeria, New Zealand, Pakistan, Rwanda, Samoa, Sierra Leone, Singapore, Somalia, Swaziland, Tanzania, Trinidad and Tobago, Uganda, Zambia, Zimbabwe.

27 *Cfr.* Merryman, John Henry, *La tradición jurídica romano-canónica*, Mexico, FCE, 1971, pp. 22 and et seq., and Domingo, Rafael, *Juristas universales*, Madrid, Marcial Pons, 2004, t. I, p. 110.

from), and other times, a position or an office, as when it is said "municipe", Because it serves the offices of the republic. In general, this chapter contains a true legal repertoire, within the then incipient tradition of lexicons.

3. *Legal Lexicons*

The issues of cryptic law are a secular concern. That is why the usefulness of legal lexicons has been valued since ancient times. Aeschylus[28] allude to it the same as Montesquieu.[29] For him, the laws should be written in a simple way and its words mean the same for everyone. In one of his many astute remarks, Tocqueville pointed out that the precedent system adopted by the United States denied the population the benefit of a written, accessible, and intelligible law. The right of judges, he claimed, is only for experts, and the right must be for everyone. This comment from the brilliant French observer allows us to understand why, today, the United States is one of the most contentious societies on the planet: because it is, inevitably, in the hands of the translators of the law. The lawyers, there, are a new species of haruspices, who thrive thanks to a system that was designed for them.

The available elements allow us to establish that the first voice lists were made in China and Mesopotamia, eight centuries before our era. Later, Espeusipo, "Plato's direct successor", as Jaeger describes it, codified the norms of the symposia, formulated a classification of the animal and plant kingdoms, and in his

[28] In *Eumenides*, Aeschylus presents the trial of Orestes, charged with matricide. In addition to the aesthetic interest of the tragedy, the work is of great importance from a procedural point of view, because it consists of the contradictory trial held before an impartial jury, which casts its vote secretly; In several dialogues, the need for clear and precise provisions becomes apparent (see, for example, paragraph 950).

[29] *El espíritu de las leyes*, VI, 2.

works *Definitions*, disappeared, and *Similarities*, of which only they give fragments, it presented a "classification of what exists".[30]

While it also dealt with legal issues (*Of justice*, *The politician or the citizen*, *Of the legislation*, also disappeared), it has been argued that it included the definition of various voices on these matters. The lexicon of Varrón, in the second century BC. J.C., included numerous legal terms; Although the first specialized work that is known is *De verborum quae ad ius civile pertinent significatione* by Gaius Aelius Gallus, the text did not reach us. The lexical concern was present in more than twenty jurists who lived between the 1st centuries **BC. J. C., and VI d. J. C.**[31]

The publication of lexicons, vocabularies, repertoires, and dictionaries was frequent in the Middle Ages, and it tended to expand as the process of constituting the modern state progressed. In the 14th century, the precursor work of modern legal lexicography circulated: the *Dictionarium iuris*, by Alberico de Rosciate, where it already merges the treatment of both rights (*utrumque ius*): the civil and the canonical. This notable jurist, contemporary of Bartolo, author of the Statute of Milan, was also a fervent admirer of Dante. Alberico owes a Latin version of the Commentary on the Divine Comedy, written by Jacopo della Lana. His worship by the word equaled his legal vocation. Later, the invention of the printing press allowed the multiplication of biblical editions, but also of civil legal texts. Dictionaries began to be small.

Although in the 15th century the lexicons of Alberico, Baldo and Paolo di Castro, for example, had an impact, the emergence occurred in the century of the state. Only of the famous *Vocabu-*

30 See Diógenes Laercio, *Vidas, opiniones y sentencias de los filósofos más ilustres*, Madrid, Sucesores de Hernando, 1904, t. I, pp. 233 and et seq.

31 Among them: Ulpiano, Paulo, Gayo, Javoleno, Marcelo, Celso, Pomponio, Modestino, Proculo, Calístrato, Terencio Clemente, Elio Galo, Alfeno Varro, Juliano, Africano, Papiniano, Triboniano, Hermogeniano, Labeon, Ofilio (who pointed out, for example, that "toga", "slum" and "roof" come from *tego*, cover).

larium utrius que iuris, by Antonio de Nebrija, can be counted at least eight editions in the 16th century, published in Paris, Venice, Lyon, and London. Nebrija, author of the first grammar and the first dictionary of Spanish, also produced a dictionary on both rights (civil and canonical). It is not a coincidence that it has considered the systematization of the specialized language of lawyers as a relevant project. A Renaissance prototype like the Andalusian sage had to understand the significance of legal concepts and the usefulness of specifying them.

In his general Latin dictionary, Nebrija defined *ius* as "the faculty or power of each one" and as "the right that interprets the law", and in the Dictionary of Romance in Latin, the word "civil law" had two meanings: "*ius civile canonico*", and "*ius riguroso; ius meo, ius tuo*", and so on.

With Nebrija's dictionary, those of at least fifteen other authors coexisted, plus another ten that only contained data from the publisher. In this case, the list of places of origin extends to German, Italian, Spanish and English cities.[32] The proliferation of lexicons of civil and canon law coincides with the blossoming of a new reality: the secularization of politics and its natural consequence: the State.

In Mexico, a similar phenomenon took place after Independence.[33] At least a dozen dictionaries were published, as the legal

[32] The authors of dictionaries and repertories include Simon Schardio, Hermano Ulnero, Francois Ragueau, Ioan Bertachini, Paolo di Castro, Barnabé Brisson, Jean du Luc, Alberico de Rosciate, Alexander Scot, Thomas Neageorg, Johann Oldendorp, John Skene, Francis Jammet, Pardoux du Prat, and Jacob Spiegel.

[33] However, the different lexicons of indigenous languages, elaborated during the viceregal period, must be taken into account. Voices related to law and justice appear in them. See, v. g., the works of Fray Tomás de Coto, Thesaurus verborum (made between 1647 and 1656; edited by the UNAM in 1983) of the Cakchiquel language, where the words law (*oquebal*), justice (*chohmilah banoh*) and rule (*tin qohba*); and by Fray Alonso de Molina, Vocabulary in Spanish and Mexican languages (Mexico, 1571), where, among other legal voices, justice (*tetlatzacuilriliztli*) and law (*nahuatili*), but not law, appear.

structure of the Mexican State was defined, during the second half of the 19th century. In this measure, dictionaries are a kind of witness that accompanies the constructive process of languages, as well as of legal systems. The regulatory complexity makes consultation instruments necessary; specialized dictionaries characterize the spread of legal culture in a society.

In addition to the national lexicons, the Spanish texts had a great impact in Mexico. Of these, the classic dictionary of the 19th century, by Joaquín Escriche, led to Antonio de Jesús Lozano publishing a voluminous dictionary in our country under the title of Mexican Escriche.

The role of legal lexicons presents new dimensions. If in ancient times they served to establish the law, and in modern times to accompany and witness the development of the state, in our time more ambitious tasks are reserved for them. Until now, lexicons have been an eminently professional instrument. They have served both those who study and those who profess the right; also, those who are incidentally interested in the issues and problems of law. But law is a cultural phenomenon, and as such, communities are being attracted to its study and understanding, beyond what a professional concern may mean.

In open societies the legal culture has a priority role; the so-called internal legal culture, related to the training and information of those who participate in legal practice, as well as the so-called external legal culture, related to social perceptions and attitudes in general.[34]

The words of current law do not belong to the reserved domain of lawyers. A society does not become plural if its members ignore their rights and duties. The law has reached high levels of complexity and the professional requires advanced consultation tools; but the law is also the collagen of society, and citizens need reasonable means of information. The highly demanding slope

[34] See Atienza, Manuel, *El derecho como argumentación*, México, Fontamara, 2004, p. 81.

subsists, increased; but the other, which leads to the familiarization of society with the normative order and, therefore, to the formation of a legal culture, also increases.

This social phenomenon, which singles out the citizen produced by the constitutional state, could be called "juridicalization", if I am allowed this loan from Quintiliano. Do not forget that democratic institutions, from their Hellenic origin, relied on the presence of the *politeuma*,[35] what we now call "citizenship". Even in still rural France in the 18th century, the spread of the word "citizen" symbolized a reference to the democratic polis.

The *Diccionario de la Lengua*, of the Royal Spanish Academy, contains numerous voices and legal meanings. While some may be controversial in light of particular schools or methods, all involve a long process of fine-tuning. Academic rigor is not rigidity; for this reason, in successive editions there have also been significant adjustments. Throughout its history, the Academy has adopted three concepts of law, plus some variations of style.

The first concept adopted in the *Diccionario de autoridades*, of 1732, and reproduced some fifty years later in the first edition of the *Diccionario de la Lengua Española*, of 1780, said that law is: "What nature dictates, Divinity commands, defined by our Holy Mother Church, the people constituted, establishes the prince, supreme legislator in his dominions, or orders the city or the town for his private government, or introduces the custom". In the third edition, of 1791, grammatical adjustments were made, without substantially changing the concept: "What nature dictates or God has ordained or defined the Church or the people have instituted or sovereigns have established in their dominions or cities and peoples for their private government". The disjunctive conjunctions helped to clarify the text; in the first version it could be understood that there were two sources of law: that dictated by nature, God, the Church and the prince, successively; and the one adopted by the city or the town. According to the

35 See Aristóteles, *Política*, 1279a; Polibio, *Historias*, IV, 23, 9.

corrected version, the series of disjunctions makes it possible to establish that there is a plurality of sources. In any case, this did not modify the legalistic and monarchical conception of the legal order; the reference to the prince, or sovereign, and to the Church, was not exclusive, insofar as it attended to the coexistence of civil law and canon law.

The second academic concept of law appeared in the eleventh edition, in 1869: "Collection of principles, precepts and rules to which all men in all civil society are subjected, and to which observance they can be compelled by force". With some variations of style introduced in the 1925 edition, the definition adopted remained as follows: "Set of principles, precepts and rules to which human relations are subject in all civil society, and to whose observance they can be compelled by force." In the 1947 edition, it was noted that "compelled" lacked a complement, which it did have according to the 1869 wording, so "individuals" was added, to read as follows: "Set of principles, precepts and rules to which they are subject to human relations in all civil society, and to whose observance individuals can be compelled by force". With this conception, in 1869 the Academy surpassed that of 1732, and adopted a positivist approach, in accordance with the theses held in England by John Austin.[36]

The third concept appeared just a few years ago (2001), in the current edition, 22nd.: "Set of principles and norms, expressive of an idea of justice and order, that regulate human relations in every society and whose observance can be coercively imposed". What is distinctive here is to have included references to justice and order. The latter, in particular, could imply a static position that will need to be assessed. The positivist idea is still present in the reference to justice, but its fluid nature, appropriate to the cultural processes of which the law is a part, contrasts with the rigidity suggested by the reference to order, which the Academy itself defines as "Placing things in their proper place".

36 From his work *The Province of Jurisprudente Determined*, published in 1832.

4. *Revolutionary Changes and Words*

Alexis de Tocqueville associated revolutions with changes in language;[37] previously, J. J. Rousseau had established the relationship between the social formation of man and language,[38] and much earlier, with an exceptional perception, Thucydides had noticed that great shocks generate changes in the language. On the Peloponnesian War, the intensity of passions grew, and in such a way the objectives of life in common were upset, and the fracture of conventions came to such a degree that the "words changed their original meaning".[39] That is the result of a revolution. As the Greek historian suggests on the clash between the Spartan and Athenian cultures in the 5th century B.C.: when reason loses meaning, words also lose their meaning.

The role of language in the construction of new legal institutions is fundamental. This was pointed out by Tocqueville when he differentiated the language of democracies and monarchies. In the 18th century, the Americans created the word "federalism" and the French "constitutionality", as well as a legal and political discourse capable of wrapping everything that the imagination of societies could incorporate into the new meaning of words. "Democracy" is one of those terms that the French observer describes as "double bottom", because "you put the ideas you want into it and get them out without anyone seeing it". The modern origin of abstruse language is situated in that space where no limits were placed on what was asked for or what was offered; the applicants knew that the responses to their feverish words would be in others no less euphonic. The greater generality of the words allowed a more widespread satisfaction of their addressees. Each

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37 La democracia en América, Madrid, Aguilar, 1989, t. II, pp. 96 and et seq.

38 *Discours sur l'origine et les fondements de l'inegalité parmi les hommes*, en *Oeuvres politiques*, Paris, Garnier, 1989, pp. 37 and et seq.

39 Tucídides, *The History of the Peloponnesian War*, New York, Dutton and Co., 1950, p. 228.

one began to offer whatever was convenient to interlocutors who found it convincing.

The work of the legal discourse consisted in restoring that disorderly political discourse to give it a more coherent content. Then the jurist appeared as the curator of the scene; his word wanted to be precise in an environment that rewarded generous expression. The perplexity was overcome because the lawyer, put to pontificate, that is, to build bridges that would link the arcane of power, the ambition of the rulers, the frustration of the governed, the bitterness of the present and the uncertainty of the future, he became the presiding miracle worker over the founding era of the constitutional state. During the first decades of the constitutional state, the beneficiaries of power have been the lawyers. His power was not, of course, in arms; neither in the legal order; he was only in the ability to use the words that did the lay miracle of inspiring confidence.

This was the case in constitutional states that were consolidated with some rapidity; those who took a more rugged path saw generals and lawyers alternate; and the former always advised by the latter, or the latter always supported by the former. The countries abandoned by democracy, experienced the paradox of dual language: military and forensic. A quick, insipid, dry one that only managed to speak of order; another, more versatile, seductively misleading, for its prolific invocations of justice.

The language of law acquired the nuances of hope. It was built to clear doubts, calm concerns, and calm demands. The concept of sovereignty, so dear to medieval and absolute monarchs, was one of the keys to facilitating the concentration of power. Then, the principle was transferred to the saddlebags of the people, who from subject became sovereign. The magic of words, in this case of the word "sovereignty", allowed a Copernican turn in the organization of power. Of all luck the sovereignty continues being discussed, like an authentic polysemy.

Today, nation states are sovereign; but among us, for example, it was resolved that the old provinces should also be. Thus,

Mexican federalism was built on the basis of a distorted concept, because in the same Constitution two sovereignties coexist: one greater than the other. Two higher powers, of which one is inferior. The Orwellian paraphrase is inevitable: all are sovereign, but some are more so. This is a typical case of antinomy in the constitutional text that must be resolved by applying concepts of linguistic analysis. Among us, the greatest semantic success of the Constitution in the 19th century was in the incorporation of the *amparo*. This Spanish voice, of medieval stamp, was adopted to find the legal bases of freedom in Mexico. His success, internal and external, was remarkable. The *amparo* trial uses a clearly identifiable voice as protection from power. Had a technical term been used, the level of general acceptance might not have been the same. The institution was consolidated both by its formal structure and by its social acceptance. Some doctrinal concepts have met with a similar fate.

As for our current Constitution, the original version contained the word "social" four times; now uses it 51 times, with a multiplicity of contents (for example, rating classes, sectors, institutions, policies, actions, strategies, services, functions, responsibilities, organizations, procedures, economics, communication or security). At no time, however, does the concept "social rights" or "social guarantees". This is a doctrinal construction that has had a profound impact on identifying the profile of the Constitution. Furthermore, it is significant that the Constitution contains 125 references to law or rights, 452 to law or laws, 103 to authority, 91 to power, and another 91 to justice. The word "freedom", on the other hand, only appears 22 times.

A good level of reference consists, for example, in verifying the current text of the Constitution, with that of its predecessor of 1857. In this, freedom appears 8 times, social one, justice 19, power 26, authority 20, law or rights 28, and law or laws 75. Another check would allow us to see that the word "democracy" appeared on one occasion in the Constitution of 1857, it did not

appear in the original text of the current one, and now we have ten records.

The number of times a nomenclator is used does not, by itself, reflect the general structure of the standard; but it can denote the prevailing concern among those who have been writing or interpreting it, although not always. The use of the word "social", for example, served various purposes. On some occasions it was a diverse strategy to alleviate the effects of economic crises; in others, it was used to reinforce a particular political discourse or to attract voters; a few more was just the product of bureaucratic inertia or declarative routine. All of this becomes apparent when the text is contrasted with the context.

The considerable number of referrals to the law or laws is symptomatic. In these mentions, nothing less is hidden, the discretion of power. As many times as the Constitutions refer to laws, they allude to the powers conferred on the organs of power. The usual expressions are: "in accordance with the provisions of the law"; "In the terms of the applicable law"; "According to the law of the subject matter." This type of provision is common in constitutional norms and allows the permanent updating of the organization and operation of the institutions. However, it also puts the governed at the mercy of the circumstantial decisions of political agents and sows doubts as to the foreseeable actions of the authorities. Paradoxically, the very words that protect rights can be considered a veiled threat to those rights.

In Germany, Peter Häberle has put forward the thesis that in a constitutional state an open society of free interpreters should prevail.[40] The thesis, no doubt suggestive, represents a contribution to the pluralist interpretation of the legal system; but it also makes the problem of cultural limitations evident in societies that suffer from ancestral deficiencies. Of course, it is one thing to recognize the pitfalls, and another to settle for them. The goal of a society of constitutional interpreters might seem utopian to

40 *Retos actuales del Estado constitucional*, Oñate, IVAP, 1996, pp. 17 and et seq.

us; but what tends to happen in other parts of the globe is not utopian.

Furthermore, the option of skepticism, of resignation without further ado, is incompatible with a conviction of cultural development. The function of law and language is associated with the cultural transformations of each society. The established is not immutable. The Parmenidean and Heraclitean views of society continue to attract adherents. However, the ideologically attractive polarity in practice does not help to solve problems. Without both perspectives, the change would have no reference, nor would stability make sense. In law, there is much that remains, but much more that changes, as it is the case of language.

Words, legal institutions and societies change. Legal culture is a network of sediment that accumulates in the manner of customs and traditions, as well as of the pulsations that result from freedom and intelligence, as feats that do not cease. Legal culture is not a cookbook of facts, nor a catalog of illusions; it is the sum of experiences and possibilities; it is a process that accumulates the past and prepares what is to come. Legal culture is protean because it includes the being and doing of a society. Legal culture is memory and imagination; it is preservation and construction; it is intuition and instinct; it is rest and activity. Legal culture is made up of convictions, perceptions, and forecasts. All of this reveals its complexity. Like a kaleidoscope, at each moment, each member of society has different perspectives of the legal world; the function of the norm and the word is to ensure that heterogeneity does not turn into dispersion and that freedom does not lead to anomie.

In ancient Greece, epigraphy[41] represented an instrument of legal culture. Few could read, but it was enough for others to learn that their laws, inscribed in stone, wood, or bronze, and publicly displayed, had the cohesive effect that together law, and word pro-

[41] See, for example, Cortés Copete, Juan Manuel, *Epigrafía griega*, Madrid, Cátedra, 1999, pp. 103 and et seq.

duced. Few read in Homer's Greece, but many recited his verses; so, it must have been with the laws of Pericles and Lycurgus. The memorization of what was heard allowed its internalization; the important thing was to offer the recipients of the standard an opportunity to get to know it.

In our time there are other instruments to broadcast the norms, but there is still only one to elaborate them: the word. There is, however, a new problem: the words of the law have multiplied, along with the processes that the norms regulate. Among these processes, the most representative have to do with scientific knowledge. The world of our time is that of knowledge. The broadcasting of the voices that identify current law has a very broad effect. Unlike what happened for centuries, whoever consults a well-developed legal lexicon today will know what a will, a contract or a crime is; but also, what is a protected species, an act of artificial insemination, a satellite for data transmission, a bad medical practice. The law has been extended to all areas of knowledge, to all areas of intellectual activity. Whether the bureaucratic apparatus of the state grows or diminishes has nothing to do with the normative processes that guarantee freedom, dignity, equity, property, and the legal security of relations between all individuals, throughout the world.

Not all people can have specialized lexicons in the different disciplines of knowledge; But those who have a well-structured legal lexicon will also have a means of observing the fascinating rhythm of our time. The words of law are a faithful witness of what remains and what changes.

5. *The Indeterminacy of Words*

Studies on language and law have been interested in strictly professional issues; especially by judicial interpretation, as part (for some even the most important) of the process of construction of the law. Language and judicial and legislative activity are,

therefore, the axis around which these studies are developed, giving clear priority to jurisprudence. This can be explained if one considers the cultural fact that such studies have a field of development especially localized in the Anglo-Saxon countries; countries with a jurisprudential culture, where the norm comes to life from the solution of the specific case. A good example is that represented by American realism, inspired by the famous judge Oliver Wendell Holmes. One of his followers assured that "any word that does not have a provision of funds in currency of facts at sight, is declared bankrupt".[42]

There is, however, a practically ignored question: what is the unprofessional interpretation of the words of the law? Olivecrona said, and was correct, "that legal language has its origin in the language of magic."[43] Certainly, in addition to what legislators and judges of antiquity have said, there were customs, superstitions, rites, which made up many of the ancient institutions. Some remain: the oath and marriage are good examples.

Common law remains important, and the relationships between law and culture are beyond question. This means that society has a way of intuiting (knowing) the law. The words of law are binding according to the meaning that legislators or jurisprudents attribute to them; but that meaning does not always coincide with the social perception of those words.

The collective understanding of laws, contracts and judgments implies that the words have the same meaning for everyone. This does not exclude that deliberation among specialists addresses nuances, highlights ambiguities, or highlights contradictions between precepts and concepts. When H. L. A. Hart raised the "open texture" of legal language, he pointed out that there are cases of normative indeterminacy. There are also, of

42 Cohen, F. S., "Trascendental Nonsense and the Function Approach", *cit.* by Olivecrona, Karl, *Lenguaje jurídico y realidad*, Buenos Aires, Centro Editor de América Latina, 1968, p. 15.

43 *Lenguaje jurídico y realidad*, *cit.*, note 42, p. 59.

course, many other cases in which a term is not understood by everyone, including experts, in the same way.[44] But those that usually attract the attention of scholars are those precepts whose words may be obscure, imprecise, and incomplete. The confusion is frequent, also, due to syntactic errors: the bad punctuation causes that the meaning of a contractual clause or a legal provision varies. In general, amphibologies, common in everyday language, are also frequent in legal language.[45] On the other hand, problems of indeterminacy, due to vagueness, ambiguity contradiction can be accidental or deliberate. The latter, although it seems strange, occurs when a norm (legal, jurisprudential, contractual) is the result of an unresolved deliberation, before which the agents who make the decision opt for confusing formulas that do not compromise a criterion or a position, and that on the other hand, generate a super-open text that later, thanks to a new agreement or an interpretive act, will be able to acquire the precision that it originally lacked.

There are also cases of supervening indeterminacies, as the circumstances that make a provision intelligible change. The context can operate as a factor that modifies the statement of a norm. Sometimes the cultural conditions change while the norms remain. This is the case of constitutional texts formally fixed throughout the decades and even centuries. Interpretation makes it possible to adapt the text to the context. Years ago, Lampedusa used to be invoked by one of the most famous expressions in his novel *Il gatto-pardo*: "everything must change so everything remains the same". This, applied to politics, probably happens. However, in law the opposite is frequent, and it could be stated, inverting the now classic expression, saying that many times "ev-

44 Hart name them as "the paradise of concepts". *El concepto de derecho*, Buenos Aires, Abeledo Perrot, 1977, p. 162.

45 A very clear case, in Mexico, consists of the use of the verb "federalize", which is used to denote exactly opposite extremes. Sometimes it indicates transferring powers to the states, and other times the opposite: depriving the states of certain powers and transferring them to the Federation.

erything remains, in order to change". Words of law do not always mean the same thing.

In the legal field there are other types of semantic questions whose solution is highly difficult. For example, one of the commonly used voices that I alluded to earlier is "sovereignty". The idea of popular sovereignty is present in all those interested in the political organization of power. Now, when we ask ourselves if sovereignty has limits, there are logically only two possible answers: yes, it has them in the norm, in which case there must be something above the sovereign power that imposes that rule, or it does not have them, in which case the sovereign power is outside the law. This discussion may even be entertaining, but it is irrelevant when it comes to illustrating a population, which is satisfied to know that the sovereign is the people and not the monarch; that the one who makes the law is the representative acting on behalf of whom he represents (the sovereign people) and not by his own right. This does not solve the theoretical problem of sovereignty, but it does solve the practical question of democracy.

It is to the clarification of this type of issues that must be addressed when the solution of a doctrinal riddle is not so important, but rather guiding a community that requires basic knowledge to decipher the functioning of institutions and solve their very specific problems of coexistence.

6. *Interpretation*

A problem that occurs, more frequently than is supposed, is the indeterminacy of the words. This concept also requires precision. Legislative vagueness or ambiguity can result from three causes: an error in the elaboration of the rules, a deliberate decision in that sense or a natural consequence, due to the need to adopt texts thanks to negotiations of a political nature. The first case usually stems from poor preparation of the rules; it is understandable and, to a large extent, surmountable. The second

problem is related to the fear of normative prescriptions, which is why confusing statements are chosen, usually inapplicable. The management of amphibology can become a highly appreciated skill.[46] Protection, in this case, is not in what the norm prescribes, but in what it hides or hinders. The third case is more complex. The norm serves politics more than politics serves the norm. The norm organizes the work of society, but political leaders sometimes make the norm a space to settle their demands or to decline their claims, although not always in an intelligible and conspicuous way. The concealment of someone else's triumph or of one's own defeat can give rise to confusing norms, which in the end are of as little use to their audiences as to their authors.

All the above makes the interpretive tasks of the judge, the analyst and, of course, the governed especially necessary. In a broad sense, the interpretation covers the entire legal spectrum: from the elaboration to the application of the norm, by any person. Interpreting is a polysemy, although all its meanings are linked. Interpreting means understanding or explaining the meaning of something; transfer the meaning from one voice to another; it even involves performing, although now this meaning applies only to the dramatic, musical, and choreographic arts. From the classical world interpretation corresponds to a unitary process, and that the distinction between cognitive, normative and reproductive interpretation is highly controversial; for H. G. Gadamer[47] it even lacks validity.

The formation of the voice "interpret" is guiding. Its root *interpres* has, in turn, an uncertain etymology. *Inter* is known to correspond to "between", but *pret*? An accepted version is that it comes from *pretium*, which is equivalent to "reward", "valuable". In the classical world (Cicero, Pliny, Livy), the character of *inter-*

46 On certain occasions, contractual negotiations or for the elaboration of normative projects include what is colloquially called "drunken clauses", to denote a deliberately attempted inconsistency.

47 *Truth and Method*, Nueva York, Continuum, 2002, pp. 309 and et seq.

pres was given to the intermediary, the agent, the spokesman, the exhibitor, the envoy (ambassador) and, of course, the haruspex. The interpreter, therefore, fulfilled a wide range of activities but all related: they had to do with the intelligible translation of a message.

Perhaps the first systematic exercise in legal hermeneutics was that carried out by Quintilian. There were great rhetoricians who preceded him (Gorgias,[48] Aristotle, Cicero, among others), but he organized the legal arguments in an especially premonitory way of the interpretive task. Quintiliano presented various cases whose solution he confronted with the interpreters[49] and, although he did not propose rules to resolve the antinomies, the important thing was that he warned them with great clarity.

Interpretation is at the core of the life of law. The problems of legal hermeneutics were originally located in the broad territory of civil law, and as the successive branches of law developed, the relevant rules for their interpretation were also built. The construction of numerous principles relevant to fundamental rights, such as the non-retroactive application of the norm when it is harmful, for example, have given rise to a rich range of interpretative theses.

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48 Gorgias explains to Socrates that rhetoric (or oratory) is the most important human activity because it is concerned with the freedom of each person and with the government of the city. Plato, Gorgias, 451 d, 452 e.

49 See, for example, Oratory Institutions, VII, 1, vi. The rule that existed: "whoever is convicted of treason, be banished together with whoever defended him." The problem arose because a father was accused; one of his sons defended him and another, being illiterate, abstained. The father was found guilty and exiled, along with his defending son; the illiterate later achieved military success and, as a reward, was allowed to repatriate his father and brother. The father died without a will; the illiterate son claimed a part of the inheritance and the banished son demanded the whole for himself. Next, the right of each one was discussed based on interpreting whether the illiterate should have assisted the father, in which case the rule that provided that "the child who does not defend the father be disinherited" was applicable, or if he was exempted from doing so for his disability. Quintiliano presents all the arguments, favorable and adverse to each one of the brothers, with an admirable interpretive rigor.

Regarding the various expressions of law, the constitutions are relatively recent; Discounting its British, American, and French backgrounds, the universal spread of constitutionalism is a 19th-century phenomenon. The constitutionalists, since then and well into the twentieth century, had to solve, essentially, constitutional engineering problems; but the consolidation of the constitutional state has had, among other consequences, the acceptance of the constitution as a legal norm. The legality of the constitution has in turn generated the development of specialized courts and, consequently, the gradual development of a new discipline: constitutional procedural law.

For the contemporary constitutionalist problems of a structural nature are only part of the possible horizon. The complexity of the constitutional state calls for broadening the scope of its study. Hence, issues related to legal hermeneutics have been incorporated into the field of discussion of theory and constitutional law. With this issue, the same is true of what happened with the organization of the state, which before being the object of legal analysis it was the subject of political philosophy.

The interpretation of the legal-constitutional norms requires the adoption of a method. The regulatory framework is very abundant and, not infrequently, contradictory; the legal activity, internal and international, covers aspects that are broader every day. Constitutional jurisdiction has overturned Montesquieu's dogma on which many constitutional structures are still based. Since the second postwar period, constitutionalism has undergone a Copernican change, which not all experts have yet noticed.

Article 39 of the Mexican Constitution establishes that "national sovereignty resides essentially and originally in the people." Examined with a rigorous criterion, apart from the nineteenth-century doctrinal tradition, we will notice that it is a construct to base the democratic nature of the institutions. While the constitutions could not accept an explicit reference to the social contract, they chose to transform it into the basis of an original, non-

transferable, and imprescriptible right: that of sovereignty, and they used it to elaborate the abundant catalog of fundamental rights and their corresponding guarantees. The brilliant discovery to which Locke, Rousseau and Kant successively printed a formidable dimension, was interpreted by the authors of the constitutions as the origin of the constitutions themselves. To such an extent this doctrine has been relevant, that it continues to offer bases for new disquisitions.

Even the solid formulation of a fundamental norm, based on the successive references to the preceding norms, ends up recognizing that at the origin of the norm there was a *de facto* power.[50]

The identity between the state and the law makes it possible to resolve this contradiction, if it is accepted (a new interpretive act) that every expression of political power is, at the same time, a normative act. The job of the constitutional interpreter is not to elucidate this controversy; By accepting the supremacy of the constitution, whoever applies it attributes normative value to all its provisions, regardless of the vagueness or ambiguity of some of its precepts.

7. *Legislative Technique*

Writing norms in a "simple, clear and concise" way, as the classics postulated, is a problem that has been tried to be solved since the 18th century. Until before the texts published from the works of Bentham and Hamilton, this matter had generated only isolated expressions. Today, on the contrary, the bibliography is very extensive. It corresponds to the need to adopt a method for the neat drafting of the rules, taking into consideration the dif-

[50] H. Kelsen says: "If we inquire why the Constitution is valid, perhaps we will find its basis of validity in another, older Constitution. We will finally arrive at a Constitution that is historically the first and that was established by some usurper or by some kind of assembly". *General Theory of Law and the State*, trans. by Eduardo García Máynez, Mexico, UNAM, 1979, p. 135.

ficulty of constructing intelligible texts with the participation of several people, who also intend to introduce theses that are not always compatible with each other. The legislative process in a democracy is particularly complex and requires minimum rules to harmonize proposals and results. In addition to the intrinsic difficulties of the subjects that must be regulated today, there is also the participation of many authors, usually non-professionals and, moreover, contenders among themselves for power.

The work traditionally considered a precursor on this subject is that of Jeremy Bentham.[51] It is the work of one of the most important British jurists, founder of analytical jurisprudence. Bentham clarifies that his work has nothing to do with the gadgets of politics, and that he uses the word "tactical" in the classical Greek sense of the "art of putting order". Bentham's work also had a wide impact in France, where the text became a reference for parliamentary work, and later in Spain.[52]

The work of William Hamilton, little remembered today, was a pioneer in this matter. Although his *Parliamentary Logic* appeared in 1806, two decades after the author's death, it was written around 1770. It is a text of great conceptual richness, full of recommendations, not always based on ethics, to argue and act in parliament. Hamilton, a member of parliament for several decades, became famous for giving a fifteen-hour speech. One of the first observations that he makes in his work is crucial as far as the legislative procedure is concerned: "there are three causes that produce the imperfection of the laws: lack of power [to apply them], lack of knowledge [to draft them], and lack of conviction of those who make them."[53]

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51 *Essay on Political Tactics*, London, T. Payne, 1791.

52 *Tactique des assemblées législatives, suivie d'un traité des sophismes politiques*, Paris, Dumont, 1816. This version is longer than the English one, dated 1791, and it was also translated into Spanish: Tactica de las assemblies legislativas, Paris , J. Smith, 1824.

53 Hamilton, William Gerard, Parliamentary *Lógica parlamentaria / Parliamentary logick o de las reglas del buen parlamentario*, bilingual edition, Madrid, Con-

The works of Hamilton and Bentham are complementary, in that the former is inspired by British parliamentary practice and the latter by the study of French provincial assemblies.[54] The years preceding the French Revolution were of intense political activity. Faced with the imminent convocation of the Estates General, Jacques Necker, Louis XVI's finance minister, tried to soften the conditions of virtual exclusion of the so-called "third estate", and give its members a double vote that would allow them to mitigate the disadvantage in the one who were before the nobility. It was then that interest in studying parliamentary practices began in France, in an effort to reduce political tensions. Necker failed in his endeavor and revolution became inevitable. It was in this political context that Bentham toured France, and hence the first version of his work on parliamentary tactics resulted. This antecedent serves to identify the extent to which parliamentary practices and their adequate normative and doctrinal systematization are important.

Another classic on the subject was published in the United States: Jefferson's Manual of Parliamentary Practices. Born in 1743, Jefferson was one of the most lucid exponents of democratic law and politics of his time. Author of a good part of the Declaration of Independence of the United States and a member of the Congress of Philadelphia, culminated his career occupying the presidency of his country. In 1774 he published his first work;[55] between 1769 and 1779 he carried out various tasks

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gress of Deputies, 1996, p. 250. There were works published before Hamilton's, but his was written earlier. The participation in the writing of the work by Edmund Burke, for many years Hamilton's secretary, is not ruled out. Other classic works are John Hatsell's *Precedents of Procedures in the House of Commons* (1785) and George Peyt's *Lex Parliamentary* (1790). Currently the most consulted work is that of Thornton, G. C., *Legislative Drafting*, London, Butterworths, 1980; there are successive editions.

54 *Cfr. Political Tactics*, Blamires, Cyprian (eds.), Oxford, Clarendon Press, 1999, p. xvi.

55 *A Summary View of the Rights of British America*, Wi- lliamsburg, J. Dunlap, 1774.

in representative bodies and in 1797 he held the vice-presidency. During the period in which he presided over the Senate, he prepared his Manual, which he published when he was president of the United States. The work begins with a categorical prevention: Congress loses power when it ignores its right.[56] In making this statement, he had the double merit of having thought of it as president of the Senate and of having published it as president of his country. Throughout fifty chapters, Jefferson examines parliamentary procedure in detail, relating constitutional norms with provisions and practices adopted by the Senate.

At present, the study of legislative technique corresponds to a fundamental chapter of political institutions. The quality of democracy is linked to electoral processes and to the organization and functioning of institutions. In the case of representative bodies, it is crucial that their structure and operation conform to social expectations regarding responsibility, sobriety, and effectiveness in fulfilling the tasks that concern legislators. In Mexico, there is a growing interest in the matter,[57] and the same occurs in other latitudes.[58]

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56 *Manual of Parliamentary Practice for the Use of the Sena te of the United States*, Washington, S. H. Smith, 1801, p. 1.

57 57 See, for example, the works of Carbonell, M. and Pedroza, S. (coords.), *Elementos de técnica legislativa*, Mexico, UNAM, Institute of Legal Research, 2000; López Olvera, M. A., *Técnica legislativa*, Mexico, McGraw-Hill, 2002; Mora Donatto, C., *Principales procedimientos parlamentarios*, Mexico, Chamber of Deputies, 2000, and *Teoría de la legislación*, Bogotá, Externado de Colombia University, 2003. UNAM and the Senate also convened a colloquium on the matter, whose papers appear in the volume *Política y proceso legislativo*, Mexico, Miguel Ángel Porrúa, 1985. Several authors, led by José Sáenz Arroyo, published *Técnica legislativa*, México, Porrúa, 1988, and Manuel González Oropeza carried out a useful study on the nomenclature of legal texts, "Conceptualización histórica de la terminología legislativa" in Soberanes, J. L., *Memoria del III Congreso de Historia del Derecho Mexicano*, Mexico, UNAM, Institute of Legal Research, 1984. José Francisco Ruiz Massieu examined the subject with arrest in *El Parlamento*, Guanajuato, Congress of the State, 1995.

58 In France, for example, the work of Camby, Jean-Pierre and Servent, Pierre, *Le travail parlamentaire sous la cinquiéme République*, Paris, Montchrestien,

In addition to doctrinal studies, some parliaments, academic organizations, and labor and administrative training centers have institutionalized regular courses on parliamentary technique,[59] aimed at parliamentary staff, students and, in general, the interested population. These courses are useful to know how to conduct the debates that take place in non-governmental, academic, social organizations (unions, cooperatives), sports, corporations and, in general, all those representative collegiate bodies that usually deliberate to make decisions.

In general terms, issues of legislative technique are considered in Mexico as typical of local and federal congresses. This is a limited vision, because governments also do a lot of work in terms of formulating initiatives. The problems of drafting the rules are usually attributed to the congresses, but the reality indicates that the governing bodies have a very relevant participation in this area. In New Zealand and Great Britain, for example, there are special law-writing offices, depending on the areas of government. It is understandable that this is the case, insofar as it concerns parliamentary systems; but what is significant is that the drafting of legal texts is not considered part of parliamentary work.

A distinction must be made between the law as a legal act and as a document. The first corresponds to a legislative decision and, therefore, is the competence of the organs of political repre-

1994; in Spain, the Legislative Technique Study Group (GRETEL) published *La forma de las leyes. Diez estudios de la técnica legislativa*, Barcelona, Bosch, 1986, which is an obligatory reference for the matter, in that country; and in Germany an important doctrine of legislation (*Gesetzgebungslehre*) has developed. As studies of a general nature, not linked to a particular positive system, see Bothwell, Reece B., *Manual de procedimiento parlamentario*, Puerto Rico, Editorial Universitaria, 1969, and Meehan, José Héctor, *Teoría y técnicas legislativas*, Buenos Aires, Depalma, 1976. These last two studies have been an important source of doctrinal concerns in Latin America and are characterized by their conceptual precision.

59 This is the case of the "Legislation Process Course" taught by the Australian Parliament; the British Royal Institute of Public Administration (RIPA) also offers courses in parliamentary technique.

sentation; but the second aspect, the documentary, is technical in nature, and can be commissioned from experts. It does not seem necessary for legislators to become professional writers, as this task can be best performed by those with specialized training.[60]

There are also important developments of a theoretical nature, and a new and growing doctrinal production known as parliamentary law. Some authors differentiate between law and parliamentary procedure,[61] although others include in the generic name "parliamentary law" all aspects related to the structure of the assemblies and their political and administrative functioning, as well as the *stricto sensu* legislative procedure and activities of a political (questions, interpellations, motions, recommendations, points of agreement) and jurisdictional nature that correspond to the representative bodies.[62]

The use of the expression "parliamentary law" among us could be objected, due to the reference to an organ (the parliament) that does not exist in Mexico. The reservation can be exceeded insofar as "parliamentary", in this case, corresponds to a generic denomination that includes what is pertinent to congress-

60 The New Zealand law for the drafting and compilation of statutes dates back to 1920 and empowers the drafting department of laws to prepare bills that are submitted to Parliament and to process the changes that result from the debate; In the British case, the Parliamentary Council has a similar function.

61 For example, Longi, Vicenzo, *Element di diritto e procedura parlamentare*, Milan, Giuffrè, 1978; there are successive editions.

62 A general overview of Latin America can be found in the work of Catala, Joan Prats, The reform of the legislatures in Latin America, Valencia, Tirant lo Blanch, 1997. The author is especially interested in examining the economic and political impact of errors due to poor legislative techniques. Also important are the works of Planas, Pedro, Parliamentary Law, Lima, Forensic Editions, 1997, a detailed comparative overview; as national studies, Tossi, Silvano, Parliamentary Law, Mexico, Miguel Ángel Porrúa, 1996, deals with Italy; Guchet, Yves, Droit parlamentaire, Paris, Economica, 1996, examines French regulations; Santaolalla, Fernando, Spanish Parliamentary Law, Madrid, Espasa Calpe, 1990, makes a detailed study of the norms and practices in Spain; and de Tovar, Orlando, Parliamentary Law, Caracas, Central University, 1973, who founded the studies of the matter in Venezuela.

es, assemblies, chambers or any other denomination with which the organs of power that carry out legislative and political control tasks are constitutionally identified.

II. The Law of the Language

1. *The Problem*

Various estimates place the number of languages spoken in the world between five thousand and seven thousand.[63] However, if the sources differ in terms of the approximate number of existing languages, those that are in process of extinction are better identified. With some minor variations between sources, it is estimated that every two weeks on average one language dies. If this rate continues, around 2,500 languages will have disappeared by the end of the century. Such a large decline in the linguistic heritage of humanity, in just one hundred years, is a cultural catastrophe. Furthermore, from a constitutional perspective, this phenomenon represents a threatening regression.

I will explain myself. There are many misunderstandings related to the traditional concept of democracy. I will not stop to examine them, but the most common is to associate democracy with the power of the majority. The quantitative categories do not represent a guarantee for the ideas of justice, equity, freedom or legal security that each member of the political community sustains, senses or hopes to achieve. The majority can be oppressive, in the same way that the minority can be liberating. Faced with these apparent paradoxes, we must pay attention to regularities, and these indicate that freedom is better guaranteed when the government is determined by the majority, but it is a trend, not an unalterable constant.

63 Ethnologue. *Languages of the World*, Dallas, SIL, 2005, pp. 23 et seq., Puts the figure at 7,299. The calculations, however, vary. V. g. Andrew Dalby (*Language in Danger*, London, Penguin, 2002, p. Ix), puts the figure at five thousand.

The aphorism of democracy as "the government of the people, by the people and for the people", which A. Lincoln (1863), without mentioning the source, took from J. Stuart Mill,[64] is only a construct, not a political or legal axiom.

Expressions close to this type of government have only been registered in very limited cases: in the polis, if we abstract from slaves; in the phalansteries, if we accept that they ever worked; in the cantons, as far as social complexity allows, and in few other examples. To correct the defects of majority democracy, the Greeks adopted various corrections. One, ostracism, which made it possible to avert the tyranny of the most popular;[65] another, the lottery, which put in the hands of chance, and not voluntarism, to determine the ownership of the magistracies.[66] When democracy ceased to function, other rules applied to elude power struggles.

In Rome another mechanism was devised, practiced during the monarchy and often also under the empire: the predecessor appointed the successor. This, which today seems to remind us of an extensive chapter of Mexican historical events, was healthy in antiquity. The designation of the successor was made by the prince to avoid conflicts between those who survived him. This was especially important in societies whose expansion implied the presence of a military elite. The confrontation between armed leaders could affect the territorial integrity of the state and weaken its capacity to react to attacks from abroad. In addition, the author of the succession was not substituted in life, so there was

64 *Considerations on Representative Government* (1861), VII.

65 It was applied, at least, to Cleisthenes (507), Hipparchus (487), Megacles (486), Kallias (485), Xantipo (484), Kalixenos (483), Aristides (482), Themístocles (471), Cimon (461), Alci- biades (460), Thucydides (443) Hyperbolos (417). See Finley, M. I., *Politics in the Ancient World*, New York, Cambridge University Press, 1983, pp. 55 and et seq.

66 *Cfr.* Darete, Rodolphe, *La science du droit en Gréce*, París, Larose & Corcel, 1893, pp. 53 and et seq.; Lang, Mabel, *The Athenian Citizen*, Princeton, The American School of Classic Studies, 1987, pp. 8 and et seq.; Manin, Bernard, *Los principios del gobierno representativo*, Madrid, Alianza, 1998, pp.19 and et seq.

no room for perpetuation in power; his decision had only posthumous effects.

Later, in the Middle Ages, hereditary dynasties proliferated. To justify them, it was even necessary to concoct and propagate the species that monarchs had the power to perform miracles.[67] These selective procedures raised many monsters, but from time to time they also opened the doors of power to admirable personages.

The pathologies of power have been more frequent, profound, and damaging in oligarchic systems than in polyarchic ones, but this does not exclude the potential danger of a majority tyranny. Say so, if not, Cromwell and Robespierre. To avoid this threat, constitutional systems were being built.

Constitutionalism has already entered its third century and registers progressive changes. The Constitutions written and accepted by the monarchs were a significant advance. Then came the fundamental rights and their guarantees of observance; representative systems gradually became more porous; the most universal and secure electoral procedures; the most effective political controls; the most autonomous and impartial jurisdictional bodies. All these instruments are highly sensitive and must be continuously tuned, because wear, fractures and atrophies result from their use or disuse.

Old solutions have become new problems. Today, after a long journey, we can breathe a sigh of relief only when we contrast ourselves with the past; but sometimes it hurts to notice what lies ahead. Absolute monarchs no longer dominate the world, nor do military leaders; in turn, dominated assemblies, consignment judges, and electoral fraud were no longer mandatory. So far, the accounts are positive; But now there are no excuses to face what

67 See Marc Bloch's remarkable study, The Royal Touch, *Monarchy and Miracles in France and England*, New York, Dorset, 1961. The author mentions that Vespasian had already been credited with performing miracles (p. 13), but the practice became frequent, particularly in the healing of scrofula from the X-XI centuries (pp. 28 et seq.)

we have been putting off for centuries: social exclusion. This phenomenon, whose attention has always been left for later, becomes apparent when other folds of power have been smoothed out. There are no more excuses to maintain the routine of forgetting.

That is why the democracy of our days is not only the rule of the majority; it is the government of all. The current constitutional instruments confer certain rights to make decisions to the majority, but never at the expense of the rights that also assist minorities. In a constitutional system, no one is denied access to power; attributions vary, depending on the electoral support available, but minorities in no case lack influence in collective determinations. Contemporary democracy gives minorities rights that they did not have before. This is our democratic cultural revolution; it is the small revolution, because it has been carried out without blood effusion, without violent shaking, without stereotypes, without prejudice, even without champions, led by national groups thanks to a singular convergence that communication, another cultural phenomenon, has made it possible.

The conceptual revolution of our time results from the propagation of simple but convincing voices. In all systems that adopt the principles of the constitutional state, the rights of minorities have acquired increasing importance, as one of the most suitable means to overcome exclusion.

The most characteristic expression of exclusion has an economic content. It is understandable because it is the most excruciating and most easily grasped. To say that half a country lives in poverty, or that half of the world's population is undernourished, has a chilling effect; when referring to the cultural causes or consequences of exclusion, the impact is significantly less. It is understandable. The social fabric presents so many tears that the cultural ones seem less pressing. What is not noticed is that, due to the complexity of contemporary society, the cultural is also a priority. Law, for example, is the substantive factor of social cohesion, because law is nothing more than a product of culture,

and without adequate legal instruments there would be no way to ward off exclusion.

This is where the chapter on languages comes in. It is inevitable that some languages will die, but it is unacceptable that they remain unregistered; to be denied at least the right to a death certificate. Languages, which make the difference between men and the rest of the animal species, cannot be left to their own devices without, with this, accentuating the exclusionary nature that a good part of the constitutional systems of the world still present.

As the cultural heritage of societies, as a symbol of the identity of groups and individuals, the right of languages, and its guarantee of observance, is one more step that constitutionalism must ascend.

2. *Language and Constitution*

One of the characteristics of contemporary constitutionalism is the recognition of both cultural rights and the rights of minorities. Currently, out of 180 Constitutions, only 22 do not contain references to languages. Two of these correspond to states of our hemisphere: Chile and Uruguay. The Uruguayan omission is not significant, if it is considered that in that country only two languages are reported, including Spanish, but in Chile, where in the last decades two languages have become extinct, and two other of the few remaining already they are spoken by less than a hundred people.

In many cases it is the ordinary laws that determine which is the official language, so there are few states that completely lack legal definitions on the matter. However, by virtue of the increasingly pronounced tendency to protect the rights of minority groups, especially those of cultural relevance, the new constitutions are being added to the list of those that do address the subject matter.

On this subject there is a great variety of norms that, however, can be systematized into three main currents: those that recognize as the official language the one that prevails in the country; those that admit linguistic diversity but allow each one to develop more or less spontaneously, and those that adopt state commitments regarding the dissemination, preservation and development of minority languages.

In the first case there are the Constitutions of Saudi Arabia, Egypt, the Philippines, France, Latvia, Lithuania, Norway, Poland, Portugal, and Romania, for example. Also included in this group are Brazil, Cuba, Honduras —where the State undertakes to protect the purity of Spanish and to "increase" its teaching— and Panama. In none of these countries does the constitution refer to the linguistic rights of minority groups. The Brazilian case is striking, if one considers that just two decades ago it had 235 languages registered, of which 47 have already become extinct, and another 25 will suffer the same fate in a very short time.

India's situation is peculiar. Hindi is established (articles 343 et seq.) As the official language, although a kind of tolerance period was adopted for English to continue as the official language during the first fifteen years of the 1950 Constitution. A subsequent reform has allowed that Parliament extend the deadline, and that English be used in parliamentary debates and jurisdictional resolutions. In addition, pursuant to article 29, the protection of minority interests is established, which includes the right to use and preserve their language. In linguistic matters, the Hindu constitutional regulation is, together with the South African, the most detailed of all that exist. Among other things, the Constitution provides (article 350 B) the appointment of a presidential high commissioner to attend to the linguistic problems of minorities

Linguistic diversity is also recognized in Austria, Belgium, Slovenia, Finland, Georgia, Haiti, Ireland, Malaysia, and Switzerland. In addition, in this group the case of Singapore draws attention, where Malay, Mandarin, Tamil and English are in parliamentary use. Another unique case of diversity is that of Croatia.

Although the Constitution of this country establishes Croatian as the official language, written in Latin characters, the Cyrillic spelling and others that are practiced in the various localities of the country are allowed.

The case of China should also be highlighted (article 4), where there is no official national language, and the problem of multilingualism was solved by recognizing that all internal nationalities are free to use and develop their own languages, written and spoken, as well as to preserve or reform them according to their own decision. In this case, the national state does not assume any responsibility and leaves each linguistic group to their own devices. It is not expected that any of the more than fifty languages spoken in China will disappear, although the asymmetric development between them is clear, because of regional economic and cultural differences.

In Austria (article 8), German is declared an official language, "without prejudice to the rights that federal law recognizes for linguistic minorities". The solution is very practical, because the Constitution does not adopt detailed rules, but it does guide the content of the law on the matter. Unlike the Austrian case, in Belgium (article 4) the supreme rule has had to go into greater detail. Tensions between national groups have been more pronounced, and the Constitution has directly defined the four linguistic regions: the French, the Dutch, the German, and the bilingual Brussels as well. The Belgian rule is extremely rigid, as it can only be modified if the parliamentary group that represents the linguistic region accepts any possible reform by at least two-thirds of its members.

Nicaraguan (article 11) and Peruvian (article 48) constitutional norms are in a more open position. In both cases, the official language is Spanish, and it is established that the vernacular languages have an official character in the areas where they predominate. Here the State only has a passive obligation, in terms of consenting to the use of local languages on an official basis, but it does not incorporate them into the national cultural heritage.

In Colombia (article 10), where Spanish is official, a similar structure is adopted, but it is added that the teaching given in communities with their own linguistic traditions must be bilingual.

The group of Constitutions that, in addition to diversity, establishes commitments for the state to adopt positive measures for linguistic rights, is relatively small, although their contributions are significant. Ibero-American countries stand out in this area, although not ours.

The most important current is represented by Costa Rica, whose Constitution (article 78) establishes that the official language is Spanish but adds that the State is responsible for ensuring the maintenance and cultivation of indigenous languages. Ecuador (article 1) adopted a very suggestive formula: "The State respects and encourages the development of all the languages of Ecuadorians." He then points out that the official language is Castilian, but adds that Quichua, Shuar "and the other ancestral languages" are of official use for indigenous peoples.

In El Salvador (article 62), the official language is also Spanish, in relation to which the government has the obligation to ensure its conservation and teaching; Regarding autochthonous languages, it declares them to be members of the cultural heritage and object of preservation, dissemination and respect. Another is done in Guatemala (article 143) and in Venezuela (article 9) where the official language is Spanish, and the vernacular languages are declared cultural heritage.

By incorporating a language into the cultural heritage of a nation, the state commitment to preserve it is established, and preservation is not limited to maintaining a thing in the state it maintains, which could very well be declining; preserving also means taking the necessary actions to maintain its validity and, where possible, regain its splendor. When the protected object is a living language, the obligation is to encourage its vitality, with the powerful instruments that education and dissemination offer.

Spain, Russia, and South Africa are also among the states that have made linguistic diversity a paradigm. The official char-

acter of local languages, and their nature as cultural heritage, is recognized by the Spanish Constitution (article 3); the Russian one (article 68), authorizes the federated republics to freely establish their official languages, and also declares the responsibility of the national State in terms of promoting the study and development of native languages.

The South African case deserves special attention, because, like India, it contains the most extensive treatment in force in the world, in relation to linguistic rights. Various sections (6, 9, 29, 30, 31, 35, 185, 186 and 235) of the Constitution, adopted on May 8, 1996, deal with these rights, and offer a panorama of the considerable breadth that this new legal aspect can reach. First, it is noted that vernacular languages have historically been neglected, and that the constitutional state must adopt positive measures to raise the status and promote the use of these languages. The legal regime of languages is protected by the national state, the provinces that comprise it and the municipalities.

The South African constitutional position opens a new horizon for linguistic rights, because in addition to the protection of native languages, it extends guarantees to those cultivated by other cultural minorities, such as the German, the Greek, the Portuguese, the Arabic, the Hebrew, and the Hindu. Furthermore, it admits that, within the possibilities of the state, minorities have the right to receive education in public institutions, in the language of their choice. Also, the Constitution establishes, as a state organism, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

Another noteworthy example is the Welsh Language Act. This Act was adopted in Wales in 1993 to promote and facilitate the use of Welsh. The Law established that in the administrative procedures and in the jurisdictional instances, English and Welsh would be official languages, on "equity bases". To apply the Law, a committee (Welsh Language Board) made up of fifteen members was set up, which in addition to adopting the administrative measures that motivated the Law, can create funds, from dona-

tions and trusts, destined to support the Welsh language. The actions of the committee are aimed at planning the teaching and dissemination of the language, the training of teachers, the supervision of public services, especially those of health and education, and the relationship with the media, therefore regarding the protection and promotion of the language. Throughout the years of activity, the initial attitude of reserve, even skepticism, has given way to wide recognition for the tasks that the committee has carried out, making this Law an example.

In the international order, in addition to the Universal Declaration on Cultural Diversity, adopted by UNESCO in 2001, there are three major areas, Africa, America and Europe, where various instruments refer to linguistic rights. All regional agreements postulate the right of communities to preserve their original languages.

3. *The Death of Languages*

So far, a very general panorama of the legal regime of languages has been seen. However, there is an issue that has not been addressed by national nor by international norms: the risk of extinction of languages, and the obligation to reduce this threat to the minimum possible. The international PEN Club, as well as other non-governmental organizations, including foundations and academic institutions, have alluded to the accelerated process of the disappearance of languages.

There is a defensive mechanism called indifference, thanks to which we quickly get used to the most adverse conditions and end up considering them part of our normality. For this reason, we are not moved to know that fifteen hundred human beings perish every hour of starvation; that every three minutes biological diversity decreases due to the loss of a species; that every day an extension of tropical forests equivalent to the area of the Federal District is destroyed. As for languages, it is calculated, as men-

tioned above, that one dies every two weeks.[68] By the end of this century, we will have lost between a third and a half of the linguistic heritage of humanity, according to the census of existing languages that is handled.

The Ethnologue report locates 290 languages in Mexico,[69] among which is imminent the extinction of Kiliwa, in Baja California, Matlatzinca, in the State of Mexico, Zapotec from Mixtepec, and Zoque, in Tabasco. The panorama of the old Mexican languages is even more bleak beyond our borders. Of the nearly 100 languages that came to be identified in California,[70] currently 36 are remembered by elders, 17 have fewer than five speakers, and the rest have disappeared. This process of extinction has not been the object of our attention.

It is estimated that the Mexican population of California in 1845 was over one hundred and fifty thousand inhabitants; in the first ten years of the annexation by the United States, one hundred thousand were presumably annihilated. With them their languages disappeared. We never ask for accounts; we never deserved explanations. The Treaty of Guadalupe authorized the US government to "punish and chastise" the "wild tribes" and to "evict the Indians," when security or sanitation conditions make it advisable. The demographic and cultural impact of this Treaty was devastating.

Our tongues had already been harassed long before. On April 17, 1770, the king issued a Royal Decree so that the neces-

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68 *Cfr*. Cristal, David, *Language Death*, Cambridge, Cambridge University Press, 2005, pp. 68 and et seq.

69 At this point there is also an important variation in relation to the information available. The *Atlas de infraestructura cultural de México* (Mexico, Conaculta, 2003, pp. 30 ff.) identifies only 62 languages. This is the most reliable data, as *Ethnologue* considers the multiple variants of a single language as languages. Notwithstanding this, as in many cases the disappearance is taking place according to some of these variants, I took the data from *Ethnologue* to support my argument.

70 See Dalby, Andrew, *Language in Danger*, Londres, Penguin, 2002, pp. 238 y et seq.

sary measures be taken so that "the different languages used in the same domains are extinguished and only Spanish is spoken, as is mandated by repeated laws, royal certificates and orders issued in the matter ".[71]

4. *Legal Defense of Languages*

This Academy corresponds to the Spanish one; but it is also Mexican. Our vehicle of expression is Spanish, but in terms of rights, the one that attends this language also concerns others. The right of the language is an axial chapter of contemporary fundamental rights. The curse of Babel consisted of the isolation between men due to their propensity to idolatry, but it did not condemn their vocation for culture.[72] Linguistic diversity is an intrinsically eloquent proof of the cultural vitality of humanity. Mutilating that diversity, or leaving it to its own devices, hurts human nature, because it affects people's identity, even when it is only a numerically reduced portion.

What constitutionalism has done for culture is precisely to recognize the rights of minorities and give cultural rights the same hierarchy as those traditionally recognized as fundamental: life, liberty, and legal security. Starting in the second half of the previous century, and in response to the barbaric acts that took millions of lives, the constitutions welcomed and protected a new principle: that of dignity. Dignity, in our time, is an ethical value that also has legal relevance.

Now, of all cultural phenomena, the one that registers the slowest changes is the state. While the speed of innovation in the sciences and the arts is dizzying, the renewal of the state is usually characterized by its parsimony. That is why it is a cultural space

71 *Cfr.* Dublán and Lozano, *Legislación mexicana*, México, Imprenta del Comercio, 1876, t. I, p. 20.

72 *Cfr.* Hyland, Richard, "Babel: a She'ur", in Morawetz, Tom, *Law and Language*, Darmouth, Ashgate, 2000, p. 32.

where there is still room, sometimes ample, for conservatives. If we also understand that the state and the law are two ways of expressing the same reality, we will see to what extent the slow march of the institutions can be shaken by the more intense pulsations of the field in which they operate.

It is difficult to overcome the inertia of institutions and accelerate their pace. Only the great social gales generate a flutter that takes these institutions to other spaces; not always, of course, those who were loved. The history of institutions is not linear; there is no upward progression if you wanted to call it that. Its changes are rather zigzagging regarding its ideological content, and in ups and downs regarding its results.

The precepts of the state are based on a relatively simple concept: the hierarchy. The cultural changes that are registered in contemporary constitutionalism have been, to a large extent, the result of the strong demands that come from the academic spheres, the media, the social organizations that have proliferated; of movements led by minorities, of the disappearance of the colonial system, of the suppression of totalitarian systems and the democratization of authoritarians. All this was what, in the institutional order, left the Second World War. Five decades of profound adjustments were used to print another face to the state. After the French Revolution, the state had not undergone such profound changes.

The momentum must not wane. Now, to prevent the state from returning to its modest rhythm and retaking its cryptic style, the international community has ceased to be only the scene of the big bureaucracies and the territory of the big corporations; it is also the space where social groups act, personalities are projected, the media influence and culture expands. Globalization began as a political and economic phenomenon, but is gradually becoming a cultural process.

Languages have an odd chance. There is a constant that indicates the subsistence of languages associated with power. After all, law is nothing but a set of words with power. The officializa-

tion of vernacular languages is a recent phenomenon, so it will be necessary to wait for something more to confirm that their use, constitutionally guaranteed, has had the effect of their durability.

However, we have seen that only in some cases are constitutional instruments available to protect languages, and that international agreements still do not recognize the challenge of those in danger. In the horizon of time, national recognition of multilingualism will have a protective effect on the life of languages, but the steps could be shortened if deliberate actions are taken to achieve this goal.

Two legal modalities seem recommendable: one, to sponsor the multiplication of national norms to consider vernacular languages as part of the cultural heritage, and consequently to deploy a range of actions aimed at their development. Another is to promote the signing of international commitments, through the expansion of UNESCO's Universal Declaration on Cultural Diversity, to ward off the linguistic degradation of humanity. It is not necessary to expand international bureaucracies; it will be enough to adopt mechanisms that allow promoting and coordinating the efforts of national institutions, to generate a new commitment to culture.

It will be impossible to prevent the extinction of many languages; but of them, the records that, at least, perpetuate their memory and allow their study may be kept. Educational and research institutions would have to intensify philological studies.

There are analogous experiences. Regarding endangered species, legal measures have been successfully adopted to protect them. In 1973, for example, the United States enacted a law on this matter. It was expressly recognized that various animal and plant varieties were at risk of disappearing, because of invasive economic growth, and it was resolved to stimulate local and municipal authorities to undertake actions that would safeguard these species; Incentives were also provided for individuals who would help in this task, and sanctions for those who did not respect the adopted safeguards. With the purpose of saving en-

dangered species, and based on the law, a formidable program of public investment was launched to raise inventories, acquire land, modify communication routes, regulate trade, develop reproductive techniques, train staff, organize study groups, structure official agencies and trusts, and encourage civic associations. With a similar orientation, at the international level the Convention on International Trade in Endangered Species, signed in Washington, also in 1973, governs. It is valid to ask whether languages in extinction do not deserve something similar.

One of the most important writers on linguistic rights is Tove Skutnabb-Kangas. According to his thesis, which is also widely accepted, a universal declaration of linguistic human rights must guarantee, at the level of each individual, identity with the mother tongue and respect from third parties. This means that each person receives education in their mother tongue and can use it in an official way, that is, in their working life and in their communication with public entities. In addition, there must be a guarantee that no change related to the mother tongue will be compulsory, and that complete information will be available on the consequences of whatever options are offered in the long term.[73]

Fundamental rights are subjective in nature; the problem is in determining what is the meaning of subjective right. In general terms, it has been understood as a legal power (Windscheid) or as a legally protected interest (Ihering). The controversy has not been settled (Alexy)[74] and arguments continue to accumulate that rely on the theory of will, that of interest, or combinations of both.

The issue cannot be peaceful, because from the point of view of a constitutional state, it is valid to ask, in relation to minori-

[73] Skutnabb-Kangas, Tove, "The Scope of Linguistic Human rights", en Phillipson, Robert (ed.), *Rights to Language Equity, Power, and Education*, estudios en honor de Tove Skutnabb-Kangas, N. Jersey, Lawrence Erlbaum Associates, 2000, pp. 55 and et seq.

[74] *Cfr.* Alexy, Robert, *Teoría de los derechos fundamentales*, Madrid, Centro de Estudios Constitucionales, 1997, pp.178 and ss.

ties, if the protected rights belong only to those minorities or are those of the community in general. In other words, are the rights of the Zapotecs only those of the Zapotecs, or do they belong to all Mexicans? If the rights of equality, freedom and legal security correspond to the universality that we know as society, why should cultural rights belong to a restricted community, or to a group of communities that we call "minorities"?

Here, sensitive questions remain to be resolved, which emerge in a particularly striking way when we speak of linguistic rights. Let us ask ourselves, in this Academy, if the interest in protecting Opata concerns only the fifteen people who still speak it, or all Mexicans. Let us also ask ourselves if Mexicans are only concerned with the normative protection of national vernacular languages, or if we also have an interest in Andoque, extinct in Peru and ready to disappear in Colombia; or in the Abnaki, turning off in Canada, for example.

The subjective nature of linguistic rights does not imply that they only have as holders those who are numerically inferior to the majority. So far this has been the criterion applied by the doctrine and followed by national and international instruments, but it will be necessary to review it. Contemporary constitutionalism recognizes a new dimension to minority rights; especially the right not to suffer the oppression of the majority and, therefore, their interests must be protected, even if they do not have sufficient political force to enforce them. But, in the sum of constitutional provisions, the rights of the more and the rights of the less are not distinguishable, because all constitutional rights belong to all the recipients of the constitution.

In these terms, it would not be the linguistic right of an Otomí compared to the rest of the Mexicans, but rather the linguistic right of all Mexicans, which each one exercises in the terms that are most satisfactory for their interests and most in accordance with their own cultural choice. In a certain way, in this case the subjective right participates in the characteristics of the legal power and the legally protected interest.

If this is so, we can say that linguistic law includes all the languages that are spoken in the territory of a state, both the majority and the minority. This runs counter to the concept of constitutional neutrality advocated by Michael Waltzer, according to which the state must refrain from setting criteria related to language, history, and literature. Which is only true insofar as the State cannot impose a dogmatic position on the governed without violating their constitutional nature; this is why Kymlicka has refuted it when formulating his thesis of "societal culture", which has a territorial connotation and is represented precisely by shared language.[75] The expression is not pleonastic. Culture is a social phenomenon, but the Canadian professor alludes in this case to that which is characteristic of particular groups or that identifies certain social institutions. The *Diccionario de la Lengua*, of the Real Academia Española, defines the adjective "societario" as "belonging to or related to associations, especially workers." Perhaps the academic concept should be broadened, so that society also includes unorganized groups.

The concept of linguistic law is far from uniform. Dora Pellicer,[76] for example, identifies it as typical of the peoples usually considered minority. If religious rights were a reference, we could also see them originally as a way to protect minorities as an expression of tolerance. But at this point the rights have been extended. The norms regarding beliefs and convictions protect all believers, including those who belong to a majority religion, and those who do not profess any religion or creed. If religious and belief rights are applicable to all the inhabitants of the territory of a state, as an expression of respect for convictions, it does not

75 Kymlicka, Will, "Nation-Building and Minority Rights: Comparing West and East", *Journal of Ethnic and Migration Studies*, New York, vol. 26, No. 2, Routledge, 2000, pp. 183 and et seq.

76 "Derechos lingüísticos en México: realidad y utopía" a working document presented on the occasion of the XX International Congress of the Latin American Studies Association, held in Guadalajara in April 1997.

have to happen the other way around in matters of languages, which also corresponds to the freedom to choose.

The relationship between the majority and the minorities was, initially, a chapter of tolerance. However, tolerance, in linguistic matters, does not represent a great advance, as Francesca Pou has recently shown,[77] because it does not equalize the opportunities between those who speak different languages. Although the state should not encourage any religion, because it would invade a very personal space, in matters of languages it cannot abandon them to their fate, because it would leave a part of the cultural heritage without due protection.

The politics of tolerance indicates a passive, non-intrusive attitude. Linguistic rights are not just for minority groups. The cultural rights of minority groups are of general interest, like all the provisions that make up the constitutional system, with the peculiarity of having as owners those who are in the assumption that the same norm provides. Miguel Carbonell has pointed out that this is a controversial area.[78] Due to the nature of the recipients, few regulations are intended to be applied by all the inhabitants of the territory of a state. The culprits in tax matters, for example, would be "a minority" if they are contrasted with the entire population; and when measures are adopted to protect children, the elderly, or those affected by disabling conditions, reference is made to demographically reduced groups. It is not in this sense that reference is made to the rights of minorities unless they suffer some form of exclusion.

Cultural rights concern the general population (such as access to educational services or freedom of artistic creation or research), although by their nature they are not exercised by the totality. What is meant, therefore, when the rights of minorities are

77 "Contra la lengua invisible. A discourse on the normative-legal relevance of linguistic plurality", in Vázquez, Rodolfo (comp.), Tolerancia y pluralismo, México, Ediciones Coyoacán, 2005, pp. 235 and et seq.

78 *Cfr*. Carbonell, Miguel, *Los derechos fundamentales en México*, México, UNAM-Porrúa, 2005, pp. 979 and et seq.

referred to? Essentially, reference is made to social groups that suffer or have suffered some form of exclusion, although this is not recognized, or is done in a veiled way. Miguel Carbonell uses the concept of "collective rights" to frame the bundle of norms pertaining to the protection of minorities. The expression, like any other, is debatable, but in this case, it solves, in a conventional way, a terminological problem that for many is hardly intelligible. Whether we speak of "collective rights" or "corporate rights", we know that we are referring to those that correspond to human groups with ignored rights.

Language rights have long been assumed to fall into that category. I believe that aspects such as the government of ethnic groups, the protection of underprivileged people, or the recognition of homosexual unions, for example, which correspond to traditionally violated rights, should not be mixed with the rights that, although they had their origin in the omissions of the state, today are part of the list of rights that assist the collective of the inhabitants.

The right to the language belongs to everyone. In our case, Spanish and the vernacular languages spoken in Mexico are part of our national cultural heritage, and each person has the right to cultural autonomy. This form of autonomy, which can be exercised individually or collectively, is what allows the freely chosen language to be practiced and cultivated, permanently or occasionally. The cultural autonomy of individuals and groups is another expression of freedom, only possible within a constitutional state. Insofar as it supposes a decision on the use of a language, it has legal effects because it implies, as in any synalagmatic relationship, a series of obligations on the part of the entity before whom the right is exercised. In this case, cultural autonomy means, before third parties, the duty of respect, and before public entities, the duty of assistance.

At this point it must be distinguished if we are dealing with the phenomenon called "multiculturalism". In my concept, multiculturalism corresponds to a national or international sphere in

which various cultural expressions coexist. At the national level, however, what is presented is cultural pluralism, because the mosaic of cultures is what makes up the national culture. In the international space, Mexican, Nigerian or French cultures coexist, with equal rights; but in the Mexican sphere there is no "Mexican" culture and no other Zapotec or Huichol culture. All cultural expressions constitute Mexican culture.

The concept of Constitutional Article 2., in the sense that the nation "has a multicultural composition", is equivocal and exudes a veiled form of exclusion. The sum of all cultural forms is what constitutes the Mexican national culture. If we do not understand it this way, we would enter the debate of knowing who is part of the Mexican culture and who is part of the "other" cultures. That is why I consider that cultural pluralism is a characteristic that enriches Mexican culture, because it denotes versatility, freedom, and equality. Our great national culture is multifaceted, multifaceted, heterogeneous, but egalitarian. We cannot, from the perspective of the constitutional state, decide that the holders of the national culture are a few, or many, and that the rest are not part of the Mexican culture but of a diverse, minority, civilized toleration, but alien to the one that, by strange arguments, stands as the only one that can be considered as national.

Cultural autonomy will have to be recognized by the state, because otherwise it would lack binding force. Once its constitutional basis has been established, positive actions by the state will be required in terms of the protection of languages and the promotion of their development. This obligation, of course, will not be exhausted within the national territory. The cultural autonomy of individuals and groups includes the protection of their linguistic rights even when, for reasons beyond their control, they are forced to emigrate from the country. The economic limitations that condition access to work and force them to leave the national territory should not deprive people of their cultural rights. Through international agreements, or directly, the Mexi-

can state must take positive actions that guarantee Mexicans respect for their linguistic rights abroad.

Colophon

Legal words have various functions. For example, they are descriptive, in the sense of representing a behavior, stating a paradigm, alluding to a property, denoting a regularity. It is a guideline to which a reasonable content is collectively attributed, as when referring to dignity. Legal words are also generative, in that they give rise to conduct because they make it possible, because they prescribe it or because they prohibit it. As for the generative ones, they can be grouped into three pairs of voices, depending on how they express rights or duties, freedoms or powers, immunities, or responsibilities. This multiple function of the word of law is the one that fits into the classic concept of logos, the one that justifies the explanation of the words of law, and the one that legitimizes the legal defense of the word, as relevant actions of culture.

Law is just words. Accepting this, arises the need to analyze the meaning of the word "word". Doing so is, of course, not part of my study, not even my professional training. It is here, in this august and worthy institution, which for welcoming me must also be recognized as generous, where those who know this matter are. For this reason, being part of this venerable corporation will allow me, by consulting and listening, to resolve many of the concerns that have accompanied me for years.

The idea of logos was one of the great contributions of Heraclitus. From him this versatile and mysterious concept acquired numerous contours. Translated as "word", much of its content is subtracted. The philosophy of the nineteenth and twentieth centuries has dealt with profusely the problem of the Heraclitean logos;[79] some are inclined by feeling (in German, Sinn), oth-

[79] See the extensive list of sources prepared by Mondolfo, Rodolfo, *Heracli-*

ers by "verb" (as the Gospel of Saint John is usually translated), some more by "reason". The antecedent is a fascinating paragraph by Goethe. In his cabinet, Dr. Faust struggled to find an accurate translation from Greek (as German translators still do).[80] The voices used by Goethe as equivalents of logos are *"Word", "Sinn", "Schafft"* and "Tat". In the now classic version of him, José Roviralta translates them, respectively, as *"word", "sense", "force"* and "*action"*; before, Teodoro Llorente had interpreted them as "word", "reason", "force" and "action"; in Italian Andrea Casalegno makes them equal *"parola", "pensiero", "forza"* and "atto"; Gerard de Nerval puts them in French as *"verbe", "esprit", "force" and "action"*, and Denton Snider translates them into English as *"word", "sense", "force" and "deed"*. The coincidence is total in three of the four concepts; the problem is in Sinn: sense, reason, thought and spirit, it is the meaning that each one gives it. As you can see, the word "word" is a true polysemy. The interesting thing about Goethe is that he faithfully followed the doctrine of Heraclitus: as in the luminous Ephesus of twenty-seven centuries ago, logos is a dynamic concept, which continues to capture the cultural pulsations of each time.

It is in this broad list in which the words of law are also inscribed. That is why rigorous language allows jurisprudence to become science. Although only from the formulations of logical positivism it has been possible to see the importance of language for the law,[81] for centuries that relationship had been intuited and the bases for the precision of language were forged. This explains the appearance of vocabularies, lexicons and dictionaries in the Middle Ages and the Renaissance.

The need for rigor in language comes from various requirements: the recipient of the norm demands to know exactly what

tus. Textos y problemas de su interpretación, México, Siglo XXI, 1966, pp. 129 and et seq.

80 See Goethe, J. W. von, *Fausto*, multiple translations, 1224-1237.

81 Bobbio, Norberto, *Contribución a la teoría del derecho*, Madrid, Debate, 1990, p. 180.

their rights and obligations are; the subject that applies the norm needs to know exactly what his powers and responsibilities are; the person who resolves a conflict needs to know the rights and obligations of others, as well as their own powers and responsibilities. The universal validity of the norm is related to its understanding by the legislator, the administrator, the judge, and the citizen. If each of the subjects attributes a different meaning to the same norm, it is doubtful that one can speak of the validity of a rule of law.

In a constitutional state, the intelligibility of the norm is an element of validity. A classic principle says that ignorance of the law does not exempt from compliance (*ignorantia non excusat legem*). But there are two ways to ignore the law: because its existence or its content is unknown; or because its meaning is unknown. The latter in turn can occur due to poor knowledge, or poor drafting of the rules. To compensate for personal deficiencies, the instruments that allow them to know the meaning of the voices that are relevant to community life should be made available to as many people as possible; to avoid the second problem, neatness and precision must be required in the wording of the normative provisions. Cryptic, ambiguous, or equivocal norms cannot reasonably form part of the normative cast of a constitutional state. In this type of state, the norm, in addition to being general and abstract, must be intelligible. Without this requirement, its validity seems questionable to me.

There are many ways to classify words: utilitarian, as they help us to communicate; intellectual, to the extent that with them we coin concepts and express ideas; literary, when in addition to ideas they express feelings and serve aesthetic purposes; powerful, when they prescribe behaviors and attribute recognition or punishment. In this sense, law is a set of words with power.

Law is the sum of words to which, historically, humanity has attributed the function of regulating its individual and collective life; the cohesion of social life depends on them. The meaning of these words has moved men of all ages because life, liberty,

security, and property depend on their precise and reasonable statements, and they are called upon to achieve justice and equity in the lives of women. people and in social relationships. Whatever the interpretive methods used to identify the meaning of the rules, the instruments used are none other than the word; the size of the word depends on the magnitude of the right that each voice contains.[82]

Beyond the informational requirements that professionals, students, or people in general may present, the problem of isolation in legal matters is a real obstacle for the integration of a democratic society. The essence of a system of freedoms consists of the capacity, personal and legal, to enforce the system of guarantees that protects those freedoms. Subjective rights not exercised, due to ignorance of their existence, due to ignorance of the procedures for their defense, or due to the mistake of their statements, are precarious rights, unnoticed by their holders.

In a constitutional state, every form of relationship (family, labor, social, economic, or political) is governed by a legal system that ensures conditions of equality and equity. The problem is that, on many occasions, this symmetry is eroded by the pathologies of power and social life. The legal system itself offers solutions, but usually makes them available only to those who know of their existence or have the means to seek assistance.

There is a kind of defenselessness that affects groups that lack relevant information on legal matters. In many nations, the legal culture has gradually taken shape as a process added to the general culture, so that through literature, the press, and more recently the cinematograph and electronic media, the average citizen is entering into the range of rights that assist you. Instinctive knowledge of rights is complemented by the national cultural environment.

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82 In free societies, power is subject to words, especially the words of law; in captive societies, the word submits to power; it is the power that dictates it, in the sense of command. Remember that the voice *dictator* comes from *dicto*, "say", "prescribe"; thus used by Cicero in Catilinarias.

In the case of Mexico, however, our indicators show a low cultural level, which has a negative impact on legal matters. For this reason, among us, distrust in institutions has a double origin: adverse personal and collective experiences, and the perception of law as arcane. The words of law continue to have a high magic ingredient among us, which makes them mysterious, distant, dangerous. Far from instilling security, the words of the law produce shock.

The cohesion factors of societies vary according to the patterns of cultural diversity. In highly heterogeneous societies, such as those with high immigration, for example, the law has a cohesive function superior to that which it performs in more homogeneous societies. In these, the social collagen is usually made up of language and religious beliefs. But language by itself does not imply a communion of values; language is an instrument through which people communicate and share values, which may correspond to the religious universe or the secular sphere. In these circumstances, spreading the words of law is part of a civic task that encourages social cohesion.

One way to help achieve this goal is to promote awareness of legal voices. In addition to dictionaries for specialists, legal vocabularies that include historical voices, slang, and general definitions may be helpful.

In general, the expressions that make up slang are excluded from repertoires, vocabularies, or dictionaries. In the case of legal language, however, they have implications that should not be overlooked. Legal jargon has several dimensions: that used by judicial officials; the one used in the forum, in the media or in social rehabilitation centers; the one that is typical of society and even that adopted by young people and sectors exposed to cultural exclusion, for example.

From that language it is clear the value that in each field or sector is granted to the right; there you can see how institutions are transfigured or even disfigured. Expressions such as “bite”, to

refer to bribery, "chota" or "strip", to refer to the forces of order, can be considered representative of this language.

For the rest, it is also useful to specify the free lexical associations. The social understanding of the words of law is directly related to the perception of institutions. By documenting[83] the use of a single word, "constitution", through a free verbal association, a dominant link between constitution, democracy and freedom was established, while the relationship is weaker with the voices: "norm" and "legality". This result indicates the role of the constitution as an axis of political expectations rather than as a normative instrument; It shows the effects of a traditional political discourse, clearly aimed at persuading society of the political virtues of a system and the usefulness of collective behavior, rather than the individual defense of rights.

The exercise carried out has a lot to do with what Julio Casares[84] called active lexicon and latent lexicon. The first is made up of the hundreds of voices of those who communicate through a common language; the second corresponds to the voices that we understand when listening to them, although they are not the ones we usually use. The survey carried out showed to what extent the word "constitution" is part of these lexicons, in different areas of society.

These considerations necessarily lead to the conclusion that it is necessary to promote new forms of diffusion of legal language. The force of the words of law must be explored in its broadest dimension, and used so that, in turn, it serves as a platform to defend the right of words. Knowledge of the language can do for the law the same as the law for the defense of the language. There is, between both, a relationship to such an intimate point that words make law better known, and knowledge of law gives words greater security.

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83 Concha, H., Fix-Fierro, H., Flores, J., y Valadés, D., *Cultura de la Constitución en México*, México, UNAM, 2004, pp. 44 and et seq.

84 *Nuevo concepto del Diccionario de la Lengua*, Madrid, Espasa-Calpe, 1941, pp. 52 and et seq.

Along with dissemination actions, fundamentally through vocabularies that bring the norm closer to society, it will also be possible to build the normative scaffolding to establish that chapter that we lack in Mexico: the rights of the language.

We cannot attend, indifferent, to the death or the collapse of our own languages; neither can we close ourselves off from the world and ignore what happens or will happen in other places. Among us, the legal defense of languages offers many options: adopting constitutional provisions to recognize that Spanish is the official language, because it is the common language, in addition to protecting and promoting the development of indigenous languages, as part of the Mexican cultural heritage; modify, accordingly, the school programs, so that the norm does not remain a mere declaration; train the dozens of philologists required by a country with such a rich linguistic heritage; establish a high-level body that is responsible for bilingual educational programs, outreach actions that contribute to the knowledge of our languages and assistance to access justice in the indigenous language that each person chooses.

Also, in international cooperation we have much to do, be it by building a regulatory apparatus that complements the national one, or by participating in actions to preserve the linguistic heritage in our hemisphere. The community of problems should lead us to share experiences. We need, in this matter, to carry out comparative studies of actions aimed at the conservation and development of vernacular languages.

We preserve biological species, and we fulfill a duty; we preserve historical and archaeological monuments, and we fulfill another duty; but we neglect our linguistic heritage, and we lack a duty. At this point there is no need to worry about being late; let's not think about the time that is already gone, let's think that the time will not continue to go away.

REPLY BY MIGUEL LEÓN-PORTILLA

Our friend, the lawyer Diego Valadés, arrives at this Mexican Academy of the Language. His words that we have just heard, and many others that we have heard or read from him on other occasions, more than confirm the wisdom of choosing him as an academic. In addition, he is a connoisseur of our language, a loving cultivator of it, who today enriches us with a dissertation on the language of law and the law of the language.

He has addressed in it how much, being an integral part of the lexicon of our language, is related to the legal order in all its aspects and semantic fields. And if this is what belongs to the language of law, on the other hand, in what seems like a play on words, that is, on the other topic, that of the law of language, it has pointed out that which is an inalienable attribute of the person and society. I am referring to the right to express oneself in all contexts of life, in our case either in Spanish or in the vernacular languages, those of the indigenous peoples who are also ours. His dissertation, so I want to understand it, anticipates what his work will be in this Academy: to expand our knowledge about the language of law and advocate for everything that concerns the right to speak and cultivate one's own language.

Luminous has been the academic career of Diego Valadés. A native of Mazatlán, Sinaloa, Diego studied at UNAM, as well as at the Classic University of Lisbon, studying in both a law degree. Years later he crowned his studies with a doctorate in the same discipline at the Complutense de Madrid. Specialized in constitutional law, but also attentive to other branches of the legal sciences, he has been a highly esteemed teacher and has published

and coordinated fundamental works in the field of his knowledge. I will remember only a few: *The constitutional dictatorship in Latin America*, his first work published in the Institute of Legal Research in 1974. Another book, of which I know that Diego remains happy to have written it, with a foreword by Dr. Héctor Fix-Zamudio, is *The Control of Power*, published in 1998. The list could be lengthened and other contributions of which he was coordinator should be cited. I will cite two that I consider essential: the *Ibero-American Constitutions series*, which includes several volumes, and the monumental *Mexican Legal Encyclopedia*, co-edited by the Institute of Legal Research and the Porrúa Publishing House in 12 volumes and now with two editions. This work shows, more than any consideration, a great interest in delving into the knowledge of the theory and language of law.

I have described his academic-administrative career as brilliant. And so, it has been. It includes his teaching work in the Faculties of Law and Political Sciences of UNAM, as well as in other universities in the province and abroad. He, who had such distinguished teachers as Dr. Héctor Fix-Zamudio, a corresponding member of this Academy, has also had disciples who are now established legal teachers and researchers.

Diego has held in his alma mater, UNAM, positions as relevant as those of member of the Technical Commission of University Legislation, general director of Cultural Diffusion, general lawyer, coordinator of Humanities and director of the Institute of Legal Research from 1998 to the present.

Despite such assignments, which would prevent others from continuing to work in teaching and research, Diego has amply confirmed that those who have a genuine academic vocation can combine academic-administrative assignments with teaching and research. His copious bibliography bears witness to this. In addition to his books, he has written and published more than 180 articles in specialized magazines, as well as dozens of other contributions in newspapers and popular magazines. To this must be added multiple conferences and participation in congresses

in Mexico and abroad. The university student Valadés, with all these merits, to which are added awards and other distinctions, is a simple and affordable person, a lover of travel, good food and conversation with friends.

An indefatigable reader, he opens his mind to a wide variety of topics, many related to law but others related to history, art in all its forms, sociology, philosophy and, of course, also to contemporary problems, that of Mexico and that of the world.

Diego's luminous career has not been limited to the field of academic life. He has also served Mexico with professionalism and honesty as general director of Legal Affairs of the Ministry of the Interior; Federal Deputy; General Secretary of the government of Sinaloa; Ambassador of Mexico in Guatemala; Attorney General of the Republic and Minister of the Supreme Court of Justice of the Nation. Having carried out these assignments, he never meant abandoning his primary academic interests. Good proof was given when he left the high position of minister of the Supreme Court of Justice to devote himself fully to university life.

What I have evoked from the career of Diego Valadés will help us to better appreciate the personality of our new academic who he is, I want to reiterate it and it is clear to all of us who know him, a cordial person, always ready to listen and help those who come to him.

Now I will turn to what have been the two central aspects of the speech that we have just heard. After praising those who have previously occupied the XVI Chair of this Academy, he has concentrated on topics that deal entirely with two key aspects related to the language.

Taking as a starting point a pertinent quote from Miguel de Cervantes in *El Quijote*, he enters fully into the subject of the relations of literary creation and language with the concerns associated with justice, equity, freedom and the exercise of power. "Problems of justice," he tells us, have been viewed many times, illuminatingly from the perspective of the writer, including of course novelists.

Since the language of law is proper to lawyers, it is essential to promote legal culture. This is being achieved with contributions such as the incorporation in the *Dictionary of the Language* of more voices concerning the law. From this follows something very important and that is the collaboration between philologists and linguists, on the one hand, and jurists, on the other. As samples of contributions that can be considered the fruit of this kind of collaboration, he quotes

Diego a series of important legal lexicons, from the first elaborated in Mesopotamia and others due to Roman lawyers and from the Middle Ages, until reaching the present. In it we hope, by the way, his personal participation by offering us the desired dictionary of key concepts of law.

Law, here and throughout the world, relates to all areas of knowledge and action. At present, this relationship is greatly increasing. As our new academic shows, the intimate relationship between certain biological, clinical, and ecological issues with the legal order is already fully recognized. From this derives a new discipline, biolaw, which includes areas such as the regulation of genomic medicine, neurosciences, pharmacology, the provisions relating to a dignified death in cases of terminally ill patients. And to all this can be added the rights of society to social security that include new forms of medicine, the protection of the environment, the values at risk of human dignity in a world threatened by cultural globalization and countless others. of themes. All of them, when relating to essential aspects of life, require the existence of regulations that allow legal resolution of problems that previously did not seem to be related to the application of the law.

This shows the enormous magnitude of how much the subject of the increasingly rich language of law encompasses. And also, the magnitude of the task to be undertaken by jurists who, like Diego Valadés, agree to work side by side with linguists and philologists, in particular with those who have assumed the responsibility of working in a Language Academy.

Already dealing with the right of the language, with pertinent erudition Diego reminds us of the current existence of more than five thousand languages and the danger in which many of them are going extinct. Of that decline, he affirms that his disappearance will be a cultural catastrophe. I want to express here that I fully agree with him. Here, in this Academy, there are mainly three members who are fighting for the defense of the indigenous languages of Mexico. I am referring to Andrés Henestrosa, whose mother tongue is Zapotec, Carlos Montemayor, who has done so much in the literary workshops he directs and in which many indigenous people have participated. The other defender of vernacular languages, I must say, using a legal expression, is "the one with the voice," that is, myself.

To illuminate what the right of the language means, our new academic attends to what is established in the constitutions of various countries. He also brings up the Universal Declaration on Cultural Diversity, approved by UNESCO in 2001, which includes what concerns languages considered an integral part of the heritage of humanity. "The right to a language belongs to everyone," proclaims Diego Valadés. With an accurate expression, which he fully shared, he later affirms that "our great national culture is multifaceted, multifaceted, heterogeneous but egalitarian". And he adds that "cultural autonomy will have to be recognized by the State, which must confer binding force on it, and which must at the same time develop actions for the protection of languages."

And, now to conclude his speech, Diego formulates an indication of what the language of law encompasses and that it is not only legal language but even expressions of popular slang, legal jargon, which is even adopted by young people and other sectors sometimes exposed to cultural exclusion. For this reason, it is extremely important to promote new forms of diffusion of legal language to ensure that justice prevails more and more in our country. For my part, I will add, dear friend and admired col-

league, Diego Valadés, that it is precisely to achieve this that this Academy has chosen you.

I will remember here the words that, when I entered this Academy, my remembered and dear teacher Ángel María Garibay K: "We did not come to the Academy to sleep on withered laurels; we come and we must come to plant new trees and reap new fruits".

This is what I want to convey to you and, if it means work, we are certain that you will have to undertake it. In the meantime, here and now, on behalf of our Academy I welcome you again. It is yours to work around the language of law and the law of the language. Congratulations, Diego!

August 25, 2005

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