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# Law and the City

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## Chapter 8

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# Mexico City

## The city and its law in eight episodes, 1940–2005

Antonio Azuela\*

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### Introduction

This chapter is about the relation between the law and a city that has increased its population 7 times in 50 years, has undergone profound changes in its political system and has suffered economic crises much worse than the earthquake that destroyed 3,000 of its buildings in 1985. An attempt to tell that story through a mere description of statutes and by-laws that supposedly rule urban processes would give us only a very small part of that story; or rather, it can give us only a single moment of it: the one in which inspired political actors (in their role as legislators) enact the urban world as (they think) it should be. Instead, I intend to explore the *legal experience* of this urban society, that is, the way people use the law (or forced to tolerate it) in the wide range of social interactions that occur in the urban context. The problem, of course, is that such legal experience is a vast and complex reality, and it would be impossible to render a reasonable account of that universe *as a whole* in a few pages. Indeed, in the work of the urban theorist Richard Ingersoll, we encounter the idea that the impossibility of analysing the totality of a contemporary metropolitan agglomeration finds its solution in the language of film-making: the *jumpcut* is the way in which a story is told in pieces, sometimes abruptly taking us back and forth in time and from one place to another. Cinema-goers rarely have more than 90 minutes to consider a story; yet film-makers manage to deliver one. The story 'as a whole' is something we reconstruct in our minds and with our own cultural background; what they give us is just a series of images put together through the *jumpcut* technique; this is also the way we experience the huge urban agglomerations of our time.<sup>1</sup>

In what follows, I offer to the reader an idea of the relation between Mexico City and the law, through the description of eight 'legal landmarks' of the city's history in the last 60 years. Through what might be called a small collection of

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<sup>1</sup> Ingersoll, 1996.

vignettes, I illustrate the multiple dimensions of that relation. This endeavour presupposes the abandonment of two (predictably similar) ideas: that the city is a coherent whole, just like an organism; and that the law is a system, that is also a coherent whole. The notion that a city is an organism (an old biological metaphor which is hard to sustain when one considers, *inter alia*, contemporary environmental parameters)<sup>2</sup> must be replaced with the recognition of the fragmented character of contemporary metropolis.

On the other hand, the idea of the law as a coherent system weakens when, instead of looking at the logical connections between norms, we analyse social practices in which the law is central to actors' discourses; coherence becomes the least interesting concept by which to describe what we see. Moreover, when we consider the urban experience *and* the legal experience together, the word 'fragmentation' gives way to a stronger one: *dislocation*. Not only are the parts of the whole separated from each other, but they are positively *dislocated*: no longer is it possible to imagine a way of reestablishing a meaningful connection between them.

### 1946: the invention of regularisation

During the Second World War, Mexico City was growing at an unprecedented rate, both in population<sup>3</sup> and in industrial production.<sup>4</sup> One of the most relevant changes taking place was the emergence of the *colonias proletarias*, which became the dominant form of urban habitat for the poor. Looking at this phenomenon from the unusual point of view of the *Diario Oficial de la Federación* (the Mexican 'Registrar'), one finds an interesting legal fact: in six years, 71 decrees signed by the President of the Republic expropriated suburban areas in order to 'create population centres for workers'.

The practice of expropriating land for the urban poor resembles the agrarian reform that distributed half the national territory to peasants throughout the twentieth century.<sup>5</sup> It may thus seem strange that this practice by the city's government was never proclaimed as part of the official programme of the Mexican revolution. However, the fact is that those expropriations had, to a large extent, a fictional character. Not because land was not really occupied by the urban poor;

2 Obviously, most large cities' energy balance includes flows coming from afar. Also, their internal fragmentation makes it possible that, within the same 'city', hundreds of thousands may be exposed to horrible tragedies, whereas those in the rest of the urban agglomeration experience (when tragedies occur) the same kind of emotions they can feel with distant tsunamis or with the death of a Pope.

3 During that decade, the city's population went from 1.7 to just over 3 million, an annual growth rate of 5.87 per cent, Negrete, 2000: 248.

4 For the general evolution of the city, see generally Garza, 2000.

5 As with agrarian reform, these urban policies included mechanisms to integrate the masses into corporatist organisations. See the analysis of the *Reglamento de Colonias* in Azuela and Cruz, 1989.

rather, because in many cases the poor had already occupied the land – be it in the form of land invasion or illegal subdivisions – by the time the expropriation decrees were issued. When aerial photographs of those years are analysed in relation to the dates of the expropriation decrees, one discovers that many of the latter were issued long after houses had appeared on the land that was expropriated for ‘creating’ those workers’ neighbourhoods.<sup>6</sup> For almost six years, government officials had been trying to pretend they controlled the process, when in fact they were only reacting to a *de facto* situation. This was recognised at the end of the *sexenio* (the six-year term of the presidency), as the final report of the city government states that during the period 107 *colonias* were *regularised* – with a list that included those that had been allegedly created by decree. It was the first time the word ‘regularisation’ was used in official discourse.

As we shall see, land tenure regularisation became public policy in the 1970s, but its social foundations were well established by the 1940s. In the beginning, it took some time for the government to recognise regularisation as an acceptable practice, but its political potential became clear at once. As in the rest of the underdeveloped urbanising world, the Mexican state was (and still is) unable to guarantee access to land for the urban poor. But in Mexico irregular urbanisation was integrated into the political system in a remarkably extensive fashion. It is well known that granting government tolerance towards illegal urbanisation in exchange for loyalty at electoral times has been a profitable political transaction in many parts of the world, but in Mexico City the use of legal devices to sanctify this tolerance was part and parcel of the process. The ideology of the Mexican Revolution permeated the legal practice of the government to such an extent, that legal pluralism was an internal tension of state practice, rather than a tension between state law and practices outside it.<sup>7</sup>

### 1952: the end of planning as urban renovation

Nowadays, urban processes that contravene land use regulations are seen as the clearest evidence that there is no such thing as a rule of law in this country. But a less simplistic image emerges when we look at specific episodes of the history of planning in the city. By the early 1950s, the 1933 Planning Act (*Ley de Planificación*), influenced by CIAM,<sup>8</sup> used the word *planificación* for the opening (or widening) of roads in the city’s core. Following Le Corbusier’s ideas, the way of dealing with a congested and ‘unhealthy’ urban environment was to tear buildings down and to open wide roads for better ventilation – and cars. Nowadays, this is seen as an atrocity against the richest historical centre of the

6 Azuela and Cruz, 1989.

7 For another account of the way people use the law in urban processes in Mexico, see the splendid article by Jones, 1998.

8 The International Congress of Architecture, dominated by modernist urban theories.

continent,<sup>9</sup> but by 1950 three major renovation projects had already destroyed parts of the centre and a social protest began to emerge through a coalition of conservationists and house owners.

Interestingly, the Planning Act created a 'Planning Commission', a sort of planning board with representatives of professional bodies (engineers, architects), house owners' associations and government officials. Since all urban projects had to be approved by the Commission, this body became the field of the confrontation between those who wanted to preserve the city, and 'planners' – that is, those in favour of road opening. The latter used the Planning Act and its 'instrument'; the former used the law on monuments and historic buildings. In one of the sessions, one of the planners said that

...if, really, colonial monuments cannot be touched and no betterment is allowed for the city, then there is no point in the existence of a Planning Commission at all.<sup>10</sup>

That was the sort of technocratic approach with which planning was associated. But what I want to convey here is that the law was used by social actors even in an authoritarian political context. That was the period of an undisputed political domination by the official party (the *Partido Revolucionario Institucional* or PRI); a party that for decades fascinated political analysts with its capacity to stay in power through what appeared an eternal and invincible machine. In spite of such an authoritarian context, social resistance to urban projects used the law and did it successfully: with the decisive support from one paper,<sup>11</sup> in 1953 the government projects were abandoned and, since then, it is unthinkable to promote urban renovation actions that affect what we proudly call the *centro histórico*.

### **1964: Tlatelolco and its hypermodern property arrangement**

In pre-hispanic times, Tlatelolco was a small town close to Mexico-Tenochtitlan, the capital of the Mexica (also known as the Aztec) empire. Since the early 1960s, the area has been occupied by a public housing project, with more than 150,000 people living in 102 ultra-modernist buildings. Tlatelolco was to become the symbol of two tragic moments in Mexico's contemporary history: the massacre of students in 1968, and the earthquake of 1985, in which hundreds of people died and dozens of buildings were destroyed. In 1964, in the project's opening ceremony, the speech of the main responsible comprised two elements that reflect the optimism of those days. On the one hand, he announced that a

9 This is true at least in terms of colonial architecture.

10 Quoted in García Cortés, 1972: 261.

11 One of Mexico city's major papers, *El Universal*, covered the story and its role was crucial in forcing the government to stop renovation projects. True, newspapers had not enough freedom to criticise the President, but they could influence urban policies, as in this case, García Cortés, 1972.

team of competent engineers had already taken care of the 'slight leaning' that had been detected in one of the buildings. On the other hand, he praised the innovative system of property rights that was being used, namely, the certificate of participation (or *certificado de participación inmobiliaria*) that Mexican lawyers had devised in order to facilitate transactions over individual apartments, following the inspiration of trust management in the United States of America. Like today's law-and-economics gurus, so obsessed with 'getting the institutions right' through a specific 'property arrangement' for every social problem, lawyers working for banks (including in this case a state-owned one) thought they had found the smart legal formula that could give both economic efficiency and the personal sense of security that property titles are supposed to provide.

Years later, it became obvious that both legal and civil engineering had failed. Many buildings did not resist the 1985 earthquake and the legal formula had worked against the interests of the state. As all apartments were part of a trust fund, and this fund was the government's responsibility, certificate holders (i.e. home owners) did not care about having their apartments insured and the federal government had to pay for the reconstruction after the earthquake. The residents of the Tlatelolco project were the only middle class sector of the city that obtained a state subsidy for the *entire* cost of the reconstruction, whereas at the lowest extreme of the social scale, some 12,000 households had to borrow with market-based interest rates in order to get a new house in one of the reconstruction programmes: just another instance of perverse effects of a property system.

In any case, the fact is that in the first half of the 1960s the Mexican elite still had a very strong sense of confidence in the future; a confidence that was seriously damaged in 1968, and then almost totally destroyed in 1985. Legal institutions were in the middle of that process.

### 1973: the institutionalisation of regularisation

In the planning agenda of the 1970s, one of the most salient issues was (and still is) the formation of the so-called irregular settlements in the urban periphery. As in other parts of the developing world, those settlements were created through the illegal subdivision of land and, less frequently, through its direct occupation by settlers – appropriately known in Mexico as *colonos*.<sup>12</sup> Eventually, it was possible for the government to control land invasions, as well as illegal subdivisions by private landowners. What has proved strikingly enduring is the selling of land belonging to *ejidos*. An *ejido* is a corporation of peasants that received land as part of the agrarian reform.<sup>13</sup> Land is owned collectively but cultivated individually by

12 The experience of spending years, and sometimes decades, in a hostile territory without urban services is a true colonisation process.

13 In some cases, the agrarian reform recognised the rights held by communities from colonial times – the latter are not called *ejidos*, but *comunidades*. There are some 30,000 of those two forms of agrarian corporations and they own 52 per cent of the national territory.





*ejidatarios*, that is, the members of the corporation. Each *ejidatario* has individual rights over a piece of land (*parcela*) which forms the basis of the household economy. Up to 1992, agrarian law denied both *ejidatarios* as individuals and *ejidos* as corporations the right to sell their land. Although this has been a matter of intense debate,<sup>14</sup> the *ejido* was a paternalistic landownership system in which only the President of the Republic was authorised to make land transactions – through the power to expropriate land. According to agrarian law, private land sales were non-existent (*inexistentes*). Thus, in the urbanisation process, transactions through which *colonos* had bought an un-serviced plot of land from *ejidatarios* were not recognised. Agrarian legislation provided for severe sanctions for *ejidatarios* if they sold their lands, but those sanctions were never applied.

By the early 1970s, the situation was ripe for an institutional innovation: since its creation in 1973–1974, the Commission for Land Tenure Regularisation ('Corett')<sup>15</sup> has conducted the most comprehensive programme of land regularisation in the developing world; a programme that cannot come to an end because it has created the conditions for the institutionalisation of this specific form of urbanisation.<sup>16</sup> Every participant in the illegal urbanisation of *ejido* lands knows that, eventually, *colonos* will get a property title from Corett. The system is very simple: once an irregular settlement is created, Corett promotes an expropriation procedure.<sup>17</sup> Then Corett sells to the *colonos* the plots they had bought 'outside the law'. It is like the dream of economic liberalism, since original transactions are not subject to any restriction – if only because they are illegal. There are only three problems: first, *colonos* have to pay twice for having access to (un-serviced) land;<sup>18</sup> second, in many instances *ejidatarios* create settlements in high-risk areas; and, third, in the whole process the government can act as a benevolent agent that forgives settlers for their improper behaviour, and places their needs above the idea of enforcing the law – no one seems to notice that it is not settlers, but *ejidatarios*, who have broken the law.<sup>19</sup>

There is an obvious political rationale in the government's tolerance towards the illegal selling of land by *ejidatarios*. The *ejidatarios* are the core of the 'peasant sector' of the PRI and throughout the century they constituted a very important part of the social support of the regime, something that Echeverría's

14 Most of those who see themselves in the left, consider the reform that allowed *ejidatarios* to sell their lands as just one more example of privatisation policies. In my opinion, there is enough evidence that such reform strengthened the position of *ejidos vis-à-vis* the state.

15 Comisión para la regularización de la tenencia de la tierra.

16 Smolka, 2000.

17 Getting the President's signature is not a problem, since he will be happy to appear as the benevolent king that grants property rights to settlers. Since 1988, titles are handed out in a folder with the president's name on the front page.

18 They pay for the non-existent original operation and when they must acquire their plots from Corett.

19 The prohibition to sell the land is in this case clearly addressed to the owner, not to those who buy it in good faith.

administration tried to maintain and even nourish at any cost. In the long run, this institutionalised tolerance undermined state authority, by strengthening the position of *ejidos*. They became corporatist enclaves in which public authorities have very little to say as to the way *ejidatarios* use their lands.<sup>20</sup>

### **1976: the short life of planning as social justice: the Human Settlements General Act**

One of the aspects of President Luis Echeverría's administration was the so-called democratic opening (*apertura democrática*) which consisted of the cooption of former student leaders into the government ranks. That was the origin of a generation of professionals that constructed the planning institutions of the country in the last quarter of the century. From 1970 to 1975, urban policies began to take shape in different government agencies and, by the time the Vancouver Conference on Human Settlements was called upon, the Mexican government was ready with a model statute, the Human Settlements General Act (*Ley General de Asentamientos Humanos* or LGAH). The President arrived at the conference in June 1976 with an exemplary legal piece, but at the cost of a very intense political conflict in the country.

The LGAH expressed the expectations of that particular generation of urban planners and urban lawyers – my generation. Not only did it create a 'rational' planning system, with a state-of-the-art version of planning theories, but it seemed, above all, to provide for legal instruments in order to bring to the urban arena one of the dearest principles of the Mexican Revolution: the *social function* of private property – a principle that was not recognised by Constitutions in many Latin American countries until the 1990s. Since 1917, Art 27 of the Mexican Constitution proclaims the principle that the general interests of society are above private property rights. It was also the basis for a comprehensive agrarian reform, public ownership over strategic natural resources, and wide regulatory powers of the state over the economy in general. But it was only in 1976 that urbanisation processes became the subject of a programme in which the social function of property was to be the core idea of urban law and policy.

Under a pragmatic interpretation, the LGAH appears as nothing more than the typical planning legislation of a capitalist country in the second half of the century. No more harmful for property interests than planning in Rooseveltian America or even in Franco's Spain.<sup>21</sup> However, the rhetoric, both of the legal text and of President Echeverría's propaganda regarding his initiative, made it look like a step towards socialism. Private business's organisations launched a campaign against

20 For an insightful account of the strategies of rural communities towards urbanisation in the periphery of Mexico City, see Cruz, 2001.

21 Indeed, the favourite reading of those interested in urban law in those days was the Spanish legal literature, and the model was the Land Act (*Ley del Suelo y Ordenación Urbana*) of 1956.

the bill arguing that it had been drafted by 'Chilean advisors that had worked for Allende', and even spreading the rumour that the Government's intentions was to place homeless people into any spare room that 'decent families' may possibly have in their houses. The President's response was also strong: he denounced entrepreneurs as a 'plutocratic and fascist minority' for opposing his bill.<sup>22</sup> The confrontation went on until the end of Echeverría's administration in December 1976. The political climate was so harsh that it incubated the rumour that the President was ready to organise a *coup d'état* in order to stay in power indefinitely – indeed, the rumour appeared as the main instrument of the political right.<sup>23</sup>

Three decades later, the whole thing looks like an appalling comedy of errors. The truth is that Echeverría's relations with private capital had deteriorated so much that anything could have sparked off a conflict in the last year of his *sexenio*. But it can also be understood as an interesting ideological debate about the tension between planning and private property in urban development. LGAH has been the basis for contemporary land use planning in Mexico. We cannot offer a comprehensive analysis of the question here, but we can acknowledge that the issue of social justice was not part of the legacy. Most Mexican cities have plans now, as does Mexico City, but the prestige of social justice for planning was seriously damaged. The idea of delivering social justice through planning law fell into irreparable disrepute and is now subject to the accusation of 'populism' or 'statism'.

### 1985: an earthquake with two epicentres

It was 7.30 am on the 19 September 1985, when an earthquake of 8.2 on the Richter scale hit Mexico City and other parts of the country. Nobody knows how many people died, but calculations range from 20,000 to 35,000. Around 3,000 buildings collapsed, and the worst-hit part of the city was its historical centre. Many thousands were found overnight living on the streets, and a few days after the initial shock the question was what the future of the city's centre and its inhabitants would be.

By then, the city centre's population was predominantly poor and (except for those living in public housing projects such as Tlatelolco) most were tenants in deteriorated buildings. Given that a large part of the latter were subject to rent controls (*rentas congeladas*), the obvious fear after the earthquake was that property owners would take advantage of the opportunity to evict tenants. Some visionaries also advocated the possibility of 'renovating' the centre; this time it was not buildings they wanted to get rid of, but people.

It would be unfair to say that driving people out of the centre was the government's project. But people had good reasons for being afraid of being expelled to the periphery. Thus, a huge social movement began to emerge as two myths of Mexican politics collapsed. First, people did not follow the leaders of

<sup>22</sup> Azuela, 1989.

<sup>23</sup> Monsiváis, 1980.

the PRI. The so-called official party had lost every chance of doing its historical job of organising the masses, and the new leaders had to appear as 'independent' to get any credibility – the Mexican Leviathan was publicly naked. Second, thousands of people from the rest of the metropolitan region poured into the centre to help in all sort of tasks, with a certain feeling of disobedience against the government's claims that everything was 'under control'. *Chilangos*, as they call us derogatively in the rest of the country, realised that Mexico City's immense urban community did not fit in the cliché of indifference and individualism that large cities usually convey. The word *solidarity* permeated the symbolic space, and the phrase *civil society*, until then used only by Gramscian intellectuals, rapidly became part of the political vocabulary of the whole country. Leaving aside the many implications of this collective experience, three legal landmarks are worth recalling from those days.

*An expropriation:* In the previous two years, President Miguel de la Madrid had been engaged in the redefinition of the role of the state in the economy. After Echeverría's government, things had got even worse with his successor José López Portillo, who nationalised all the banks as part of another conflict with private capital. Thus, by 1985, the word 'expropriation' was an anathema, as it evoked one of the legal instruments through which an authoritarian regime was built. But after the earthquake, it was precisely an expropriation that people were demanding in order to avoid being displaced from the city centre.

In post-war Europe, reconstruction took place through 'compulsory purchase' – a euphemism for expropriation, when read from the point of view of Mexican legal culture. But in Mexico that same action evoked a memory of the times that modernisation policies wanted to avoid – the nationalisation of the banks was too recent and the new political elite wanted to assure private capital that expropriation was out of the agenda. The problem was that hundreds of thousands were (literally) on the streets asking the government to expropriate the ruins where they used to live and develop housing projects in the centre. Sociologists that had been following urban social movements that, up to the earthquake, took place mainly in the urban periphery, would habitually locate those movements also in the periphery of the political system. But now they were witnessing a huge movement in the very centre – in both senses.

On 11 October 1985, and just before the urban disaster became a disaster for the political system as well, the President, De la Madrid, issued a decree through which more than 4,000 buildings were expropriated in order to conduct a housing program: *Renovación Habitacional Popular*. Although some voices bemoaned that gesture as a return to populist politics, its immediate effect was to calm down the public unrest. Overnight, a social movement that had brought some 150,000 people to the gates of the presidential house, adopted the shape of a disciplined queue in front of whatever state agency was to be created in order to *administer* the reconstruction.<sup>24</sup>

24 For an account of this process, see Azuela, 1987.

*A new social pact:* Social discipline did not last long. *Damnificados* (those injured by the earthquake in one way or another) were not ready to accept just any proposal the government would have for the reconstruction – *inter alia*, financial conditions for the payment of new houses could be hard for poor tenants. The conflict was aggravated because the initial response of the government displayed the typical authoritarian attitude of the old political style. In March 1986, a new team was appointed to conduct the negotiations with a different approach, and two months later an agreement called *convenio de concertación* was signed between the government and dozens of social organisations. The political meaning of this agreement was much stronger than its legal status: it was the first time that a post-revolutionary government openly recognised as legitimate interlocutors social organisations that were not part of the PRI. *Concertación* was not only the catchword for a new political style: governing through agreements was the source of a new form of legitimacy that departed from the old idea of following general rules enacted by the legislative power.

*A new legislative body:* It is difficult to assert the specific impact of the political aftermath of the earthquake on Mexico's democratic transition. But there can be no doubt that it was a turning point in the city's political system. One year after the earthquake, the *Asamblea de Representantes* was created. For the first time in the history of the Federal District, there was a mechanism for the representation of the capital's polity. Since then, *Chilangos* are not second-class citizens anymore.

The *Asamblea's* powers were increased in 1996, when it became *Asamblea Legislativa*. Amongst other changes, it gained an important role in the process of lawmaking for the city. Finally, the times in which the President of the Republic ruled the city through an appointed functionary ended in 1997, when the first *Jefe de Gobierno* was elected and President Ernesto Zedillo conceded to the triumph of Cuauhtémoc Cárdenas.

When one considers together the three legal events that followed the earthquake, the complexity of the relation between the law and the life of the city becomes apparent. An instrument of the old regime (the expropriation) was used in order to reestablish social order in the city; a contractual mechanism (the *convenio de concertación*, so different to the classical ideal of the rule of law) was necessary to recognise social forces that the old PRI could not accommodate; and a legislative assembly, based on the principles of modern democracy (the *Asamblea de Representantes*), was to become a source of legitimate lawmaking. Regardless of the theoretical tag we can put on this (legal pluralism, interlegality), the coexistence of three different instruments illustrate the density of legal practices in the complex set of social relations in the city. Far from a lawless land, this appears as an ebullient social landscape that never stops from producing rules, norms and legal gestures of all sorts.

### 1998–2002: metropolitan planning in times of political pluralism

Apart from being the moral leader of the Mexican left since 1988, Cuauhtémoc Cárdenas is an engineer. An active member of the planning movement since the late 1960s, he shares the vision of urban development that one can find in the Human Settlements Act (*supra*). Thus, when he became the first elected mayor of the capital city in 1997, he promoted the review of urban development plans at several levels. It is interesting to note two of those planning initiatives, as they were put to the test in the following years. On the one hand, some 30 local plans (*planes parciales*) for particularly problematic areas were put together after a painful process of public participation. Public participation was an exercise in which different views and interests were taken into account *before* drafting the plans. About half of them relate to areas of the urban periphery, where it has been particularly difficult to find a balance between the views and the interests of three groups of actors: environmental NGOs that oppose every form of urban expansion over rural areas; members of rural communities, who do not want to be 'swallowed' by that expansion; and groups of *solicitantes de vivienda*, that is, social organisations that seek a plot of land to develop housing projects in the urban periphery, the only land they can afford. Most local plans were approved by the *Asamblea Legislativa*. And therefore they embody a combination of *concertación social* with the legitimacy of lawmaking through formal political representation.<sup>25</sup>

On the other hand, the Cárdenas administration promoted a Metropolitan Programme for Urban Development; that is, a programme that included more than 30 municipalities of the State of Mexico, where almost 9,000,000 people live. A constructive attitude on the part of all main actors (i.e. the planning authorities at federal level, the State of Mexico and of course Mexico City) produced what had been impossible in the times of the one-party system: a legally binding metropolitan development plan. There was an issue, however, on which they could not reach a consensus: the location of the new airport. Everyone could see that in a few years it would be necessary, but the federal government had not made a decision as to where to build it. A wise solution to this uncertainty was to state in the programme, quite explicitly, that the question had to remain open.

In 2000, the country's political landscape changed radically: Vicente Fox (from the right wing *Partido de Acción Nacional*) defeated the PRI in the presidential election, and Andrés Manuel López Obrador (AMLO), the candidate of the *Partido de la Revolución Democrática* (PRD), became the new *Jefe de Gobierno* in Mexico City. The PRI retained most state governments and a strong position in Congress.

<sup>25</sup> Ziccardi, 2003.

Conflicts between Fox and AMLO have marked Mexican political life since then and, most interestingly, urban issues have been the motive – as well as the excuse. Two examples will suffice to illustrate the weakness of planning law facing those conflicts.

One of the first decisions AMLO adopted was to stop the issuing of planning permits in the urban periphery. Listening to the old argument that there is no more water to sustain urban growth, and without any public consultation, he published what became famous as the *Bando Dos* (Edict number two),<sup>26</sup> a simple announcement that no new urban projects would be authorised outside the central areas of the City. In the long run, it is possible that this will help to increase densities in those areas that had been losing population during the last decades. But there were two problems with this *Bando*: the decision ignored three years of public participation in planning from the Cárdenas administration. At the same time, and perhaps more importantly, it was the first gesture in which AMLO showed a lack of respect to the law, since he was clearly exerting the land use regulation powers that are by law reserved to the *Asamblea*.

AMLO had not been alone in ignoring planning laws. The main infrastructure project of President Fox's administration was the new airport for Mexico City. The governors of Mexico and Hidalgo battled over 'winning' the decision for their states. But after the Federal Government announced its decision to build the airport in the state of Mexico, it had to face a fierce upheaval of *ejidatarios*, who opposed the expropriation of their land. As a result of this, in April 2002, the project was abandoned. Many things could be said about this episode, which was, not only the first drawback of the Fox administration, but above all, a clear indication of the strength of the *ejido* property system *vis-à-vis* state institutions. The point is that the Federal Government was so determined to conduct the process in a technocratic way, that it ignored the Metropolitan Urban Development Programme approved by the Metropolitan Commission only three years before. The Commission was created as a forum for public deliberation on metropolitan issues. In other words, Fox too violated urban laws in his haste to begin the construction of the new airport, regardless of the obligation of public consultation that is recognised in the generally progressive national planning legislation.

These are only two examples in which planning law has been ignored by political actors. In both cases, actors did not employ the law in order to defend their views – not even their interests. The local government (AMLO) did not request a public discussion on the airport issue in the metropolitan commission. At the same time, those affected by the *Bando Dos* (including housing organisations and landowners in the urban periphery who could have benefited from their projects) decided not to challenge the *Bando* through legal means.

26 *Bando* is an old terminology for proclamations of different kinds. For example, the results of an election are announced through *Bandos*, but they are not supposed to bear a normative content by themselves.

All these conflicts have been overshadowed by an emergent political phenomenon: AMLO's social policies, in combination with his amazing political talents, have made him the most popular politician in the country – in Mexico City he enjoys an approval of more than 80 per cent of the population and at national level he has been ahead in the surveys for the presidency for almost two years. This takes us to our last vignette, which involves some serious *jumpcut*.

### **2004–2005: from a petty expropriation to a political crisis**

On 7 April 2005, a legal event in Mexico City hit the front pages of many papers outside the country. For example, *The Boston Globe* reported that 'Mexico's lower house of Congress is expected to vote today to impeach the enormously popular mayor of Mexico City, Andres Manuel Lopez Obrador, in one of the most divisive moments in the nation's recent history.'<sup>27</sup> As it happened, the *Cámara de Diputados* stripped AMLO of his immunity. In the language of the law, this meant he could then be subjected to trial for contempt of court. In the language of politics, it meant he would not be able to contend for the Presidency in 2006, because (again in the language of the law) those who are subject to criminal charges cannot exercise their political rights – with this I want to stress the circularity between law and politics. It was the first time in the country's history that an urban conflict led to a major political crisis at national level. For more than two years, the relation between the *Jefe de Gobierno* and President Fox had deteriorated to such an extent, that it became the main issue in Mexican public life. In March 2004, the gap widened as a series of videotapes showed high level officials of the AMLO government taking money from a private entrepreneur who was making millions with public works.<sup>28</sup> A great divide in public opinion developed and it had to do with the relation between law and politics. On one side, for those who see AMLO as an irresponsible populist leader, he represents a threat to Mexico's democratic order because he shows no respect for the law; for those on his side, on the other hand, the whole thing was a 'conspiracy' to kick him out of the presidential race; just another example of the selective use of the law as a means to get rid of difficult political adversaries.<sup>29</sup>

This is not the place to explain in what sense there is some truth in both sides. But it is interesting to note that, in the legal arena, it was not the corruption cases that were being discussed, but a typically urban conflict: an expropriation decree

27 *The Boston Globe*, 7 April 2005.

28 Carlos Ahumada, the contractor, appeared in one of the videos handing money to René Bejarano, a close collaborator of AMLO and one of the leaders of the tenants' movement after the 1985 earthquake. They are now both in jail.

29 On this point, see Escalante, 1999: 39.



that had been issued in order to open an unimportant road, which was challenged by the landowners through an *amparo* suit.<sup>30</sup> An injunction was issued by a federal judge ordering the local government to stop works on the site.<sup>31</sup> It is not entirely clear what the specific conduct of AMLO was in the case, but in two occasions federal courts ruled that his administration had failed to comply with the injunction. After one of those judges denounced the situation to the General Attorney (i.e. the law enforcement agency of the Federal Government), the latter referred the case to the *Cámara de Diputados* in order to obtain impeachment. As many political analysts say, his absence from the presidential election would seriously damage the legitimacy of our incipient democracy. That morning, before speaking to the *Cámara de Diputados* as part of the impeachment process, he gathered almost half a million people on the city's central square and launched a movement of social resistance to defend his cause.

It is of course impossible to ascertain the many implications of this episode, but there are two elements that should be mentioned for the purpose of the present argument. First, considering that the original conflict (the opening of a secondary road) is of a lesser importance compared with the great dilemmas of contemporary urbanism, it is remarkable that the legal system was not capable of dealing with it efficiently.<sup>32</sup> The courts were not only unable to appease the conflict, they actually made it worse. The courts' inability to explain to the general public the facts, the nature and the meaning of the conflict is indeed worrying. When the Supreme Court tried to offer such an explanation through a long insert that appeared in seven national newspapers, most people (including many lawyers) were unable to make any sense of it.<sup>33</sup> It is no surprise that, as in any political conflict, people take sides regardless of the arguments of the other party. But when legal discourse is unintelligible, eccentrics who want to have an independent opinion on the basis of public information end up greatly frustrated.

Second, there is a profound ambiguity in AMLO's conduct towards the law. In previous expropriation cases, his reluctance to follow courts' decisions revealed with clarity to what extent the judiciary has been the place of numerous frauds;<sup>34</sup> surely, he deserves credit for that. But at the same time, he repeats over and over

30 *Jucio de amparo* is the name of the legal recourse that private persons have in order to obtain judicial protection from government's actions that violate constitutionally protected rights.

31 The expropriation decree had been issued by the local government before the AMLO administration. It is no surprise that a federal judge find weaknesses in those kinds of decrees.

32 For a good analysis of the case, see Roldán-Xopa, 2004.

33 For a collection of opinions on this case in the Mexican press, see the newsletter Foren(sic) at [www.unam.mx/iisunam](http://www.unam.mx/iisunam)

34 In the famous Paraje San Juan case, a judge ordered the payment of an absurdly large amount of money as compensation for an expropriation. It was only after AMLO refused to pay, that the Supreme Court overruled the judge's decision. The principle of *res judicata* had to be broken in order to amend what had been disclosed thanks to AMLO's reluctance to follow a judicial decision.

that the Supreme Court 'cannot be above the people' ('people', in his discourse, does not include those who disagree with him); in his scheme, substantive justice is on one side, while the law on the other. Thus, he declared that even if he was entitled to remain free on bail, he would go to jail because he had no intention of using any legal resource against an injustice.

It is not enough to recognise a political strategy there; of course protests would have been much more effective with him in jail. Rather, the point is his reluctance to give an explanation in the language of law. When confronted with the direct accusation that he ignored at least four requests by judges in the El Encino case (in order to stop public works on the site), his explanation had no clear meaning in the realm of law. His only answer was that he did no wrong, that he never gave orders to disobey the judge and that he just wanted to build a road to connect a hospital. Interestingly, he never made clear whether he answered to those requests and what exact explanation he gave. The dislocation between form and content seems irreparable. The accusation is put in such a formalistic and procedural language that it was impossible to see the substance of the case; but the substantive character of AMLO's answer was delivered in such terms, that it was very difficult to accommodate in a legal argument. Instead, his *dignity* as a social leader (a form of moral superiority) appeared as the argument for explaining both his reluctance to defend himself with legal means and for *not* explaining his conduct as the head of the local government.

After the impeachment, AMLO left his office and appointed a close collaborator in his place in order to avoid being accused of another crime. While he waited to be arrested, he led a large social mobilisation against the impeachment. Almost 1,000,000 people marched in Mexico City,<sup>35</sup> the international press unanimously sustained that a presidential election would not be legitimate without AMLO, and President Fox began to experience social protest in person: at every public appearance someone would show him a banner with a *no al desafuero* – that is, *against the impeachment*. Two weeks later, in an unexpected move, Fox solemnly announced in a nationwide TV broadcast that he had 'accepted the resignation' of the General Attorney and ordered a 'review' of the case. The political crisis, together with the legal case, dissolved into thin air, as the new team announced that there was not enough evidence to prosecute AMLO for contempt of court. Although this 'political solution' was decried by some, most analysts praised it as proof that the President was rising to the level of a real head-of-state.

It is difficult to say whether this episode will leave a mark in Mexican legal culture. But if there is any, it will probably be the reiteration of a generalised idea: that the law is an instrument in the hands of those with power, much more than a means to defend legitimate interests.

<sup>35</sup> Many who did not support AMLO's policies joined the march as a protest for what was seen as a 'factious' use of the law.

## Final remarks

The *jumpcut* technique I have followed in this essay is only one way of illustrating the complexity of the relation between the law and a city like Mexico. To be sure, there is nothing new in the recognition of such complexity; suffice it to recall the old insight of E P Thompson, whose historical research found that the law was 'at every bloody level' of social reality.<sup>36</sup> This is particularly relevant in Mexico's public debate, where the main question is usually posed in an oversimplified (binary) way: is there (or is there not) an 'authentic' rule of law here? This is a heroic question that, as citizens, we can ask ourselves from time to time. But from an analytical point of view, its simplicity casts more shadows than light on the understanding of the meaning of law in society. Instead, I have tried to show that people use the law in many different ways. Whether we like it or not, there is not a single kit of analytical categories to find a general meaning to this 'untidy' universe. The flow of legal practices that occur in Mexico City is as overwhelming as the endless stream of human movement and interaction through which the city is socially constructed everyday. The legal experience of the city is at times as confusing as its smells and sounds. It is not easy to distinguish noise from music, destruction from construction. Likewise, it is hard to explain the kind of social order that produces (and is produced by) such practices.

There are, however, some risks in this approach: it can encourage one to adopt images like the old adage that Mexico is 'a surrealist country', a local joke that is rarely confronted with serious thinking. The recognition of complexity, paradox and contradiction should not prevent us from trying to see some general effects of major socio-legal processes. In this respect, the impeachment of Andrés Manuel López Obrador (as well as the subsequent decision not to prosecute him), the most relevant legal event of the city's history in many years, should lead us to at least one major question: to what extent will this episode change social attitudes and expectations in relation to the legal system? Beyond the propensity of most observers to conflate their own opinions with that of the majority, this should be a central empirical question for socio-legal research in the years to come.

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36 Thompson, 1978.

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