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SYMPOSIUM: MEXICAN ELECTIONS, HUMAN RIGHTS, AND INTERNATIONAL LAW: OPPOSITION VIEWS

I. INTRODUCTION

National Sovereignty, the North American Free Trade Agreement, and the Requirement Under International Law for “Genuine, Honest and Free” Elections

ROBERT W. BENSON*

Good morning. I am Bob Benson, Professor of Law here at Loyola Law School. We are delighted that some esteemed guests from Mexico and Los Angeles are with us this morning, this February 20th of 1993. Mr. Javier Livas, the legal adviser to the National Action Party of Mexico (“PAN”), and Mr. Samuel del Villar, the legal adviser to the Party of Democratic Revolution of Mexico (“PRD”), are both distinguished Mexican attorneys and important in the intellectual and political life of Mexico. We are fortunate to have Professor David Ayón of Loyola Marymount University, Director of the Mexico Round Table, a new project of this university that, over the months ahead, will be sponsoring a series of events about Mexico from various political, economic, social, and cultural perspectives. We have with us Ellen Lutz, the California Director of Human Rights Watch, who will be one of our distinguished panelists. We also have with us Magdalena Rose-Avila, the Director of Amnesty International. Ellen Lutz and Magdalena Rose-Avila have done significant recent reports about the human rights situation in Mexico. Mr. Shawn Wade, a graduate student at UCLA,

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Department of Comparative Politics, is also here, and next to him is Cynthia Anderson-Barker, a Loyola law student, class of '93, and my valued collaborator in putting on this conference. Without her, this conference would not have taken place; she was the catalyst.

I want to acknowledge the co-sponsorship of this event by a number of organizations in addition to the International Programs Committee of Loyola Law School—the Mexico Round Table of Loyola Marymount University, the Department of Chicano Studies of Loyola Marymount University, the National Lawyers' Guild, the Amnesty International Chapter of this law school, La Raza Law Students of this law school, and the *Loyola of Los Angeles International and Comparative Law Journal*, which will publish today's proceedings.

Our purpose here is to focus on the right to free, genuine, and honest elections as a human right recognized in international human rights law. This traditionally has not been part of the agenda of international human rights activists. Human rights activists generally have focused on the right to be free from torture, arbitrary government abuse, and violence, the right to a fair trial, the right to eat, and so on. All of these are of essential importance. Also important, however, and perhaps in a way more fundamental because it serves as a bedrock for those other rights, is the right to vote in free, honest, and fair elections. On the wall, I have excerpted some words from the American Declaration of Human Rights: elections should be "honest, periodic and free." In the American Convention on Human Rights, you have equivalent language: "to vote and to be elected in genuine, periodic elections which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voter." The International Covenant on Civil and Political Rights also has equivalent language: every citizen shall have the right and opportunity "to vote and be elected in genuine, periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot guaranteeing the free expression of the will of the electors." So there is no question that, in those same documents that guarantee the right to fair trial, the right to be free from violence, the right to be free from torture, and the right to enjoy basic human dignity, there has always existed this bedrock right to genuine, honest, free, and fair elections.

Now, we are focusing today on the right to fair elections with respect to the situation in Mexico. I want to acknowledge at the outset that, when the citizens of one nation criticize the citizens of another, it is very sensitive business. It raises issues of cultural sensitivity and of interference with another nation's sovereignty. I think that there is a special problem for North Americans, like myself, being critics of Mexico. The United States of America does not have a pretty record with respect to being sensitive to the sovereignty of Mexico. The most recent example, in case you needed to be reminded of that record, is the blatant violation of international law by our government in the *Alvarez Machain* case. This seminar today is not an exercise in finger-pointing by United States citizens against Mexico. We have got to recognize that we in the United States have similar and even identical problems in the areas of human rights and respect for national sovereignty. Only a few miles from here, in the last elections held just months ago in Los Angeles, there was a dispute about who was a registered voter and who was not a registered voter. That dispute wound up in court. Let me show you a picture of one of the registered voters in downtown Los Angeles in this disputed election district. This is a photograph of one Sam Kawamura, a registered Democrat in a municipal district in downtown Los Angeles, but actually a member of the canine family, a dog. Upon investigation, the political opponents found that he was, in fact, not eligible to vote. So I want to acknowledge the fact that we have our problems as well and are fully ready to, and do, criticize our own government.

At the same time, I, for one, cannot accept that the citizens of one country are not free to criticize foreign governments. That notion is a smoke screen. The cry of sovereignty—the cry against intermeddling with domestic internal affairs—have been prominent in the history of international human rights law since immediately after World War II. During this time, human rights activists began to complain about torture of political prisoners in foreign lands. These complaints were greeted with pleas of “don't interfere with our sovereignty.” We have now reached the point in the development of international human rights law where we have overcome that obstacle. It is now an accepted part of the international political discourse to hold nations to higher universal standards on basic human rights questions. It is time also to say that the international human right to vote in honest and fair general

elections cannot be hidden behind the smoke screen of sovereignty.

Frankly, it is also difficult to take seriously the cries for sovereignty when they come from sources who are willing to give up sovereignty on other issues for what seems to be a very easy price. In my analysis, the current negotiations over the North American Free Trade Agreement ("NAFTA") will result in a great deal of relinquishment of the sovereignty of Mexico. At the insistence of the American negotiators, NAFTA includes provisions for a radical reform of the Mexican legal system in certain business and intellectual property cases. The cultural and economic invasion of Mexico by the United States, invited by the Mexican Government, is, in fact, a relinquishment of sovereignty. The American negotiators insisted upon revision of the Mexican court system, the naming of different types of judges, and the creation of an independent kind of judicial review, which otherwise would not have existed in Mexico. The Mexican negotiators were willing to accede to those points and they are now in the NAFTA text. I think this constitutes giving up certain sovereignty in exchange for perceived economic benefits. Well, the people who complain about intermeddling with Mexican sovereignty when the issue of Mexican election honesty is raised are the same people who negotiated those provisions in the NAFTA in order to protect business interests.

I would like to tell you now what is going to happen for the rest of the morning. We will first hear for half an hour from two graduate students who were in Michoacán, Mexico last summer, independently doing case studies on the state elections of July 12, 1992. They will describe their findings. Cynthia Anderson-Barker, a Loyola law student, was there working on a research paper under my supervision and was a recipient of a Latin-American research scholar award from this law school. Shawn Wade of UCLA was there at the same time. He will emphasize the role of media reporting during the preelection period leading up to the July 12 elections. That will be a microcosmic case study of one election in one time and place. Then we will move to the broader themes which are the principal focus of today's conference. We will hear for forty-five minutes from Mr. Javier Livas, the Legal Adviser to the National Action Party, on the issue of Mexican elections as a violation of international human rights law, which is the perspective

from the right or from the National Action Party. Samuel del Villar, Legal Adviser to the Party of Democratic Revolution, will then speak on his perspective from the left or from the Democratic Revolution Party. There will then be a short break, and we will return for a panel discussion of what we have heard with our other guests.

