

MC GILL LAW JOURNAL ANNUAL LECTURE 2011 ~
CONFÉRENCE ANNUELLE DE LA REVUE DE
DROIT DE MCGILL 2011

*Carlos Fuentes**

EDITOR'S NOTE

Much as with the work of Sergei Eisenstein—the famous Soviet filmmaker alluded to below by Carlos Fuentes—this lecture provides us with a montage of Fuentes' life experiences, with a particular focus on how they may find resonance in the area of transsystemic law, and the non-traditional legal pathways that these studies may lead to. At a young age Fuentes was exposed to both the formal study of law as well as the less formal realms provided by his own undertakings and explorations into literature. The interplay between these two apparent opposites produced a concrete understanding of society, the law, and the world it is applied to.

It is important for students and practitioners of law to understand the global importance and applicability of our field. To that end, it is edifying to hear from a multidisciplinary scholar who has transcended his legal education, while still carrying with him his early formation in law. This lecture can be read as a serious look at the life of a literary genius, or as a postmodern pastiche that seeks to lay a series of questions in front of the reader alongside the responsibility of piecing the answers to such questions together for oneself. In the recent tradition of bringing unorthodox speakers to the *McGill Law Journal's* Annual Lecture with something unique to say about the state and culture of law, rather than purely the theory of it, we are pleased to present our transcription of this thoughtful address from Mr. Carlos Fuentes.

MOT DE LA RÉDACTRICE

À l'image de l'œuvre de Sergei Eisenstein — le réalisateur de films soviétique dont Carlos Fuentes fait mention ci-dessous — cette conférence nous offre un montage des expériences de vie de Fuentes. Il s'agit d'un amalgame entre ses expériences, l'étude transsystémique du droit et les parcours non traditionnels auxquels des études en droit peuvent mener. Dès un jeune âge, Fuentes fut exposé aux aspects formels et informels de l'étude du droit grâce à ses propres initiatives et explorations littéraires. L'interaction entre ces deux notions, lesquelles peuvent, à première vue, paraître opposées, a résulté en une compréhension concrète de la société, du droit et du monde que celui-ci régit.

Il est important pour les étudiants et pour les praticiens du droit de comprendre l'importance et la pertinence de notre domaine. Il est donc utile de tendre l'oreille aux propos d'un intellectuel multidisciplinaire qui est allé au-delà de sa formation juridique sans pour autant la délaissier. Cette conférence peut être interprétée soit comme un regard sérieux que l'on pose sur la vie d'un génie littéraire, soit comme un pastiche postmoderne qui présente au lecteur une série de questions auxquelles il doit répondre par lui-même. La tradition veut que le Conférencier annuel de la *Revue de droit de McGill* ait un point de vue unique non seulement sur la théorie du droit, mais aussi sur l'état et la culture de celui-ci. C'est donc avec plaisir que nous vous présentons la transcription de la conférence de M. Carlos Fuentes.

* Professor-at-Large in Hispanic Studies, Brown University. Carlos Fuentes is the author of over two dozen novels and, in addition to his post at Brown, has served as a professor at Princeton, the University of Pennsylvania, the University of Paris, Columbia, Cambridge (as Simón Bolívar Professor for the Centre of Latin American Studies), and Harvard (where he was appointed the first Robert F Kennedy Visiting Professor of Latin American Studies). From 1975-1977 he was Mexico's ambassador to France, and in 1987 he received the Miguel de Cervantes Prize for lifetime achievement in Spanish literature. This speech was delivered as the *McGill Law Journal* Annual Lecture at the Faculty of Law, McGill University on 30 March 2011.

Je remercie Sara Ross, tout d'abord. Señoras y señores, ladies and gentlemen, mesdames et messieurs, bonsoir. Je vais parler en français, et aussi en anglais, eh ? Un peu en espagnol aussi.

J'ai dit à mon père, « Je veux devenir écrivain ».

Il m'a dit, « Tu vas mourir de faim ».

« J'insiste, je crèverais, mais tout en étant, écrivain ».

Il m'a dit, « Tu es fou ! Va voir le plus grand écrivain mexicain ».

C'était Don Alfonso Reyes, qui était un grand écrivain, mais aussi avocat. Donc, je suis allé voir Don Alfonso Reyes, qui était considéré par Jorge Luis Borges, comme le plus grand prosateur de la langue espagnole, et je lui ai dit non, non, non, je veux être écrivain pas avocat.

Il m'a dit, « Écoute, nous sommes tous des petites tasses de café. Si tu prends la tasse comme ça, tu vas te brûler les doigts. Il faut la prendre par la anse. Alors la anse au Mexique, c'est Señor Licenciado, Monsieur l'avocat. Si tu n'as pas ça, tu es foutu ».

Il a cité Goethe, quand il [a] dit ça [...] et [...] j'étais obligé d'étudier le droit contre les désirs de mon cœur. Alors, j'étais inscrit à la Faculté de droit, au centre de la ville de Mexico, San Ildefonso¹. Je prenais mon temps, j'habitais près de l'Ange de l'Indépendance. Et dans la route, je m'arrêtais à la librairie britannique — il y avait plus de librairies spécialisées à Mexico à ce temps-là — à la librairie britannique, puis je m'arrêtais à la librairie française, puis à la librairie américaine, puis à la librairie espagnole, qui était la seule où on ne pouvait pas toucher les livres.

Il y avait des gens presque armés là, qui vous empêchaient si vous achetiez le livre, ou bien, sinon, touchez pas. Et j'arrivais au centre de Mexico — le Zócalo, la Place de la Constitution. Là même, j'avais une sensation étrange. J'étais dans le centre de ce qui a été la ville Aztec, la ville indienne avant la conquête espagnole. Le centre d'une ville fondée en 1325, la ville la plus ancienne — vivante — la plus ancienne du côté nord américain. Là où je voyais la cathédrale catholique, il y avait eu le grand Teocalli² de la religion Aztec ; là où il y avait le palais du président, il y avait le palais de Montezuma, l'empereur avec ses nains, ses albinos ; et là où il y avait la mairie de Mexico, il y a eu le Tzompantli³ avec la tête de mort. Donc, j'avais cette sensation d'être à la fois, dans le présent et dans

¹ The full name of the institution is Antiguo Colegio de San Ildefonso. It is located in Mexico City.

² A terraced pyramid built as the base for a temple located at its apex.

³ An alter upon which the skulls of human sacrifices were placed.

le passé de ma ville, de mon pays. Mais il y a un certain soulagement de se savoir héritier d'une culture qui avait une vie intense dans le présent.

Donc, chargé de mes lectures, mais aussi de la croyance que la littérature n'était que divine inspiration, je n'avais pas besoin du droit, et il fallait s'éteindre, s'asseoir à la table, et attendre l'arrivée de l'ange de la littérature. Ma première leçon a été le droit romain, le droit écrit. J'avais passé mon enfance à Washington, donc on trouvait du monde du droit, du droit anglo-américain, du droit non écrit, du common law. Mais au Mexique, j'étais bien au centre de la tradition romaine et du code Napoléon, du droit écrit. J'étais donc livré à l'inspiration et [...] avec une certaine foi, une croyance à la vertu créative du désordre. Et soudainement, je me trouvais à l'intérieur du droit romain, qui est l'ordre même. Le texte que nous avons à la Faculté de droit à Mexico était le traité d'Eugène Petit, *Le traité [élémentaire] de droit romain* d'Eugène Petit⁴.

Mais j'ai trouvé vite les textes les plus intéressants, qui étaient *Les institutions de droit romain* de Don Rudolph Sohm⁵ et *L'Esprit du droit romain*, surtout, de Don Rudolf [von] Jhering⁶. Jhering m'a donné l'idée de l'universalité du droit romain, et le droit comme unité de l'état de Rome, le droit comme unité de l'Église à la chute de l'empire romain et le droit comme unité des états nations de la Renaissance. Jhering m'a fait comprendre encore qu'un d'eux n'aurait existé sans le droit romain. Rome même, n'aurait pas existé sans le droit. Rome comme fait central de la civilisation pagane qui a suivi, et le droit romain dans la naissance du monde chrétien au Renaissance, le droit romain comme élément de la civilisation moderne. C'était ma première leçon dans la Faculté de droit et très important pour moi, et par là [...] j'ai découvert l'élément d'ordre, et la raison nécessaire à une écriture que jusque là, jusque là, je croyais libre — toute en étant assujetti, bien-sûr, à mon caprice.

Du droit romain j'ai passé au cours sur la philosophie de l'État. Le cours était donné par un maître que je n'oublierais — un maître merveilleux — c'était Manuel Pedroso⁷. Manuel Pedroso était un marquis de Séville qui s'est tourné vers la République espagnole, a été

⁴ *Le traité élémentaire de droit romain, contenant le développement historique et l'exposé général des principes de la législation romaine, depuis l'origine de Rome jusqu'à l'empereur Justinien* (Paris: Arthur Rousseau, 1903).

⁵ This refers to a general French translation. For the original book, see Rudolph Sohm, *Institutionen Des Römischen Rechts* (Leipzig: Verlag von Duncker & Heublot, 1884).

⁶ *L'esprit du droit romain dans les diverses phases de son développement*, translated by Octave De Meulenaere (Paris: Maresq, 1878).

⁷ Manuel Martínez Pedroso was the Spanish commercial attaché to Moscow in the years leading up to the Second World War and a dean of the University of Seville.

ambassadeur de la République à Moscou et à Caracas, et a traduit *Le capital* de Marx, en plus. Alors, à ce moment-là, la Faculté de droit de l'Université de Mexico, avait une tradition bibliophage. On nous donnait des listes énormes de livres qu'on ne lisait jamais. Cent livres pour un cours — on ne lisait pas. Pedroso était plus intelligent, et nous donnait trois livres pour comprendre la philosophie de l'État.

Ces trois livres étaient — tout à fait — *La République* de Platon⁸, pour comprendre l'état organique, comme articulation de ses parties. Mais, nous avertit Pedroso : [...] si l'État signifie la loi et les caprices des souverains, c'est l'ennui [...] tandis que si l'État signifie que la loi s'impose au seigneur, c'est le bonheur. Pour notre maître Pedroso — le pouvoir de l'esprit — le pouvoir de l'esprit désignait l'esprit du pouvoir. Donc, c'est la justice qui devait dominer, aussi bien chaque classe et chaque individu.

Le deuxième livre, que nous proposait le Professeur, c'était *Le Prince* de Machiavel⁹. Chez Machiavel, il nous enseignait [que] la nécessité n'est pas une limitation des capacités humaines, mais la stimulation à l'action politique vertueuse. Le choix [...] limite la nécessité totale comme règle du monde, même si la vertu est constamment violée [...] par l'ambition et par les mots de l'esprit. La vertu enfin est une qualité de la femme de Machiavel. Et bon, permettez moi de lire ce que Machiavel dit sur lui-même dans mon plus récent roman, *La voluntad y la fortuna*. C'est Machiavel qui parle ici :

Machiavelli the misogynist! Didn't I marry Marietta Corsini to obtain, in a single hymen, both virginity and fortune? Ah, don't repeat the tired phrases that pursue me from century to century. Be bolder. Have the audacity, my young friends, to penetrate my true biography, not the one that historians [...] "serious" historians [...] my true biography, about the real, vulgar, crude, lustful existence of Niccolò Machiavelli [...] Let me say it aloud so everyone can hear: « I, Machiavelli, don't know anything that gives me more happiness, doing it, thinking about it, than fornication. A man can philosophize all he wants, but this is the truth ». That's what I wrote, and now I repeat it to you. Everybody understands it. Few say it. You can quote me. It irritates me that people are ignorant of my taste for women and sex. Let them be ignorant! What difference does it make! But if you're going to write truthfully about me, you'll repeat with me: Sweet, trifling, or weighty, sex creates a network of feelings without which, it seems to me, I could not be happy.

Look at them: One is named Gianna, another Lucrecia, still another La Tafani. I'll tell you something beyond their names: Desire

⁸ *L'État ou la République de Platon*, translated by Jean Nicolas Grou (Paris: Chez Lefèvre, 1840).

⁹ Translated by Amelot de La Houssayne (Amsterdam: Union Générale d'Éditions, 1684).

responds only to nature, not to morality. La Riccia was a prostitute well known all around Florence? That does not diminish in the least the pleasure she gave me. She was my lover for ten years. It didn't matter to her when my fortunes changed. She didn't change. Friends changed. She did not. And La Tafani [...] La Tafani [...] Charming, refined, noble, I can never praise her as she deserves. Love entangled me in her web. They were nets woven by Venus, my young friends, soft and sensitive ... Until the day when the nets harden and imprison you, and you can't undo the knots and don't care about the punishment. Don't forget, all love is pardoned and pardonable if it gives you pleasure. I had relations with women and with men. It was another time. Homosexuality was common in Florence.

In general, all my love had sweetness, because loved flesh gave me delight and because when I loved I forgot my troubles, so much so that I preferred the prison of love to having freedom, yes the freedom, ha! the small freedoms granted to me¹⁰.

Le troisième auteur dans le cours de maître Pedroso, était Rousseau. [Du] *contrat social*¹¹, qu'il jugeait très important pour comprendre la volonté générale, assume le fait de l'état et la liberté comme participation. Je comprenais bien les leçons du Professeur Pedroso, mais finalement, il me fallait les associer à la lecture et à l'écriture. Donc, c'est grâce au droit que j'ai relu sérieusement l'*Antigone*¹², un livre qui était fondamental pour moi. [...] *Antigone*, comme la grande œuvre qui me concernait comme une position entre le droit écrit, et le droit non écrit, entre l'état et la famille, entre Creon et Antigone¹³. Et ensuite, une lecture qui était aussi très

¹⁰ Carlos Fuentes, *Destiny and Desire*, translated by Edith Grossman (New York: Random House, 2011) at 338-39. Note that Fuentes's reading of these pages during the lecture is read differently in parts than the original text by Fuentes as translated by Grossman. The new idiosyncrasies that Fuentes brought to this reading of his own work have been left in this transcript of the lecture in order to reflect Fuentes's purpose of expressing the spirit of the text towards the audience in the lecture room—as a part of his lecture—rather than merely relaying the original text, where Machiavelli is instead speaking to the character Josué.

¹¹ Jean Jacques Rousseau, *Du contrat social* (Paris: Chez Mourer et Pinparé, 1797).

¹² Sophocles, *Antigone*, translated by Ian Johnston (Arlington, Va: Richer Resources, 2007).

¹³ During the question and answer period, an audience member asked Fuentes about the relationship between the understanding of the law as it is reflected in *Antigone* and the law in contemporary Mexico in terms of the problematic dynamic between the written law of the government and the law created in the streets of Mexico by drug traffickers. Fuentes responded:

Je crois que ça se porte universellement, eh? Dans n'importe quelle société vous aurez les obligations et les devoirs, les droits qui posent la loi et celles de l'individu de la famille. Une bonne société, celle qui arrive [à] faire une espèce de conciliation entre les exigences de la personne, de la famille et les exigences de la politique de la société. Quand cette relation n'existe pas, bon, vous avez le régime d'Hitler ou de Stalin. Dans la mesure, la démocratie

importante pour moi tandis que j'étudiais le droit, c'était l'œuvre de Kleist, *Le prince de Hombourg*¹⁴. *Le prince de Hombourg*, qui me parlait aussi de la divergence entre le succès personnel et la loi de l'État. C'était, voyez-vous, la manière que ma vocation d'écrivain s'est liée à l'histoire, à la *civitas*. Je ne sais pas comment vous le prononcer ici : *civitas*, ou *quivitas*, ou *quiwitas* — de plusieurs façons.

Dans un pays, le Mexique, qui sortait à peine de sa propre révolution politique, sociale et culturelle, et se voulait une révolution dans la loi et avec la loi mais, que, dans la pratique a trouvé d'autres chemins révolutionnaires, tout d'abord dans le roman. Azuela, Guzmán, Muñoz. Azuela qui, déjà en 1915 dans *Los de abajo*¹⁵, [...] décrivait les contradictions, les faillites révolutionnaires de la peinture murale de Rivera et Orozco, qui déjà aux années vingt peignaient les dissolutions, les caricatures, les chagrins et les pitiés des révolutionnaires. La musique nouvelle de Chavez, Revueltas, Blas Galindo, qui récupéra le son perdu de l'oreille mexicaine.

Du cinéma [...] aussi influençait [le] Mexique par Eisenstein qui était là pour filmer *¡Que viva México!*¹⁶, et la photo de Figueroa, le premier film de Fernando de Fuentes, *¡Vámanos con Pancho Villa!*¹⁷ et *El compadre Mendoza*¹⁸. [Et] [...] l'œuvre de Luis Buñuel, qui a fait parti, Luis Buñuel,

offre — pas d'une façon parfait — mais dans la mesure où ça c'est possible, c'est la meilleure du monde que nous avons. Mais il faut perfectionner ce monde. Ce n'est pas jamais un monde tout à fait idéal, ou parfait. Ce que vous venez de proposer, c'est le but, le but d'une société : d'arriver à concilier. Mais dès qu'on croit qu'on a concilié les deux facteurs, des nouveaux problèmes se posent et il faut repenser et aller plus en avant. C'est à dire que l'histoire est comme la personne humaine. On vit, et on fait nos travaux, et nous mourrons. Et ensuite, il y a des enfants, et des petits enfants. C'est la société — c'est comme ça aussi. Ce qu'on a fait, il faut que les autres qui arrivent plus tard le fassent mieux que nous et vont [le] faire en avant. C'est à dire, on a jamais une idée, on arrive jamais à une société parfaite. Quand on croit qu'on a une société parfaite, ça s'appelle le totalitarisme. Dans une démocratie, ce n'est pas possible.

¹⁴ Heinrich von Kleist, *Le prince de Hombourg*, translated by Daniel Mesguich (Paris: Bord de l'eau, 2005).

¹⁵ Mariano Azuela, *Los de abajo: novela de la revolución mexicana* (Tlalpan, MX: Fondo de Cultura Económica, 1973).

¹⁶ Sergei M Eisenstein & Grigori Aleksandrov, *¡Que viva México!* (film), directed by Sergei M Eisenstein (Mexico: Sergei M Eisenstein, 1931).

¹⁷ Fernando de Fuentes, Rafael F Muñoz & Xavier Villaurrutia, *¡Vámanos con Pancho Villa!* (film), directed by Fernando de Fuentes (Mexico: Alberto J Pani, 1936).

¹⁸ Juna Bustillo Oro, Fernando de Fuentes & Mauricio Magdaleno. *El compadre Mendoza* (film), directed by Fernando de Fuentes & Juna Bustillo Oro (Mexico: José Castellet Hijo, Rafael Ángel Frías & Antonio Prida Santacilia, 1934).

de l'immigration de l'Espagne républicaine qui a tant contribué à nos oreilles la tentation chauvin [...] en Mexico [...] et du folklorisme, un couleur. L'immigration républicaine espagnole nous a aidé à transformer — m'a aidé — à transformer les études de droit.

Je viens de parler de Pedroso et de philosophie. L'Université de Mexico accueillait des grands philosophes espagnols de la migration tel [que] José Gaos, qui était le traducteur espagnol du *Sein und Zeit* de Martin Heidegger¹⁹, et d'Eduardo Nicol²⁰ qui était spécialiste dans l'oeuvre Nicolai Hartmann²¹. Musiciens, metteurs en scène, acteurs, architectes, c'est le Mexique enfin qui a gagné la guerre d'Espagne, dans ce sens-là.

The Spanish Civil War ... As a child, I lived in the Mexican Embassy in Washington, DC next door to the embassy of the Spanish Republic and its ambassador, who was a great republican statesman, Fernando Los Rios—who was torn between the Spanish Republic's ... autonomy, and the need for support from the European democracies—which did not arrive while Hitler and Mussolini supplied Franco with arms and airplanes.

As it is depicted forever in Picasso's great painting *Guernica*, I evoke the Spanish Civil War, as a way of passing from my Mexican education to my European year at the École d'hautes études international in Geneva.²² I was twenty years old. This was a beautiful lakeside mansion. The school was headed by William Rappard²³—a youthful looking, serene, white-haired man who sought through the school to continue Geneva's internationalist tradition, its spirit beyond the League of Nations, and in continuance with the newborn United Nations organization. The law of the United Nations had several specialized agencies in Geneva, starting with the ILO—the International Labour Organization—which brought together representatives of labour, governments, and the private sector. ... In turn—[this] combination—it gave the International Labour Organization (the ILO) its character. Created in 1919 by the Treaty of Versailles,

¹⁹ Martin Heidegger, *El ser y el tiempo*, translated by José Gaos (Tlalpan, MX: Fondo de Cultura Económica, 1951).

²⁰ Eduardo Nicol was a professor of philosophy at Universidad Nacional Autónoma de México.

²¹ Nicolai Hartmann was a professor of philosophy at the University of Marburg, University of Cologne, University of Berlin, and University of Göttingen.

²² The institution's full name is Institut de hautes études internationales et du développement.

²³ William Rappard (1883-1958) was the co-founder of the Graduate Institute of International Studies (GIIS) and served as the director of the Mandate Department of the League of Nations. He is also the namesake of the World Trade Organization's headquarters in Geneva.

the ILO was the first specialized agency to become part of the United Nations after World War II.

Mexico's interest was even evident in the ILO's concern with migrant labour and economic development. Later decolonization brought special attention to developing nations, and thus again to Mexico. As a junior (very junior) member of the Mexican delegation to the ILO, I was assigned to take care of Mexico's labour representative to the annual meeting.

I couldn't find him. The conference opened. No sign of the labour representative. Finally, on the second day, he showed up.

"Where have you been," I asked?

"With a woman," he admitted.

"That's not a serious answer," I said ... untruthfully.

But he said, "It's the first time I've made love to a woman who speaks French ...," was his definitive answer.

But to come back to the school [on a] professional roster was truly imminent. I attended the classes of Paul Guggenheim.²⁴ Paul Guggenheim was immensely concerned with the failure of the League of Nations, and its tendencies to give universal importance to all issues—large or small. Professor Guggenheim believed that international organizations should clearly distinguish between the universal, the continental, and the regional. But he was fearful that the tension between the equality of states and the hegemony of law—of big powers—could not be solved ... could not be solved. Although the United Nations tried to through the General Assembly, which gave representation to all of [the] member states, and the Security Council, to a few members.

What I found very important in Professor Guggenheim's course, was that he realized the rudimentary character of international law—how rudimentary international law truly was—and the consequent recourse to illicit measures because, precisely, of that rudimentary character; and the need to go forward in perfecting international rights and duties.²⁵ I came

²⁴ Professor Paul Guggenheim was a professor of public law from 1931-1969 in Geneva.

²⁵ During the question and answer period, Fuentes expanded on his current views about internationalism, specifically within Latin America, stating:

I think we should ... think in terms of a transatlantic community that takes in the Iberian Peninsula, and all of Latin America, from Mexico down to Chile and Argentina, and we do so in many aspects. There are, of course, political differences. Not all governments are the same but the language is the same. The culture is the same. The traditions are the same. That gives us a sense of unity that perhaps should not be bothered by political differences, which are natural. It would be very imperfect, very dangerous, I think, if all

away from this course, Professor Guggenheim's course, with a return visitation of my literary impulse. My conviction that as much as literature required form, there was in literature an implicit freedom: an implicit freedom to violate rules, and to give space to matter beyond the pale of good manners, of social conventions, or rules of language—to violate. To have the sense of order I had achieved, but also to violate those same rules in order to write. I had arrived in a way at a useful synthesis of my own creative imagination, of my own freedom, and the need for rules and for Roman law.²⁶

I needed yet another lesson, and I received it in the lectures delivered by Professor Wilhelm Röpke,²⁷ who did not undermine my lifelong faith in a better social structure, or the left's inherent location [facing] the problem that the right doesn't want to face. I always believed this, but, but, but ... Professor Röpke's critique of socialism—he called it a tragedy not a utopia. ... Nevertheless I quote Röpke, I quote him, "To work out new forms of socialism which will stand up to present day capitalism [*sic*]."²⁸ This is a valid suggestion for the left everywhere today.

Latin American countries had the same regimes. This happened a bit under the military dictatorships of the Cold War when the armies of Latin America, many armies, thought that to be in the favour of Washington was to have military dictators that were anti-communist. The Pinochet dictatorship in Chile, the Videla dictatorship in Argentina, the constant dictatorships of Central America, Trujillo ... were all extremely favourable to the Americans. They [knelt] before the United States in the name of anti-communism—that is gone.

Today, we have very different governments. Some are more democratic than others, but in general, there is a diversity, which reflects the reality of Latin America, and what permits us to deal in a better way than the past, not only with the United States, but with Asia and Europe. Many countries in Latin America have begun very straight relationships, with China, for example—Brazil, Columbia, Chile—and so we are entering a multicultural diversified world. And I think that President Obama understands this and it's a good thing because in the past, sometimes, the American presidents proposed only one way, which is the American way. Now we're following the Latin American way, in friendship, with the United States, which is the best solution.

²⁶ Fuentes's account of his legal education and its place in his description of his vision of the law was emphasized later on in the question and answer period that followed his speech, when he stated: "I think that's it—since the earliest times, especially Roman law, which is our great inheritance—it was the sense of giving ideas activity; a presence; an action in the role of society, the state, and the individual. And that is the best definition of the law that I know."

²⁷ Professor Wilhelm Röpke was professor of economics in Geneva and was heavily concerned with human rights and advocating free trade.

²⁸ Wilhelm Röpke, *The Social Crisis of Our Time* (New Jersey: Transactions, 1991) at 157. Originally published in 1942, the official quote reads: "All these damning arguments

For Röpke wanted to attend [to] the problems of the working class, the problems of monopolies, exploitation, and the mechanizing effects of capitalism—mass civilization—but wanted to find a third way between capitalist exploitation and totalitarian collectivism. This idea of a third way, which I heard for the first time in Röpke's courses in Geneva—which has been popularized today by the London School of Economics, and its former director Anthony Giddens.²⁹ A third way to try to place the market economy within the larger framework of the society and its many strata and the reality of the state as a principle of governance, and as an emanator of laws.

I ended my year in Geneva—a very formative year as you can see—as secretary to the Mexican member, Roberto Cordoba, in the International Law Commission of the United Nations: a body of jurists independent from the states they belong to, at least in principle. I recall the presence of eminent internationalists in the Commission such as James Brierly, the English author of a brilliant compendium called *The Law of Nations*,³⁰ Nellie Hudson of New York, who had worked for a solution of Mexico's debt crisis in the 1930s, and Georges Scelle, the prolific French author of *Droit des gens*³¹ et *l'Introduction de l'étude de la loi*.³² The Latin American members were ... Roberto Cordoba, who was also later to pose as Mexico's representative to the Caracas Conference in 1954 that demanded a socialist government; and Gilberto Amado, who was a very picturesque Brazilian diplomat whose enthusiasms were tempered by his secretary Setze Camara Filio, who was to achieve a high and influential position in Brazil's chancellery Itamaraty, which is the model of Latin American foreign ministries.

The central subject at the International Law Commission's 1950 meetings was no more and no less than the Nuremberg Trials, which just occurred a few years before, and the problems it posed for international law since the trials were not based on pre-existing legal ordinances, and could be accused of being created *ex post facto*. So the Commission discussed two matters: whether the Nuremberg Trials were based on judicial acts

have, as we said, caused the more farsighted among socialist theorists of our time to reorient themselves and to work out new forms of socialism which will stand up to such present-day criticism of socialism as has become irrefutable."

²⁹ Baron Anthony Giddens is a British sociologist and was director of the London School of Economics from 1997-2003.

³⁰ (Oxford: Oxford University Press, 1978).

³¹ *Précis de droit des gens principes et systématique : droit constitutionnel international ; les libertés individuelles et collectives, l'élaboration du droit des gens positif* (Paris: Recueil Sirey, 1934).

³² *Introduction à l'étude du droit* (Paris: Rousseau et Cie, 1951).

considered criminal *before* World War II—and which were these—and whether individuals and not only states could be judged under international law in these cases. Two important matters.

Part of my obligation at the École d'hautes études, was to write a thesis, and mine was on the *clausula rebus sic stantibus*: considering the *pacta sunt servanda* [as] the thesis, and *rebus sic stantibus*, the antithesis. I will not go into the details of a matter well known to you—it implies that all treaties are concluded with a reserve that the treaty should be modified if the circumstances that motivated it change. Which means that we are dealing with valid treaties, and—because the treaty is valid—is a reason why the *clausula* is *post*.

I questioned in my thesis the interpretation, always tricky, of will—*volonté*—and whether the *clausula rebus sic stantibus* can take effect if we ignore the conditions under which the parties signed the treaty. That is, whether we can abstract from these conditions. And also, the question of who is interpreting the treaty and finally—no, no, not finally—I just had to ask who has the right to unilateral denunciation of a treaty. And finally, yes finally, do treaties become invalid, or can they only be overcome by a contrary act—*une acte contraire*? As Georges Scelle, who was a member of this Commission put it, “*Ce que le corps fait, le corps seul peut défaire.*”

These are some—if my memory serves me well—some of the questions I dealt with in my thesis. I don't remember too well because writing it; I felt free from my obligations as a student of the law, and free—and free—to restart my literary career.³³ To resume my literary career, which I did, publishing a book of short stories, *Los días enmascarados; The Masked Days; Les jours masqués*, in 1954. Then my first novel, *La región más*

³³ During the question and answer period following the lecture, Fuentes responded to a question about the methodology behind his writing career as follows:

You can't wait for inspiration, for the angel to come down, and flutter around you. You have to sit down, and do your work, and do your writing. ... Many writers in Mexico and Latin America fail because they're waiting, really, for inspiration to arrive. So the inspiration isn't there; can't write? No, no, no! It's a question of work, and don't call it work, because finally, it becomes a pleasure. ... You discover your vocation, then you write it. You write it through discipline, you do it through discipline, but at the same time, you do it through joy. There's a great joy in writing, and then [it] ceases to be work in the negative sense of the word, and I think this is true of every activity you undertake. If you are doing what you do not like, you are unhappy. If you do what you like, you have a measure—the measure that is allowed of happiness. So I urge everyone in this room tonight, to do what they want to do. Don't let parents, obligations, the law, politics, anything deter you from what you want to do, because you will find happiness, if you do what you want to do.

transparente; Where the Air is Clear; La plus limpide région, in 1958. Sensing that the novels of the agrarian Mexico, of the revolution in Mexico, had acquired two masterpieces, *Pedro Páramo* by Juan Rulfo³⁴ and *Al filo del agua* by Agustín Yáñez;³⁵ and that the vast city of Mexico—a huge city of Mexico—was the heart of the country, calling me, and saying, “Please ... write me! Write me!”

Which I did.

Let me add ladies and gentlemen, that all I have said tonight, led me of course to a rethinking, and constant rethinking, of the relationship between the law and literature. And of both, as part of the civilizing process—civilizing process. As a citizen of Mexico, I was as I have already hinted, haunted, haunted by the divisions, separations in the political process of change—especially of revolutionary change. A revolution unites versus the dictatorship—the *ancien régime*—then *la force des choses* leads it to results it had not foreseen: so said Saint-Just.³⁶ The young revolutionary died in his twenties, guillotined in his twenties; Saint-Just called, called the ... “adolescent with a funeral halo,” said Michelet—an adolescent with a funeral halo.

So the Mexican revolution had united against the thirty year dictatorship of Porfirio Diaz in 1910. Under the leadership of Francisco Madero he became President, and was then assassinated by General Huerta, his minister of war—which united all factions against Huerta.³⁷ But as soon as Huerta was defeated the revolutionaries also broke up into separate movements. There was the agrarian revolution of the south, personified by Emiliano Zapata. There was the northern division led by Pancho Villa, and both fighting the so-called constitutionalists led by Venustiano Carranza—who had Zapata murdered and was then himself (Carranza) murdered by the rising military leader Álvaro Obregón, under whose presidency Pancho Villa was killed (retired from fighting, he was murdered before Obregón himself, seeking re-election, was murdered by a fanatic Catholic in 1928).³⁸

³⁴ Translated by Margaret Sayers Peden (New York: Grove Press, 1994).

³⁵ (Mexico: Editorial Porrúa, 1980).

³⁶ Louis Antoine de Saint-Just, *Esprit de la révolution et de la constitution de France* (Paris: Chez Buevin, 1791) at 59-62, 150-53.

³⁷ See Teresa A Meade, *A History of Modern Latin America: 1800 to the Present* (Singapore: Wiley-Blackwell, 2010) at 163.

³⁸ See Don M Coerver, Suzanne B Pasztor & Robert Buffington, *Mexico: An Encyclopedia of Contemporary Culture and History* (Santa Barbara: ABC-CLIO/Greenwood, 2004) at 31.

And Obregón's successor—big violence, tremendous violence, twenty years of violence—then under Obregón's successor Plutarco Elias Calles, a revolution was institutionalized. And under Cárdenas—Lázaro Cárdenas—1934-1940, and on re-election: ongoing predominance of the revolutionary party was assumed, and the last rebels of Saturnino Cedillo, [were] defeated.³⁹ So Mexico had this very long thirty year struggle to achieve peace and political succession—if not political democracy—which would have to wait until the election year 2000 as reason to that.⁴⁰ It was a process of civilizing Mexico while tolerating *decivilization*—decivilizing situations—civilization and *decivilization*.

I take the example of my own country to exemplify the double-process of civilizing and decivilizing. Evoked famously by Norbert Elias in his book on the Germans,⁴¹ signalling that both civilizing and decivilizing can occur, as occurred in Germany in the years after World War I simultaneously—civilization and decivilization.⁴² I always looked at the troubles in

³⁹ See William Dirk Raat & Michael M Brescia, *Mexico and the United States: Ambivalent Vistas*, 4th ed (Athens, Ga: University of Georgia Press, 2010) at 148.

⁴⁰ Fuentes expanded on his view of modern Mexican democracy during the question and answer period following his speech when he stated that:

If we don't solve the accumulation of problems that are taking place in Mexico, we're going to have an awful time. We're going to have an explosion. I don't want that. I want peaceful, democratic succession in Mexico that has to come through order, through realization of who we are, through an advocacy of the candidates ... from the left, not only to the mass of the people, but to the middle class. It is the middle class that decides an election in Mexico. It is the middle class that goes to the voting booths. You have to offer them something. They can go the right. They can go to left. But if you have a good candidate capable of offering them a program for moving forward, for progress in Mexico, from a civilized center-left, which is what governs many parts of the world. It's nothing extraordinary ... we must have a center-left, and a center-right, and the extremes to the extremes. Let them go to the extremes. That is my hope, but sometimes what I hope, doesn't happen.

⁴¹ Norbert Elias, *The Germans*, translated by Rosemary Breger (New York: Polity Press, 1996) at 196.

⁴² Fuentes discussed Mexico's current major struggle with violence during the question and answer session following his speech, stating that:

I am part of a commission, which is led by ... former Presidents Gaviria of Columbia, Cardoso of Brazil, and Zedillo of Mexico, which are saying [that] this is not the way to combat drugs. By simply forbidding drugs, and fighting the cartels violently, we are not solving the problems—we are not offering alternative solutions to drug consumption. We have to understand that many people who take drugs are not criminals. They abuse drugs. They should be in hospitals, not in jails. That there are many ways to accept the use of drugs—little by little, if you want—but not to attack the problem frontally as a criminal act and nothing more. It is more than a criminal act. It involves society, its wishes, its whims, its possibilities, the necessities of some people. I mean, you have a terrible problem ... in the United States with prohibition,

my country occurring simultaneously in Germany—the country of my great-grandfathers—wondering how the nation of Goethe, and Schiller, and Beethoven could fall into such an abyss. And wondering also [of] the ability of the German culture of exile—Thomas Mann ... Hanna Arendt, Hermann Broch—to sustain the continuity and renew the culture under such brutal assault as that Hitler represented. And how, why, the culture of Russia—Akhmatova, Mandelstam, and Babel—had practically been in silence under the rule of Stalin, [the] rule of Stalinist dictatorship.⁴³

So I looked at my country Mexico, and realized that the historical events of the Mexican Revolution, took place in 1910 before the Soviet

and prohibition meant that you had Al Capone, and gangs proliferated in Chicago, and murders. The moment Roosevelt ended prohibition, everybody could take a shot of whisky without going to jail, and Al Capone disappeared from the scene.

If we go little by little, in the sense of decriminalizing the taking of drugs, we will arrive [at] something comparable as to what Roosevelt did. But of course, this poses a big problem Franklin Roosevelt did not have. And now that is that prohibition was purely a US affair, whereas the consumption of drugs is a global problem. So how do you go about it? What agreements do you make? What treaties do you sign? How do you go about it in each country and a bloc [of] countries? I know it's very difficult, but you have to start somewhere. The present policies have failed. They do not serve anyone. When you start thinking of new policies and go forward—even if it is with small steps.

⁴³ Fuentes expanded upon how he sees the societies of modern predatory governments evolving, and the opportunities of the people within those societies on the world stage:

We did not know that the modern means of communication were reaching the young, the middle classes of Egypt, of Tunis, of other countries in ... Northern Africa and the near East ... The fact that there are societies, which are forming themselves in order to act democratically ... this is going to be a major factor in [twenty-first] century politics ...

Originally the United Nations, as I said before, had representation of all the world in the Assembly. This does not work, because you cannot have 200 people speaking at the same time with opposing points of view and different regimes. Then you had the Security Council, which is a minority of nations that acted specifically on certain issues. We must reform United Nations, yes. Who will go into the United Nations? Imagine. In the time I'm speaking about, in the time I was a student, the great powers were Russia (the Soviet Union) and the United States. This is no longer true. The countries that used to be called "third world countries" are suddenly the great countries of the world. They are Brazil. They are China. They are India. You couldn't have believed this fifty years ago, but suddenly they are the protagonists of the world order. So what can we say about the future knowing that it is changing so quickly? That the conditions, which we thought were secure—which were stayed, stable—are no longer there. That we are waiting to see what happens in the world in order to try to get some order to those events. But right now, that is all I could say or dare say.

Revolution of 1917, and before the Nazi counter-revolution of 1932. Which meant that both Soviet communism [and] Nazi totalitarianism had little effect—had little effect—on Mexico's politics (anchored as they were by events prior to both), and heavily weighted nevertheless Mexico's revolution by the loss of one million people in the armed struggle of 1910-1921. One million Mexicans died. Jokers say they died in the cantinas, but I wonder.

And most importantly, as I've already cited: in the very early criticism of the revolutionary (of the political) process, and of the revolutionary governments by the culture—in the culture—that sprang from the revolution to criticize the revolution, and make sure that it could be a benevolent dictatorship, and not a totalitarian dictatorship. And that, finally, made it impossible to understand the revolution without these cultural events.

I say this, finally, in order to bring together the facets of our meeting here tonight. Law and literature. Politics and language. Reality and imagination. And I have done it, of course, through my personal experience, as we face renewed threats—renewed opportunities—in our world.

And let me say, finally, that I am thankful for the opportunity that the *McGill Law Journal* has offered me tonight. Many thanks, merci, muchas gracias.
