

A close-up photograph of a person's hands, likely of Mexican descent, gripping the vertical metal bars of a prison cell. The hands are weathered and the skin is dark. The bars are thick and metallic, with some horizontal bars visible. The background is a light-colored wall with some stains and a faint, circular pattern.

MEXICANS ON DEATH ROW

**RICARDO
AMPUDIA**

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ENGLISH TRANSLATION BY SUSAN RASCÓN



Arte Público Press
Houston, Texas

Mexicans on Death Row is made possible through grants from the City of Houston through the Houston Arts Alliance.

Recovering the past, creating the future

Arte Público Press
University of Houston
452 Cullen Performance Hall
Houston, Texas 77204-2004

Cover design by Mora Des!gn

Ampudia, Ricardo, 1949-

[Mexicanos al grito de muerte. English]

Mexicans on Death Row / by Ricardo Ampudia; English translation by Susan Rascón.

p. cm.

Includes bibliographical references.

ISBN 978-1-55885-548-9 (alk. paper)

1. Capital punishment—United States—Cases. 2. Mexicans—Legal status, laws, etc.—United States. I. Rascón, Susan Giersbach. II. Title.

HV8699.U5A7713 2010

364.66092'36872073—dc22

2010033484

CIP

The paper used in this publication meets the requirements of the American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI Z39.48-1984.

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Printed in the United States of America

10 11 12 13 14 15 16

10 9 8 7 6 5 4 3 2 1

To Scott Atlas,
Sandra Babcock,
Carlos Marín,
for their part in securing
Ricardo Aldape's freedom

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Acknowledgments

TO JORGE ACERO, LEGAL DIRECTOR OF THE MEXICAN Consulate General in Houston from 1990 to 1992, and to the legal directors of the Mexican Consulates abroad, excellent attorneys who practice their profession in another country, under different legal codes.

To public defenders and private law firms in the United States that defend Mexicans sentenced to death.

To the non-governmental organizations that support the causes of the defense of Mexicans in the United States.

To Dr. Hermilo López Bassols and Quetzalli Padilla, for their unwavering support in the work on the subject matter of this book. To José Paoli Medellín, for the documentary research he helped me conduct, and to Adriana Bosada Ramírez de Arellano for the Spanish translation of various texts that are part of this document.

To Fernando Solana, Andrés Rozental and Aurora Adame of the Mexican Council on International Affairs for their support in the publication of this book.

To Emma, Roberta, Leandro and Ricardo, who with their customary enthusiasm supported me throughout the writing of this book.

Prologue

RICARDO AMPUDIA, WHO COMES FROM A WELL-KNOWN journalistic family, has extensive experience in business, communications and public relations. I have personally witnessed his work on behalf of better relations between Mexico and other countries.

Ricardo did outstanding work as Mexican Consul in Houston. Not only was he a great promoter of business and our national image, but he also actively participated in the tasks of persuasion and information on behalf of the North American Free Trade Agreement (NAFTA). This responsibility was extremely complex, but he managed to convince those whom he needed to convince in Texas, and particularly in Houston, of the benefits of the treaty for both countries.

Another project in which he participated actively was the communications system of the Secretariat of Foreign Relations, which provided information so that all representatives of Mexico abroad would be fully apprised of the Secretariat's positions. As a result of this joint effort, diplomats and consuls played an active role in promoting Mexican opinion across very diverse areas. He also participated in organizing the first Bush-Salinas interview, whose relevance goes without saying. In short, he was a witness and a leader in some key moments in our relationship with the United States.

Among the problems that Ricardo experienced firsthand as a consular official, the death penalty is one of the most complex. This extreme punishment that has caused so much international controversy allows him to delve into a wide range of subjects, including civil and criminal rights, limits on government power and the daily functioning of the justice system.

With his personal and professional experience as a point of departure, Ricardo undertakes a profound, well-researched reflection on the topic. He is particularly concerned with reporting the practical and financial implications of this form of punishment, and demonstrating that executions are at times due more to causes such as racism and xenophobia than to solid evidence of the defendant's guilt.

Thus the overview begins with death as a historical human penalty, later it is taken up again in criminal procedure in the United States and finally it becomes an opportunity for a detailed analysis of that country's judicial system. Consular protection of Mexicans sentenced to death has not been, nor will it ever be, a trivial matter. The number of people, and the amount of material and political resources required to defend all those sentenced to death can be overwhelming, but so is the evidence that judicial systems are adapted and constructed upon interests and identities that are far from impartial.

Article 36 of the Vienna Convention, the *Aldape* case, and the *Avena* case are always useful references for close observation of the functioning and the difficulties of justice. It is essential to distinguish the death penalty as a government policy from that extreme punishment when the motive is personal. If we think of our loved ones being harmed by a criminal act, it is logical and could even be reasonable to wish that the guilty party pay with his life. However, the distance between that just (perhaps vengeful) impulse and a government position should, as a matter of principle, be very great.

In order to fully understand the other side of the story, it is worthwhile to consider the bias in the dispensing of justice. The influence of public opinion and the media over judges can be one valid source of concern. If one intends to examine the subject seriously, in addition to questions on the effectiveness of this measure, the relevant contexts must also be set forth. Judges and courts, in addition to possessing their own set of values, empathies and stereotypes, are systematically permeated by public opinion. Therefore let us recall the economic necessity that at times moves our fellow citizens to emigrate, the difficulties of the U.S. environment for Mexicans and discrimination, present in an increasing number of academic, legislative and civil voices. If in the United States the citizens charged with dispensing justice feel closer to the threat per-

ceived by Huntington and the Minute Man Project than to the dream of the inclusive melting pot, it is possible that their decisions may be less impartial than they should be.

The execution of Mexicans has not come out of the binational agenda. The situations of Jaime Elizalde and Angel Maturino demonstrate that, although the death penalty is on the decline worldwide, the United States is the exception.

The risks of a national discourse that is weak on this subject, as on many others (let us think, for example of the International Criminal Court), may determine the future of relations. Mexico's Supreme Court of Justice determined that when there is an extradition treaty with another country, the International Extradition Law is not applicable. Let us not forget, then, that on a more general level, the debate may be that of multilateral institutions and international law versus national sovereignty.

May this book serve, therefore, as a stimulus for reflection on the present and the future of bilateral relations, criminal justice systems and the risks of making the death penalty a government policy.

—Fernando Solana

Introduction

DEALING WITH THE TOPIC OF THE DEATH PENALTY IS A daunting task. Remembering the look in the eyes of my Mexican compatriots who were about to lose their lives at the hands of our northern neighbor's government, controller of legal violence, is an experience that leads to profound reflection on life and death.

As Consul General of Mexico in Houston, Texas, my mission was to follow the cases of several Mexicans who had been sentenced to death. This situation provided me with, among other things, the opportunity to examine the phenomenon from a special position: not only was I to advocate for these people but also I was to make them feel, through my actions and attitudes, that they were not completely alone in a strange land, and that their own nation had not abandoned them.

The Ricardo Aldape case, which will be covered in this book, is part of my life. Between 1989 and 1992, as part of my consular duties, I had to pick up the case, interview Aldape, examine the facts and arrange for a U.S. law firm to take on his defense. As a Mexican government official, my country's representative before a foreign power, my duty was to support and defend my fellow citizens. This duty required conscientious work, since the facts clearly showed that Aldape was innocent—a mere victim of irrationality, xenophobia and a legal system that wanted to find a scapegoat.

Aldape's defense was primarily handled by Scott Atlas, an attorney from the firm Vinson & Elkins. He handled the case for more than five years and at tremendous cost. Also of great importance was the participation of Sandra Babcock, a court-appointed attor-

ney in the Houston court system. I mention them here because, fortunately, their efforts bore fruit. After fifteen years in a maximum-security prison, having had four different execution dates, Ricardo Aldape was released. The district attorney's office dropped the charges due to procedural issues as well as the merits of the case. Sadly, Aldape died four months later in a terrible car accident while he was traveling from Mexico City to his native Monterrey.

All of this made me question this law: What does the death penalty solve? Does the death of the killer bring back the lost life or the lost years? Does it erase the suffering and the pain? Is it true that such a punishment will prevent crimes from being committed? What is it about human nature that leads us to take the life of another human being? What is the nature of crime? Is it truly just to take one life to pay for another? What about involuntary manslaughter, killing in self-defense, state assassination? To what point is it valid to take the lives of others, whether they are criminals or not? Is justice blind? How many innocents have been killed in the name of justice and law?

Beyond our religious beliefs, the ethical dilemma involved in taking a position on the death penalty leads to radicalization. Those who have seen people on death row witness the anguish, not only of the condemned but also of their family. This anguish is even worse when the condemned are poor immigrants in a highly developed country, victims of contempt, intolerance and often injustice. While I do not believe that the situation is easy for those sentenced to death in their own countries, I do believe that it is much worse for a Mexican sentenced to death in the United States.

My experience in carrying out my consular duties led me to write down my reflections and analyze this controversial issue. Although initially, and in a way involuntarily, I had to approach the phenomenon with an almost anthropological methodology, the years have allowed me to gather and study a multitude of documents and testimonies regarding the death penalty. Unlike my prior research on the Church, and the Mexico-U.S. bilateral relationship reflected in presidential reports, on this occasion I had the opportunity to consult specialized bibliographical sources. These tools have a virtue: they allow us to see what the discussion of the topic is at this time and who its main actors are. The number of biblio-

graphical sources dealing with the death penalty is astonishing, most of them against it, but more amazing is the number of organizations devoted to its study, many of them dedicated to fighting for its eradication.

There is one fundamental reason I decided to write about the death penalty and Mexicans sentenced to death in the United States. I would like Mexican citizens to be aware of the dilemmas involved in capital punishment. It is terrifying that many Mexicans, because of Mexico's lack of security, are considering implementing the death penalty in Mexico. Although the death penalty has not been used in many years, it was included in several recent Mexican laws.

Fortunately, recognizing that life is the most important human right, in March 2005, the Senate of the Republic passed a constitutional reform that explicitly prohibits the death penalty in Mexico.¹ The Chamber of Deputies ratified this reform in June 2005.² Since the reform was of a constitutional nature, it was sent to the thirty-one state congresses. It can be stated, however, that the message sent by the Mexican government with this proposal not only means reaffirming Mexico's continuing adherence to the international treaties and accords,³ but also "the most significant commitment that we today celebrate and agree on with society and with the Mexican people."⁴

¹ The reform of Article 22 of the Constitution establishes that "Punishment by death, mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property and any other unusual or extreme penalties are prohibited." The measure also deletes the language that no one shall be deprived of life without a trial, previously established in Article 14 of the Magna Carta.

² The reform of Articles 14 and 22 of the Constitution, expressly indicating that "the death penalty is prohibited" in Mexico, was approved in the session of the special term, with 412 votes in favor and two abstentions.

³ PRD Deputy Arturo Nahle García said that with this reform the nation complies with different international treaties and accords that Mexico has signed and in which the use of capital punishment is rejected. He emphasized the importance of this reform, since there still remained gaps in the law that would allow a person in Mexico to be subject to sanctions that would lead to the death penalty, especially for crimes of a military nature or treason. Notimex, "Aprueban reforma que prohíbe pena de muerte en México," 23 Jun 2005 <noticias.aol.com.mx/nacional/notas/sfcg/?id=1804>.

⁴ These are the words of PRI senator and president of the Human Rights Commission, Satot Sánchez Carreño cited in Arturo Sánchez: "Elimina Senado la pena de muerte en México," 17 Mar 2005 <www.canaldelcongreso.gob.mx>.

Upon searching in different media for the Mexican people's reaction to the constitutional reform prohibiting the death penalty in Mexico, I was very concerned when I read some of the comments of my fellow citizens. There was someone who claimed not to understand "because this being the time when [the citizenry in general], is suffering from a lack of security and abuse at the hands of murderers, rapists, kidnappers, etc., the authorities [. . .] succeed, almost unanimously, in eliminating the death penalty from the Constitution."⁵

In my opinion, it is cause for concern that society does not take into account the many occasions on which an innocent person has been executed pursuant to the death penalty and, likewise, that it is unaware of the practical implications and the costs of the death penalty. These are two aspects about which this book seeks to inform.

On the other hand, from Mexico's earliest days as an independent country, it has had a humanitarian tradition that molds its values and culture and makes Mexicans a people averse to corporal punishment. We can say that, as a majority Christian country, we value life and have a sense of the transcendent; we do not believe that we return anything to the victim by killing the murderer.

Therefore, I insist that the idea of an eye for an eye cannot be legitimized, because it has not reduced crime in those countries that use the death penalty. It is true that the judicial and prison system, even in Mexico, suffers from enormous deficiencies and irregularities. It might seem simple for society to attempt to reinstate the capacity for legal murder and take justice into its own hands. However, it must not be forgotten that laws are for everyone to follow. So, if people took the law into their own hands, how could we guarantee justice?

I believe that the experience of having seen people who have been sentenced to death waiting in subhuman conditions for up to twenty years to be executed gives me the right to do what I can to prevent the death penalty from ever being implemented in my country. At the same time, although this book does not claim to provide a solution to the problems faced by Mexican citizens abroad, it does seek to raise awareness of the suffering experienced by those (unjustly) sentenced to death.

⁵ Comment to the article "Eliminan Pena de Muerte de la Constitución," 17 Mar 2005 <esmas.com/noticierostelevisa/mexico/4406661.html>.

In order to achieve this objective, the book has been divided into five chapters. The first consists of a brief introduction about the death penalty: some of the methods utilized to apply it throughout history, useful statistics to give the phenomenon a global dimension, the legal and historical situation of the death penalty in Mexico, the debate surrounding this punishment, as well as a brief description of organizations opposed to the death penalty. With that, the intent is to present to the reader the context in which the discussion of the death penalty in the United States is framed, and the assistance provided by the Mexican government to its citizens who have received this sentence.

The second chapter is devoted to understanding the phenomenon of the death penalty in the United States. Some historical, statistical data is provided to show the dimensions of the problem in the United States. The goal is to explain how the death penalty is carried out in the United States, from the legal aspects to the practical aspects of an execution. Both general explanations and some descriptions of specific cases are provided for this purpose. The main goal of this chapter, however, is to make the reader aware of the problems inherent in the U.S. legal system, especially the risk of innocent people being executed.

The third chapter explores the work done by the Mexican government to protect its citizens abroad. The practical and legal evolution of the general consular function of protection is shown through a historical study. This section is followed by the specific analysis of cases of Mexicans sentenced to death in the United States, and the assistance provided to them by the Mexican government in order to guarantee their rights.

Finally, two chapters are devoted to the analysis and description of two special cases in which the Mexican government has participated, successfully, in the protection of its citizens sentenced to death in the United States. The *Aldape* case, not only because the author experienced it personally, but also because of the forcefulness with which it exposes the flaws in the U.S. legal system and the importance of consular protection in the defense of those sentenced to death, described in this book by attorney Michael Mucchetti. The *Avena* case, for its part, is considered Mexico's greatest achievement in recent years in the area of consular protection and a victory for international law in the quest for respect of human rights.

