

The Bucareli Agreements: A Political Evaluation

On May 1, 1923, Mexican Secretary of Foreign Relations Albert Pani sent a long set of memoranda to Ramón Ross and Fernando González Roa, who were about to embark on major negotiations on a number of important issues including subsoil rights with representatives from the United States. These memoranda are a remarkable record of Mexican views of the political and economic issues between the two countries at the time. The administration of President Alvaro Obregón was seeking accords that would lead to U.S. recognition of his government; U.S. policymakers were interested in putting to rest differences with Mexico before the upcoming presidential elections. While for the Mexicans, U.S. opinion, along with political and economic support, was of enormous importance, an issue of highest priority, for the U.S. negotiators Mexico was more of a pesky problem. Mexican policy had been a matter of dispute within the United States since the beginning of Obregón's term in 1920. Because Mexico was not a high priority for policymakers, one individual and great friend of major U.S. oilmen, Senator Albert Fall of New Mexico, had been able to exert enormous influence over President Warren Harding, who assumed that his former companion in the U.S. Senate -- they sat close together given the alphabetical proximity of their last names -- had a special knowledge of the country to the south. Fall, as Harding's Secretary of the Interior, had also managed to gain control over much oil policy and even over the naval reserves of oil in United States. However, Fall had encountered some unpleasant political fallout when he transferred parts of those reserves in Elk Hills and Teapot Dome to friends in the oil business, and word of these agreements reached the U.S. Senate during April of 1922. Fall's hard-line policies toward Mexico were difficult to pursue as the U.S. Senate voted

to investigate him for corruption. Fall soon vanished from Harding's cabinet, and the two implicated, Edward Doheny and Harry Sinclair, were also deeply involved in Mexico. The major issues between the two governments when the two presidents came into office had been three: the way in which Article 27 of the Mexican Constitution would be applied, U.S. damage claims arising from the violence of the Mexican Revolution, and the payment on the foreign debt. At the time of the Bucareli conversations, only Article 27 remained as a major issue, affecting agrarian reform and the status of U.S. petroleum holdings in Mexico.

Fall's troubles were not the only factors leading the U.S. to wish to regularize relations. Border interests, especially Texans, were pushing for recognition in order to improve the ease of economic connections, small oil companies and operators were pressing for more normal connections which might help them get into the game, and even the U.S. press, particularly William Randolph Hearst, who seemed to have made some special arrangement with Obregón about his own holdings, was beginning to supply favorable publicity to the Mexican administration. Fully half of the U.S. state governments had passed resolutions asking for Mexican recognition, and bankers including Thomas J. Lamont, who had been key in the negotiations on the external debt, had begun a subtle campaign to influence the Secretary of State, Charles Evans Hughes. Lamont, of course, realized that the Obregón government would be unable to meet its debt obligations unless there were an agreement in which the Mexicans received payments from the oil companies. Harding himself, a fairly easy going chief executive, had never seemed to be particularly unfriendly to the Mexican administration. When it seemed that he might be amenable to less-than-official talks, Pani responded quickly.

Charles Beecher Warren, former ambassador to Japan, and John Barton Payne, who had served as Secretary of the Interior and was head of the Shipping Board during World War I, were selected as U.S. representatives, while Ross, a longtime friend of the Mexican President, and González Roa, who was familiar with the petroleum situation through his important posts in the political secretariat of the Mexican government and as lawyer to the Pierce Oil Company, were to serve for the Mexicans.

The documents began with an extended discussion and review of negotiations between the two governments beginning with the accession to power of President Obregón in December of 1920 and Harding in March of 1921. Most importantly, it pointed out that the attitude toward Mexico of the Wilson administration had changed significantly, and that immediate recognition would not be forthcoming. The Harding policy was characterized in capital letters: "ABSTENERSE DE RECONOCER AL ACTUAL GOBIERNO MEXICANO Y DE REANUDAR CON EL SUS RELACIONES DIPLOMATICOS REGULARES, MIENTRAS NO CUENTE CON LAS GARANTIAS QUE, EN SU CONCEPTO, SON NECESARIAS PARA LA SEGURIDAD DE LOS DERECHOS ADQUIRIDOS LEGALMENTE POR LOS CIUDADANOS AMERICANOS EN MEXICO, ANTES DE LA VIGENCIA DE LA CONSTITUCION DE 1917." This reassurance would have to come, according to the Americans, in a Treaty of Friendship and Commerce. Such a conditional recognition was completely unacceptable to Obregón and his ministers; it would imply the acceptance, they felt, of the status of unofficial protectorate similar to the one imposed on Cuba in the wake of the Spanish-American-Cuban War. Tellingly, the documents was entitled, "Controversia sostenida entre los gobiernos de México y los Estados Unidos, con motivo de la

reanudación de las relaciones diplomáticas.” Four annexes included the specific proposals which had passed back and forth between the two governments in 1921. Only now, in 1923, it seemed to the Mexicans, was the U.S. position beginning to soften; perhaps the insistence on a prior treaty could finally be overcome.

The most important documents, for my purposes in this paper, were twelve attached memoranda, largely focused on the positions to be taken by the negotiators and the arguments to be made. These arguments were not necessarily consistent one to the other, but were clearly to be tailored to the negotiating stances and attitudes in the arguments of the American representatives. In contrast to the very formal and carefully produced discussion and copies of draft documents, these memoranda seem to have been prepared quickly, contained typographical errors, and were significantly less formal in language than the rest of the document. They were written up on at least two different typewriters, and, in my opinion, reflect three different writing styles. I think it is likely that the most important were prepared by Pani in consultation with the Mexican President, who himself had had significant experience dealing with the American negotiators in regard to the Pershing Punitive Expedition into Mexico in 1916. Others were very short, and probably had been written by someone else for Pani's and Obregón's approval.

Six of them dealt with political attitudes and procedures, five more with economic problems, and one relatively short one with the religious question. However, politics and negotiating points are mixed into all twelve, with some points appearing repeatedly. The major issues are several. In political terms, the respect for Mexican sovereignty (in particular, respect for the dignity of the Obregón administration) is the paramount value

continually stressed. The economic issues are the two directly related to Article 27: agrarian question and subsoil rights. For the government, agrarian reform is the major issue to be resolved and subsoil rights the secondary one. It is clear to me, based on these documents, that the government's first concern in regard to arrangements on the subsoil was to keep the oil fields functioning and bringing in revenue, and that Mexican officials were acutely aware of the fine line they were treading here. Oil revenues would help them carry out their various programs, among them the highly important agrarian reform, the major benefit that the government had to distribute to maintain a popular base that would preserve its power. Sovereignty, subsoil rights, agrarian reform -- these were the themes that recur throughout the documents.

The political and procedural documents (here numbered in the order in which they appear the file) are 1: "Relativo al reconocimiento bajo condición de un tratado;" 2: "La política Americana sobre protección de los extrajeros;" 5: "El cambio de actitud de los Estados Unidos;" 10: "Las causas de la desconfianza que existe en México para los Estados Unidos;" 11: "El Bolshevismo en México;" and 12: "La política de los Estados Unidos en material de arbitraje." The first of these, referring to the earlier requirement by the U.S. government for a treaty of conditions precedent to recognition, urged the negotiators to "señalarse fuertes objeciones a este procedimiento," with the precise objections following. These included an insistence that recognition should be "simplemente la aceptación de un hecho que ya existe," and arguments that they surely realized was insufficient to persuade the Americans. A second point emphasized that "muchas países...han reconocido al Gobierno Mexicano, sin las exigencias de un tratado..." making the attitude of the United States seem "extraña." Furthermore, many

other governments which had undertaken more radical constitutional principles and legislation had established relations with the United States, including former President Venustiano Carranza, during whose administration the Constitution of 1917 was already established. Usually, according to the Mexican memorandum, the United States had out of principle recognized established governments, even if that recognition had been only de facto. As to a treaty prior to recognition, the negotiators should point out that the United States had itself refused to negotiate with the Chinese before an exchange of ministers in 1891, when that government insisted on a revocation of the Chinese Exclusion Acts of 1888 before an exchange of ministers.. The implication was that, just as the United States had objected to conditions precedent to mutual recognition, Mexico was taking the same stance for the same reason, that such an arrangement would be "incongruente y inadmissible." The heart of the objections came near the end of the memo; special guarantees to citizens of the United States would require the same for other foreigners, and "podría establecer un regimen privilegiado (sic) a favor de los extrajeros..." Thus, Mexico would be afflicted with "una agrupación completamente independiente de la sociedad en que viven." Throughout, the clear concern was that the United States was trying to exert its power to declare the same kind of informal protectorate status over Mexico that it enjoyed over Cuba, and that that status or anything implying that status should be rejected most vigorously.

The second of these political memos, in regard to the U.S. policy toward the protection of foreigners in Mexico, was also framed around the issue of sovereignty. It reiterated the Calvo Doctrine that foreign citizens in Mexico must be subject to the laws of the Mexican Nation. It stated strong opposition to the constant demands by the U.S.

government -- sometimes successful -- that Latin American governments set up special claims courts U.S. dealings handle its citizens' requests for indemnization, without exhausting existing legal remedies. The discussion then moved specifically to questions of land. Despite the fact that in the United States land sales had always been recognized as being governed by the laws of that government holding jurisdiction over the territory in question, Americans had always complained that "se ha privado a sus conciudadanos de sus propiedades, sin el debido procedimiento de ley, sin indemnización y sin respeto al derecho de propiedad." This problem had even occurred in their dealings with the land of the conquered territories of New Mexico and California, where they had insisted on special commissions rather than ordinary courts. It went on to emphasize that the U.S. government had, in the past, abrogated property rights without compensation, in, among others, the cases of the abolition of slavery and of prohibition. In a slightly ominous note, it added that although the U.S. government had always insisted on the inviolability of contracts made by the Mexican government, the current Mexican government could not accept such a position as in regard to some contracts there might well be a "causa de nulidad... absolutamente legítima."

The "Nota sobre el cambio de actitud de los Estados Unidos," showed an interesting understanding of U.S. politics. While the writer of the note admitted that his conclusions were tentative, he suggested several possibilities. First of all, he speculated, the Harding administration had enjoyed a period of peace, and perhaps wanted to sustain that record until the end of its term. Further, the Republicans were concerned that their inability to resolve the Mexican question might be thrown in their faces. Another factor might be that the changes in the system that were being made in Mexico were relatively

modest, even though "las capitalistas de los Estados Unidos" wanted no change at all. Other Latin American countries were also beginning to object to the U.S. administration's attempts to establish a kind of "veto" over their actions and governments. These concerns had led to a distinct "ambiente de impopularidad" in recent hemispheric meetings in Santiago de Chile. The writer of the memo, however, omitted a major factor -- the departure from the government of the discredited Albert Fall, the most effective friend of the large oil interests which had always insisted that their version of their acquired rights in Mexico be guaranteed.

Toward the end of the memoranda were two which indicated the reasons for Mexican distrust of the United States and the pressures they felt they were under. #10 addressed the reasons for Mexican lack of confidence regarding the United States; #11 was a strong argument differentiating the Mexican government from the Bolshevism of the Soviet Union. It had become common in the United States for U.S. hard-liners to denounce the Mexican government as a Bolshevik threat far too close to home; in the case that this point arose, the Mexican representatives were instructed to point out that Bolshevism was a particular system and one that had not been implanted in Mexico; that in Mexico agrarian policy was one of "subdivisión y no nacionalización;" that Russian industry had been nationalized, something that had not happened in Mexico; that the Mexican Constitution contained many concepts, beginning with the Derechos del Hombre, that emphasized the "carácter individualista de las instituciones," making it entirely different from the communist system; that the Soviet system had established a government by one class only, with members of that class as the only voters, when among the Mexicans nothing of the sort had occurred; that trade had not been limited,

and was in no way under the control of the State; that Mexico maintained freedom of the press; that in Mexico there were no workers' councils interfering in the management of factories; that Mexico had neither economic councils nor economic parliaments, as had been established in Russia; and, rather poignantly, "Nosotros tenemos un sistema electoral y de gobierno calcado de los Estados Unidos, y la Rusia ha abolido por completo todo sistema de gobierno congressional para substituirlo por el sistema de representación (sic) de los Soviets."

As for the reasons that Mexicans distrusted the United States, the litany was predictable. The Mexico had suffered propaganda attacks from certain segments of the press, from groups defending their commercial interests, and even from movie companies. The lack of real knowledge of each nation by the other had been "la causa de conceptos erroneos." The United States had not respected the independence of the Latin American countries generally. Constant U.S. diplomatic interference in internal affairs of Mexico had resulted in converting "los representantes de los Estados Unidos en abogados particulares de sus compatriotas." The invasion of Veracruz, the Punitive Expedition, and other incursions into Mexico by the U.S. military were mentioned without comment. A further issue was the constant mention in the U.S. press of the "Doctrina del Destino manifiesto (sic)." A particular sore point was the exclusion of Mexico's representatives from conferences, including recent meetings of the Pan American Union, and international organizations, particularly their barring from the League of Nations. Again, the objection was that the United States was controlling (and preventing) Mexico's access to the international community, even to the rest of Latin America, thus damaging its sovereignty.

Finally, #12 discussed the issue of arbitration, pointing out that this method of resolving diplomatic disputes had long been favored by the United States itself. The indication here, it seems to me, is that any unsettled issues might be referred to international arbitration. The memo pointed out that as recently as 1908, when a treaty between the United States and then President Porfirio Díaz, had established in its first article that differences arising between the two nations of a juridical nature or in regard to the interpretation of existing treaties would be referred to the International Court of Arbitration at the Hague. This article was in line with Article 21 of the Treaty of Guadalupe Hidalgo.

Five articles were directed more specifically at the issues of an economic nature and/or involved possible agreements involving potential financial settlements that were to be addressed. #4, which addressed the public debt, was very short, indicating that this issue had been settled in negotiations between Secretary of Finance Adolfo de la Huerta and U.S. banker Thomas Lamont. #5 was likewise relatively brief; it dealt with the Court of Claims which would settle disputes between Mexico and the United States arising out of damages caused to U.S. properties by the violence. It suggested that some sort of procedures might be worked out, and indicated the hope that the commission would meet in Mexico, where the claims could be more easily verified. The Cuban case was mentioned here as having been particularly problematic, as the Claims Tribunal arising out of the Spanish-American-Cuban War had run into difficulties because it was not actually on the island. One further warning indicated that the claims be carefully investigated, as those suffering losses had a tendency to inflate their value. The Convention of 1868 was mentioned as a bad example here, with claims amounting to

more than 100 times larger than the actual value of compensation ultimately recommended. #9 had to do with seized properties; the memorandum indicated that very few U.S. properties had been taken during the Revolution, and the ones that had, had largely been returned. If legitimate cases should arise during the discussions, the Mexican government was definitely disposed to return them as long as the request was made to the appropriate court.

The most important memoranda of all, of course, were those related to the subsoil and to the agrarian question. The first which I will discuss here, #8: "Sobre el regimen constitucional del subsuelo," was obviously written to meet the objections of U.S. oilmen and their friends in the Harding administration. While strong, it showed considerably more flexibility than its obvious companion, #3: "Sobre la cuestión agraria." The two were written on the same typewriter and, I believe, it is not too much to assume that they were written by Pani or at least under his very close direction. The first point here emphasizes that "Todos los paises principales del mundo aceptan el principio establecido por el artículo 27." It goes on to give particular examples: England had the law which refers to petroleum, and in the case of coal, the legislative tendency has been toward nationalization. Holland claimed the rights to its subsoil for the State in its possessions in Oceania. Guatemala had a nationalization law. Romania, France, Ireland, Germany, and Yugoslavia all had legislation or constitutional provisions that gave special rights over the subsoil to the State. Obviously, no one expected such arguments to be decisive with the U.S. negotiators. Nevertheless, the writer the memo was placing Mexico securely in the mainstream of State policies throughout the world.

The second point insisted that "En nuestro caso no ha habido confiscación, ni se ha pretendido hacerla, sino solamente un ajuste o un sistema de legislación." Here again, obviously, the writer was swimming upstream, and the Americans would clearly not except such assertion at face value. Nevertheless, the argument was critical for the Mexican negotiators, as the adjustment called for was one which would re-establish the principle of government concessions as opposed to absolute rights on the part of property or leaseholders.

Acquired rights, the third point asserted, had never been affected. "Nunca se ha pretendido perjudicar al que tenía un derecho adquirido," it asserted. The government of President Venustiano Carranza had, it agreed, provided preferences to the owners of the surface in regards to the subsoil. He had given them permission to drill even when they had not officially denounced the claim to subsoil resources. A law recently approved by the Senate had also given preferential rights to surface owners. The Mexican Supreme Court had established in several decisions that where investments had been made or there had been some formal proof that the subsoil would be exploited, rights would be completely protected. Further, the Cámara de Diputados had just approved yet another series of rules which would protect anyone with acquired rights even more securely. The document went on to assert that even though the legislation on mines was currently much less liberal than that on petroleum, it had completely protected foreign investors and had not lead to any international controversies. The law itself was in no way out of the Mexican or the Spanish legal tradition; even in the Philippines, recently, following traditional Spanish law, the subsoil had been determined as belonging to the Nation and not to the owners of the surface. The Law of 1884 which, according to this document at

least, gave surface owners rights to the subsoil, was "una ley dada contra la Constitución," with the Legislature having no power to permit any such alienation of State control over the subsoil. Further, "las regalías del Soberano no podían ser trasladadas (sic) en dominio absoluto." Even in the mining law, surface owners were only given a preference over individual concessionaires, and failure to exploit subsoil resources would lead, in general, to a loss of rights. The strongest statement argued that there was no question of retroactivity, however, in the law "cuando solamente se atacan esperanzas y no derechos completamente adquiridos." Mexican legislation on the subject, it asserted, only referred to cases in which there had been no financial investment or formal exploitation, "dejando a salvo todos los casos en que hubiere derecho adquirido o producción adecuada."

While other points reminded the negotiators that the U.S. had not been completely consistent in regards to rights to the subsoil and in regard to and indemnification for property taken (again U.S. prohibition was mentioned), these discussions were not followed up in any detail. What did follow was a strong argument in favor of the advantages of State control over the management of subsoil resources. State direction would permit a just and rational approach to the exploitation of the subsoil; it would prevent lengthy litigation between the companies, would clear title problems, would provide uniform legislation, and would give the federal authority to prevent "excesos fiscales" by the individual states in which the properties were located.

In no case did it appear that the Mexican government wanted to discourage petroleum production by foreign investors. Rather, the writer seems to have assumed that while the Mexican government was still eager to control the terms of that production,

there was, for the time being, a great need to have that production continue. Thus, while asserting rights and fairness, along with the principle that rights to the subsoil resided in the Nation, the memo makes clear that the government wanted to keep petroleum producers in the country and investing and producing. Indeed, as I re-read the memorandum, I believe that in one form of communication or another, the writer head-to-head some sort of assurances that the basis for resolution already existed. In fact, when discussions began on May 14th, the issue of subsoil rights was resolved relatively quickly. By June 1st, only two weeks later, the negotiators were moving on to the question of agrarian reform and compensation for expropriated lands. The subsoil issues seem to have arisen off and on during the discussions, but the major points seem to have been settled. The agrarian question, in contrast, required six weeks of negotiations.

The memorandum about the agrarian question, #3, is therefore of particular interest. The first section was a strong defense of the legitimacy of retroactivity. It argued that there was no "obstáculo a la retroactividad de la ley. Nuestro derecho colonial y del México independiente señalan innumerables casos de leyes retroactivas." This strong statement would, no doubt, have startled the American negotiators had they seen it. The second again pointed out that "Los mismos Estados Unidos se han visto obligados a atacar derechos adquiridos sin pagar indemnización" in the cases of the abolition of slavery, prohibition, and others. Several cases were specifically cited here. Further, in the third major points, it asserted that the United States had recognized the significance of Spanish colonial law in regard to ejidos in the territories acquired after 1847, again referencing several legal cases. It went on to claim that "La Ley Agraria no es más que la aplicación del derecho tradicional de México." Point IV insisted that

European countries were establishing agrarian legislation much more stringent than Mexico's own; Poland and Rumania had already carried out expropriations either without compensation or with compensation in forty-year bonds. Italy had favored the peasant over the landlord, and France had provided for the free sowing of lands not cultivated. Point V asserted that the agrarian problem had been in place since the colonial period, and the existence of which could be shown clearly simply by pointing out the number of landlords vs. peons, the salary scales, and the prices prevalent in the country. The implication here was that simple justice would require significant adjustments.

Point VI contained an implicit threat. Land prices, it noted, were falling anyway because of the dreadful economic conditions in the country. The government, it asserted, had proceeded in the mildest possible way by re-establishing ejidos, but much stronger measures were available. The large holdings could be destroyed by government policies permitting the free importation of grain and imposing low rates for the railroads. Thus, "la grande agricultura" would be made unprofitable, which would force landowners to abandon their holdings to the campesino for their direct exploitation, as had happened during the period of the independence wars.

Point VII of this memo on the agrarian question reminded the negotiators that the government had offered to pay with bonds, as that was the only way in which future generations could help pay for this economic change. The enormous significance that the writer of the memo placed on agrarian matters is indicated by his language, which referred to the process as "esta gran transformación que está sufriendo el país." The writer continued, just as strongly, that, "como la solución de la cuestión agrarian es inaplazable, sería necesario establecer fuertísimas contribuciones que no podrían soportar,

ni la agricultura ni la industria.” The related Point VIII denied that there was any reason for those involved to refuse to accept bonds, since the Mexican government had already agreed to renew the service of its debt, demonstrating its reliability. It closed with the Point IX, a strong statement of what at least the writer of this document believed that the Mexican government was about: “Las transformaciones sociales afectan siempre la economía general del país que las sufren, por lo mismo, afectan también los negocios. Esto es inevitable y la mejor manera de llegar a un estado de equilibrio es no oponerse de una manera abierta a la transformación, sino facilitarla para prevenir nuevos conflictos y establecer una paz orgánica.” These last words have the distinct ring of statements made by the Mexican President throughout his term of office, and if not written by him, certainly met his approval.

Thus, in agrarian matters, the negotiators were not to back down. They were to be sure of their ground, both within their own legal tradition and within the needs -- political and economic -- of their suffering country. That the country was suffering, politically, economically, and socially, in the wake of its great civil war, is something regularly neglected by scholars and polemicists. This suffering was a factor in the thinking of all Mexican policymakers at the time. The only major economic resource available for reconstruction was petroleum; as long as the principle of national control of the subsoil was maintained, they were willing to make temporary concessions that would permit foreign investment and involvement in that sector to continue. On the issue of agrarian reform, in contrast, there was no give. In their minds that issue, in its social, economic, and political aspects, permitted no backing down. While it would take two decades to carry out the changes in landholding that they already had in mind, in fact decisions had

already been made to carry out sweeping changes in the countryside. In the meantime, foreign investment in the petroleum sector could be tolerated as a temporary measure. That such concessions as there were, were almost immediately eroded during the presidency of Plutarco Elías Calles underlined the temporary, tactical nature of these concessions. Indeed, these concessions were not extensive. Basically, what the Obregón administration had agreed here was that foreign holders of subsoil rights with a reasonable claim would be treated fairly, and permits to drill would go preferentially to those companies and individuals who held leases or owned the surface before Article 27 came into effect.

Both government had resisted significant pressures before and during the course of the negotiations and in the case of the Obregón administration, consequences thereafter. The Association of Petroleum Producers in Mexico, that organization of the most intransigent of U.S. oilmen involved in the country to the south, had lobbied the Secretary of State Hughes before the meetings to insist on "the free and untrammled and perpetual right to all petroleum" extracted from lands they believed they held rights to. The organization contacted the U.S. negotiators at various points during the meetings, and Warren apparently asked them for clarification on particular issues from time to time. After the meetings, several problems including royalties were left unresolved, and these oilmen found that particularly troubling, troubling enough to prompt communication with Hughes while the negotiators were actually in session at their final meeting.

The Obregón administration, despite having gotten most of what it wanted -- formal recognition, the acknowledgment of only preferential rights of surface owners as opposed to any sort of absolute rights to the subsoil, the reservation of the Nation's right

to the subsoil wherever no positive acts had been performed. Where absolute property rights had been demanded, the principle of government concessions had been acknowledged. The cost was minimal, and amounted basically to an expansion of the definition of "positive acts" -- one that included a high price for land that would indicate the value of its expected subsoil resources. Leases, which involved payments, were already so considered. Nevertheless, there was a political price to pay within Mexico, as Adolfo de la Huerta claimed in support of his December, 1923, rebellion that it was a reaction to the administration sellout of Mexican rights at Bucareli. Such a charge was almost ludicrous, given his inept handling of negotiations with international bankers the previous year, but it is one that still arises, even, occasionally, among historians.

The Mexican negotiators had come out relatively well and gotten most of what they wanted. Oil production would continue for the time being, and a message had been sent on the issue of agrarian reform. The De la Huerta Rebellion would almost certainly have occurred regardless of what had been decided at Bucareli, but after the negotiations, the Americans, capitalist or policymakers, did not aid him substantially. On the contrary, what aid did come to Mexico in this event came to Obregón. The American government had opted in favor of political stability and against force, and the Mexicans had taken advantage of circumstances to get what they wanted and needed in the immediate moment. The document discussed here shows clearly what they wanted, and the results show that they were successful achieving their purposes despite a heavy power asymmetry in favor of the Americans.

Secretaría de Relaciones Exteriores, “Controversia sostenida entre los gobiernos de México y de los Estados Unidos, con motivo de la reanudación de las relaciones diplomáticas. Comisionados: Ramón Ross
Fernando González Roa”

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(#3:) Momerandum (sic) sobre la cuestión agraria.

I.-El derecho sobre la propiedad en los países latinos es distinto del derecho norteamericano. Desde el Derecho Romano ha habido cambios en la organización de la propiedad y la doctrina de las Pandectas, que es que no hay obstáculo a la retroactividad de la ley. Nuestro derecho colonial y del México independiente señalan innumerables casos de leyes retroactivas.

II.-Los mismos Estados Unidos se han visto obligados a atacar derechos adquiridos sin pagar indemnización, como en los casos de la abolición de la esclavitud, del establecimiento de la prohibición, y la de las leyes de inquilinato. Diversas ejecutorias han sostenido esta necesidad de modificar la legislación, y podía citarse la sentencia de Juez Gregory, de New York (sic), en el caso de la Fetra (sic). Puede citarse el caso de la destrucción de propiedad por medidas sanitarias en el Brasil, pues los Estados Unidos se negaron a apoyar a los americanos que pedían indemnización.

III.-Los Estados Unidos han admitido nuestro derecho colonial en lo que se refiere a las posesiones adquiridas después de 47, y establecieron que era obligatoria la legislación sobre ejidos, como lo demuestran diversas ejecutorias entre las cuales podía citarse las de la United States vs Pico; Townsend vs Greeley; Haggans vs Reclamation District y Greeley vs MacDowald. Los Estados Unidos también por medio de leyes especiales revisaron la titulación de California y de Nuevo México. La Ley Agraria no es más que la aplicación del derecho tradicional de México.

IV.-Los países europeos están estableciendo una legislación agraria muchísima más enérgica que la nuestra. En algunos países como en Polonia y en Rumania, se han hecho firmes expropiaciones sin cubrir el valor de las tierras o se ha ofrecido pagarlas en bonos redimibles en 40 años. En otros como en Italia se ha favorecido la substitución del

terratiente por el campesino y en otros más como en Francia, se ha decretado la siembra libre en terreno ajeno no cultivado.

V.-La cuestión agraria representa un problema que data desde la creación de la propiedad en México por la Real Cédula del Emperador Carlos V. Es una cuestión social cuya existencia podía demostrarse con enunciar simplemente las cifras de números de propietarios y de peones y las escalas de los salarios y de los precios que prevalecen en el país.

VI.-La cuestión agraria se está resolviendo por un descenso del valor de la tierra, en virtud de un ajuste a las nuevas condiciones económicas del país. El Gobierno ha procedido en la forma de aplicación más benigna, como es la de los ejidos, pues podría destruir la grande agricultura y hacer que los hacendados abandonaran sus tierras, simplemente con decretar la libre importación de los granos y con poner bajos fletes a los ferrocarriles. Entonces, la grande agricultura se haría incosteable y los hacendados tendrían que abandonar sus tierras a los peones para que las explotaran en alguna forma de aprovechamiento directo por parte de los campesinos, como se hizo en el interior del país después de la guerra de Independencia.

VII.-El gobierno ofrece pagar con bonos, por ser este el único medio de hacer que las generaciones futuras participen en algo de esta gran transformación económica que está sufriendo el país. De otra manera, como la solución de la cuestión agraria es inaplazable, sería necesario establecer fuertísimas contribuciones que no podrían soportar, ni la agricultura ni la industria.

VIII.-No hay ninguna razón para que se rehusen los interesados a recibir bonos, pues las reclamaciones extrajeras se cubren siempre por semejantes procedimientos, y el Gobierno nacional no solamente está empeñado en la reanudación del servicio de su deuda, sino que también se propone recibir los intereses de esos bonos por contribuciones.

IX.-Las transformaciones sociales afectan siempre la economía general del país que las sufren, por lo mismo, afectan también los negocios. Esto es inevitable y la mejor manera de llegar a un estado de equilibrio es no oponerse de una manera abierta a la transformación, sino facilitarla para prevenir nuevos conflictos y establecer una paz orgánica.

(pp. 131-134)

#8. Memorandum sobre el régimen constitucional del subsuelo.

I.-Todos los países principales del mundo aceptan el principio establecido por el Artículo 27. Inglaterra tiene dada una ley en lo que se refiere al petróleo, y en lo que se refiere al carbón de piedra, la tendencia legislativa del país es en el sentido de hacer una nacionalización. Holanda decretó que el subsuelo de sus posesiones en la Oceanía, pertenece al Estado. Guatemala ha dado una ley de nacionalización. En Rumania está por modificarse la Constitución en este sentido, por gestiones hechas por las empresas norteamericanas. Francia a fines del año pasado acabó de reformar su legislación, substrayendo al petróleo del Derecho Común, y concediéndole al Estado para que lo explote bajo una forma de concesiones. Las Constituciones de Irlanda, Alemania y de Yugo Eslovenia (sic), establecen, en fin, principios de nacionalización de los recursos naturales, más enérgicos que los del Artículo 27.

II.-En nuestro caso no ha habido confiscación, ni se ha pretendido hacerla, sino solamente un ajuste o un sistema de legislación. Cuando se dió la ley de aguas, se constituyó en propiedad pública ordenándose el canje de los títulos privados por títulos expedidos por la Administración Pública.

III.-Nunca se ha pretendido (sic) perjudicar al que tenía un derecho adquirido. En las diversas formas que ha afectado la situación jurídica de los propietarios, desde la Constitución de 1857, se ha protegido a los que en alguna forma tenían un derecho adquirido. La primera ley que ha sido el origen de la controversia, establecía preferencias a l-s (sic) propietarios (sic) de la superficie. El Gobierno del señor Carranza concedió derechos de perforar a los propietarios de terrenos o a sus causahabientes, aun cuando no hubieren denunciado. El proyecto de la ley aprobado por el Senado también establecía derechos preferentes a los propietarios superficiales. La Suprema Corte, en los casos de la Texas Oil Co., y subsecuentes, estableció también que debería considerarse ampliamente protegido todo aquel que hubiere hecho inversión o manifestado en alguna forma exterior, que tenía el propósito de utilizar el subsuelo. Por fin, la Ley que acaba de ser aprobada por la Cámara de Diputados, contiene también una serie de preceptos destinados a proteger ampliamente a todos aquellos que tuvieren un derecho adquirido.

IV.-La legislación (sic) actual de minas es mucho menos liberal que la ley del petróleo, y no obstante, ha protegido ampliamente las inversiones extranjeras, y no ha dado nunca motivo de controversias internacionales.

V.-La legislación sobre el subsuelo no es extraña a la legislación de México, sino perfectamente conforme a nuestro derecho tradicional, pues el petróleo estuvo comprendido en las leyes mineras españolas. La misma Corte de las Filipinas, aplicando el derecho tradicional de las colonias españolas, resolvió, no ha mucho, que el subsuelo de las islas pertenecía a la Nación y no a los propietarios de la superficie.

VI.-La Ley de 1884 en la que los superficiarios sostuvieron su derecho sobre el subsuelo, fué una ley dada contra la Constitución, pues las facultades que se otorgaron al Ejecutivo fueron simplemente las de dar una ley de minería; por lo mismo, no tuvo derecho el legislador de 1884 a dar una ley por la que se renuncia al dominio sobre el subsuelo.

VII.-Conforme a nuestra legislación, las regalías del Soberano no podían ser trasladadas (sic) en dominio absoluto.

VIII.-La legislación de Minas lo único que hizo fué dar concesión de carácter general a todos los superficiarios para que explotaran el carbón o el petróleo sin un título determinado, de manera que los que adquirieran derechos bajo el amparo de ese permiso general, se podían refutar concesionarios particulares; pero la concesión general podía revocarse por aquellos que no la hubieran aprovechado. Todo esto es conforme con el antiguo derecho español, pues las leyes españolas en varias ocasiones dieron semejantes permisos de orden general, pudiendo citarse la que dió El Rey Carlos III a los superficiarios sobre el carbón de piedra.

IX.-Conforme a nuestra legislación no hay retroactividad en la ley cuando solamente se atacan esperanzas y no derechos completamente adquiridos. Toda nuestra legislación ha tenido el propósito de referirse a los casos en que no hubiere inversión de dinero o explotación formal, dejando a salvo todos los casos en que hubiere derecho adquirido o producción adecuada.

X.-La explotación del subsuelo bajo un régimen de dirección del Estado no sólo es perfectamente justa y racional, porque el derecho civil presenta muy serias dificultades a

su aplicación al subsuelo, sino que también es conveniente para la industria, porque dá término a largos litigios entre las compañías, perfecciona los títulos, da intervención a la autoridad federal para impedir los excesos fiscales de los Estados y uniforma la legislación.

XI.-En los Estados Unidos se consideró en una sentencia dictada en el caso de United Status vs San Pedro que el título a la superficie, expedido por el Gobierno Federal no da derecho al subsuelo.

XII.-Repetidas ejecutorias de los Estados Unidos establecen el derecho ilimitado a legistas, sobre propiedades dentro del territorio. La última es la de la prohibición.