

# The lawyer of the 21st century

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**T**he institutionalization of political democracy in the 18th century assigned new tasks to lawyers, beyond those which they had traditionally performed under the system of Roman Law which dominated Europe since the 6th century. Lawyers were now expected to participate in public administration as government employees or civil servants.

Lawyers now perform a number of social roles which go beyond merely representing clients in legal matters. They may now be called upon to act as judge, notary, legislator, minister, teacher, researcher or consultant.

In transitional periods the law recovers its supreme function as an instrument of social transformation. Modern democratic theories of the State and the separation of powers are based on the premise that government is a social creation of human beings which is institutionalized by legal methods and procedures.

By making its constitution the supreme source of authority, a legally constituted state strives to assure the coherence of the laws which it enacts. Governmental actions which do not strictly adhere to the constitution are illegal. In a democracy, the constitution provides for its own defense and thus affords equal protection of the law to all citizens.

In a democracy, the law determines the form of government and defines the powers and duties of governmental bodies and officials. Hence, it is necessary in a legally-constituted democratic state that those responsible for government affairs be lawyers or have the assistance of lawyers. Government officials must base their decisions on the law. This makes it necessary for them to have an adequate knowledge of the legal system.

In Mexico, legislators are required to have a thorough knowledge of the Mexican legal system. The principle of legality requires that all court decisions be based on

precedent. The logic of the law does not permit a law to contradict the constitution or a previous ruling by the courts. Should this unlikely event occur, the legal order itself would determine the appropriate procedure to uphold both the constitution and the law.

What questions will arise in the next century for those who interpret, study, and make the law? Some suggestions follow.

## Human rights

In 1824, when Mexico's first constitution was drafted, federalism was an important concern and normative principle. In 1857, individual rights and guarantees were the predominant concern. The Mexican Constitution of 1917 was far ahead of its time in its statement of social rights and guarantees.

As we near the end of the 20th century, the question which inevitably arises is what the new focus of concern in the area of human rights will be. Mexico, as a democratic society, follows the humanist tradition in its national and international policies.

The creation of the National Human Rights Commission and state human rights commissions is an organic expression of this trend. The Commission's work in the two years since it was founded demonstrates that human rights is not only a current issue but will continue to be a matter of concern in the future.

In this respect, the role of an Ombudsman is particularly important. It may be that an Ombudsman's presence will be required to resolve other national



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problems, such as those concerning the ecology, indigenous communities and social communication issues.

Despite enormous efforts in the field, miscarriages of justice continue. According to the National Human Rights Commission, the majority of complaints it receives are about arbitrary arrest, denial of justice, abuse of authority and delays in the legal process. Other complaints include false accusations, procedural anomalies, torture, disagreements with court findings, decisions, or sentences, and denial of medical treatment to persons in custody.

There have been encouraging signs, however, beginning with the creation of the National Human Rights Commission. During the first year of its existence, the greatest number of complaints received concerned torture. According to the Commission's Fourth Semiannual Report: "In the first year of the Commission's existence, torture took first place among complaints about violations of human rights received; in the third semester it fell to third place, 6.2% of all complaints. In the fourth semester, torture occupied seventh place, with 134 recorded instances, equivalent to 2.9% of all complaints."<sup>1</sup>

Future lawyers should devote serious attention to human rights and contribute to the efforts to see that they are respected. They will have to reconcile the need to preserve juridical norms with society's demand for greater

<sup>1</sup> *Fourth Semiannual Report of the National Human Rights Commission*, June 2, 1992. See Fox, "Litigation in the Year 2050," *Fordham Law Review*, Vol. 60, 1991, who notes that in 1932 it was common practice in Philadelphia to obtain confessions by violent means and that this occurred in 20% of arrests in New York. The recent videos on American television showing police brutality in Los Angeles confirm that this still holds true.

public safety. Here they will have to tread the thin line between protecting public safety at the expense of human rights and defending human rights without compromising public safety.<sup>2</sup>

### Democratization

Another issue for 21st century lawyers to consider is democratization, i.e., the process necessary for society to move toward greater political participation by its members.<sup>3</sup> Democratization is a suitable subject for lawyers because it is based on normative rules. There are dysfunctional aspects of democracies all over the world, including Mexico. The laws need to be improved to provide for better organization of elections, to determine which independent government organizations should be responsible for judging the

electoral process, to review the role of the media, and to reduce anomalies in the democratic process.

### Labor law

In a welfare state which follows protectionist policies, laws protecting workers' rights suffer from the imposition of dogmatic requirements. An example of this is Mexico's Federal Labor Law which states that labor is a social right and duty. There is little emphasis on the fact that labor is not an object of commerce and it is unlikely that this concept will survive the process of economic globalization which already affects us in Mexico. The Federal Labor Law states that no distinctions may be made between workers on the basis of race, sex, age or religious belief. However, in a globalized economy labor relations need to be "harmonized" across borders which inevitably means that certain issues will have to be confronted.

Other legislative systems make distinctions on the grounds of race or sex. The basic premise of "affirmative action" in the United States is to establish minimum quotas of Black or Hispanic workers to compensate for their disparity in numbers in comparison with white workers and to lead to their greater participation in social processes. This will have to be reviewed in the case of Mexicans joining the labor market in the United States. Either new conventions will have to be drafted or a similar system

<sup>2</sup> Compare the remarks of Diego Valadés, Attorney General of Mexico City, in *El Nacional*, July 2, 1992.

<sup>3</sup> José Francisco Ruiz Massieu in a lecture at the UNAM Law School, on March 2, 1992, referred to democracy as a static concept, whereas the idea of process suggests a dynamic and an evolution.

implemented here for foreign companies operating in Mexican territory.

We should preserve our protective laws, guide the class struggle and protect the working classes, but how can we reconcile this with the need to achieve the productivity levels required by international competition and to maintain good-quality products, competitive prices, adequate purchasing power and job benefits? A change of attitude is required regarding the purpose of the right to work.

One cannot ignore the need to include the handicapped, the sick, the unemployed and senior citizens in the Social Security system. However, this should not be based on indiscriminate fiscal subsidies, but on a new concept of social and economic efficiency that would abolish the present system in which most Mexicans are treated in state or social security hospitals, while those who can afford private medical insurance can go to the hospital of their choice.

### Federalism

Mexico has a long federalist tradition that began with the Mexican Constituent Act.<sup>4</sup> The 19th century witnessed struggles between Conservatives and Liberals to establish Mexico's form of national government. Federalism is concerned with the nature of power and its distribution. Competition between different levels of government provides a mechanism to assure the balance of power required in a democracy.

Although there is a modern tendency toward greater decentralization of governmental power, there is a lack of a coherent doctrine regarding the nature and role of local government. Lawyers who deal with such issues should have no shortage of work in the 21st century. They might involve themselves in issues concerning the relations between federal and state government, and between federal agencies and local governments.

### Relations between state and society

The reform of the governmental apparatus implies the creation of a new relationship between state and society. This is a task for lawyers because such changes would have to be set forth in the form of laws.

In a democracy there is a bilateral relationship between society and state, governors and governed, which places limits on the role of each. However, the relationship between a society and the social groups which comprise it also has to be defined. The same applies to the relationship between individuals and groups, and between individuals and the state. For example, it is necessary to define the relationship between schools, pupils and parents; between



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individuals and the mass media; and between consumers, producers and distributors.

The Ombudsman could become a key figure in defining the legal relations between individuals and groups with social authority which may not necessarily be identical to the state.

### Church-state relations

The reform of Article 130 of the Constitution and the enactment of the new law concerning religious associations and public worship present a new legal problem: how to render effective the rights created by the church's new status. Lawyers who are notaries may now register church property. This was not possible under Mexican law inherited from the 19th century which refused to recognize church property.

### Conclusion

Lawyers now play a key role in keeping society running smoothly. In the 21st century, this role will undergo modifications as lawyers assume different functions. There is a pressing need to redefine the constituent elements of the state and the legal system.

The legal concepts of popular sovereignty, democracy, and nationhood are no longer adequate for a world characterized by economic globalization and universal problems of environmental protection. New means must be found to adapt national and international law to this new reality in order to encourage greater development and guarantee freedom and social welfare throughout the world.

It is for these reasons that the role of the lawyer in shaping national and international, as well as public and private, law will develop new dimensions in the 21st century. Lawyers are central figures in society. They are responsible for drafting, enforcing, interpreting, executing and applying the laws which govern social life. Lawyers play a vital role in the functioning of society's legal system because it is their responsibility to see that justice is done ✕

<sup>4</sup> The 1824 Constitution was based on this Act which laid the basis for Mexico's independence.