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CURRENT ISSUES IN UNITED STATES-MEXICO LAW AND SOCIETY

LIC. MIGUEL JÁUREGUI ROJAS*

I. INTRODUCTION

One of the goals of the United States-Mexico Law Institute is to recognize and discuss the pertinent legal, political, and social issues that our neighboring nations share. To this end, I have recognized and will address several concerns that in particular Mexico should acknowledge and attempt to resolve. I have categorized the issues as “legal,” “political,” and “social” issues, yet they evade categorization because each issue has lasting repercussions in many areas of society, politics, and law.

II. LEGAL ISSUES

Negotiating the Law

Mexico has one major issue, which to me strikes at the heart of being a lawyer. Our politicians and our judiciary continue to negotiate the law. To conquer this problem will signify the birth of an independent, democratic, free, prosperous, and rich Mexico. Why? Because law and order are essential for Mexico to be able to realize its goals. Law and order are not easy to obtain. Law and order certainly exist; otherwise we would still be in the jungle. Law and order, as they are today, are not enough. We have good and bad judges, and hard-working judges and lazy judges, like the rest of the world. However Mexico has a political problem. Mexico's politicians and judiciary continue to negotiate the law. There are many pending issues that should be prosecuted and should receive some form of judgment. These issues should be looked at by the courts, but they are not being looked at. And the reason they are not being looked at is because in Mexico the enforcement of the law is negotiated in matters of national interest. My concern is that legal issues are being overlooked and laws are not being enforced for the purpose of saving face.

I will mention two of these legal issues quickly here, and discuss them in more detail in the section examining the political confusion among Mexicans.¹ First is the

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1. *Infra*, Section III.

legal issue of the Pemex² union leader's involvement in making political campaign contributions, also known as "Pemexgate."³ The second is that of "*Los Amigos de Fox*,"⁴ and the continuing allegations of improprieties. The events surrounding these two currents are continually alleged to be inappropriate, but at the same time no follow-up investigations are being made, possibly with the exception of *Los Amigos de Fox*.⁵

I strongly believe these are political issues. Yet to address and resolve them becomes the commingled duty of the judicial, legislative, and executive branches; all three share the burden. As Mexicans, it is our duty to see that law and order prevail in this country.

Structural Reform

The second major unresolved issue that currently demands attention is that of structural reform. Mexico has been stalemated now for three years. *El gobierno de cambio*, the government of change, has not been able to pass important structural reforms that Mexico needs.

Tax Reform

The first and most important structural reform is tax reform. The governors of Mexico's thirty-two states are analyzing what needs to be done to reform Mexico's tax law. We are expecting tax reform to occur during legislative days between now and the end of the year 2003.⁶ Perhaps it will not happen at all, or the reforms will be less than are necessary. It will be a *reforma fiscal* "lite"—a weaker set of reforms, but not enough to make a substantial difference. It will be an omnibus tax bill, as in prior years. It will do some good; it will not cure everything; nothing cures everything.

But the tax reform bill will not represent a consensus as to how the Mexican economy should behave. I believe that tax reform and the resurgence of the Mexican market, for the Mexican people with purchasing power, must be commingled with the growth of small and medium-size business. So, to that end the proposal for a flat personal income tax is being discussed. The flat tax idea is this: individuals will have zero tax up to X number times the daily federal minimum wage. Then the next bracket for those who earn more will be around 25% and the highest earner's bracket will be 30%, according to the *diputados*⁷ and the Senators who are discussing tax reform. Hopefully the tax-free bracket will be high enough

2. *Petróleos Mexicanos*, the state-owned Mexican oil monopoly.

3. "Pemexgate" refers to the scandal created when the PRI was accused of diverting state oil funds to finance its 2000 presidential campaign candidate. Lisa Adams, *Cash, Lies and Videos as Mexico Campaigns*, THE INDEPENDENT, March 6, 2004, at <http://news.independent.co.uk/world/americas/story.jsp?story=498369> (last visited May 7, 2004).

4. "The Friends of Fox" is a non-governmental political lobby group.

5. E. Rodriguez, *Se Niega la corte a analizar el Pemexgate*, ESMAS ONLINE, August 20, 2003, at <http://www.esmas.com/noticierostelevisa/mexico/309049.html> (last visited May 7, 2004).

6. Editor's update: The tax reform package was rejected by Mexican lawmakers in December 2003. *Mexico's Fox calls Tax Defeat "A Historic Mistake"*, Bloomberg, Dec. 22, 2003, at http://quote.bloomberg.com/apps/news?pid=10000086&sid=azOB.dukBDuc&refer=latin_america (last visited May 7, 2004).

7. "*Diputados*" are those elected to the *Cámara de Diputados*, equivalent to Congressmen in the U. S. House of Representatives.

to allow Mexicans to make enough money to live above the poverty line, and to live well within their income bracket.

Another proposed tax reform considers making changes to the already existing value-added tax. For a while both food and medicine were taxed in Mexico. When the earthquake emergency came to pass, those taxes became politicized and were eliminated. Now that Mexico has survived several crises, those taxes are back on the discussion table. Hopefully a tax on food and medicine will not hurt poor people but will make everyone contribute to the public expenditures. So, if Mexico can agree that a flat income tax is fair and if we can agree that taxing food and medicine will not hurt the most vulnerable in society, we may find consensus that it will be a simpler tax system which may be viable given the complicated circumstances of how we live today.

One of the major challenges facing the economy now is the tax-free business conducted in the underground economy, the grey market.⁸ The grey market is reportedly exceeding 40% of the whole Mexican economy. Therefore, finding a way to encourage paying taxes is something that has to occur if Mexico is to prevail and grow, and if the Mexican government is to create a social safety net.

State Reform

The next topic to consider is the unresolved issue of state reform. Mexico currently has a wide variety of views on state reform, and the views seem to vary by political point of view. In the lower chamber in the Senate, we have very strange bedfellows after the elections of July 2, 2003. The *Partido Revolucionario Institucional* (PRI)⁹ and the *Partido Verde Ecologista de México* (PVEM)¹⁰ have begun to band together, while the *Partido de Acción Nacional* (PAN)¹¹ and *Partido de la Revolución Democrática* (PRD)¹² have begun to join forces. This is unheard of to see two quite different political stances make such alliances. I am not a member of any party, but my concern is that due to the disputes between the PRI and PAN, which are really the governing parties, the only winner of this will be the PRD. Now in itself, that is not a bad deal, but it depends on is the PRD's stance.

Now it could mean trouble if the PRD promotes reforms that put Mexico back twenty years to a state-driven economy and a centralized planning system, and we walk away from the market-driven economy that we are attempting to live with under the North American Free Trade Agreement (NAFTA)¹³ and other international trade agreements we have signed. If the PRD does not propose a state-centered

8. The "grey market" refers to a class of vendors not authorized by manufacturers who sell legal products and services.

9. PRI was Mexico's ruling party for approximately 71 years. Further information about the PRI is available at its official website at <http://www.pri.org.mx/> (last visited March 12, 2004).

10. PVEM is Mexico's environmentalist party. Further information about the PVEM is available at its official website at <http://www.pvem.org.mx/> (last visited March 12, 2004).

11. PAN is President Vicente Fox's party. Further information about the PAN is available at its official website at <http://www.pan.org.mx/> (last visited March 12, 2004).

12. PRD is the Mexican social-democratic party. Further information about the PRD is available at its official website at <http://www.prd.org.mx/> (last visited March 12, 2004).

13. North American Free Trade Agreement, Dec. 8-17, 1992, U.S.-Can.-Mex., 32 I.L.M. 289 (1993) (entered into force Jan. 1, 1994).

economy, and they behave like Felipe González in Spain,¹⁴ who talks with a left view but acts as the most conservative government on earth, that will be fine, but only time will tell. Certainly, the attraction of NAFTA, the attraction of the United States and the well being of Mexico's people are at stake here.

III. POLITICAL ISSUES

A major political issue Mexico must confront now is the political confusion among the Mexican people. Across the board, political experts agree that during the elections, the reactions of Mexicans have been very similar to the reaction of post-Soviet Russian voters. Mexicans are not accustomed to being free. We have been under the PRI's rule for more than seventy years.¹⁵ They did good, bad, and mediocre things. Overall, Mexico grew. There was a fair amount of freedom in the years the PRI was in control of the government. There was certainly order. Mexicans had an orderly life and the people had hope.

Since the *gobierno del cambio*¹⁶ came in, we have been unsure how it would act. If the opposition parties had stalled the *gobierno del cambio* and President Fox's initiatives when he took office, then the immediate reaction of the people would be that of hopelessness and doubt. The people would reconsider if it was a good idea to change. Would it be better to remain with the PRI? This mirrors exactly the same situation that the world witnessed in Russia. The Russian people questioned the wisdom of their choice. Would it have been better to remain communist? Do we want to continue to receive a handout from the state? Is it better to get a handout from a party in power or do we do it ourselves? Doing it ourselves is difficult. Being in free enterprise is difficult. Ruling your own life is difficult. Not having a paternalistic government is difficult. Likewise, the Mexican people are doubtful. They are worried and feel inundated with complications. This is most true in Mexico City, though not as evident in the provinces.

The Mexican people, therefore, see the PRI as a safe harbor. But, is it really a safe harbor? Well, the answer is, to the extent that the PRI would modernize itself and then has confused itself with any modern political tendency or fad, its name would lose meaning. It could be the PAN, it could be the PRD, or it could be the PRI. The Mexican people are confused as to what are the policies espoused by the parties in power. The undefined and undecided policies of the various partisan political groups make Mexican voters tread on uncertain and unsafe ground.

The stalemate of political parties has clearly undermined the success of the *gobierno del cambio*. Within three years there has been a big change in voting patterns. Now, the Lower Chamber is under the control of the PRI again. A total change of attitude has taken place within the PRI. Also, a clear division of two

14. Felipe González is the former socialist party Prime Minister of Spain. Several members of his government in the 1980s and early 1990s, including the former interior minister, were convicted in 1997 of engaging in a "dirty war" against Basque separatists. González has denied any knowledge of their actions. After losing public confidence, his socialist party lost the 1996 election to José María Aznar, leader of the Popular Party.

15. For a brief history of the PRI see its official website at <http://www.pri.org.mx/principal/PRI.hum> (last visited March 12, 2004).

16. President Vicente Fox's PAN party government, dubbed the "government of change."

wings of the PRI has taken place. This division could mean a future of discontent, or it could mean a future of disagreement within the party.

For a closer look at current disagreements, we have to look at the Cabinet members. Everybody does what they feel they should be doing; there is no real coordination. The reason for this lack of coordination is that we are too new at democracy, we are too new at getting the active government together, and therefore, there are disagreements. We call it the Montessori Cabinet.¹⁷ The views on the future of Mexico are there, and they are not helping President Fox, they are not helping the Cabinet members, and they are not helping the Mexican people. In the next three years, consensus among the Cabinet should be encouraged. It would be helpful to correct certain things to promote the health of our democracy.

One problem that we have had in this country is that if a president said "Yes," the people said "Yes." If the president presented a bill to Congress, that bill would come out exactly as the president wanted. If Congress changed a bill, the president would change it back and put it in the books as law. We are not in that situation today; Mexico is democratic. There has been a great change and therefore there is discontent and worry. The lack of PAN party support of President Fox has been a terrible, debilitating factor. Elected PAN officials are not working with their President. They are not really implementing the policies that the President espouses, not across the board. Instead, they are implementing those that PAN considers to be germane to their position. They are not accustomed to being a party in power. They are accustomed to being the opposition party. Therefore, they are not accustomed to creating laws, they are not accustomed to creating public policy, and they are not accustomed to governing across the board. Therefore, we see the great deficiency. The most aggravating example of this is Senator Diego Fernández de Cevallos Ramos. He is a complete mystery.

Senator Fernández de Cevallos is a colleague, a lawyer, and also a Senator. He is a great politician, one of the banners of the PAN. At the same time, however, there have been a number of allegations of his power-mongering and using his position for self-serving motives. These allegations, if true, are detrimental to the stature of the Senate and the PAN, and the conflicts of interest create discontent in the Mexican people at large.

Another source of political discontent is the dual scandals of Pemexgate and *Los Amigos de Fox*. The PRI decided to conflate *Los Amigos de Fox* with Pemexgate. They are not the same thing, however, and they should not be linked because *Los Amigos de Fox* is made up of people and privately owned companies that were contributing to a political campaign. They are alleged to have contributed to a pre-campaign (not the formal campaign because that has to be funded by the state). They could not have done what has been alleged in the formal campaign. So if they

17. Montessori refers to the teaching style known for its lack of unified movement, a sort of at your-own-pace learning style. Ray Suarez, *A Neighbortly Meeting*, PBS Online, Sept. 5, 2001, at http://www.pbs.org/news/hour/tb/latin_america/july-dec01/fox_9-5.html (last visited March 12, 2004); see also, *Mexico Suffers a Serious Case of Political Paralysis*, THE MIAMI HERALD, July 21, 2002, at <http://www.miami.com/mld/miamiherald/news/world/americas/3701490.htm> (last visited March 12, 2004) ("Mexicans joke that Fox has a 'Montessori Cabinet' because, as in the private schools that follow the Montessori teaching system, everyone does whatever he wants. The joke has appeared in print so often that Mexico's Montessori school felt compelled to call a news conference to categorically deny that it tolerates anarchy, tacitly suggesting that it is more disciplined than the government.").

did not break the law, which is the position of those who defend *Los Amigos de Fox*, then you cannot compare the two. A further difference is that *Los Amigos de Fox* collected and used only private money. It may have been legally or illegally contributed but it was private money.

Pemexgate, on the other hand, concerned public money. Its leaders used Pemex money, which is public money, to help finance a political campaign. The scandal resulted from the fact that huge amounts of money were allegedly given by leaders of Pemex to finance the campaign of the PRI candidate. The PRI has tried to link the two scandals. But the Mexican people understand the differences and hope that the Federal Electoral Tribunal will decide they are not the same, and they will take different legal routes. Fortunately, the court will decide.

Another condition that aggravates the problem of political confusion among the people is that in the Congress and the Senate, the current trend is toward block voting. In a sense, there is no leeway. Elected officials feel that they cannot vote whichever way they like. Only once has a party member voted against the party position in the past three years. Block voting is what stalemates the growth and the maturity of the Mexican democratic system that we are living in. So, therefore, Mexico has arrived at a consensus-versus-majority concept. Do we want to have majority or consensus, or do we want to have block voting, or do we want to have unanimity? What are we doing so that we are able to make the most needed changes in Mexico?

IV. SOCIAL ISSUES

Security, poverty, joblessness and a decline in competitiveness of Mexican workers continue to be the major issues confronting Mexico now. Many steps have been taken to control the growth of the problems, but much more needs to be done.

The crime and lack of security, especially in Mexico City, is a growing problem. There are a great number of car thefts; there are problems with kidnapping; there is an armed robbery every day; organized crime is still going strong. We have tried everything in the book, including bringing Mr. Rudolph Giuliani¹⁸ to Mexico City for his advice on how to make it safer. Mexico has created the kin to the FBI. The legislature has put a lot of public money into this. President Fox has really been a steward of this issue.

However, not all the efforts have been successful. We have not been successful because we have a political problem, a democracy problem, and an ethical problem. Our society grew with the conception that you could bribe policemen. Our society grew with the conception that you could negotiate the law. Our society therefore has no respect for institutions. It may be an exaggeration to say that people have "no respect," but people are aware to some degree that you can bribe a policeman. And to the same degree, those who do bribe have no respect for the law. This is both the root of the problem and the result of living in an unsafe place. So how do we resolve the problem?

18. Rudolph W. Giuliani, former mayor of New York City, is known for being tough on crime and making New York appealing to visitors after reducing the major crime problem of the 1990s.

Transparency will help. We have a law of transparency, the *ley de transparencia*.¹⁹ Such a law should reveal everything that happens in the public sector, through publication. Why? Because then people become accustomed to having those public officials be accountable. We have no concept of accountability in the public sector of Mexico, across the board. We need it. We need accountability and we have to make everybody accountable and hopefully the transparency law will be sufficient.

Now, because of joblessness, because of poverty, because of lack of education, we have received very bad marks in our education system. We know that we are behind. We know that we have not done enough. We know that the state-driven system has failed. What are we going to do to educate our people? The weak education system has begun to manifest itself in social unrest and is fostering organized crime. Proof presents itself in the gray market; it presents itself in contraband; it presents itself in street vending; and it presents itself in lawlessness in the payment of taxation. So therefore, we think the Mexican Government, and we as a people, have a lot of work to do to control that.

Mexico has lost many jobs, aggravating the poverty level. Why is Mexico losing jobs to China? Why are we losing *maquiladoras*?²⁰ The degradation of the workforce is due, in part, to the lack of education and the lack of on-the-job training. The Mexican people need to be trained to elevate their skills, and we need to have higher paying jobs so that the value-added chain comes back to Mexico and does not go to China.

We are very concerned about the security of the United States. We are very concerned that nothing happen to our borders. If that is true, we are the perfect partner for the United States. If that is true, we should not be treated as slave labor, but rather skilled labor. We should upgrade the chain, and we should therefore compete at another level for the benefit of the United States, Canada, other trading partners, and Mexico. So therefore, I think this problem of job loss is preventable, even though the informal economy is growing. You have a social safety net if you collect more taxes, and then, basically, you are going to have to control the food trade.

The farmers are being taken advantage of by the urban underground. The lack of control of the food trade in Mexico is problematic. But sometimes the lack of control favors the needy, and in that respect it works in favor of keeping social unrest away from Mexico.

Now, that takes me to the last topic that I wanted to share with you and that is Mexico's competitiveness. The lack of structural reform has taken away a lot of Mexico's competitiveness. Frankly, we must ask both our foreign investors and our Mexican investors, "What do you want?" A simple answer is that they want returns and profit comparable to other locations. They want business and a pro-business environment. If we do not give them a pro-business environment, if we do not give them ease of operations, and if we do not do something drastic so that we achieve the structural reforms that we need to be competitive, we are going to have trouble

19. "LEY FEDERAL DE TRANSPARENCIA Y ACCESO A LA INFORMACIÓN PÚBLICA GUBERNAMENTAL, D.O.," 11 de junio de 2002.

20. "Maquiladoras" are manufacturing plants.

attracting foreign direct investment. What is even worse, Mexico can not even attract Mexican investment. I believe that if we make the structural changes that I was referring to, this situation will change.

The lack of infrastructure is the next biggest problem of Mexico and will have to be addressed within the next ten years. We have already made strides. President Fox has launched some initiatives that are going to work, in my view. They have been adapted and “Mexicanized,” taking from the United Kingdom’s idea of public partnerships. There will be systems financing for infrastructure projects. These initiatives are now being implemented. They will be a reality in Mexico, and they will revitalize Mexico’s infrastructure. I anticipate that one of the motors of change that will lead to the growth of Mexico will be the development of Mexico’s infrastructure.

Education decay needs to be addressed through additional funding. Education would be my first concern, then healthcare and training of workers, followed by protection of our children and families. Mexico, in achieving competitiveness and making structural changes, will be able to overcome its deficiencies in education, and in the social safety net. We will train our workers.

What is the state of workers’ unions? We have union strongholds in certain areas. Most of the unions are now reviewing collective bargaining; it is almost palpable across the board in collective negotiations, except for unions like the electric company, the *Comisión Federal de Electricidad* (CFE),²¹ and the national oil company, Pemex. Those unions still believe in the mother state. So therefore, the union strongholds are changing, the policy is changing, and the idea of democracy is changing.

V. CONCLUSION

Is law and order evolving? Yes, it is. Is law and order going to prevail? It must. Are we doing the right things in the judiciary? We are. Is the judiciary a good power? It is wonderful. Is the judiciary good across the board? No. Is there hope that it will get better? Yes. Is Mexico going to be safe? Yes. Is Mexico going to continue being a good neighbor to the United States? Yes. Is Mexico going to grow with the United States? Inevitable.

21. CFE is Mexico’s federal electricity utility.