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# Public Interest Lawyering in Mexico and the United States

Carl M. Selinger

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# PUBLIC INTEREST LAWYERING IN MEXICO AND THE UNITED STATES

CARL M. SELINGER\*

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## I. INTRODUCTION: THE CONCEPT OF PUBLIC INTEREST LAWYERING

In the study of comparative law, a central concept is that of *functionality*: the different ways that the laws and legal systems of different countries attempt to deal with the same problems.<sup>1</sup> One such problem is the provision of legal services to persons who are unable to retain a private lawyer. Every society that is

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\* Professor of Law, West Virginia University College of Law; B.A. University of California (Berkeley), 1955; J.D. Harvard Law School, 1958. A shorter version of this Article was presented at Conference XXXII of the Inter-American Bar Association, in Quito, Ecuador, in November, 1995. The author wishes to express special appreciation for the support provided for his research by West Virginia University's Regional Research Institute, where he is a Faculty Research Associate.

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1. See KONRAD ZWEIGERT & HEIN KOTZ, 1 INTRODUCTION TO COMPARATIVE LAW 31 (Tony Weir trans., 2d ed. 1987).

committed to the legal equality of its citizens must find a way to provide legal assistance to persons who lack sufficient financial resources to engage legal counsel. And every society that is committed to the rule of law must find a way to provide representation to those citizens whose legal rights are being violated by government officials, political figures, economic interests, or criminal enterprises so powerful that private attorneys hesitate to oppose them.

Both the United States and Mexico profess commitments to the legal equality of their citizens and to the rule of law. The American commitments are expressed most dramatically in the legend chiseled into the facade of the Supreme Court building in Washington, D.C.: "Equal Justice Under Law." The Mexican Constitution guarantees access to justice for everyone,<sup>2</sup> and states that no person or corporation is exempt from the law.<sup>3</sup>

The firmness of these professed commitments is questionable. In the United States, legislation prohibits lawyers in federally-funded programs that serve the poor from representing women who want to challenge restrictive abortion laws.<sup>4</sup> Current efforts in Congress to bar these same legal services lawyers from challenging new limitations on social welfare benefits and regulations affecting illegal immigrants and prisoners<sup>5</sup> seem to reflect a view that such laws should be immune from constitutional scrutiny.<sup>6</sup> With respect to Mexico, a very well-informed American lawyer concluded in 1994 that "[t]he persistence of widespread human rights violations in Mexico and the impunity with which such violations are committed contradict the stated commitment of the Mexican government and President Salinas to improve human rights practices."<sup>7</sup>

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2. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, art. 17, ¶ 2.

3. *Id.* art. 13.

4. Legal Services Corporation Act, 42 U.S.C. § 2996(b)(8) (1994).

5. See *Conferees Settle on \$278 Million for LSC — Administration Veto Likely*, UPDATE (Project Advisory Group, National Organization of Legal Services Programs) Dec. 5, 1995, attachment; Laurie D. Zelon, *Changes in Law Demand Push from Private Bar*, NAT'L L.J., Jan. 15, 1996, at B8.

6. "What baffles and angers Legal Services' critics is that Congress subsidizes lawsuits to undermine the kinds of welfare reforms it claims to support." Carl Horowitz, *Welfare Reform: Like a Rorschach Inkblot Test, The Term Evokes a Host of Interpretations*, INVESTOR'S BUS. DAILY, July 24, 1995, at A1.

7. Raul M. Sanchez, *Mexico's Governmental Human Rights Commissions: An Ineffective Response to Widespread Human Rights Violations*, 25 ST. MARY'S L.J. 1041, 1056-57 (1994).

This Article, however, assumes that the commitments are serious, and goes on to look, first, at the different ways in which the two countries have sought to make available what we in the United States call public interest lawyering, and, second, at the probable future development of such lawyering in Mexico.

## II. U.S. RELIANCE ON THE PRIVATE BAR

In the United States, the primary responsibility for securing equal justice under the law has traditionally rested, and rests today, on the over seventy percent of American lawyers in private practice<sup>8</sup> and on the organized bar associations to which they belong. Indeed, a textbook assigned at many American law schools asserts that, "[t]he legal profession in the United States has regarded itself, uniquely among legal professions in the world, as charged with a responsibility to provide legal assistance to the poor."<sup>9</sup>

Two moral bases underlie the professional responsibility of private lawyers in the U.S. to provide legal assistance to those who might not otherwise receive it. First, American lawyers consider themselves officers of courts that are committed to administering justice.<sup>10</sup> In an adversarial system of litigation in which the primary responsibility for discovering evidence and legal authority is vested in lawyers, it is very difficult for a court to be sure it is doing justice if one of the parties has no legal assistance.<sup>11</sup>

Second, American lawyers have long held a broad monopoly, not only over representing parties in court but also over giving out-of-court legal advice. Selective standards for admission to law school and state examinations for admission to the bar limit the number of persons who may practice law. Thus, American lawyers are deemed to owe special obligations to society as a *quid pro quo* for their exclusive privileges.<sup>12</sup>

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8. See BARBARA A. CURRAN & CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1990'S 7 (1994).

9. GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING 1043 (2d ed. 1994).

10. *Id.*

11. See Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1059 (1970).

12. See Barlow F. Christensen, *The Lawyer's Pro Bono Public Responsibility*, 1981 AM. B. FOUND. RES. J. 1, 14-18; AMERICAN BAR ASSOCIATION COMMISSION ON

With respect to legal services for the poor, many poor criminal defendants are represented by public defenders who are full-time employees of federal or state governments.<sup>13</sup> A few federal and state agencies charged with administering particular laws, such as those against discrimination by private employers on the basis of race or sex, provide legal assistance to persons claiming that their legal rights have been violated. Some 4000 lawyers — a very small number — are employed by independent local legal services programs that receive funding from the federal government to provide civil (non-criminal) legal services to the poor.<sup>14</sup>

Much of the burden of representing poor criminal defendants is borne, however, by lawyers in private practice who are appointed and paid by the courts to represent defendants in particular cases; lawyers generally may not refuse such appointments.<sup>15</sup> On the initiative of state bar associations (to which lawyers usually must belong), federally-funded legal services programs also receive financial support from the interest that accrues on client funds held by private lawyers for short periods of time.<sup>16</sup> These programs also draw upon the services of many private lawyers who have agreed to represent referrals from the programs without charge.<sup>17</sup> Law school clinical education programs that serve actual clients are frequently oriented toward serving the poor and are taught by deeply committed, full-time professors.<sup>18</sup>

The American Bar Association (ABA), a voluntary association comprising about forty percent of the country's lawyers,<sup>19</sup>

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PROFESSIONALISM, IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR THE REKINDLING OF LAWYER'S PROFESSIONALISM (1986), *reprinted in* 112 F.R.D. 243, 261-62 (1987).

13. In 1991, 8816 lawyers, or 1.1% of the U. S. total were employed by *either* public defender offices or non-government legal aid agencies. See CURRAN & CARSON, *supra* note 8, at 7.

14. See HAZARD, *supra* note 9, at 1045.

15. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.2 (1983).

16. See HAZARD, *supra* note 9, at 592-93.

17. In West Virginia, for example, over 730 lawyers have signed up for the State Bar's Pro Bono Referral Project and agreed to take at least one pro bono case each year. See Thomas V. Flaherty, *President's Page*, W. VA. LAW., Jan. 1996, at 4, 5.

18. See REPORT OF THE ABA TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM 54, 247 (1992).

19. In 1994-95, the American Bar Association membership was 339,476. See *National Declines, Local Growth*, NAT'L L.J., Jan. 15, 1996, at A22. There were approxi-

strongly supports federal funding for legal services programs.<sup>20</sup> The *Model Rules of Professional Conduct*, recommended by the ABA for adoption by the states, suggest that every lawyer aspire to provide at least fifty hours per year of no-fee or reduced-fee legal services and make financial contributions to legal services programs.<sup>21</sup> It is widely assumed that anticipated cutbacks in federal funding for legal services programs will lead to some expansion in organized volunteer services by private lawyers,<sup>22</sup> and perhaps even to state requirements that lawyers perform such services.<sup>23</sup>

Over the course of American history, labor union leaders, political radicals, African-Americans and some criminal defendants charged with shocking crimes have at times encountered great difficulty in obtaining legal representation.<sup>24</sup> However, the official position of the organized bar is expressed in an earlier ABA code of ethics adopted by practically every state: "Regardless of . . . personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse."<sup>25</sup> The current *Model Rules* encourage such representation by informing the public that "[a] lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities."<sup>26</sup>

Today it seems unlikely that *anyone* in the United States would have difficulty obtaining representation from the private bar merely because he or she is challenging the government or other powerful interest. This is the result of many factors, including the increased size of, and economic competition within,

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mately 875,000 lawyers in the U.S. in 1995. See THOMAS D. MORGAN & RONALD D. ROTUNDA, PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY 2 (6th ed. 1995).

20. See 11 LAW. MAN. ON PROF. CONDUCT (ABA/BNA), CURRENT REPORTS, No. 15, Aug. 23, 1995, at 251.

21. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1983).

22. See, e.g., Robert N. Weiner, *Heeding the Call to Fill Service Gap*, NAT'L L.J., Jan. 15, 1996, at B7.

23. See, e.g., *Point, Counter Point: Should Providing Pro Bono Legal Services Be Mandatory? (Yes: Richard Lee; No: Pauline Gee)*, CAL. B.J., Aug. 1995, at 12.

24. See VERN COUNTRYMAN & TED FINMAN, THE LAWYER IN MODERN SOCIETY 576-94 (1966); see generally Michael E. Tigar, *Essay, Defending*, 74 TEX. L. REV. 101 (1995).

25. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 2-27 (1969).

26. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2(b) (1983).

the legal profession since the 1960s.<sup>27</sup> Other factors include the increased racial and gender diversity in the profession, the increased number of law practices that cross state lines, the political and ideological fragmentation of the American body politic, the lure of media celebrity for lawyers who take on controversial cases, and laws that allow the recovery of attorney's fees against certain unsuccessful governmental and private defendants.

I do not suggest that the picture in the United States is a satisfactory one, especially for the poor. Only when threatened with incarceration do the poor have a *right* to publicly-funded legal representation,<sup>28</sup> and the private bar has simply not done enough to make up for meager governmentally funded services. Studies show that only about fifteen to twenty percent of the legal needs of the poor are now being met.<sup>29</sup> With respect to opposing powerful interests, no one knows how the private bar in the U.S. would respond to, for example, the threats of physical harm or harassment that confront lawyers in other countries<sup>30</sup> and some doctors who perform abortions in the United States itself. Increasing competition from non-lawyers in providing legal services,<sup>31</sup> in addition to increasing numbers of lawyers themselves, could well undermine the exclusive privilege basis for obligations of public service.

### III. MEXICAN RELIANCE ON GOVERNMENT LAWYERS

Whether or not any surveys of the legal needs of Mexico's poor have been completed, I met no one during my research in

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27. See MORGAN & ROTUNDA, *supra* note 19, at 2 (stating that in 1995 there were 2 1/2 times the number of lawyers there were in 1970).

28. See HAZARD, *supra* note 9, at 1035-36.

29. See REPORT OF THE ABA STANDING COMMITTEE ON LAWYERS' PUBLIC SERVICE RESPONSIBILITY, ET AL. (1993), *quoted in* STEPHEN GILLERS & ROY D. SIMON, JR., REGULATION OF LAWYERS: STATUTES AND STANDARDS 263, 265 (1994).

30. See, e.g., *Lawyers Drop Case After Threat in Egypt*, N.Y. TIMES, July 19, 1995, at A7. Even in the U.S., some criminal defense lawyers believe that federal prosecutors are using attorney's fee forfeiture proceedings and other forms of alleged harassment to carry on a "war" against the defense bar. See Michael Checcio, *Paranoid or Persecuted?*, CAL. LAW., Jan. 1994, at 44. Also, prior sex offenders who may be subject to a New Jersey law requiring that residents of their communities be notified of their criminal records have experienced difficulty in obtaining legal representation. See Robert Hanley, *'Megans Law' Leaves New Jersey Lawyers in a Tough Spot*, N.Y. TIMES, Oct. 16, 1995, at A9.

31. See ABA COMMISSION ON NONLAWYER PRACTICE, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS (June, 1995).

Mexico during the summers of 1993 and 1994 who believed that their needs were being adequately met, or who did not believe that opponents of the government or powerful private interests frequently faced real problems in obtaining legal assistance.<sup>32</sup> But if Mexico falls short of meeting its constitutional commitments, its shortcomings are quite distinct from those of the United States. In Mexico, the primary responsibility for public interest lawyering rests with lawyers employed by the government. According to one estimate, about half of Mexico's lawyers are employed by federal, state, and local governments,<sup>33</sup> versus approximately thirteen percent in the U.S.<sup>34</sup>

Some government lawyers in Mexico represent the poor in judicial proceedings. At the federal level, only criminal defendants are provided with *defensores de oficio*.<sup>35</sup> Conversely, in the Federal District of Mexico City the poor can also receive the help of *defensores* in civil, family, labor, and landlord/tenant matters.<sup>36</sup> Other lawyers are employed by the government to enforce labor and agrarian reform laws by hearing complaints against employers and landowners and attempting to resolve

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32. These observations about the Mexican legal system, and a number of others to follow, are based wholly or in part (in addition to published sources) on the author's interviews with Mexican lawyers, judges, legal educators, social scientists, and human rights advocates. While the atmosphere for criticism of the system seemed relatively open in the summers of 1993 and 1994, the still unsolved June, 1995 killing of a Mexico City judge who had complained publicly about political pressure has doubtless created tension and some concern about reprisals in the legal community. See Tim Golden, *Mexico Judge in Union Case is Shot Dead*, N.Y. TIMES, June 21, 1995, at A7. See also U. S. Citizen Cited to Leave the Schedule [sic]; Will Ask for a Review of His Case; Another 20 Foreigners Have Been Pressured, LA JORNADA (Mexico City), Jan. 15, 1996 (Chris Ames trans.) (reporting alleged government intimidation of lawyer in state of Chiapas who was representing American filmmaker threatened with expulsion from Mexico). Therefore, the author does not attribute negative comments to particular interviewees.

33. See PETER S. CLEAVES, PROFESSIONS AND THE STATE: THE MEXICAN CASE 16 (1987) (estimating that the Mexican legal profession is "split more or less evenly between the state and private sectors."). According to Dr. Miguel Acosta Romero, an authority on the legal profession in Mexico, reliable statistics on the number of lawyers pursuing different careers are not available. Letter from Dr. Miguel Acosta, Law Faculty Member, *Universidad Nacional Autonoma de México* (on file with author).

34. See CURRAN & CARSON, *supra* note 8, at 7.

35. See LUIS RUBIO ET AL., A LA PUERTA DE LA LEY: EL ESTADO DE DERECHO EN MEXICO, capt. IV (1994).

36. See Esperanza Barajas Urias, *Sin título, la mayoría de quienes representan a los pobres en juicios*, LA JORNADA (Mexico City), Aug. 14, 1995. The information about labor cases was obtained from an interview with Dra. Alicia Elena Perez Duarte, a judge and legal educator in Mexico City.



disputes through negotiations or administrative procedures.<sup>37</sup> A National Human Rights Commission investigates complaints of official misconduct and makes recommendations to state and federal authorities concerning whether to prosecute or conduct further investigations.<sup>38</sup> Some government lawyers (including lawyers for the *Solidaridad* development program and others employed by the governing PRI party) staff legal advice offices, but do not participate in legal proceedings.<sup>39</sup>

These government programs are rife with problems. For one, salaries are very low.<sup>40</sup> Some *defensores* in Mexico City are paid only about twenty-five percent of what a private practitioner would receive to handle a similar case.<sup>41</sup> Such low earnings lead many lawyers to accept paying cases on the side, to channel potential paying clients to their friends in the private bar, to accept monetary tokens of "appreciation" from the families of poor clients, and to extort small sums for performing routine minor services.<sup>42</sup>

In addition, the workloads of *defensores* are often unmanageable. Some *defensores* in Mexico City are expected to handle as many as a hundred cases at a time. Consequently, little or nothing is accomplished for many clients.<sup>43</sup> Government lawyers often lack adequate office space, equipment, and secretarial assistance.<sup>44</sup> Government service tends to attract mostly younger lawyers, who lack practical training and are often not fully qualified *licenciados*,<sup>45</sup> having not completed a required thesis or passed a comprehensive examination.<sup>46</sup> Many lawyers immediately leave government practice when they find a position in

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37. See CLEAVES, *supra* note 33, at 92. See also Stephen Zamora, *The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement*, 24 LAW & POL'Y INT'L BUS. 391, 446 (1993).

38. See Sanchez, *supra* note 7, at 1052.

39. Interviews with Dra. Alicia Elena Perez Duarte, Magistrada, Tribunal Superior de Justicia del Distrito Federal, in Mexico City (Aug., 18, 1994), and others.

40. See RUBIO ET AL., *supra* note 35, capt. IV.

41. See Barajas Urias, *supra* note 36.

42. *Id.*

43. *Id.* See also RUBIO ET AL., *supra* note 35, capt. IV.

44. *Id.*

45. See Barajas Urias, *supra* note 36. After three years of study, Mexican law students can litigate civil cases and misdemeanors. See Fred V. Perry, *Understanding the Mexican Attorney*, 10 INT'L LAW., 167, 173 (1976). Most students do not graduate, and many who do not finish go into the civil service. *Id.* at 173.

46. See James E. Herget & Jorge Camil, *The Legal System of Mexico*, in MODERN LEGAL SYSTEMS CYCLOPEDIA 1.30.65 (Kenneth Robert Redden ed., 1988).

the private sphere.<sup>47</sup>

In the comprehensive code of ethics adopted by the *Barra Mexicana de Abogados*,<sup>48</sup> Mexican lawyers in private practice are exhorted, much like their U.S. counterparts, to represent indigents without charge,<sup>49</sup> and not to let their decisions to accept or reject cases be affected by the power or wealth of the opposition.<sup>50</sup> These are not binding obligations, however,<sup>51</sup> and only a small percentage of Mexican lawyers belong to the *Barra Mexicana* or other bar associations,<sup>52</sup> which are generally viewed by lawyers in both large and small firms as more focused on obtaining political advancement and government jobs for their members than with upgrading legal skills or improving the legal system.<sup>53</sup> A prominent human rights advocate told me that the last time the bar associations took a position against the government was in 1944, on its treaty-making powers.

Furthermore, legal education in most of Mexico's universities has offered little support for public interest lawyering. The traditional curriculum, developed at the *Universidad Nacional Autónoma de México* (UNAM) in 1907, is highly theoretical, and divorced from the practicalities of the legal profession and the realities of Mexican society.<sup>54</sup> Faculties consist mainly of practitioners who teach part-time (but still theoretically)<sup>55</sup> and do not wish to lose clients or opportunities for political advancement by taking controversial positions. Students often spend their obligatory six months of social service in government departments far removed from the problems of the poor, or in law school clinical programs (*bufetes jurídicos*) where faculty supervisors provide

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47. See Barajas Urias, *supra* note 36.

48. See Eugenio Ursua-Cocke & William P. McPherson, *El Papel del Abogado en Mexico*, 14 REVISTA DE INVESTIGACIONES JURÍDICAS 419, 437 (1990).

49. *Id.* at 442.

50. *Id.* at 441.

51. See Pedro G. Zorrilla Martinez & Manuel Gonzales Oropeza, *Licensing Attorneys in Mexico* 4-5 (unpublished manuscript submitted to the January 1995 Annual Meeting of the Association of American Law Schools, on file with author).

52. See *id.* at 3 (stating that only 2000 lawyers nationally belong to the five recognized associations); Herget & Camil, *supra* note 46. As of 1987, Mexico had 311,572 fully qualified lawyers (a great many do not actually practice). See Ray August, *The Mythical Kingdom of Lawyers*, A.B.A. J., Sept. 1992, at 72, 73.

53. See CLEAVES, *supra* note 33, at 66.

54. See Artemio Roque Alvarez, *Los abogados del futuro*, EL NACIONAL, INSTANCIA (Mexico City), July 7, 1992 at 5; Perry, *supra* note 45, at 171-74; Herget & Camil, *supra* note 46, at 1.30.61-65.

55. See Herget & Camil, *supra* note 46, at 1.30.64.

little real training and occasionally attempt to charge clients.<sup>56</sup>

With no appreciable participation or financial support from the bar as a whole<sup>57</sup> — Mexicans themselves note the absence of any real tradition of charitable giving<sup>58</sup> — the burden within the private sector of providing competent and honest legal assistance to the urban poor, *campesinos*, and indigenous peoples, and of opposing the government and other powerful interests has been assumed by a very small interlocking network of lawyers in private practice, lawyers for non-governmental organizations, and legal academicians who provide as much of the required service as they can. This group probably still numbers no more than a thousand nationwide.

The umbrella organization for these lawyers is the *Asociación Nacional de Abogados Democráticos* (ANAD), established in 1991.<sup>59</sup> As of 1993, ANAD comprised about 250 members in Mexico City and another 200 in twelve of Mexico's thirty-one states.<sup>60</sup> Since winning its first fight with the government over the inclusion of the word "*democrático*" in its title (which the government initially declared could only be used by a political party),<sup>61</sup> ANAD has opposed the government on such issues as NAFTA and the privatization of collective farms and government enterprises. It advocates greater independence for the official Human Rights Commission,<sup>62</sup> better training and higher pay for *defensores de oficio*,<sup>63</sup> and more vigorous investigations of corruption in the judicial system.<sup>64</sup>

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56. Interviews in June, 1993 and Aug. 1994.

57. "Se puede concluir . . . que los juristas no han aportado su colaboración a la búsqueda de la justicia, el pretendido primer propósito de su profesión." Ursua-Cocke & McPherson, *supra* note 48, at 425. In English: "One could conclude . . . that the attorneys have not contributed their participation to the search for justice, supposedly the primary purpose of their profession."

58. See Judith Bicknell, *From Handouts to Self-Help*, EL FINANCIERO (Int'l Ed.), Aug. 15-21, 1994, at 10.

59. See *Encuentro Nacional de Abogados Democráticos* (Oct. 17-20, 1991) (report published by Instituto Latino Americano de Servicios Legales Alternativos) [hereinafter 1991 ANAD Encuentro].

60. Interview with Lic. Jesus Campos Linas, President, Asociación Nacional de Abogados Democráticos, in Mexico City (June 21, 1993).

61. PRIMER INFORME ANUAL QUE EL CONSEJO NACIONAL RINDE A LA ASAMBLEA GENERAL DE LA ASOCIACIÓN NACIONAL DE ABOGADOS DEMOCRÁTICOS 1-2 (1992) [hereinafter ANAD PRIMER INFORME].

62. *Id.* at 2-3, 7.

63. See Barajas Urias, *supra* note 36.

64. See 1991 ANAD Encuentro, *supra* note 59, at 54-55.

Affiliated with ANAD are four other non-governmental organizations. *El Despacho de Orientación y Asesoría Legal* (DOAL) in Mexico City has four lawyers and two paralegals and offers public legal education publications and training programs throughout the country concerning the rights of criminal defendants, workers, tenants, debtors, and citizens in general.<sup>65</sup>

*Mujeres en Acción Sindical* (MAS) is another Mexico City group that began by organizing and representing the employment problems of women workers and is currently handling women's family law problems — especially domestic violence. With only three lawyers and some volunteer paralegals, MAS is fairly overwhelmed as it handles seventy to eighty new cases each month.<sup>66</sup> There is also a *Red* (network) *Nacional de Abogadas Feministas*, but as of 1993 it had only about twenty members, mostly in Mexico City.<sup>67</sup>

*Tierra y Libertad* is basically a one-woman office in Mexico City that seeks to organize and represent groups of *campesinos* all around the country, especially in response to the government's efforts to privatize collective farms.<sup>68</sup> (As in other developing countries, it is extremely difficult to get lawyers into the countryside, where conditions are rough and a great deal of travel is required.) *Chiltak*,<sup>69</sup> an organization located in Chiapas<sup>70</sup> and staffed by a single lawyer, advises groups of *campesinos* and indigenous peoples. It also trains non-lawyer advocates from these communities, some of whom have been appointed municipal judges.<sup>71</sup>

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65. Interview with Lic. Ernestina Godoy, Lawyer with *El Despacho de Orientación y Asesoría Legal* (DOAL), in Mexico City (June 21, 1993). See also DOAL, DOCUMENTO DE TRABAJO PARA EL INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS, SAN JOSE DE COSTA RICA 1993 (on file with author).

66. Interview with Lic. Claudia Barron, Lawyer with *Mujeres en Acción Sindical*, in Mexico City (July 5, 1993). See also MUJERES TRABAJADORAS UNIDAS — MAS, PRESENTACIÓN (undated) (on file with author).

67. DIRECTORIO RED NACIONAL DE ABOGADAS FEMINISTAS (undated) (on file with author).

68. *Tierra y Libertad* is led by Lic. Barbara Zamora Lopez. See Barbara Zamora Lopez, *Actividades Realizadas: Bufete Jurídico "Tierra y Libertad,"* in ANAD PRIMER INFORME, *supra* note 61, at 21-23.

69. *Chiltak* means *compañeros* in the Tzotzil language.

70. The Zapatista uprising occurred in Chiapas in 1995. *Chiltak's* headquarters are located in San Cristobal de Las Casas, Chiapas.

71. Interview with Lic. Javier Valdiviezo, Lawyer for *Chiltak*, in San Cristobal de las Casas (Aug. 11, 1994).

Further, the unofficial *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos* employs two lawyers to investigate human rights abuses throughout the country and to advise local organizations.<sup>72</sup>

While most of these organizations publicly assert their independence from political affiliation, some appear very closely identified with the left-of-center PRD opposition party. Indeed, upon my visit the only way to identify the DOAL office was by a PRD sticker at the entrance to its building. The *Chiltak* office also served as the San Cristobal de las Casas headquarters of the Zapatistas' *Convención Nacional Democrática*.

#### IV. THE FUTURE OF PUBLIC INTEREST LAWYERING IN MEXICO

From time to time, proposals are made to transform public interest lawyering in Mexico in ways that closely resemble the U.S. system. For example, in a recent study of the Mexican legal system, *A La Puerta de la Ley, El Estado de Derecho en Mexico*, the distinguished political scientist Luis Rubio and his colleagues urged the creation of a national U.S.-style system of legal representation and advice for the poor that would be publicly funded, but independent of the courts and of any other governmental unit.<sup>73</sup> In 1993, the presidents of ten Mexican bar associations signed an agreement to jointly promote public knowledge of the law and the legal system (albeit in a joint effort with the government to control crime).<sup>74</sup> In August, 1995, both a prominent official of the governing PRI party and a PRI legislator were reported to say that the law should ideally obligate all lawyers to take some cases free of charge.<sup>75</sup>

The moral foundations for the professional responsibility of private practitioners in the U.S. to contribute services are still

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72. Interview with Mtra. Mariclaire Acosta Urquidi, President, *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, in Mexico City (July 8, 1993). See Mariclaire Acosta Urquidi, *Informe General de labores que rinde la presidenta de la Comisión Mexicana de Defensa y Promoción de los Derechos Humanos a la Segunda Asamblea General Ordinaria de Miembros* (Feb. 1990 - June 1992) (on file with author).

73. See RUBIO ET AL., *supra* note 35, capt. IV.

74. See *Reunión de Diego Valadés con abogados; Señala la PGJDF la necesidad de cultura jurídica en los ciudadanos*, LA JORNADA (Mexico City), June 28, 1993, at 19.

75. See Barajas Urias, *supra* note 36.

largely lacking in Mexico. In Mexico's investigatory system of litigation, lawyers play a much less central role than in an adversarial regime. There are no jury trials — assistant judges rather than lawyers question witnesses, rules of evidence are not strictly followed, and there is no cross-examination of witnesses. The assistant judges prepare written summaries of the evidence which usually become the basis of the principal judge's decision. In criminal cases lawyers make their closing arguments only in writing.<sup>76</sup>

Furthermore, unlike American lawyers who enjoy exclusive privileges, Mexican lawyers do not have a monopoly on giving out-of-court legal advice, and less than fully qualified *licenciados* are permitted to litigate many kinds of cases.<sup>77</sup> Nor is there much selectivity in law school admissions. There are nearly 120 recognized public and private law schools in Mexico,<sup>78</sup> and UNAM alone has an enrollment of 10,000 law students.<sup>79</sup> One thoughtful observer of the professions in Mexico, Peter Cleaves, has written that in an effort to keep bright young people off the labor market and out of political trouble, "[t]he state finds it cheaper to build a classroom and hire a teacher than to construct a factory."<sup>80</sup> Moreover, law graduates do not have to pass an additional state licensure examination.<sup>81</sup> As a result, on a *per capita* basis Mexico may have as many as a third *more* fully qualified lawyers than the United States<sup>82</sup> (doubtless far fewer actually practice at any one time) — with all that must mean to individual lawyers in terms of not feeling especially privileged.

Mexico's severe inequalities of wealth<sup>83</sup> and the fact that its middle class constitutes only a quarter to a third of the population<sup>84</sup> limit in several ways what one may expect from

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76. See Paul Bernstein, *El Derecho y El Hecho: Law and Reality in the Mexican Criminal Justice System*, 8 CHICANO L. REV. 40, 54 (1985); Herget & Camil, *supra* note 46, at 1.30.53-54; Perry, *supra* note 45, at 172, 175-76.

77. See *supra* notes 45 & 46 and accompanying text.

78. See Zorilla Martinez & Gonzalez Oropeza, *supra* note 51, at 1.

79. See *id.* at 3.

80. CLEAVES, *supra* note 33, at 44.

81. See Herget & Camil, *supra* note 46, at 1.30.65.

82. See August, *supra* note 52, at 73.

83. See Sergio Sarmiento, *La evasiva igualdad*, REFORMA (Mexico City), Nov. 17, 1994, at A8.

84. See Jorge G. Castaneda, *Ferocious Differences*, ATL. MONTHLY, July 1995, at 68, 71. See also DAVID E. LOURY, *THE RISE OF THE PROFESSIONS IN TWENTIETH CENTURY MEXICO* 191 (1992).

the private bar by way of public interest lawyering. First, most lawyers probably do not feel secure enough economically to forego income or risk making powerful enemies.<sup>85</sup> Second, the absence of a larger middle class means the absence of what an English writer on Mexico, Sybille Bedford, referred to as "the exercise of pressure through disinterested moral criticism distinct from any direct prerogative."<sup>86</sup> Instead, when it comes to controversial issues, most Mexicans, including Mexican lawyers, are likely to think they have too much to lose to take positions that might prove contrary to their own interests.<sup>87</sup> Thirdly, the relatively small Mexican middle-class has probably obtained a measure of justice through traditional networks of personal connections, rather than developing more effective impersonal legal mechanisms, including litigation.<sup>88</sup>

Since choosing sides on many controversial legal issues in Mexico unavoidably means choosing political sides, efforts to truly "separate law from politics" will in the short term probably achieve little success. For example, in one embarrassing 1993 incident, a seemingly non-political full-page newspaper advertisement appeared protesting proposals to expand the government's arrest and wiretapping powers. The advertisement bore the signatures or endorsements of many distinguished lawyers, human rights advocates and organizations. However, it erroneously contained the logo of the opposition PRD party and was reprinted the next day without the logo.<sup>89</sup> One might hope that at least *within* the major political parties lawyers would consider joining together to form specifically identified legal groups,<sup>90</sup> as is done within the major parties in Great Brit-

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85. Several legal educators stressed to the author the concerns of their students about getting into, or staying in, the middle class.

86. SYBILLE BEDFORD, *A VISIT TO DON OTTAVIO: A MEXICAN JOURNEY* 191 (1953).

87. The right-of-center PAN opposition party seeks to reassure government employees that if elected it would not reduce the civil service, and the left-of-center PRD opposition party seeks to reassure the business community that it would not re-nationalize banks.

88. *Cf.* ALAN RIDING, *DISTANT NEIGHBORS* 113 (1984) (stressing that in Mexico the impersonality of law has to contend with "the powerful and traditional importance of status and personal connections.").

89. *Compare* LA JORNADA (Mexico City), June 29, 1993, at 16, *with* LA JORNADA (Mexico City), June 30, 1993, at 15.

90. The author was told by one legal educator that while lawyers have traditionally been leaders within the governing PRI party, they often feel they can be more influential if they do not "talk like lawyers."

ain.<sup>91</sup> The groups could formulate and publish party legal manifestos taking positions somewhat less partisan and more sensitive to the legal needs of Mexican society as a whole than those that the party might otherwise espouse. In this connection, it was very encouraging when a prominent human rights advocate praised the human rights positions of a group of lawyers from the right-of-center PAN party.

More broadly, any assessment of the future of public interest lawyering in Mexico must take account of that country's long tradition of reliance on the state for social advancement. This stems from the idea that "only the state . . . [has] an unbiased conception of the general interest and the common good."<sup>92</sup> While a recent *Economist* survey highlighted "the emergence of ever more independent voices, pressure groups and grass-roots organisations,"<sup>93</sup> an observant American law professor, Stephen Zamora, reminds us that for all those Mexicans who would prefer a government that ensured greater economic and political freedom, "an equal number of Mexicans would prefer a radically different model, with vigorous governmental controls operating to remove the pronounced economic and social inequities that exist in the country."<sup>94</sup> Indeed, in a recent poll only forty-nine percent of Mexicans favored a democratic form of government, as compared, for example, with eighty percent of Uruguayans and seventy-six percent of Argentineans.<sup>95</sup>

Against this background, Cleaves has concluded that "[i]t is illusory for professionals to think of challenging state power in direct confrontation."<sup>96</sup> This seems particularly true of Mexico's fragmented bar: "[I]n Mexico, one generally speaks of the legal

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91. See, e.g., *Editorial: A Conservative Approach*, 137 NEW L.J. 353 (1987).

92. ROBERTO NEWELL & LUIS RUBIO, MEXICO'S DILEMMA: THE POLITICAL ORIGINS OF ECONOMIC CRISIS 65 (1984), quoted in Zamora, *supra* note 37, at 441.

93. *A Survey of Mexico*, ECONOMIST, (Special Insert), Oct. 28, 1995, at 8 [hereinafter *Economist Survey*].

94. Stephen T. Zamora, *Forward: Searching for the Mexican Model of Government*, 12 HOUSTON J. INT'L L. 181, 185-86 (1990). Even the *Economist* found that, "Mexicans, though disillusioned by their politicians' recent performance, still look first to the central authority for solutions to all kinds of problems. They remain, deep down, true believers in the power of government and of the state." *Economist Survey*, *supra* note 93, at 18.

95. See *En Mexico, solo 49% favorece la democracia: encuesta de CIIPE*, LA JORNADA (Mexico City), Aug. 30, 1995.

96. CLEAVES, *supra* note 33, at 13.



*professions* rather than the legal *profession*.<sup>97</sup> Zamora points out that a banking lawyer in Mexico City has much more in common with a banking lawyer in New York than with a criminal defense lawyer across the city.<sup>98</sup>

According to Cleaves,

to the degree that professionals occupy positions commanding state resources and are entrusted with the task of interpreting official ideology, their influence will increase. Professionals will exercise influence *through* the state as increasingly prominent members of the bureaucratic elite, and not *on* the state as a relatively autonomous force in civil society.<sup>99</sup>

Thus, the most promising approach for public interest lawyering is probably to infuse the state apparatus itself with legal professionalism. Again, quoting Cleaves, "[t]he most articulate professional leaders in Mexico cite as criteria of professionalism a commitment to social justice, rationality and efficiency, abstinence from illicit public sector gain, a strong work ethic, development of techniques suited to national problems, and methods to insure multi-class recruitment into the professional ranks."<sup>100</sup>

In this regard, it is important that at least one law school, at the public *Universidad Autónoma Metropolitana* (UAM), is explicitly dedicated to the training of lawyers "oriented to public service." Founded in 1975 in the aftermath of the 1968 student protests against government suppression of political opposition, the school has a curriculum designed with public sector lawyers in mind.<sup>101</sup> According to 1990 figures for sixteen major public universities in Mexico, UAM had by far the highest percentage of full-time faculty.<sup>102</sup> In their first year, law students at UAM, together with students in economics, sociology, and public ad-

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97. Perry, *supra* note 45, at 175.

98. Stephen Zamora, Remarks to the Section on North American Cooperation, Annual Meeting of the Association of American Law Schools (Jan. 4, 1996). Many Mexican lawyers and even law professors have never heard of the *Asociación Nacional de Abogados Democráticos*.

99. CLEAVES, *supra* note 33, at 18.

100. *Id.* at 102.

101. See *Fabricantes de Abogados*, EL NACIONAL, INSTANCIA (Mexico City), July 7, 1992, at 1, 8-9 (comments of Jorge Fernandez, director de la Division de Ciencias Sociales de la UAM).

102. See LOURY, *supra* note 84, at 180-81.

ministration, take interdisciplinary courses that confront the realities of Mexican economic, social, and political life.<sup>103</sup> Later they can enroll in an exceptionally well-organized and well-supervised live client clinical program, located in a specially designed facility in a nearby poor neighborhood.<sup>104</sup>

Additionally, the private *Academia Mexicana de Derechos Humanos* offers after-hours human rights training programs to a mix of government lawyers, including prosecutors, and public interest lawyers from non-governmental organizations.<sup>105</sup>

In fact, one may see evidence of a promising future for Mexican public interest lawyering in the official National Human Rights Commission. The Commission is staffed by idealistic young lawyers, chosen by merit examination rather than by political connections, who are willing to spend months living out of suitcases as they conduct investigations throughout the country.<sup>106</sup> Created in 1990, the Commission has been criticized for its lack of prosecutorial authority and limited jurisdiction, which does not include violations of electoral and labor rights.<sup>107</sup> However, it has recently exposed police torture of suspected Zapatista leaders,<sup>108</sup> found officials in the state of Guerrero culpable in a police slaying of seventeen leftist *campesinos*,<sup>109</sup> and investigated government tolerance of the illegal activities of

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103. *Fabricantes de Abogados*, *supra* note 101, at 8 (descriptive materials on file with author).

104. The author visited the clinic (*bufete jurídico*) and spoke with several instructors (descriptive materials on file with author).

105. Interview with Sergio Aguayo, President, *Academia Mexicana de Derechos Humanos*, in Mexico City (June 30, 1993); Interview with Carol de Swaan, Executive Director, *Academia Mexicana de Derechos Humanos*, in Mexico City (July 7, 1993); Gloria Ramirez, Program Officer for Education, *Academia Mexicana de Derechos Humanos*, in Mexico City (July 7, 1993) (descriptive material on file with author).

106. Interview with Lic. Victor Arequiano, Lawyer with the National Human Rights Commission, in San Cristobal de las Casas, Chiapas (July 30, 1993); Dra. Alicia Elena Perez Duarte, *supra* note 39.

107. See Sanchez, *supra* note 7, at 1052-55. See generally JORGE L. SIERRA GUZMAN, COMISIÓN MEXICANA DE DEFENSA Y PROMOCIÓN DE LOS DERECHOS HUMANOS, LA COMISIÓN NACIONAL DE DERECHOS HUMANOS — UNA VISIÓN NO GOBERNAMENTAL (1992).

108. See Sara Silver, *Government Denies Zapatista Rebels Tortured to Confess*, AP, Feb. 9, 1996; *Police in Mexico Accused of Torture*, N.Y. TIMES, Feb. 9, 1996, at A4.

109. See Anthony DePalma, *17 Police and 4 Officials Arrested in Mexican Peasants Killing*, N.Y. TIMES, Jan. 11, 1996, at A6; Raul Garcia, *Cuatro son ex colaboradores del gobernador Figueroa Alcocer; el resto, policias*, LA JORNADA (Mexico City), Jan. 11, 1996.

private police forces (*guardias blancas*) in six Mexican states.<sup>110</sup>

Obviously, non-governmental lawyers must be available to contest major presidential policies, if they are to be contested at all. For example, the Supreme Court of Justice has agreed to hear a constitutional challenge to the army's displacement of civil authority in Chiapas where no declaration of a state of emergency was ever made.<sup>111</sup> Four Mexico City law professors, including a former president of ANAD, brought the action.<sup>112</sup> Nevertheless, in the aftermath of the Human Rights Commission's recommendations concerning the Guerrero massacre, the noted political scientist, Sergio Aguayo, remarked that Jorge Madrazo, the current President of the Commission, "*se ha convertido en el Ombudsman que muchos esperábamos.*"<sup>113</sup> I believe that the Commission's kind of public interest lawyering is also what Mexico has been hoping for.

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110. See Triunfo Elizalde, *Cunden guardias blancas*, LA JORNADA (Mexico City), Jan. 15, 1996. *Guardias blancas* is the name given to private police forces employed by local strongmen. Last year, a priest in Puebla was almost lynched for sermonizing against official tolerance of ranchers who used *guardias blancas* to assassinate and evict local Indians. See Priistas intentaron linchar a un cura en Puebla, LA JORNADA (Mexico City), Nov. 8, 1995.

111. See Jesus Aranda, *Diaz Romero atenderá la demanda para determinar la constitucionalidad*, LA JORNADA (Mexico City), Aug. 7, 1995.

112. *Id.*

113. Sergio Aguayo Quezada, *El Ombudsman que esperabamos*, LA JORNADA (Mexico City), Aug. 16, 1995. In English: "He's turned into the Ombudsman we've hoped for."