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Constitutional defense of the Mexican public university

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Resumen

Las universidades públicas, como instituciones del Estado mexicano dotadas de autonomía académica y administrativa derivada del artículo 3° constitucional en su fracción VII, representan la consecución de un ideal universitario en favor del progreso al cumplir una función sociocultural que debe ser orientada por valores y principios axiológicos que fundamenten su razón de ser, lo cual supone un conjunto de responsabilidades para quienes se benefician de esa función. El estudio de las características de esos principios nos da la posibilidad de discutir acerca de los problemas jurídicos que debe considerar actualmente la universidad pública en México. Es por ello que este artículo parte de la teoría constitucional para describir la perspectiva que ofrecen los principios en el origen, desarrollo y futuro inmediato de la universidad pública mexicana.

Palabras clave: autonomía universitaria, universidad pública, Derecho, principios, Constitución.

Abstract

Constitutional defense of the Mexican public university

Public universities, as institutions from the Mexican State provided with academic and administrative autonomy derived from the 3rd constitutional article in its VII fraction, represent the concretion of a university ideal in favor of progress when fulfilling a socio-cultural function that must be oriented by axiological values and principles which fundament their reason to exist, this supposes a set of responsibilities for those who are benefited from that function. The study of these principles' characteristics gives us the opportunity to discuss about the juridical problems public university in Mexico must nowadays consider. It is because of this that the article hereby presented starts from the constitutional theory to discover the perspective offered by the principles in the origin, development and immediate future of Mexican public university.

Key words: university autonomy, public university, Law, principles, Constitution.

Introduction

There are multiple explanations and discourses to answer the problem of access to education in Mexico. Many more are the stats which aim to demonstrate that in Mexico problem of access to education is lack of investment on the field. Nonetheless, the educational deficit has not been explored from the purely juridical perspective; this is to say, concentrated on the legal responsibility of the university as for the fulfillment of its constitutional and social aims and objectives.

The fierce attack on the Mexican public university, started several decades ago, is offensive in the face of the figures these universities provide as for upper and higher education. According to data from the 2004 Statistical Yearbook (*Anuario Estadístico 2004*) of the National Association of Universities and Institutions of Higher Education (*Asociación Nacional de Universidades e Instituciones de Educación Superior, ANUIES*), the National Autonomous University of Mexico takes up 39 percent of the enrolled students in Federal District and seven percent of the national roll.

In this article we give an account of the evolution of the Mexican public university, at the time we establish the bases for its juridical and legislative defense and modernization.

Firstly, it must be pointed out that on June 9th 1980 the decree, by means of which the fraction VIII is added to the 3rd Article of the Political Constitution of the United Mexican States, was published in the Official Bulletin of the Federation; this very fraction became the fraction VII as a result of another decree published in the aforementioned bulletin on March 5th 1993. The amend to the constitutional act was due to the need of recognizing the principle of university autonomy; this is, the fundamental norm was adapted so as to perpetuate the faculty and responsibility of the universities and other institutions of higher education vested in autonomy by the State to govern themselves, with this the constitutional Right of the autonomous university arose; in short, the Constitutional right of the university autonomy.

We must begin by saying that the 'autonomy' term comes from the Greek "*autos*", which means proper, same, and "*nomos*", law. It is a principle of organization whose origin is to be found in European universities such as Bologna, Paris, Oxford, Salamanca and Cambridge. Later, this principle was exported to the universities in the colonies in America through Spain.

In the Latin American context the university autonomy is present in countries such as Argentina, Bolivia, Costa Rica, Chile, Mexico, Peru, Uruguay and Venezuela.

According to the Unesco's General Conference in 1997, the main principle of autonomy is:

... the necessary degree of independence from external interference that university requires regarding its internal organization and government, the internal distribution of financial resources and the generation of non-public sources, the appointment of its administrators, the establishing of its conditions of study and, finally the liberty to carry out teaching and research.

As a juridical concept, university autonomy is translated as the faculty and jurisdiction that determinate beings have before the State to have their own juridical personality, administrate a proper patrimony, as well as to exercise technical and organic autonomies (Pichardo, 1999: 170; Instituto de Investigaciones Jurídicas, 1992: 282-283).

In this sense, the autonomous constitutional organs are compelled by the law to perform determinate State ends; in the particular case of universities, those of providing higher education, research and diffuse culture. Moreover, said ends are accompanied by the respect to certain liberties, among which we find those of teaching and research, that of free examination and discussion of ideas, liberties which are supported in our General Constitution.

The function of these liberties is to guarantee that in university all of the trends of thought as well as those of scientific and social character are present uncensored and unprejudiced, securing the individual autonomy to teach and learn.

In agreement with that exposed in the World Declaration on Higher Education in the XXI Century: Vision and Action of Unesco, academic liberty may be defined as the liberty of the institution's members (scholars, professors and students) to carry out their academic activities within a framework of ethics and international standards, established in said community and without external pressure.

The vertiginous increment in the demand of higher education and the globalization of the economic, financial and technologic interchanges place the university before the challenge of preserving a reasonable balance between the need for technical development and its repercussions on the structure of society; academic liberty and university autonomy are regarded as prior conditions to fulfill the functions society entrusts university with; these previous conditions are only applied to the university community and might be considered as a part of a broader perspective founded upon human rights.

In a more functional and utilitarian perspective the cause of the autonomy is defended because it is also a necessary condition if education is wanted to be a part of a society that "takes risks". Universities should have the liberty to take risks as long as they are to be responsible for the consequences.

Calling on the university autonomy is pointing out the possibility these communities gained 50 years ago at national level to grant higher education and have it at the reach of people. By far, university autonomy is an institution with which the Mexican Nation has been familiarized. Because of this, it is a

permanent compromise of the Mexican State to totally respect said autonomy so that the institutions of advanced culture organize, administrate and function unhindered. Strengthening these institutions, rooted and obliged institutions with the national collectivity, and independent from one another, is an indispensable requisite for the fulfillment of their object.

Universities and higher education institutions which derive their autonomy from the law must be responsible—first of all before their own communities and eventually before the State—for the fulfillment of their plans, programs, methods of labor and for their resources to be destined for their ends.

To sum up, Mexican public universities autonomous by law exercise independence to determine on their own the terms and conditions on which the educational services they provide, the conditions of enrollment, promotion and permanence of their academic body and the form of administrate their patrimony will be carried out.

From the perspective of the Administrative Law, Mexican public universities autonomous by law are identified with ‘decentralization’, which is a way of administrative organization (Serna de la Garza and Ríos Granados, 2003: 3). In spite of the discussion from this perspective and the apparent agreement on the juridical nature of universities, it is undeniable that in the early XXI century it becomes pressing to re-dimension the role of the Mexican public universities autonomous by law before the challenges imposed by the society of information and knowledge.

In order to do so it is required, at least from the juridical perspective, to carry out in the first place the theoretical constitutional understanding of the Mexican public universities autonomous by law; a question that requires to analyze the epistemology of their juridical nature, the scope of their autonomy; but above all, the limits their faculty of self-governing is subjected to. It is thus that further in the text we attempt to establish the basis that allows determining in a juridical manner which the elements that must be observed are so that universities are subordinated to the constitutional principles that regulate their acting as State organs, since in the mid term we seek to develop the epistemological design to defend the constitutional principles that rule the Mexican public university autonomous by law.

Characteristics of the Mexican public university

As we previously mentioned, the constitutional autonomy granted to public universities autonomous by law in our country confers the faculties of having own juridical representation, administrate an own patrimony, exercise technical and organic autonomies. Indeed, this set of faculties characterizes the public universities autonomous by law and distinguishes them from other forms of administrative organization, at the time it configures the constitutional principle of autonomy.

In a first approach this principle may be understood from two perspectives: a) as the basis, foundation, fundamental reason upon which one proceeds to reflect on any subject; b) as particular maxims which guide the individuals in their operations and discourses.

Philosophically, a principle

... is that which something proceeds from and all of our processes flow from the application (conscious or unconscious) of logical principles. Yet human being does not content himself with living the first principles as laws of thought, but by an intellectual intuition also lives them as laws that all beings ontologically structure. Then they are given the name of 'ontological principles' or 'principles of being' (Villoro, 1984:303).

One of the characteristics of every juridical system is that not only does it exist as an empirical reality, as a set of very varied behavior norms and institutions with verifiable existence, but also possesses as valuing set, which gives meaning and legitimates said existence. Juridical norms thus have an ontological coexistence between being and must be.

In order to learn the juridical phenomena, the scientific perspective of Law makes use of the general principles of Law, which at the time come from the so called fundamental juridical concept. They appear as "... elements that are to be found in the formal structure of the normative propositions and therefore turn out to be general for the scientific expression of Law" (Ovilla, 1990:88).

Habermas (2004: 15) observes that a juridical system must not be reduced to a system of norms, but it incorporates principles or supposes principles, which will have to be directly related to the modern problem of rationality.

The function of these principles in the juridical order is dual, as they might be adopted as categories of knowledge or as basic concepts.

As categories of knowledge they are reduced to concepts which are found in the theoretical reflection, and as basic concepts they are reduced to elements of Law; therefore, they arise from the observation and confrontation of the diverse historic positive laws.

The ethical-juridical principles are essential parts in any system, however, neither the legislation nor jurisprudence have been able to objectively and rationally precise their conception. They have been qualified as “directive patterns of juridical regulation that in virtue of their very conviction force can justify juridical resolution” (Sánchez, 2004: 2).

This very author considers that the juridical principles do not have the character of rules conceived in a general manner, into which the facts might sink, likewise, of a very general nature; they rather precise each other and, with no exception, become concrete. Sánchez distinguishes several degrees of concretization; at the top there is the principle that does not have any specification of supposition of juridical fact and juridical consequence, but only a “general juridical idea”, by means of which the later concretization is oriented, such as the principles of the State of Law, the principle of Social State and the principle of respect to the dignity of man.

In this sense, the juridical principles have the character of the directive juridical ideas, from which resolutions cannot be obtained for a particular case, but only in virtue of their concretization in the law or because of the tribunals’ jurisprudence.

All in all, the general principles of law fulfill a function of integration, as there are principles of logical-juridical and ontological-juridical character, which express essential connections of formal nature between the precepts of Law and the modalities of the permitted, prohibited, the ordered and the optional. Whereas the general principles of axiological character are referred to the must be, those of the formal ontology of Law and the juridical logic are principles on the being of Law (García, 1986: 313).

As it may be seen, determining which the general principles of Law are is one of the most controversial topics of the juridical literature, since the delimitation made on them has a direct relation with the theoretical trend of Law which is followed; this is to say, for the jus-naturalists, the principles are those which are inherent to human nature and they have understood them as universal juridical truths; whilst the positivists point out that the general principles of Law are those which shape the fundamental aspects of the positive Law, through the growing generalization of the disposition of law to ever broader rules.

Within Mexican legislation, diverse ordinances remit to the general principles of Law in the case of omission or deficiency of law, as a further source, although they do not state which said principles are, which characteristics they must have to be considered as such, or which criterion has to be followed in their fixing, so determining what must be understood by “general principles of Law” has always presented serious difficulties, as they are expressions of vague and imprecise meaning.

Mario I. Álvarez (1996: 193) defines them as “... the set of orienting criteria inserted into every juridical system, whose objective is to complete the insufficiencies or absences of law or of other formal sources”.

The Political Constitution of the United Mexican States, in the last paragraph of the Article 14, indicates that in the judgments of civil order the definitive sentence must be applied literally or In agreement with the juridical interpretation of the law, and in the absence of it the application will be based on the general principles of Law.

From the interpretation of this constitutional article the general principles of Law are an indirect formal source of Law, that even if they do not generate juridical sources, they indeed establish an orienting criterion for judges and legislators in the creation and interpretation of law.

In this respect, the Supreme Court of Justice of the Nation (by means of the final judgment published in the XLIII tome, page 858, of the Fifth Epoch of the Judicial Weekly Publication of the Federation, date: February 1935) established that the Article 14 of the General Constitution of the Republic disposes that in the cases of omission or deficiency of the law one must appeal, in order to solve the judicial controversy, to the general principles of Law, being understood as such, not the tradition of the tribunals that, in a final analysis, are nothing but the practices or customs which evidently do not have force in the face of the law, nor the doctrines or rules invented by the jurisconsult, suppositions that do not exist in other authors whose opinion does not have legal force, neither has that which been adopted by the private inventive of a judge, as it is contrary to the nature of the institutions that regulate us, but by the principles registered in our laws, having as such not only the Mexican ones that have been decreed after the Fundamental code of the country, but also the previous.

Also in the Fifth Epoch of the *Judicial Weekly Publication of the Federation*, in a final sentence published in March 1938, it is expressed that the general principles of Law are recognized by distinguishable scholars of the Civil Law, as «notable juridical truths, unquestioned, of a general nature, as their name

states, elaborated or selected by the science of Law, by means of philosophical juridical procedures of generalization, in such manner that the judge might provide the solution the very legislator would have uttered if he were to be present, or had established, if the case would have been foreseen, being also a condition not to disharmonize or be in contradiction with the set of legal norms whose voids or omissions have to be complemented applying them; from which, one concludes, the options of the authors cannot become general principles of Law, as themselves, for they do not have the character of generality the Law demands, and because many a times those authors try to interpret foreign legislations, which do not contain the same norms as ours.

In the same manner, in the Fifth Epoch of the *Judicial Weekly Publication of the Federation* it is established that by general principles of Law are understood as those that might come off from other legal arguments for analogous cases, and the only case authorized by the Constitutional Article 14 in which the controversy cannot be solved by the law.

In the Mexican Law, the principles have a complementary character and can only be drawn to by tacit disposition of the law, once this or the jurisprudence would not have a solution for the problem dealt with; they might be used to integrate the voids the Mexican juridical ordering would present (Álvarez, 1996: 193).

The task of constructing these general principles belongs to judges and jurists, who by means of the application, interpretation, study, systematization and analysis of the law disentangle the criteria upon which the juridical system is established.

In accordance with the *Theory of the principles* by Ronald Dworkin, when there are difficult cases, which cannot be subject to analogy or interpretation, they cannot be solved consistently as other factors that are juridical and socially existent are denied, and that may be comprehended in the values and principles.

From this preponderance toward the principles it is understood that Dworkin's thought is kindred to university because it ponders the existence of superior principles which are not necessarily considered by the norm, however their observance and study is fundamental for the comprehension and re-dimensioning of a social being such as university.

In the face of this, we aim to outline what the principles contained in the university autonomy consist in.

In this sense, the own juridical representation of the Mexican public universities autonomous by law becomes concrete in the fact that they are created by means

of a law or decree that might be issued by the Congress of the Union, the Federal Executive or the legislatures of the States, these last, in the sphere of their respective federal States. These laws are those which determine the birth of the juridical representation of the aforementioned institutions, and are those which define the scope and limits of their autonomy (Serna de la Garza and Ríos Granados, 2003: 8).

In this sense, the laws of the Mexican public universities autonomous by law that have been issued by the Congress of the Union, the Federal Executive or the legislatures of the States are, from the juridical point of view, material laws, since they are general norms of abstract content.

Another characteristic element of the Mexican public universities autonomous by law is the administration of the university patrimony, which becomes concrete in the acts and juridical regulations tending to preserve, conserve, oversee, control, administrate and increase the assets, incomes, rights and obligations it has and have been given to it, as well as all that becomes integrated under any heading.

It is important to clarify that the patrimony of the university is not property of the collegiate or unipersonal university authorities, not even of the university personnel or students, professors, or administrative workers in active, the patrimony rather belongs to the university in its character of decentralized state entity and as a legal person, since said patrimony is destined to fulfill the objective and ends which the university has been appointed to by means of its law or decree of creation.

A third element that configures the Mexican public university autonomous by law is technical autonomy; in this respect we must say that universities are not subjected to the rules of administrative, financial and functional management applicable to central organs, this is, technical autonomy is the capability to freely make decisions related to their competence environment.

This autonomy is justified in the sense that the general norms of administrative, financial and account management are usually scantily suitable for the intentions of the service provided by the decentralized organisms, and because of this the Congress of the Union authorized derogations to the regime in general, so the autonomous universities adopt their own forms of administrative and financial organization.

A fourth and final element of the Mexican public universities autonomous by law, is expressed through the so called organic autonomy, which means that the law or decree of creation establishes a determined organizational and governmental

structure, which is integrated and elected by the university community (students, academic and administrative personnel) heeding the terms and conditions for this end established by the applicable juridical norms of each university.

We must leave it clear that in order to configure the autonomy of a Mexican public university it is necessary that part of its juridical normative order will be approved by internal organs composed of members of the university community. In this respect Manuel Barquín and Jesús Orozco (1988: 55) state that the internal organism of the university, empowered to apply the particular order of the institution, is needed to be elected through a process where the members of the community participate, by means of their legitimate representatives.

Legality in the Mexican public university

The topic of the Mexican public university autonomous by law is in the middle of a juridical order established in the order called Kelsenian, a theory wherefrom the Mexican juridical system comes. The object of knowledge in this system is evident in positive law as for it is composed of a system of laws emanated from the accorded volition of a legislator.

In this system of legality (description and prescription), as Kelsen (1983) calls it, we find the fundamental law, where juridical knowledge starts from, accepted as a system or set or norms of legal character, i.e., assumed as a reality of positive character in a juridical branch created by the State.

Hence, for example, the fundamental norm of the Nation-States has acquired a naturalization act with the constitutionalist movement under the name of Constitution, and the norms that are formal and materially disciplined to it are identified with the denominations of law, regulation, agreement, circular, et cetera.

In this sense, the correspondence and subordination of the university legislation has its genesis, as it has been demonstrated, in the VII Fraction of the 3rd Article of the Mexican *lex fundamentalis* of 1917

By means of it the regime of autonomy of the public universities is founded, which is expressed through the laws of university autonomy.

Hans Kelsen stated that the juridical system of a State is hierarchized, and that each hierarchy of norms represents a degree in the juridical order where the Constitution holds the highest rank in said hierarchy. In the Kelsenian juridical vision the constitution poses two different characters, one formal and the other

material. In the formal sense, it is a set of juridical norms that can only be modified by the observance of special prescriptions, whose object is to make the modification of such norms difficult; “in the material sense it is constituted by the precepts that regulate the creation of general juridical norms and specially, the creation of laws” (Kelsen, 1983: 147).

In this respect, the law of any autonomous university in Mexico is the founding norm of the objects, ends, attributions, forms and modalities of organization and functioning of its academia, government and administration.

In spite of this, the constitutional theory has coined the term ‘supremacy’ to qualify the quality that an ordeal or juridical norm has in relation to another of the same sort or type, this is to say, it identifies the preeminence acquired upon a determinate normative order.

This supremacy is based upon the principle of hierarchy, it is, the principles of logic and exclusion. Because of this, it possesses a regulatory mark in the sense that by means of a normative clause the securing of the *lex fundamentalis* as *norma normarum* is allowed; without this, it would be another law in the repertoire of norms that compose the juridical order. Through supremacy the *status* of the constitutional hierarchy and the subordination to the ordinary laws to it is fixed.

To sum up, constitutional supremacy has as an object to safeguard the permanence of Constitution and its character of superior norm from which the rest of the positive juridical order gradually derive (Covián, 2001: 21).

In this sense, the *lex fundamentalis* is assumed as supreme for it is vested in preeminence within a determinate juridical order, which makes it different from the repertoire of juridical norms produced in a State reality.

In these coordinates, supremacy has been stated as a principle in the particular relation of *supra* and subordination wherein the norms within a determinate juridical order are (Quiroga, 1987: 431).

All of the above produces a verticality and horizontality in the formulation of the juridical order. The former means that upon the *lex fundamentalis* no other juridical norm can be found and those which come from it cannot contradict it; the latter means that equally ranked norms cannot contradict each other. This has been expressed through the so called ‘Kelsenian pyramid’.

In this logic, the Law which regulates Mexican public universities is multidimensional and is integrated, in the first place, by the norms of Public Law (Constitutional Law and Administrative Law), and in the second place, by the so called University Law. On the latter one may express that it is the set or juridical

norms that regulate the organization, functions, patrimony and the relations of the individuals with the Mexican public university autonomous by law.

It is common that University Law is equaled and confused with the university legislation, since it has been considered that the latter is the juridical environment where public institutions of higher education in Mexico unfold (Toral, 1987). Despite this confusion, the extreme case of calling it domestic regulation has been reached (Muro, 2006: 475) or internal juridical regulation.

From the aforementioned we notice there is not a clear distinction between University Law and university legislation, although the distinction between external and internal university legislation has been made.

Alfredo Toral considers that external university legislation is that in which the institution is a passive subject, this is to say, it does not have faculty to issue the respective ordeals, as this faculty is reserved —by federal or State constitutional disposition— to the Congress of the Union in the first place, or to the legislatures in the second. Consequently, external university legislation, in agreement with the Mexican juridical system, is reserved to the Federal Legislative Power or that of the States, and once they have issued the norm that creates a university, and through this very act it is given autonomy, the very university, based on the regulatory legislation which has been delegated to it, issues the regulations that will rule the functioning and activity of the institution so as to fulfill their ends.

On our own, we consider University Law is a law of Constitutional Law that studies university autonomy, this is to say, it deepens into the knowledge of its juridical representation, in the administration of its own patrimony and in the exercise of its technical and organic autonomy; concomitantly, it refers to the juridical dispositions that in relation to education and professional exercise universities must observe.

This becomes tangible in the Articles 3rd, 5th, 73rd fraction XXV, 121st fraction V and 123rd section “A” of the Political Constitution of the United Mexican States; besides, in the General Law of Education, the Regulatory Law of the 5th Constitutional Article, in relation to the Exercise of Professions in Federal District and its Regulation, the Federal Law of Labor, the Law for the Coordination of Higher Education, the Law of Science and Technology, among other regulatory dispositions (Valencia, 2003: 92-100).

On its own, the university legislation is constituted by the juridical norms that regulate the substantive and adjective functions of the university, which are issued by the university organ with the most hierarchy according to the legal

procedures established in the statutes or general regulations in each university, observing to do so the constitutional principles.

In a similar manner, the 2001-2005 Master Plan of Institutional Development of the Autonomous University of the State of Mexico (2001: 173) established that “the university legislation is a set of juridical instruments that regulate the institutional *raison d’être* and tasks, attributions, functions, structure, organization, academic and administrative rights and obligations”.

For Rojina Villegas (1967) each juridical-normative-legal dimension of law is adapted to a terminology or concepts in order to difference them from the legal reality. Hence, in our juridical system there are and coexist several edifices of legal character which give objectivity and name to each element to untangle and explain it. The juridical theory has called this ‘fundamental juridical concepts’, which intervene as constant and necessary elements in every juridical relation.

As it has been stated, universities, beside their administrative schema, shape a normative structure and of formation of their juridical legal body. The theoretical parallelism between the juridical order and the pragmatism that covers the so called university legislation may be explained as follows: the structure of the Mexican juridical universe can be well perceived by means of Kelsen’s geometric construction. In this paradigm we find some concepts such as ‘system’, ‘order’, ‘hierarchy’, etc present, which are useful for the comprehension of the *universum iuris* we have referred (Uribe, 2004).

Hence, we can notice the existence of a positive system from which concepts that in no other manner might be thought of as allied to the different branches of Law, instances of this are: the liberty of teaching and research, free examination and discussion of ideas, teaching, research, diffusion of culture, university justice, university rights, university authority, among other.

We do not share the reductionism made in relation to University Law. It is not plausible to state that “the lawmakers are the most powerful” (Parent, 2005: 81). Among the university community this affirmation does not have a place, not even to consider

After the euphoria in the creation of a new university legislation, nowadays, we see that indeed the properly scientific labor of the universities unfolds without drawing to those frameworks which have not integrated in a hierarchical manner, nor have they manifested the first functions of the university that still appears as any other educational institution. For the university a list of ideas would be more proper than laws in its current formulation (Parent, 2005: 82).

In Mexican public universities autonomous by law not only are there juridical mechanisms to create, adequate and update the university legislation; in each university, according to their own circumstances, political mechanisms are established for its legitimation, such as the consultation exercise to the university community.

It is possible that the expressed dissatisfaction has as a background the fact that the university councils are those which exclusively have the faculty to approve the initiatives of reform to the statutes, regulations, lineaments, agreements and other juridical dispositions that compose the university legislation. The political juridical problem posed by the updating of university legislation, we believe, lies in the impossibility the members of the university community to formulate initiatives, reform or derogate the legal instruments, yet also to opine and carry out observations on them. This suggests the incorporation of democratic mechanisms of legitimation, such as referendum, plebiscite and the initiative of the university community, since in few universities it is established as a requisite that the proposals or projects of regulatory reform are submitted to consultation exercise of the corresponding community, such as it occurs in the following universities: Antonio Narro Autonomous Agrarian, Autonomous of the State of Mexico, Autonomous of Guerrero and Autonomous of Zacatecas.

University legislative technique

The free will that assists universities autonomous by law does not mean they are subtracted from the juridical regime of the country; conceive the converse is to ideate an anarchical and arbitrary State being.

This presupposes that the acts performed by the university authorities are assimilable by attributions which undergo an authoritarian proceeding, since they are characterized by their unilateralism, imperativeness and compulsoriness. As it is seen, the concept of authority used in common law has reached the regimes of the Mexican public university.

Before the challenge of the society of information and knowledge, it is demanding to remodel the role of the public universities autonomous by law in the national and international context; nonetheless, it is not the only aspect that requires attention, its juridical re-conceptualization is not to be delayed; because of this it is necessary, at least from the theoretical point of view, to lay the bases that allow projecting the reengineering of its concepts.

Said reengineering must be based on the premise expressed in the Mexican fundamental law and calibrate its scopes in views of the endogenous and exogenous variables that surround the university substantive and adjective functions. In this sense the variables are properties whose variation is susceptible to be measured or observed. Instances of variables are: gender, the intrinsic motivation for work, physical attractiveness, learning of concepts, historical knowledge on the integrating efforts of Simón Bolívar, religion, the resistance of a natural, verbal aggressiveness, authoritarian personality, fiscal culture and the exposure to a campaign of political propaganda.

[...] The variables acquire value for scientific research when they become related to other (making part of a hypothesis or theory). In this case they are usually called 'constructs or hypothetical constructions' (Hernández, 2003).

The conceptual world of the Mexican public universities autonomous by law is, apparently, manageable only from the internal view of the university, as they are the elements that link the institutional duty of these institutions with their regulations; because of this, variables that will necessarily lead to re-conceptualize or to incorporate new concepts to the philosophy of the university must be approached.

Well now, among the exogenous variables we have concepts such as public management applied to universities, quality and competitiveness, certification of administrative processes, transparency, and access to information, et cetera.

As endogenous variables the circular models appear, with interdisciplinary, multidisciplinary and trans-disciplinary approaches, flexible and distance education; intra-institutional and inter-institutional student mobility, as well as the incorporation of systems on university justice.

In this respect Jorge Carpizo would say: among these problems we can mention the lack of resources they have and not only restricted to material means, but it is also translated as a lack of academic personnel, both from the quantitative and qualitative points of view; the increasing demand for higher education, the growth of higher education institutions have conditioned the generation of numberless labor conflicts and the incidence of internal and external political pressures, which are produced as an unavoidable sequel of all the aforementioned factors.

The transformation of the social relations is a factor for individual and social betterment, it confers production and diffusion of knowledge a key function when it comes to reconfigure the positions of the countries in the international order and

determines the situation and category of the individual in society. This trend assigns a great responsibility in respect to formation, research, study, advice and counseling services, transference of technology and permanent education.

One of the most imperious problems faced by the university is to increase its resources, diversify them, improve their assignation and its internal management, and the way to assume the functions society entrusts on the university, preserving the university tradition and the interested service. This is due to the increment in the demand for higher education, which stands litigations of financial character. The restrictions of the resources decrease the capacity of higher education to meet the current expectations with the necessary quality level usually demanded.

For the public university to be able to assume the functions entrusted by society, it is necessary that the former appears as an “institution of knowledge and its academic body has determinate conditions of work necessary to accomplish in an optimal manner these obligations”, conditions established in the concepts of university autonomy and freedom of teaching. The university autonomy is exercised from the institutional self-government, and the freedom of teaching, by the different members of the academic body (Neve, 1998: 5).

The right to institutional government forces the university to fully and formally adjust itself to the conditions, laws and procedures corresponding to the different public organisms. Transparency and accurate demonstration of the achievements of the university have become fundamental aspects of the policy on higher education. Despite the linkage of the institutional budgets with quality goals is far from being universal, it is evident that the degree of self-governance of university ever depends on the demonstration of its performance and efficacy (Neve, 1998: 10).

We believe in a juridical manner that if these variables are not paid attention in time, the schema of development of the Mexican public universities autonomous by law will bring as a consequence their incomprehension as entities that generate knowledge, research and the diffusion of culture and arts.

The relentless attack of public policies of government imbricate public university on the brink of its history. Permanent variables such as the proliferation of private universities, the generation of mechanisms of control of the federal government and the low budgetary index for Mexican public universities autonomous by law make their architecture require shielding their theology and their purest axiological end.

Previously in the text we stated that, from the point of view of the legislative technique, laws or decrees of creation of the public universities autonomous by

law are formal laws, since they have an account of reasons, a regulatory body and transitory articles, and we cannot properly consider them as the university legislation; on the contrary, we must conceive them as the founding norm of a particular juridical order in a Mexican public university autonomous by law, which is developed in a juridical manner by the university supreme authority, through juridical norms of general or particular character directed to the members of the university community.

Once we reached this point we must enquire on which the elements that inform the university legislation are.

Guillermo Soberón Acevedo considered that university legislation must be supported upon five points or principles: 1) guarantee the autonomy of the university, the integrity of its patrimony and the validity of its eminently academic structure; 2) conciliate, by means of suitable formulas, the legitimate interests of the members of the community with the objectives, rights and social responsibility of the institution; solve the conflicts that may arise, by means of newfangled instruments, although always accordant to the principles of the university legislation; 4) involve the community into the legislative process, presenting in every opportunity each project and listening without restrictions the viewpoints which are formulated in each case; and 5) invigorate the spirit of legality among the university personnel, modernizing the existent regulatory dispositions, integrating legal voids and foreseeing the future needs and possibilities of the institution (Toral, 1987).

The process of modernization nowadays faced by Mexican public universities autonomous by law cannot be constructed on the basis of simple ideas or undocumented visions, the creation of a juridical methodology accordant to the requirements of each university is indeed needed.

An instance of this is the Methodology for the program of integral reform of the university legislation of the Autonomous University of the State of Mexico, 2005-2009, an instrument unique in the country though which the juridical theory of the universities is systematized. Historically, this methodology has support on the Program for the Integral Reform of the University Legislation of UAEM on August 15th 1990.

The objective of this program was to provide the Autonomous University of the State of Mexico with a broad and up-to-date regime that established ends, structures and processed, points out behavioral directions, regulates proceedings and actuations, and stimulates innovation and improvement of the university ways of life; being observed at all times that the integration keeps the principles

and historical values of the institution alive, measures the validity of the existing regulatory bodies, evaluates reflexively and prospectively the creation of the new ways of life and takes up this set into the institution context and social commitment (Universidad Autónoma del Estado de México, 1990: 15).

Later, the Commission of Legislation of the Honorable University Council formulated the Legislative Program for the University Statute of the Autonomous University of the State of Mexico, whose objective was to provide the institution with a university statute.

In the formulation of a scientific methodology to configure the juridical order of any Mexican public university autonomous by law aspects inherent to their history and juridical tradition, its structure and juridical-political structure must be studied in detail; what is more, it must be born in mind that it is neither possible to alter nor contravene the constitution of the university normative order, taking into account the generality, permanence impersonality and abstraction of the norm, as well as its congruency, unity, hierarchy and specialization.

The *sine qua non* element of success in every process of university reform rests on the participation of all of the members of the university community, for they are who orient the decision-making process, partake and legitimize the consultation exercise.

Reformulation of the division of powers

Habermas (2005) speaks on the existing law, not proposed, seeking to reconstruct the most basic concepts, where the law of the democratic States might become stable as the systems of norms which using the legal way is able to satisfy or reach their own promise of legitimacy. The logical genesis of the system of rights is not a reconstruction of the historical genesis, but, it is about the conceptual reconstruction of the articulating ideality of the reality of Law. A democratic State of Law is capable of performing collective ends through a political process of democratic production, as it is reflected in the Article 13 of the University Statute of the Autonomous University of the State of Mexico.

With this we are able to start walking in the construction of the University State of Law, which is characterized because the formal and material creation of the university legislation is subjected to that foreseen in the law of the university or in its university statute; what is more, because of the recognition, obedience and application which the integrants of the university community, the organs of authority and the unipersonal authorities carry out.

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