

## DEVELOPMENTAL LAWS AND ENVIRONMENTAL LAWS AND THEIR INTERDEPENDENCE

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### 1. *Statement of the problem*

Economic development laws have of lately originated at a fast pace, as a consequence of an increasing participation of the state in the mechanics of public economy. It is a presently recognized truth that an efficient economic performance is basic to attain concrete objectives required for the economic development of nations. Development policies, on the other hand, have usually been formulated with a lack of foresight for the environmental deterioration that their implementation may produce. Under these circumstances, the exuberant growth of that new juridical branch commonly named Developmental Law, has not been duly paralleled by a similar growth of Environmental Law.

As the new legal dispositions on economic development are put into operation, ecological and environmental problems, that have not yet been legally regulated, begin to arise.

Economic development normally understood as a synonym of industrialization<sup>1</sup> represents potentially an environmental deterioration. Economical and industrial growth generate mammoth cities with huge populations. And this, in itself, implies radical changes in the economical, social, cultural-psychological and demographic-ecological structures.<sup>2</sup> The process of industrialization—that stimulates also a tertiarization of the economy—, can only be construed as a city-related activity. Thus, the ever increasing demand for the laying out and improvement of new areas of land for building purposes forces an intensive use of necessarily limited spaces, that breaks the equilibrium of the ecosystems.

Mexico is a country with a high rate of city expansion. Mexican cities

<sup>1</sup> NAFINSA, *La Política Industrial en el Desarrollo Económico de México*, México, 1971.

<sup>2</sup> CEPAL, "La Urbanización de la Sociedad en América Latina", en *Boletín Económico de América Latina*, vol. XIII, núm. 2, 1968.

were initially founded and built in accordance with a primary economy aiming at the obtention and export of raw materials. A secondary type of economy has been promoted since 1940.<sup>3</sup> Its objective consists of the local production of import substitutes.

With this goal in mind, our authorities have encouraged the creation of industrial plants around those cities located in areas in which the magnitude of the population and the existence of basic facilities (i.e. communications, electrical power supply, water supply, drainage, etc.) permit a cost reduction by mass production and allow the economics of agglomeration to operate.

With industrialization and its attending effects, acting as a catalyzer, the population of cities has been increasing at a rate that exceeds that of the general demographical increase—which in itself is very high. The total population of our country increases at a rate of 3.5%, whereas in the cities it increases at 5.6%. The metropolitan area of our Federal District, that contains 20% of the total population of the country, registers a population growth rate of 5.1%. Monterrey and Guadalajara, the two most important cities after the capital, are swelling at a rate of 4.6% and 5.5%, respectively.

Some smaller localities are also growing above city average. Acapulco is rating 13.8% and Poza Rica 21.1%.<sup>4</sup>

The urbanizing process shows traces of conurbation, and in some locations, two or more urban entities are integrating into metropolis.

Mexico's lack of economic equilibrium constitutes also a variable factor that contributes to environmental deterioration. There are points of strong industrial concentration and zones of industrial vacuum. This situation damages the ecological balance, because industrial activities (see *Los Límites del Crecimiento*), are based on depredation of earth and environment resources. In 1970, the metropolitan areas of Mexico City and Monterrey contributed with 62% of the manufacturing production of the country.<sup>5</sup> Urbanization also affects adversely agricultural and cattle-raising activities. In 1960 none of the 37 more important cities of the nation had agriculture or cattle-raising as a predominant economic function.<sup>6</sup> There is a sharp continued reduction both in product volume and in number of individuals engaged in these activities.

<sup>3</sup> Kaplan, Marcos, "La Reforma Urbana en América Latina", en *Comercio Exterior*, núm. 6, 1972.

<sup>4</sup> Grupo de Estudio del Problema del Empleo, *El Problema Ocupacional en México. Magnitud y Recomendaciones*, México, 1974.

<sup>5</sup> Corona Rentería, Alfonso, *Economía Urbana*, Instituto Mexicano de Investigaciones Económicas, México, 1974.

<sup>6</sup> Unikel, L. y Garza G., "Una Clasificación Funcional de las Principales Ciudades de México", en *Demografía y Economía*, núm. 15.

Our national economy has reached secondary and tertiary stages and thus, the original exploitation of soil and natural resources is now centered upon different targets. Big centers such as Mexico City, Monterrey, and Guadalajara are bearing the burden of a monstrous overgrowth. Nowadays one hears talk of "uneconomy", to denote the increase of costs in every sense, running continually upwards, as a response to the size, character, composition, and functional conditions that prevail in big cities.

Air and earth pollution and environmental deterioration must be considered as an antieconomic result of urbanistic agglomeration. Contamination causes uneconomical conditions by its relation with the functional systems of the big city. It is mainly the result of a change in the purpose of soil-and-natural-resource utilization. An important contribution to this antieconomic condition is represented by the coexistence in cities of contradictory functions: i.e. industrial plants and residential zones; big buildings and green areas, and so forth. Urbanization associated with industrialization produces contamination costs, as this lately named endeavour implies contaminating technologies.

## *2. Juridical framework for state interventionism on Economic Development and Environmental Control*

The laws that regulate state intervention in the economic life of the country are numerous and ample. This is not the case in the legal elaboration on urbanistic development and environment protection, which has been scarce and non-systematic. Legislative work in this field is only beginning.

The Mexican Constitution of 1917 contains dispositions that empower the government to play the part of a very aggressive economic agent. It is not an exaggeration to maintain the existence of entirely new Mexican legal branches of Development Law and Economic Law. Constitutional articles 27, 28, 49, 65, 73, 87, 89, 122, 131 and 132 of the Magna Carta are the rich sources of valuable legal dispositions.

In México, the State is the recipient of a generous assortment of attributions in the economic field. It may authorize or prohibit production of certain articles of commerce, and quantify production volumes of these articles. It is legally enabled to fix minimum and maximum prices and to intervene in the fields of import and export, both to restrict and to enhance international interchange. Its hand reaches the bank vaults to guide the utilization of people's savings and the rate of interest such deposits should earn.

Additionally, it may enforce limitations as to the scope of private ownership and if it is considered adequate, it will assume the role of an entrepreneur, to produce and sell goods and services as any private enterprise.

Environment problems, on the other hand, have only been regulated marginally. The efficient economic performance of the state to stimulate private economic activities has presumably aggravated this problem.

Such remarkable absence of legal dispositions on the matter derives from the non definition of a state posture towards the hazards of contamination. Worse yet, the lack of global information, based on direct experience that could boost the crystalization of such a posture is acutely evident.

At this point, one could plausibly add that Mexican Economic Law shows a grave flaw, which in itself explains the legislators' abstentionism in the above mentioned area. Our state does not possess the planning instruments that are a vital necessity in contemporary politics. There is no such thing as a national development plan either for short or for long terms. Public investment has not been duly programmed although the constitution in force contains legal foundation for such actions. (Articles 49, 65, 73, 87, 89, 122 and 123).<sup>7</sup>

There are no plans of urbanistic development in the true sense of the concept. Some localities have formulated "regulating plans" counselled by the Secretaría del Patrimonio Nacional,<sup>8</sup> but these feeble attempts towards an effective control of this matter do not go beyond the physical and spacial aspects implied in buildings and urbanization works.

City planning, as such, may be defined as a job for jurists. Its objectives should be to control the performance of the complex entity called a city, and to orient it in a convenient direction. Planning of urban development should take care of various aspects of the question such as the location of production unities; spacial structure; city public administration; utilization of soil and air; dwellings; maintenance and renewal of buildings; transportation and employment.

Without such planning mechanisms, the "antieconomy" of contamination is aggravated, and this in turn produces higher social and economic costs.

The existing laws were elaborated seeking as a major aim the country's economic development and the cities economic enhancement, through the promotion of greater industrial activity. But this body of laws did not consider the variable factor represented by environment. This last assertion is substantiated by the analysis of the existing regulations on urbanistic activities and industrial enterprises.

2.1. The General Constitution in force since 1917 contains no articles on the problems of urbanistic development and environmental contamina-

<sup>7</sup> García Cárdenas, Luis, "Aspectos Jurídicos de la Planeación", en *Bases para la Planeación Económica y Social de México*. Siglo XXI. México, 1966.

<sup>8</sup> Ley para el Funcionamiento de las Juntas Federales de Mejoras Materiales, *Diario Oficial* del 13 de enero de 1948.

tion. Local constitutions suffer from the same omission, even though in our legal system federal and local legislators are enabled to regulate such matters.<sup>9</sup>

2.2. It wasn't until 1972 that the Federal Public Administration began to define some basic policies providing for the existence of a public organic structure that could deal aptly with environmental deterioration problems. This structure presumably delegates functions to local government agencies, as far as regulating plans, sanitation, public works, and industrial promotion are concerned.

2.3. The main legal instruments on industrial development, which are of federal scope, have resulted in a geographical concentration of industrial plants but are defective in provisions pertaining to contamination. *Vid: Ley de Fomento de Industrias Nuevas y Necesarias*; <sup>10</sup> *Ley de Fomento de Industrias de Transformación*; <sup>11</sup> *Ley sobre el Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas*; <sup>12</sup> *Ley General de Normas y de Pesas y Medidas*; <sup>13</sup> *Ley de Propiedad Industrial*; <sup>14</sup> *Decreto que concede Estimulos a las Sociedades y Unidades Económicas que fomenten el Desarrollo Industrial*.<sup>15</sup>

Some recent legal dispositions, such as the immediately abovementioned, and one dealing with industrial cities and parks, which aims to deconcentrate industries, will undoubtedly coadyuvate in the reduction of contamination indexes. Some local regulations on industrial promotion, through the formation of industrial corridors, may also produce improvement in contamination conditions.

Federal executive authorities have formulated the preliminary draft of a new law. *The Ley de Fomento Industrial*, as it is called expressly considers contamination problems. It has not been forwarded to Congress for discussion and eventually, approval and enforcement.

There are also Mexican laws that regulate various types of industries in a particular manner. In their text one can observe again the absence of dispositions referred to pollution and contamination. Such is the case of *Ley de la Industria Eléctrica*<sup>16</sup> and its bylaws. Generation use of electrical

<sup>9</sup> Villa de Helguera, Margarita de la, *Constituciones Vigentes en la República Mexicana*, México, UNAM, 1962, 2 vols.

<sup>10</sup> *Diario Oficial* del 4 de enero de 1955.

<sup>11</sup> *Diario Oficial* del 13 de mayo de 1941.

<sup>12</sup> *Diario Oficial* del 30 de diciembre de 1972.

<sup>13</sup> *Diario Oficial* del 7 de abril de 1961.

<sup>14</sup> *Diario Oficial* del 31 de diciembre de 1942.

<sup>15</sup> *Diario Oficial* del 20 de junio de 1973.

<sup>16</sup> *Diario Oficial* del 11 de febrero de 1939.

power are highly contaminant, and one must add to this circumstance, the general increase in the demand of electric fluid, both from the industrial and the domestic consumers.

The *Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo*,<sup>17</sup> its bylaw the *Reglamento de la Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo en materia de Petroquímica*,<sup>18</sup> and several related dispositions, offer the same situation. They do not regulate contamination problems, although the considerable contamination originated by lead in the combustion of high octane gasoline by automotive vehicles is an evident knowfact.

The bodies of law that regulate mining activities, not considered in the *Ley Reglamentaria del Artículo 27 Constitucional* and relative to exploitation and utilization of mineral resources,<sup>19</sup> including a connection with the building-materials industry, contain only dispositions that offer protection to the mine laborers, but does not safeguard environment. This is another aggravating factor, since the building-materials industry is outstandingly dynamic to the economy of the metropolis<sup>20</sup> and a major contributor to pollution and contamination.

All the laws enforced to promote industry are not concerned with the contaminating effects related to location of plants, and use of technologies. Their isolated objective is to enhance economical development, through the promotion of industry.

2.4. The *Ley Forestal*<sup>21</sup> constitutes a legislative effort to preserve, utilize, restore and propagate forestal resources. One of its articles declares in very general terms, that the prevention of any kind of forestal destruction that may cause social damages is of the public interest. Such a generalization may be, notwithstanding, the basis of concrete anticontamination policies.

Yet, in spite of the preceeding statement, it is easy to read between the lines of the abovementioned law, a concern for economical and recreational goals, instead of a true appraisal of the vital necessity that demands the protection of environment.

In the case of the Federal District, one can perceive the indifferent manner in which the forestal resources are considered. This underestimation of such an important point has dominated the public conduction of urbanistic affairs. The cities have grown in a disorderly manner, gaining space by the systematic depredation and destruction of environmental

<sup>17</sup> *Diario Oficial* del 29 de noviembre de 1958.

<sup>18</sup> *Diario Oficial* del 9 de febrero de 1971.

<sup>19</sup> *Diario Oficial* del 6 de febrero de 1961.

<sup>20</sup> En 1972 y 1973 la tasa de crecimiento de la industria fue del 16%.

<sup>21</sup> *Diario Oficial* del 16 de enero de 1960.

components. México City and its population occupied in 1920 approximately 137 km<sup>2</sup>, as compared with the 1 000 km<sup>2</sup> it covers nowadays. Almost every forestal zones formerly surrounding the city have disappeared swallowed by the advance of urbanization. Public parks and gardens constitute poor exceptions of zones preserved or artificially integrated, in view only of recreational needs of the inhabitants, and not as consequence of anticontaminant strategies.

In 1970 the entity formerly known as Mexico City, that today is divided into four delegations of the Federal District, accomodated a population of 3 000 000 people. That meant an approximate density of 22 000 inhabitants for every square kilometer.

We know of no law in force today aimed at the formation and preservation of a "green belt" that could alleviate the contaminating forces of the Federal District. Government delegations such as Cuajimalpa, Magdalena Contreras, Tláhuac, Tlalpan, Xochimilco y Milpa Alta, that in their greater part are of a semi-rural nature, should be considered by Environmental Law as so many zones of forestal defense.

2.5. The recently enforced *Ley de Aguas*<sup>22</sup> substitutes several previous laws as follows: *Ley de Aguas de Propiedad Nacional*; *Ley de Riegos*; *Ley Federal de Ingeniería Sanitaria*; *Ley de Cooperación para Dotación de Agua Potable a los Municipios*, and *Ley Reglamentaria del Párrafo 5º del Artículo 27 Constitucional en Materia de Aguas del Subsuelo*.<sup>32</sup> Its dispositions establish a link with the new trends towards anticontamination law.

The abovementioned *Ley de Aguas* declares in its Article 20 that the prevention and control of water contamination is a public-utility matter. This declaration encompasses all kinds of water, under any jurisdiction or legal regime and refers to the dispositions of the new *Ley Federal para Prevenir y Controlar la Contaminación*.

Water for general consumption in the Valley of Mexico comes from the high courses of the Lerma river, and from springs in Chalco, Xochimilco and Xotepingo and shows at present elevated rates of contamination and pollution induced by industrial utilization and domestic use. In this latter instance, such degrees of contamination are caused mainly by detergents and other homeoriginated contaminants.

The spacial demands imposed by the monstrous growth of the Federal District, led to the sacrifice and extinction of natural lakes, rivers and channels. Texcoco, Xochimilco, Chalco, etc., constitute a sad testimony of this contention.

<sup>22</sup> *Diario Oficial* del 11 de enero de 1972.

<sup>23</sup> *Diario Oficial* del 31 de diciembre de 1953.

The desiccation and contamination processes that have been affecting such water deposits and currents, began 100 or more years ago. And previous legislative action on the matter was not directed by any strategy against contamination and misuse of water resources.

2.6. The legal dispositions prevalent in the Federal District that constitute the so called "regulating-plan" are also outdated. An analysis of their content shows a predominant concern for the physical direction of the city's growth; a series of rules pertaining to the category of building specifications; a treasury-oriented segment that deals with the taxation of the plus-value earned in land and buildings and with other taxes. There is nothing related to a rational use of the soil or to the environmental protection of the city in said dispositions. The *Ley de Planificación del Distrito Federal* is still based on outdated ideas of hygiene and sanitation as specific situations. The new conceptions of contamination and urban ecosystems do not permeate any of its dispositions. It could be added as a final remark, that this law also attempts to regulate the aesthetic side of edification.

Preceding legislatures did not foresee the extent to which urbanistic activities could damage the natural environment of the city and its surroundings. Numerous regulations were thoughtlessly enforced seeking only to favour industrial growth, even in the very heart of the city or in close-by municipalities such as Atzacapotzalco;<sup>24</sup> Ixtacalco;<sup>25</sup> Tacuba;<sup>26</sup> Ixtapalapa<sup>27</sup> and Gustavo A. Madero.<sup>28</sup>

A new *Ley Orgánica del Distrito Federal*<sup>29</sup> marks a definite progress in these questions. Conceived under up-to-date conceptions, this law deals with real city-planning objectives and aims at improving urban environment. It also empowers a governmental agency called Dirección de Planeación to intervene in the control of soil utilization and to prevent water and air pollution.<sup>30</sup>

It may be concluded, nevertheless, that the judicial basis needed to endow the authorities of the Federal District with instruments wholly adequate for purposes of urban reformations, are still incomplete. Control of environment must be simultaneous to a redistribution of the city's wealth (in dwellings and public services).

<sup>24</sup> *Diario Oficial* del 18 de agosto de 1944.

<sup>25</sup> *Diario Oficial* del 24 de noviembre de 1944.

<sup>26</sup> *Diario Oficial* del 15 de septiembre de 1945.

<sup>27</sup> *Diario Oficial* del 28 de agosto de 1946.

<sup>28</sup> *Diario Oficial* del 19 de noviembre de 1946.

<sup>29</sup> *Diario Oficial* del 29 de diciembre de 1970.

<sup>30</sup> Artículo 53.



2.7. This brief examination is sufficient to reach several important conclusions:

Environmental Law falls well behind Development Law in our nation.

Our development legislation has been dynamically efficient, but its efficiency as a whole is curtailed by the absence of legally-founded planning mechanisms capable of encompassing completely the mediate and immediate effects of any economic development policy, such as, for example, its effects on environment.

Developmental Law has propitiated industrialization, which in turn, has brought undesirable overurbanization. These interrelated phenomenae have transformed urban centers into poles of contamination.

Legal dispositions in force relative to urban environment are very recent and insufficient. There are new and powerful legal instruments on economical development, which do not include dispositions concerning environmental problems.

We have not yet promulgated laws to regulate private consumption of goods, that will prevent further damages to ecology and environment. If it has become desirable to regulate industrial production to protect environment, the regulation of private consumption will also appear in a near future as equally necessary.

The vacuities that currently prevail in the Mexican legal structure in these fields, should be remedied with the help of specific empiric and experimental data that will insure their viability and socially-oriented contents.