PENDING ISSUES IN THE MEXICAN JUSTICE SYSTEM REFORM

José de Jesús GUDIÑO PELAYO*

The liaisons and responsibility of judges, lawyers and parties within the judicial process is an extremely complex issue. As a result, it may be analyzed from various points of view to be determined issue based on the investigator's objective. In this study, I analyze these relationships from a systematic perspective whereby the judge, litigant and parties are deemed as members of a subsystem within the Judiciary and, as such, are considered interdependent. The purpose hereof is to propose a system of rules for Mexico whereby litigants may be held responsible when, due to their negligence, gross inexperience or misconduct during the process, the parties they represent are affected or could be affected.

My central thesis may be stated as follows: in order to improve the administration of justice it is not enough to reform the Judicial Power allowing for judges to be liable when failing to perform their duties; it is equally important to reform the manner and conditions in which the legal profession is currently exercised. In my opinion, the latter is characterized negatively due to the almost inexistent system of rules regarding liability before the client that bind litigants. The judge is not the only party, and at times not even the main one, responsible for the poor quality in the administration of justice or for its lack of credibility. In the best of cases, responsibility is shared.

It is difficult to find a judge or magistrate that has never had to substantiate and rule over cases against parties that could have won, but lost due to the negligence, inexperience and in many cases as a result of their lawyer's bad faith. Although it is true that the outcome of any legal proceeding carries a certain degree of uncertainty, there are times in which the judge knows for a fact that the case was lost as a result of the lawyer's incompetence. I often tell my students that the difference between the classroom and the courtroom is that in the former students fail; in the latter, their clients.

Two cases come to my mind which could have been won, but since their beginning had no possibility whatsoever of succeeding due to the lawyer's inexperience, as I will briefly explain. The first case was about a lady who filed for divorce, claiming that her husband often verbally abused her. Pursuant to the Civil Code, said abuse constitutes grounds for divorce. In the lawsuit, her lawyer neither stated what this abuse consisted of, nor when and where it was inflicted. All of the foregoing was necessary so that the other party had knowledge thereof and was given the opportunity to prepare its defense and answer the statements of claim either as guilty or not guilty, as well as granting an opportunity to properly prepare his defense. The lawyer's incompetence or, in this case, gross negligence was his ignorance of the Supreme Court's binding precedent, which establishes that:

> DIVORCE, SERIOUS VERBAL ABUSE AS GROUNDS FOR. THE FACTS, TIME AND PLACE IN WHICH THESE OCCURRED MUST BE STATED IN THE LAWSUIT. In order for serious verbal abuse to be admissible as ground for divorce, it is absolutely necessary to state the facts, time and place in which said abuse occurred in the lawsuit so that the defendant may have complete opportunity and knowledge as to how to prepare his defense and the judge may determine the seriousness of such abuse. The degree of the aforementioned abuse must be such that married life becomes impossible.[1]

From the plaintiff's testimony it could be deduced that serious verbal abuse had, in fact, occurred; however, due to the fact that the lawsuit did not mention said alleged abuse, when, where or how it occurred, the trial judge had no option but to absolve and render the defendant as defenseless. The Appeals Court confirmed the ruling and the Collegiate Court, which at that time I was a member, denied the petition for constitutional relief [*amparo*]. The case was dismissed only after several years of litigating, albeit it lacked any probability of success since its beginning.

The second case concerns a lawsuit regarding real property title adverse possession. The plaintiff argued that he fulfilled all the requirements regarding the established term and elements for the adverse possession of a real estate property, including those required for carer of bad faith possession. Nonetheless, his lawyer neglected to state in the lawsuit what his client's grounds for said adverse possession were, when said requirement was considered by binding precedent and statutory law as a condition necessary to obtain adverse possession as established in the following precedent:

> ADVERSE POSSESSION, THE NEED TO STATE THE GROUNDS FOR POSSESSION. The plaintiff in a lawsuit for adverse possession must state his grounds for possession, even in the case of a possession in bad faith. The judge needs to be informed of the facts or the generating act thereof in order to determine the status of the possession, whether as an original or derived owner, in good or bad faith and to pinpoint the moment in which statute of limitation begins to run.[2]

Although the grounds for possession were proven during the trial, since they were not mentioned in the statement of claim, this lawsuit had the same outcome as the first example. Surely in these matters there was a party that spent time and money on an incompetent defense, whose frustration furthermore motivated or reinforced his skepticism in the justice system when, in fact, his pitiful situation was caused by the lawyer's inexperience.

Furthermore, in other occasions the lawyer's strategy is to wear out the other party by indefinitely prolonging the procedures until exhaustion is reached; those lawyers frequently do the same in order to prolong the time in which they can charge their fees and, thus, litigate until the last remedy notwithstanding the fact that these cases are lost beforehand but are carried out because of "professional" pride or dignity, or may I say, to be more precise, personal interests, keeping alive their client's hopes of winning and causing them to allot their resources to a trial that is already lost.

Every judge is aware that there are a large number of litigants that, notwithstanding their title as lawyers, lack the necessary technical knowledge to honorably a capably carry out the delicate task of judicially defending their clients. There are also lawyers that, with or without ethical principles, do not appeal to them while exercising their profession.

I believe that this issue is caused by various factors that together pervert the justice system and thus frustrate the possibility of its correct operation. Among said factors, the following can be mentioned:

- The only state requirement a lawyer needs in order to be able to file lawsuits on behalf of someone, is a degree issued by a law school; requirement that is far from guaranteeing a minimum professional quality.
- The rapid proliferation of law schools in Mexico, making academic quality control impossible.

- The absence of a system of rules regarding the control, discipline and conduct or ethical codes for the exercise of the legal profession.
- Moreover, the absence of a civil or administrative liability system that sanctions those who incorrectly exercise the profession and the precarious penal liability system.
- The absence of laws promoting mandatory membership in a professional association or barring.

Until quality in the exercise of the legal profession does not improve, and until the access conditions for the exercise of the profession are controlled so that litigation is acknowledged as a public interest profession demanding as such rigorous regulations and a disciplinarian regime, it is impossible for the genuine purposes of "access to justice" to become a reality. A justice system needs that the foregoing conditions be met in order to succeed.

In order to further explain the aforementioned and justify my statements, I will turn, as in previous occasions,[3] to the theory of systems.

Ferrater Mora defined "system", in terms that cover the various usages of this concept; according to said author a system is a: "Group of elements related to each other in such a manner that each element of the system is a function and none are isolated".[4]

This meaning can be better understood if one reads what the author understands by the term "systemic":

> Because the general theory of systems relates to all kinds of systems, the term "systemic" is applied generally: every system has a systemic nature and every consideration of a system from the point of view of the general theory of systems is systematic. However, the term "systematic" is especially used in the case of certain kinds of systems. One of the most frequently used thereof is the system constituted by *elements that are found within each other in a functional manner in such a manner that interdependence is formed pursuant to a group of rules*.[5]

Hence, it is possible for a system or a group of systems to be related to each other and act as elements of another more extensive system; each one of these dependent systems forms a subsystem, which may be grouped together with the other subsystems. If said subsystems are taken separately, they will be considered as a minor system. *The extent we choose gives each group of elements related to each other in a functional manner the characteristic of a system or subsystem.* An example will allow us to understand more clearly. If one chooses the administration of justice in Mexico as the principle, this becomes our "system". Federal justice, as opposed to local or State justice, would be considered as two large subsystems, which in turn may have various subsystems of their own. In the case of the Federal justice, the writ of *amparo* could constitute one of the subsystems. If, on the other hand, the Mexican State is taken as the principle, the administration of justice would be a subsystem within this macro-system, as opposed to the executive branch system the legislative system.

Therefore, the administration of justice may not only admit the federal and local justice as subsystems, as suggested in the previous example, but also any other system. The administration of justice system may admit as its subsystems an indeterminate number of these, depending on the perspective from which it is analyzed.

For the purposes hereof, I believe it is possible to place two subsystems within the administration of justice system. The first subsystem, I shall call "material"; and the second "human." The material subsystem includes, by exclusion, all the factors that are not human, which are necessary for the administration of justice, such as procedural laws (rules of procedure), the organic infrastructure of the justice administration (courts and tribunals) and, of course, the necessary material resources for its operation. The elements included in the human subsystems are those that Calamandrei called "actors in the procedural drama": judges, litigants and parties.

The systematic nature cannot be denied from the latter relationship or trilogy, since it is obvious that they are related to each other in an interdependent functional manner. In the current administration of justice system, it would be inconceivable for a trial to be carried out with any one of these missing. It can be argued that the lawyer is not essential, but, due to the prevailing conditions, this position is theoretical and thus unreal. Lino Enrique Palacio states that:

> It is necessary to keep in mind the growing complexity of law, which is determined by the incessant increase of written laws that, together with the progress of civilization, face the regulation of legal situations that become ever more complex. Furthermore, it is not daunted by the convenience that the authority regarding candidates for admission remains exclusively granted to the activity of those who lack the technical skills that are necessary for the adequate understanding of the ruling body, whose vastness, on the other hand, has motivated the creation of various specialties within the legal science.[6]

Rafael de Pina, base on Professor Calamandrei, explains that:

> It is not an overstatement to say that in an invariably complex legal system as the one in modern civilized States, justice cannot be carried out if legal professionals do not exist. The difficulties in judging would increase, until they become obstacles impossible to overcome if the Judge eliminates lawyers and counselors and comes into direct contact with the legal inexperience and bad faith of the litigating parties.
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> The intervention by lawyers is employed exactly to release the Judge from a struggle against ignorance and bad faith that would take away all of the serenity and agility of the trial. The presence of a defender that represents or assists the party is a guarantee of knowledge and honesty.
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> Lawyers —according to Calamandrai— are as necessary to the State, as judges. Both, lawyers and judges act as servants of law.[7]

By definition, whatever is systematic is, at the same time, functional and interdependent. Having stated that, clearly the trilogy of judge, lawyer and party is systematic because the relationship between them is functional and is based on the administration of justice. I would like to reiterate the former by emphasizing the other issue included within the systematic element: the *interdependence*, which means, as suggested by its own expression, that the elements of this system or subsystem as may be the case, each depends on the other for the system to function. Insofar as each element works, the complete operation of the system will result. It is similar to the mechanism of a watch, which needs all of its pieces and gears to work uniformly to fulfill its objective of stating the precise hour and minute.

In order for the administration of justice system to be effective, as a preceding and necessary basic premise, it requires that the integrating elements of the human subsystem that gives it life and support to fulfill their mission and perform their respective roles.

In regard to the judges in Mexico, I believe that the Federal Judiciary has come a long way in recent years responding thus to its expectations and to the social and legal demands. Among the aforementioned are:

- The creation and operation of a specialized body for the administration and auditing of judges, such as the Federal Judicial Board ("Consejo de la Judicatura Federal"); the establishment of a set of rules for a career in the Judiciary and the pertinent disciplinary procedures.
- Other measures have been adopted that are geared in the same direction, such as the creation of a law school, dependent on the Federal Judicial Institute ("Instituto de la Judicatura Federal") and the assistance thereof as a previous requirement to take the tenure exam to assume the office.

In our system, the judge is subject to various responsibilities that clearly prove that to carry out the aforementioned procedural trilogy is a delicate task and one of great public interest. A judge, regardless of his degree, is subject to:

- *Political* liability, since a political trial or impeachment may be filed against him.[8]
- *Criminal* liability, since the Federal Criminal Code contemplates various crimes pursuant to the judge's functions.[9]
- *Administrative* liability, since they are subject to the administrative liability regime set forth in the Federal Law for Civil Servants and the Organic Law of the Judicial Power, regarding complaints and criminal charges.
- Lastly, they are *civilly* liable, pursuant to Article 1928 of the Federal Civil Code.

Undoubtedly, it is a delicate task to be a judge. There is an enormous public interest which demands a judge to be an honorable and knowledgeable person who has the necessary technical skills to respectably carry out his position. Moreover, he must necessarily have the moral quality to perform it properly.

This large degree of public interest is understandable since the position involves administrating justice. Said task is the natural and constitutional responsibility of the State; and, when carried out, it is also the justification of its own existence and authority. This explains why the right to justice and access thereof is a constitutional right that is acknowledged for all men. A justice system would have little or no sense if it was only limited to granting substantive rights that could not be enforced when trampled, ignored, or breached.

The same degree of public interest must prevail regarding the performance of each element comprising the human subsystem of the administration of justice. The interdependence of the systematic elements makes it necessary for each to function in a homogenous, uniform and harmonious manner in order to carry out the judicial system's objectives and for it to be effective. Therefore, after so much social preoccupation, and legal ruling regarding the figure and responsibilities of the judge, the question is: What lies on the other side of the mirror?

On the other side, there is a forum of litigants that is not subject to *any* liability or disciplinary regime whatsoever before its clients or society. The legal profession is characterized by inequality, since it is comprised of both competent and honest

lawyers as well as incompetent and dishonest ones. Moreover, there is an absolute lack of control in the exercise of the profession and an extensive access thereof that hinders the performance of the system as a whole and thwarts its possibilities of efficiency due to the fact that the systematic elements are interdependent. Calamandrei, in his particular style, explains it in elementary terms: "The legal profession and judicature adhere to the law of the media; the level of one cannot be lowered without affecting the other".[10]

In other words: "The defects of lawyers have repercussions on judges and the defects of judges affect lawyers".[11]

The legal profession is a career which exercise is multifaceted. It is a profession that may currently be carried out in many different areas, such as specialized academics, consultancy or assistance, judicature, notary public or commercial notary public, customs agent. However, its most orthodox and purist expression is litigation.

It is necessary to acknowledge that there are certain areas in which the exercise of the profession becomes of public interest because it is performed in a public manner. For example, the activity performed by a notary public has been recognized by law as an activity of "public interest"; and the dominant doctrine regards it as such, because of the functions performed; essentially certifying legal acts and as a result giving legal certainty and security thereof. The aforementioned was expressly set forth by the Notary Law of 1901, by President Porfirio Diaz. The former idea was also reiterated in the new Notary Law for the Federal District and is an example of the issue's updated nature.

Litigation, as I have previously stated, is a task that is socially highly risky.[12] As part of the legal profession, it enters into play with fundamental values of society, the State and individuals, such as the defense of personal property, liberty, respect and dignity. For the aforementioned reasons, the performance thereof is crucial for the justice system and that is why it should be deemed as a professional activity of public interest. The litigant is a factor for access to justice, issue of fundamental importance for the modern State. Therefore, it must be agreed that litigation is a public interest activity, whereby the function of access to justice is carried out.

In 1930, Rafael de Pina explained this idea in similar terms:

> ...The nature of the legal profession has been clarified by modern procedural Law. The new doctrine corresponds to the transformation regarding the concept of process that has been established in our time.
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> Historically —writes Professor Calamandrei— the legal profession arose to provide service to the private sector, while the judicial process was conceived as a legalized duel between two private interests. However, the function of the lawyer seems to have changed when the Constitutional State claims the jurisdictional function. Thus, the result of the process is no longer alien to the public interest.
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> While the process was only a conflict between two private interests —he adds— as long as his clients won, the lawyer was transformed easily into an ambulance chaser. However, today when one thinks of the judicial process, alongside the ruling, it reaffirms the authority of the State. The existence of jurisdictional professionals is not justified until these are taken as collaborators and not as persons who mock the Judge and whose job is not so much to fight for the client, as it is for the Law.[13]

In order for the justice system to be efficient and for the relationship between the judge lawyer to be equal and functional, one must agree with the foregoing. On said grounds, the profession's legal framework must be redesigned. It is not possible, for fear of never achieving or at least not coming close to an efficient justice system, to maintain a profession that is easily accessed and without any checks and balances or liability system whatsoever. The problem must be approached from its various angles and the necessary measures must be taken. Among the steps, I believe it the following are applicable:

- The express legal acknowledgement regarding the exercise of the legal profession, particularly to litigation, as activity of public interest as by it a public function is performed, and, consequently, the creation of a system of rules that restrictively govern the access to said professional exercise. This would guarantee that those who are authorized to litigate are persons with a minimum standard of competence and experience.
- The first basic step is to socially, governmentally and legally acknowledge that a college degree from law school is not enough to make a true lawyer. Moreover, it is insufficient to guarantee the graduate's competence and experience.

Professor De Pina clearly explains in the following manner:

> The need for the legal profession to be rendered as a public function performed during the judicial process, arouses the problem of the professional formation of the lawyer. As mentioned previously, in our country this has been abandoned to the private sector.
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> The State cannot ignore the problem of the professional formation of lawyers. The importance of their role demands a set of rules issued by the public authority, *not only for their performance, but also their formation.* As Carnelutti stated, the performance of the profession largely depends on its order because the problem of the organization of the legal profession is just as important than the problem of the organization of the Judicature.
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> Starting from the unquestionable premise that the University should not be given the task of forming Lawyers —or Notary Publics, Property Registrars, or Judges, etc.— because it is alien to its own function, it is inadmissible that a Law Degree is bestowed by it…in order to exercise the profession. A University shall fail every time it is taken for or deemed as school for the making of professionals. A University should be a research center apt to give its students a qualified scientific formation, otherwise it will be only a fiction. The professional preparation, albeit eminent professors may differ from my opinion, must not be rendered among the University's activities. The University, in our case, indirectly prepares students for the professional activities and endeavors to provide a legal formation without which a lawyer would be nothing more than a business agent who is more or less resourceful. A Law Degree is a necessary antecedent for those intending to exercise the legal profession. However, the University cannot give us directly the Lawyer "who is already made."[14]

The foregoing is a proven fact that is known and acknowledged by the national legislator, proof of it is that the Federal Law for Public Defense establishes the following as requirements, besides a degree and a certain age, for public defenders (regarding Federal Criminal Cases) or legal consultants (regarding Federal issues that are not Criminal): "(i) at least three years professional work experience in said matters, (ii) a good reputation and trustworthiness, (iii) admission exams and

successful public examinations for the position, and (iv) never have been condemned for a fraudulent crime that carries a prison term of more than one year."[15] If this is so for public defenders, why are these requirements not mandatory for the legal profession in the private sector?

As if this was not enough, public defenders are subject to express obligations, restrictions, conflicts of interests with other occupations and responsibilities that, of course, are not compulsory in the private sector.[16] Moreover, they are subject to periodical auditing procedures and evaluations in regard to their professional performance.[17] I insist that if the public defenders are subject to this, then how can one justify the current regime regarding the private counsel for the defense?

However, to restate my suggestions regarding this issue, I would like to add that the following steps could be taken:

- Mandatory membership in a professional association such as barring, albeit with the previous pertinent constitutional and legal reforms, where by the access to the profession and discipline inherent thereto is restricted.
- Creation of ethical codes of conduct for lawyers.
- Creation of a specific liability regime for trial lawyers.

However, all of the foregoing would be insufficient if it is not complemented by a legal reevaluation of the role performed by the *parties, in the material sense, of the trial*. It is also important to strengthen the relationships between the judge and the parties in the trial regardless of lawyers. We must not forget that these are also systematic elements without which an efficient justice system could not exist. Anyone who has worked as a judge knows that there are many lawyers that invent and tell lies about us to their clients; sometimes in order to illicitly and immorally obtain from them payment that has not accrued. Other times, such lawyers wish to justify their own clumsiness or incompetence. Countless times we doubt that the lawyer's statements or intentions in fact correspond directly to the intentions of the real party; and other times, we doubt that the party of the trial is aware, in a material sense, of the strategic disadvantages or the procedural actions taken by their representative.

My proposal is a project regarding the human aspect of the administration of justice, which strengthens the relationship between the judge and the parties (not also their litigants) in the trial, regardless of the lawyers; That is, a direct and immediate contact and relationship judge-party. A viable and efficient solution would consist in granting the judge the express authority to issue orders that can be imposed only on the party in the trial and not their representatives. Said authorities would comprise of a direct communicating with the parties without intermediaries in order to avoid the aforementioned lies and frauds. A communication whereby, for example, the judge can express his concerns regarding the manner in which the lawyer conducts the trial and the disadvantages thereof or the motion filed by their representatives. Furthermore, another measure that could be taken would be the provision that certain court proceedings be only addressed, attended by or served directly and personally to the interested party, as for example may be, the right to desist from an action or an agreement with fundamental ruling.

Nevertheless, all of the foregoing would be solely good intentions if it is not complemented by a system of checks and balances. Ideally, this would be a system of reciprocal control whereby each party is audited by the other; judges audit trial lawyers, trial lawyers and parties audit judges and even judges audit judges.

Currently there are various checks and balances available for trial lawyers and the parties regarding the judges' actions; such as the possibility of filing criminal charges, claims or administrative charges before the Judicature Board, as well as filing for a possible political trial or even suing the judge for civil liability. Quite the opposite exists in the case of judges towards the lawyer or parties; there are minimum and inadequate checks and balances.[18]

The judge that is aware of the trial lawyer's incompetence, negligence or ineptness can do nothing, except lament and be left with a bitter feeling. This can and should no longer continue. Checks and balances need to be created whereby the judge can cooperate and achieve the correct performance of the trial lawyer. I believe that it is possible to attain this by authorizing the judge to underline in the ruling, whenever necessary and despite his opinion regarding the controversy, his viewpoint concerning the conduct of such party or lawyer that he observed during the procedure. Afterwards, said judge should be authorized to sanction the careless actions or misconduct that he may have become aware of or he may draw attention to the lawyers' notorious incompetence, negligence or inexperience. Such sanctions would be gradually imposed starting with the temporary suspension and ending with disbarment from exercising the profession. Couture expressed the aforementioned in the project concerning his Country's Procedural Civil Code:

> However, no other field is more appropriate than the trial to carry out a direct audit regarding good faith. Therein is the magistrate that simultaneously is both conflict and trial judge. He discerns, within the scope of said trial, not only who is right, but also how those seeking to win have behaved... he decides in the same act the Law that prevails and is also in conditions asses the liability arising from the behavior during the trial.[19]

This proposal must be accompanied with effective and exemplary sanctions that truly reprimand poor practices and incompetence. Furthermore, these should also sanction economically and temporarily or definitively suspend the lawyer's activities or in the worst case, revoke his professional degree. Clearly, this suggestion must rely on an infrastructure that is based on the right to a hearing, right to object in an appeals court, file for reconsideration by a review court and allows the bars or associations to intervene in determining the sanction, etc. However, the details are beyond the scope of this proposal.

During the XIX century, our country had several checks and balances regarding the conduct of judges. The appeals courts were authorized to comment on the deplorable trial actions of their inferior courts, regardless of the content of the rulings they reviewed in their resolutions. Said appeals courts were responsible for reprimanding such actions. Maybe in modern day Mexico, due to the current social and legal realities, it is advisable to reestablish this authority. However, it should be directed not towards the judges' actions, since there is enough control thereof although more needs to be done, but rather towards the actions of the lawyers and parties. Then again, why not reconsider the pertaining to lower court judges as well? I do not answer this question, but be my doubts on the issue expressed.

At that time (19th century), a leaving of office trial existed regarding the actions of every civil servant at the end of their term in office. Said trial was carried out if there were complaints against them or in a mandatory manner at the end of their term or before the promotion to any other office. It was a requirement for civil servant's permanence. During this trial, the civil servant's performance in office was evaluated, as well as the respect he upheld regarding the dignity of office. Now a days, if we agree to consider the legal profession as a service or profession of public interest that connects to important matters such as access to justice then:

why not subject the legal professionals to an examination regarding their performance in order for them to maintain the authority o the right to the litigate? Why not demand respect for the dignity of the legal profession?

Hence, with a checks and balance system among the human elements of the trial relationships, the responsibility of having and keeping a justice system with a technical and moral quality would be shared by those who intervene in it. The quality of justice, or absence thereof, would be a joint responsibility of judges, lawyers and parties. There would be no one to blame for thwarted objectives, only oneself.

If the pitfalls that currently obstruct the proper operation of the human subsystem within the justice system were eliminated, it would favor fair results socially and individually. This would allow one to believe that the system works adequately and favorably towards a real and true justice. I am aware these is not enough to overcome all the problems facing access to justice. Access to justice is a complex problem, as stated by Cappelletti in his famous work, thus entitled, in witch once an obstacle or barrier is removed then another aspect of the problem becomes vulnerable.[20] Therefore, by improving a subsystem then the system improves; nevertheless the improvement of the other subsystems remains pending. It would be a good approach to the desired results.

Of course, in order to achieve the foregoing, one must resort to the so-called "social engineering" of the "social technology" or of the "step by step technology" in order for the social engineer to assist us in how to gradually and successfully make these suggestions come true.

From a realistic point of view, be it bearing in mind that a nation, as well as an individual, have been and are the architects of their own destiny, we may consider that the problems currently faced by institutions are its historical responsibility. For the good or the bad, these are the consequences of correct or incorrect decisions taken with absolute freedom when faced by the challenges and problems that the social and political reality posed a certain time.

Today, we enjoy the right decisions and suffer the consequences of the wrong decisions made by past generations to which we must add our own right decisions and errors. Thus through human action it is possible to achieve a change in the institutions and/or subsystems within certain limits and in determined conditions in order for them to better respond to the objectives that were designed for. If the scenario is approached in the aforementioned manner, the dilemma does not consist in knowing if a change is or not possible or if it necessary to be fatalistically subject to a certain reality, but to give adequate form to the actions that must be implemented and, consequently, take the right decisions to achieve the changes we aspire to.[21]

Notes

* Supreme Court of Justice.
1 The aforementioned precedent can be found under number 230 of the 1995 Appendix of the Weekly Federal Court Report, tome IV, the Supreme Court of Justice's Part, p. 157. It became mandatory as of the ruling dated November 8, 1959.
2 The aforementioned precedent can be found under number 316 of the 1995 Appendix of the Weekly Federal Court Report, tome IV, Supreme Court of Justice, p. 213 or in the CD ROMs containing the Supreme Court's precedents under registry number 392,443. It became mandatory as of the ruling dated October 21, 1960.
3 Gudiño Pelayo, José de Jesús, *The Complexity Regarding the Simplification of the Writ of Amparo. Considerations on the Structure, Scope and Context of a New Law of Amparo*, Judicial Engineering and Reformation of the State, Mexico, Laguna Editorial, 2001.
4 Ferrater Mora, José, *Philosophy Dictionary*, the new edition was updated by the Ferrater Mora Chair headed by Josep-Maria Terricabras, Tome IV, Barcelona, Ariel, p. 3305.
5 *Ibidem*, p. 3312. The italics are mine.
6 Enrique Palacio, Lino, *Civil Procedural Law*, 4th edition, Buenos Aires, Abeledo-Perrot, tome III, p. 125.

7 Pina, Rafael de, *Procedural Law*, Temas, 2nd edition, Mexico, Ediciones Botas, 1951, pp. 46 and 47.
8 Article 110, paragraph 1 and 2 of the Constitution.
9 Title Eleven, "Crimes Against the Administration of Justice," Article 225, certain types of crimes such as the improper exercise of public service, abuse of authority, bribery and illicit enrichment established in various provisions of Title Ten "Crimes Committed by Civil Servants," of the aforementioned Law.
10 Calamandrei, Piero, *Praise to Judges*, Mexico, Edited by Orlando Cárdenas Editor, 1999, p. 49.
11 *Ibidem*, p. 50.
12 Gudiño Pelayo, José de Jesús, *Masters Degree in Law as Social Engineering*, *op. cit.*, p. 97.
13 *Ibidem*, pp. 45 and 46.
14 *Ibidem*, pp. 50, 53 and 54.
15 Article 5 of the aforementioned Law.
16 See Articles 6, 7 and 37 of the aforementioned Law.
17 See Articles 48 and 50 of the General Background of the Organization and Operation of the Federal Institute for Public Defense, issued by the General Board thereof.
18 There are some provisions in the Civil Procedure Law and Federal Criminal Law that authorize the judge to impose disciplinary sanctions due to faults committed by lawyers during hearings and also reprimand regarding their manner of litigation, Articles 54 to 57 of the Federal Code for Civil Procedures and Articles 41, 89, 390 and 391 of the Federal Code for Criminal Procedures. Moreover, the criminal charges that the trial lawyer could be liable for are few and refer to notorious conducts that are not the only manifestations of said lawyer's carelessness, malice or incompetence. Therefore, these are considered insufficient and inadequate.
19 Couture, Eduardo, *Project for the Code of Civil Procedure*, with a Congressional Declaration of Purpose, Uruguay, 1945, p. LXII.
20 Cappelletti, Mauro and Briant Garth, *Access to Justice: The Tendency in the Worldwide Movement To Enforce Rights*, Mexico, Fondo de Cultura Económica, 1996, p. 22.
21 Gudiño Pelayo, José de Jesús, *The Complexity Regarding the Simplification of the Writ of Amparo. Considerations on the Structure, Scope and Context of a New Law of Amparo*, *op. cit.*, p. 114.