

El servicio público de educación básica en México¹

The public service of elementary school in Mexico

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Resumen

Esta investigación tiene como objeto de estudio el servicio público de educación básica en México como derecho fundamental, desde la perspectiva del Derecho administrativo. Para ello ofrece tanto una aproximación al estudio de la escuela mexicana, como a las bases institucionales del sistema educativo actual; explora los fundamentos constitucionales, el marco normativo y los principales problemas de la educación básica. Se trata de una investigación jurídico-doctrinal, basada en una metodología exploratoria explicativa y cuyos resultados revelan una dispersión de reglas en múltiples ordenamientos, sobrerregulación y heterogeneidad estructural, lo que conduce a omisiones, redundancias y contradicciones en el régimen legal de este servicio público.

Palabras clave: legislación, legislación educativa, derechos humanos, justicia, educación primaria, educación básica en México.

Abstract

This research refers to education as a fundamental right in Mexico and in the major international instruments binding to international law. It also examines education as a

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public service from a perspective of administrative law. It exposes the constitutional basis, as well as the regulatory framework and the main problems found in the elementary school.

Keywords: legislation, educational legislation, human rights, justice, elementary education, primary education in Mexico.

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Introduction

Because of the significance of education for the development of individuals and peoples, you can not continue to be subject to the political will of governments in turn. It is up to each individual and to society as a whole to take a responsible and active role in the educational task. This research offers an approach to complex provisions for basic education in Mexico, as well as the problems affecting today this utility, from the perspective of administrative law. Also, this paper analyzes the legal regime of public service education with special reference to the basic training, which aims to train analytical, reflective, critical and independent children, with particular interest in the scientific, humanistic and artistic knowledge; with developing themselves and with an awareness that enables them to become more autonomous, participative and responsible in his performance at school, the family and society.

The improvement of the legal basis of basic education, takes on special meaning in an environment of violence, exclusion, intolerance, corruption, indifference and constant violation of fundamental rights, which must rescue children.

Basic education is key to strengthening democratic institutions, promoting the development of human potential and to promote understanding between peoples, thus requiring more defined guidelines that promote the culture of peace, respect, tolerance, solidarity and equality.

Basic education is of paramount value because generally intended that children acquire and develop primary intellectual abilities, to reach the essential knowledge to enable them to understand the nature, mathematics, history and geography, as well as appreciate and enjoy

art and physical exercise and sports. Right at this school level, children complete their ethics training through knowledge of their rights and duties, and practice values in their personal lives, in their relationships with others as members of a community. Education "prevents poverty, creates the need for cultural education of ethical, moral and cognitive principles to ensure short-, medium- and long-term collective welfare" (Cohen, 1999, p. 25).

In today's Mexico intellectuals missing, missing voices, such as the renowned pedagogue Pablo Latapí Sarre, who warned:

The root causes of the terrible mediocrity of our education are three: a) the perversion of the education system by political interests, especially those who generate large simulations that the National Union of Education Workers (SNTE) protects; b) the lack of firmness of the authorities, at all levels, to contemporize with undesirable situations for fear of jeopardizing their political careers or break the precarious balance of the status quo; and c) the weak participation of parents and society to demand an educational service of real quality. In these cases add the absence of an intellectually ambitious project founded, to give consistency to the actions and achievements, channeling the energies of all social sectors (Latapí, 2009, p. 1 y ss).

This author also felt that education, rather than a science, is a meeting point for many sciences. Regarding the office of teaching said: "I do not advocate a stoic attitude to the ambivalences of life, much less by resignation; rather a realistic attitude to relativize the negative and positive values without fantasies; I think there is this thing called maturity" (Latapí, 2009, p. 1).

The right to education and the profession of teaching are more than a public service. Teaching is a practice that must articulate ethical values, knowledge and creativity; teaching is a ceremony to be developed with deep enthusiasm, responsibility and vocation.

Education: the right of a few universal fundamental right

Recognition of the importance of education for the formation of the individual and, consequently, to the formation of a company, dates back to the first politically organized societies. When privileged segments are created, education begins to address the formation

of the ruling classes, educated to conquer, govern and control. The idea of taking it to popularize education all social media began in the sixteenth century, a period in which European society underwent profound transformations (Gorczewski, 2010, p. 148).

The educational theories of the Enlightenment, and the formulation of a new social and political utopia, could not be conceived without the contribution of the thought of Locke, Rousseau, Voltaire, Clalotais, D'Alembert, Diderot, Genovesi, Schiller, Basedow, Mill Humboldt, among others. Education was one of the most powerful tools against what is considered one of the biggest mistakes of mankind: superstition, fanaticism, religious dogmas.

From the second half of the eighteenth century was a period of development of the theory of education and at the same time, under the beginning of the revolutionary impulses, the chance of legal recognition (Gorczewski, 2010, p. 150 arose).

During the twentieth century until today, the right to education has simultaneously changing the character of individual rights and social rights.

The right to education is also a civil and political right. In this regard, the right to education epitomizes the indivisibility and interdependence of all human rights (Nogueira, 2008, p. 2). However, whether the case of an individual, social, civil and political rights is a fundamental right, and as such is a historical building (Pérez Luño, 1991, pp. 203-217) that can be seen as changing reality that It differs in its structure and content depending upon the historical conditions. To the extent that these rights are universal, they are also absolute and inalienable, features to see the relevance of human rights and the importance of any person to lose those rights (Laporta, 2001, pp. 23-46).

The right to education has been recognized as a fundamental right of universal character; primary education is compulsory and free. The most important conventional sources so credited.

For example, the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of December 10, 1948, states:

Article 26. Everyone has the right to education. 1. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available; access to higher education shall be equal for all on the basis of merit. 2. Education shall be

directed to the full development of the human personality and strengthening of respect for human rights and fundamental freedoms; It shall promote understanding, tolerance and friendship among all nations and all ethnic or religious groups, and promote the development of the activities of the United Nations peacekeeping. 3. Parents have preferred to choose the kind of education that shall be given to their children right.

The International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, states:

Article 13 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and strengthen respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and among all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

a) Basic education shall be compulsory and available free to all; (International Covenant on Economic, Social and Cultural Rights).

Article 14. A State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory and free primary education, undertakes to develop and adopt, within two years, a blueprint for the progressive implementation, within a reasonable number of years fixed in the plan, of the principle of free and compulsory education for all plan.

The Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Paris Protocol on March 20, 1952, points:

Article 2. Right to education. No person shall be denied the right to education. The State, in the exercise of the functions which it assumes in the field of education and

teaching, respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms)

The American Declaration of the Rights and Duties of Man approved by the Ninth International American Conference held in Bogotá in 1948, states:

Education rights

Article VII: Everyone has the right to education, which should be based on the principles of liberty, morality and human solidarity.

It also has the right to an education that will prepare him to attain a decent life, to raise the standard of living and to be useful to society.

The right to education includes the right of equal opportunity in all cases, in accordance with natural talents, merit and the desire to utilize the resources that can provide the community and the state.

Everyone has the right to receive free primary education, at least.

The Declaration of the Rights of the Child, proclaimed by the General Assembly of the United Nations and unanimously approved by the United Nations General Assembly, on November 20, 1959, establishes:

Principle 7 The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. You will be given an education which will promote his general culture and enable him, equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and become a useful member of society. The interests of the child must be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavor to promote the enjoyment of this right.

The American Convention on Human Rights signed in San José, Costa Rica, on November 22, 1969, provides:

Article 26. Progressive Development

States Parties undertake to adopt measures, both internally and through international, especially economic and technical cooperation, to achieve progressively the full realization of the rights implicit in the economic, social, educational, scientific and cultural standards, contained in the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, to the extent of available resources, by legislation or other appropriate means.

The Charter of Fundamental Rights of the European Union in December 2000, provides:

Article 14. Right to education. 1. Everyone has the right to education and access to vocational and continuing training. 2. This right includes the possibility to receive free compulsory education. 3. respect, according to the national laws governing the exercise of the freedom to set up educational centers within the respect of democratic principles and the right of parents to ensure the education and teaching of their children in conformity with religious, philosophical and pedagogical convictions.

In a legal approach to this fundamental right, the overview of binding international instruments, reflect the interest in defining education as essential for the development of individuals and nations item.

Mexican School and the institutional basis of the current education system

On the Feelings of the Nation of Jose Ma. Morelos y Pavon, was captured the interest of the people away ignorance. The Constitution of Apatzingan, the need to educate all citizens is also recorded. Iturbide, the Provisional Regulations of the Mexican Empire, 1823, required municipalities to establish local instruction. Lucas Alaman, in 1823, declared that general education was one of the most powerful means of prosperity for a nation. "Education should be useful and virtuous citizens, should not be reduced to reading and writing" (Zamora, s / a, p. 3).

Justo Sierra said the minister, Jose Ives Limantour, who had not only look at the industry and material development "industrial country is the capital which exploits it, the people can

only be masters of the country if moral prepares and intellectually for it "(Zamora, s / a, p. 3).

Manuel Calero, in 1902, stated, "we want to be guided by those who are not blind, for those who have interests to defend but with the essential condition that is not operated the ignorant, the poor, but rather, that all we apply it to illustrate, to ensure their welfare, to raise it to a higher level through education and decent work "(Zamora, s / a, p. 3).

The creation of the Ministry of Education (the September 25, 1921), and the draft Jose Vasconcelos, one of the staunchest supporters of giving education a federal character, began the long and difficult process of federalization of education Mexican.

Cardenas reforms -the major oil expropriation, land reform and to a lesser extent, the socialist education provoked a growing polarization in Mexican society. As president, Manuel Avila Camacho hastened to declare that it was not socialist, but democratic and believing Catholic by origin and feeling. In 1940, his first year in office, in Mexico began to feel the effects of the Second World War. This favorable ideological shift, atmosphere promoted the policy of "national unity" because "the sacrifice" of particular interests, which meant do everything possible to eliminate the issues for its content tended to aggravate conflicts between groups are promoted. In the field of education it was not easy to accept these ideas. And it is that the teachers were large sectors remained faithful to the Cardenas orientations. There were several secretaries of education and did not stop conflicts with teachers' organizations.

It was then that the president appoints (Secretary of Education), the prestigious writer Jaime Torres Bodet, who defined the features of the so-called Mexican school, which moved away from protest and popular tone of educational discourse of the thirties. The principles of education, held Torres Bodet, the child should develop the qualities needed most as a man and as a citizen: patriotism, love of work, honest sense of the struggle for existence, fraternity between classes and balancing social justice (Loyo, 2011, p. 29).

In December 1945 he was presented the initiative to reform Article 3ro. Constitutional, which kept secularism and the limits to religious corporations and religious ministers from the Constitution of 1917. The state controls over private education also remained, albeit slightly attenuated. The most important thing was that the socialist nature of education,

established in 1934, which was removed to be replaced by a more definite orientation tending to democratic liberalism. The orientation of primary education has varied little since then, mainly keeping the spirit of the text of 1946 (Loyo, 2011, p. 29).

The right to basic education is enshrined in Article 3, Sections III, V, VI, IX and 31 and Section I of the Constitution of the United Mexican States.

Basic education as a public service from the perspective of administrative law

The 1917 Constitution placed the right to education in the fundamental rights and freedoms, to confer the status of public service:

Article 3, Section VIII. The Congress, in order to unify and coordinate education throughout the Republic, shall issue the necessary laws for distributing the social educational function between the Federation, the states and municipalities, to set the corresponding economic contributions to this public service and point out the penalties for officials who do not comply or enforce the provisions, as well as to all those who break them.

Article 73, section XXV. [...] Enact laws designed to distribute feasibly between the Federation, States and Municipalities the exercise of the educational function and the corresponding economic contributions to this public service, seeking to unify and coordinate education throughout the Republic, and to ensure the achieving the aims of education and its continuous improvement within a framework of inclusion and diversity.

In the theory of administrative law it is unsettled discussion has revolved around its legal status as a public function or public service, beyond the provisions of the Constitution. The concepts of public service and public service, must be distinguished, though closely related. (Serra, 1999: 78) Incorporate the satisfaction of a general need for action of public power, is legally organize a new task of state power ... The functions of the State are the means by which the fundamental purposes are made Been. (Serra, 1999: 78)

State functions are not utilities, but structures of government. Díez said that "the function is an institutional concept, while the utility updates and materialized function" (Díez, 1979, p. 187). He adds: "We can say, in summary, that the activity of management is possible to

distinguish the public civil service. While the activity of the state, law and justice are always characterized by the exercise of civil, administrative activity also it includes the exercise of public function, public services. It is necessary to limit the concept of public service only aspects of administrative activity and counterpose the concept of public service as the highest form of manifestation of the same activity "(Díez, 1979, p. 187). Renato Alessi (Alessi, 1970, p. 96) also notes that it is not the same that public utility function. Alfonso Negrete Nava refers to the following characteristics of public service:

- a) You can pay by the State or by individuals; b) may be given with or without purpose of revenue by the State or individuals; c) is administrative or economic (industrial or commercial) nature, and d) their legal status is administrative, but not limited to law; It is also applicable private law (Nava, 2001, p. 419).

Dr. Jorge Fernández Ruiz, states that:

Public service is any technical activity to satisfy a need of general, uniform and continuous compliance with which is to be permanently secured, regulated and controlled by the ruling, subject to a mutable exorbitant legal regime of private law, and by the administration public or by individuals authorized to do so by a competent authority, indiscriminate benefit of everyone (Fernandez, 2002, p. 121).

The author considers the public service as any technical activity to satisfy a need of general, uniform, regular and continuous basis, subject to a mutable exorbitant legal regime of private law, in indiscriminate benefit of everyone (Fernández, 2006, p. 121).

We are faced with a case in which the traditional legal categories are insufficient to accommodate fundamentally different content.

The core issue lies not in deciding whether a public service or is a public function, whether it is a preeminent issue of the State or if it involves predominantly the individual, the important thing here is the existence of mechanisms that guarantee the right to education as a right critical stable and applied impartially to every individual, and the means to enforce it, which is obviously not the courts, because their satisfaction is not achieved through legal channels, being what Alexy calls justiciability objection poor. In light of doctrinal considerations, there is a negative definition, or an abstract right, as required of an organization and structure to ensure a positive exercise under conditions of regularity.

Luis Prieto Sanchis, refers to the existence of a certain awareness that social rights in general, and particularly the prestaciones rights, "or are not authentic fundamental rights, representing a sort of legal or rhetoric, at best, rights are diminished or training "(Prieto, 1998, pp. 96-97).

This debate should consider the nature of the right to education as one of its most significant features, and the public authorities imposed a series of positive obligations. We are facing an individual right that should give the State; if that possess sufficient financial means and if I found an offer on the market also sufficient, could also get individual (Alexy, 1993, p. 87).

Legal framework of basic education

Then the most important provisions on the subject are mentioned. Through them you can contemplate the complexity of the regulatory framework, for example, by the list of laws, regulations, agreements and decrees.

Federal laws on education. General Education Law published in the Official Journal of the Federation (DOF) on July 13, 1993, as amended. General Law of Linguistic Rights of Indigenous Peoples, published in the Official Gazette on 13 March 2003. Last reform published DOF 09-04-2012. General Act to provide services to the attention, care and integrated child development, published in the Official Gazette on October 24, 2011. General Cooperative Societies Act, published in the Official Gazette on August 3, 1994, last amendment published DOF 13- 08-2009. General Law for the inclusion of people with disabilities, published in the Official Gazette on May 30, 2011. General Law on Physical Culture and Sport, published in the Official Gazette on February 24, 2003, with its latest reforms published DOF 09-04 -2012. Law on the Shield, the Flag and the National Anthem, published in the Official Gazette on February 8, 1984 Last renovated DOF 17-01-2012.

The General Education Law Article 12 establishes the powers of the federation in education. The exclusive powers of local education authorities are in Article 13 and in paragraphs 15, 23, 29, 48, 52 and 63 of the Act itself.

Basic education in the Education Act. Article 4 stipulates the obligation to attend basic education. Article 8 refers to the criterion that guides basic education and is based on the results of scientific progress; Fighting ignorance and its causes and effects, servitude,

fanaticism, prejudice, stereotyping, discrimination and violence, especially against women and children.

Federal regulations in education. Regulations parents associations published in the Official Gazette on April 2, 1980. Regulations of the law to promote reading and the book, published in the Official Gazette on April 23, 2010. Regulation of the Law General provision of care services, comprehensive child care and development, published in the Official Gazette on August 22, 2012. Regulations of the General Law for the inclusion of people with disabilities, published in the Official Gazette on November 30, 2012 (third section-afternoon).

Agreements applicable to basic education. Agreement No. 540 that updates the diverse number 181 by establishing the Plan and Curriculum for Basic Education published in the Official Gazette on August 20, 2010. 648 Agreement laying down general rules are established for the evaluation, accreditation, promotion and certification in basic education, published in the Official Gazette on August 17, 2012 (first section). Agreement No. 499 of October 20, 2009 by amending the diverse number 200 and where assessment standards of learning in basic, secondary and teacher-training education. Agreement No. 304 approving the diverse number 181, by which the plan and curriculum for basic education are established, published in the Official Gazette on November 16, 2001. National Agreement for the modernization of basic education is updated published in the Official Gazette on May 19, 1992. Agreement No. 96 establishing the organization and functioning of primary schools, published in the Official Gazette on December 7, 1982. Agreement No. 181, approving the plan and designating the curriculum for basic education, published in the Official Gazette on August 27, 1993. Agreement No. 280 establishing the general guidelines for the establishment and operation of boards of social participation in education match fixing published in the DOF on 4 August 2000 number 535 Agreement whereby the general guidelines for the operation of school councils of social participation, published in the Official Gazette on June 8, 2010. Agreement number 592 issued by that the articulation of basic education, published in the Official Gazette on August 19, 2011 (second section) is established. Agreement No. 685 by amending the diverse number 648 and general rules for assessment, accreditation, promotion and certification in basic education are established, published in the Official Gazette on 8 April 2013. Agreement on the reform of the general

guidelines the national program of teaching career, published in the DOF on 25 May 2011. Control Standards concerning school registration, re-registration, accreditation, promotion, standardization and certification in basic education of October 1, 2012.

Constitutional reform. Initiative Decree for amendments and additions to various provisions of the Constitution of the United Mexican States, of December 10, 2012, within the framework of the agreements and commitments in the Pact for Mexico, was approved by the House of Deputies on 20 December 2012 and by the Senate on December 21 the same year. In February 2013, the reform was declared constitutional by the Federal Legislative Power, promulgated by the Executive on 25 February 2013 and published the following day in the Official Gazette.

This set of provisions should be added about twenty decrees, over one hundred federal guidelines, arrangements for particular schools, decentralized bodies, tele and full-time schools, urban schools, compensatory actions to bring down the educational gap, pre-school and primary for rural and indigenous, subsidies for education centers, adult education, technology education, institutional improvement program of public colleges and regulations governing population in each state. Also, labor standards, accountability, social security, administrative and trade union nature, as well as multiple operating rules must be added.

Specifically, the upregulation of matter reflects, on the one hand, the attention that the State pays the education issue, but on the other also reveals a high degree of coordination and a major regulatory disorder. Overregulation and structural heterogeneity around basic education reach Kafkaesque dimensions, generating the dispersion of the rules in multiple systems and hindering their knowledge, which translates into numerous omissions, redundancies and contradictions. More laws are equivalent to more controls and a growing uncertainty about its scope and content. Paradoxically, as the rules fail to regulate encompassing way the enormous quantity and variety of hypotheses involving the educational activity, gaps, gaps to fill are numerous. Upregulate in education does not guarantee that the aim of education is met.

Over-regulation is one of the great scourges that must fight against the Mexican educational system.

Main problems of basic education in the national education system

Has not yet been reached 8% of gross domestic product (GDP) spent on education (Muñoz, 2010, p. 2); However, Mexico is one of the countries in the world that most resources to their education, 5% of gross domestic product (GDP), even ahead of the United States, the percentage is 4.8, and Germany, with 4.2; Paradoxically, the greater the expenditure that spends for education, the worse the quality of education in all areas of national life (Garduño, 2010, p. 26).

- With regard to the increase of wages to the teaching staff in primary education, Mexico ranks as one of the countries that more work incentives granted to the teaching staff (Garduño, 2010, p. 26).
- The average schooling in Mexico is 8.7 degrees, which is equivalent to eighth grade. Hence, 43% of the population 15 years of age or older has not completed basic education (The big problems of education in Mexico, 2013, p. 2).
- There are still significant delays in the national education system, of which the most important are the lack of opportunities for much of the population to access quality education.
- Virtually all children are offered the opportunity to attend primary education.
- There is inequality in the quality of basic education.
- Vulnerable groups have difficulty accessing education.
- There are social imbalances that can not be solved incidentally nor can be left in the hands of compensation programs and subsidies.
- The SEP-SNTE reciprocal relationship reveals atypical subordination of every party functions, which further complicates the education in the country.
- The Alliance for Quality Education was a political pact between the Ministry of Education and the Union (signed on May 15, 2008, and removed the March 5, 2013), the most controversial point was the realization of the competitive examinations, in which there were alarming rates of failure of teachers who underwent examinations.

- Urge revolutionize the training of future teachers, which means new content and new teaching methods, seeking methodological strategies appropriate for each subject, which act as generators of analysis and reflection.
- It is urgent to analyze the rules, plans, programs and textbooks and undertake serious studies related to school failure and retention.

Conclusions

1. The improvement of the legal basis of basic education, takes on special meaning in an environment of violence, exclusion, intolerance, corruption, indifference and constant violation of fundamental rights, which we have to rescue the children.
2. Basic education is key to strengthening democratic institutions, promoting the development of human potential and to promote understanding between peoples, thus requiring more defined guidelines that promote the culture of peace, respect, tolerance, solidarity and equality.
3. The right to education has simultaneously charging the character of individual, social, civil and political rights. The right to education is a universal fundamental right that every person should have access. In all latitudes it has the character of compulsory and free.
4. The most important in international law, binding international instruments enshrine education as a fundamental right and reflect the interest in defining education as essential for the development of individuals and nations item.
5. From a constitutional point of view, education is a public service subject to a system of administrative law, which is intended to meet social needs permanent.
6. From the doctrinal perspective, the core issue lies not in deciding whether a public service or is a public function, it is important to consider its performance based character.
7. It is essential to the existence of mechanisms that guarantee the right to education as a fundamental right recognized stable and every individual, and the means to enforce it, which is obviously not the courts. One of the most significant features of

the right to education, is that the public authority imposes a number of positive obligations.

8. Education in Mexico is regulated by the Constitution of the United Mexican States, the General Education Act and other complementary laws, regulations, agreements, around twenty decrees, over one hundred federal guidelines, arrangements for particular schools, agencies decentralized, tele and full-time schools, urban schools, compensatory measures to bring down the educational gap shares, initial and basic education for rural and indigenous population, subsidies for education centers, adult education, technology education, institutional improvement program of the regular public schools and regulations in force in each state. Also, labor standards, accountability, social security, administrative and trade union nature, as well as multiple operating rules should be added.

9. The overregulation and structural heterogeneity that there are about basic training, leading to the dispersion of the rules in multiple systems, hindering their knowledge, which translates into numerous omissions, redundancies and contradictions.

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