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Modern Legal System/Encyclopedia

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THE LEGAL SYSTEM of MEXICO

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CHAPTER THREE

MEXICO

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THE LEGAL SYSTEM OF MEXICO

§ 1.1 Historical Background of The Law.

No social institution can be well understood without some knowledge of its history. This is true of legal systems as well as other institutions in society. It is therefore appropriate to present first, in brief outline, some of the more important developments in Mexican history which affected the law. In doing so, we shall also make an occasional comparison with United States history for the insights that such comparisons can provide.

§ 1.1(A). The Indigenous Institutions.

Mankind had lived on the North American continent at least twenty thousand years before its invasion by Europeans. There were an immense variety of cultures occupying this part of the globe from the extremely individualistic Eskimos in the north to the complex civilization of the Maya in the south. Much of what is now the United States was populated by nomadic groups who depended largely on hunting for their subsistence. Although we are aware today that each of these Indian tribes had systems of law that were occasionally elaborate and subtle, they exercised little or no influence on the early English settlers. Some, such as the Cherokee, had developed an agrarian way of life and corresponding legal institutions which more closely approximated those of the European world. Still, the influence tended to run from the European to the Indian rather than vice-versa. In Mexico, however, the indigenous population had reached a degree of sophistication in its civilization unmatched elsewhere in North America. These Indian institutions have left their mark on Mexican culture.

Most of our knowledge of the indigenous population of Mexico comes from the reports of the early Spanish conquerors and explorers beginning about 1519. They encountered several tribal groups or nations. Some of these were independent and hostile to the dominant Aztecs; others had submitted to Aztec rule and paid tribute to their conquerors.

The center of the Aztec empire at that time, Tenochtitlán, was the shining jewel of this highly advanced civilization, comparing favorably in its magnificent architecture and city planning with any contemporary city in Europe. As the commercial center of the empire, Tenochtitlán housed a powerful class of merchants who were organized into merchant guilds. Commerce was regulated by special courts composed of members of the merchant class, a direct parallel to European merchant courts of the same historical period.

The Aztec Empire was a military theocracy headed by an elected monarch. Under him were the nobles, the military, and the priests, headed by a Supreme Priest. Then came the plebeians, of which the most significant classes were the merchants and the peasants. At the bottom were the slaves who were not considered property (as Negro slaves later came to be in the United States), but persons with some rights, however minimal. At the beginning of the Empire the laws were made by the priests, but soon they became a

function of the nobles. Some legislation was recorded, especially criminal legislation. Pictorial scenes were made of each crime and each punishment. Criminal laws were severe, and many crimes were punishable by death.

Judicial administration was hierarchical. At the bottom were the local magistrates who were elected by the members of their communities. They had jurisdiction over civil matters and minor criminal cases. Their decisions were appealable to higher courts of three to four judges who also had original jurisdiction over some kinds of controversies. These magistrates were appointed by the Supreme Magistrate. The Supreme Magistrate exercised both judicial and administrative functions. He also heard appeals from the intermediate courts. The king had ultimate appellate power.

Real property in Mexico at the time of the Conquest was of two kinds. One was predominantly related to conquered land. Like all property, it was owned by the Emperor; but it was distributed to the nobels, the military, the priests, and others. These grantees theoretically did not own the land, but enjoyed its use during their lifetime. Upon death it passed on down the family line in much the same manner as the medieval English fee tail. The other kind of ownership was communal land which belonged to the **calpulli.** The **calpulli** was a geographically centered clan or village of several related families. It was a political unit headed by a council composed of the heads of families. The communal land was further subdivided to each family with the condition that they would cultivate the tracts given to them. Any unused land would revert to the community. Part of the agricultural produce went to the king as tribute, a crude sort of income tax. The **calpulli** is significant as a predecessor of the ejido, a system of community-owned property unique in Mexico today.

§ 1.1(B). Spanish Law.

The conquerors of the Aztecs brought with them many institutions from their homeland, including much of the law. This Spanish law was superimposed upon the indigenous population, replacing in part the earlier legal institutions, especially among the Spanish elite of the newly emerging Mexican society. As with the English common law in the English colonies to the north, not all of the law of the motherland was imported. This was due not so much to any conscious effort to be selective, but due to colonial ignorance, absence of well-trained legal professionals, and sometimes due to the inapplicability of the old law to the changed circumstances of the new world. Nevertheless, it can accurately be said that Mexico was "governed" by Spanish law, more or less, throughout the colonial period; and Spanish law certainly left its imprint on the modern law of Mexico. It is appropriate to consider the nature and sources of that law.

The law of Spain was a very old system even in the 1500's. Its origins can be traced directly back to Roman law. In fact, the Roman legal tradition had probably had a more continuous existence in Spain than almost anywhere else in Europe. Of course, the law changed greatly over such a long period. Most of this change was accomplished through successive authoritative compilations of the law. Curiously, the Spaniards seldom repealed previous compilations when they created new ones, and some of the compilations were never officially legislated at all. As might be expected, this eventually led to confusion among written legal authorities.

When the Germanic invaders settled in Spain upon the breakdown of the Roman Empire, they produced the first two compilations of Spanish law. The Code of Alaric (506, A.D.) was Roman law somewhat revised by the Fisigoths. But the **Fuero Juzgo** (671 A.D.) had a truly Spanish flavor. It covered family law, property, sales, criminal law, and

procedure. It superseded the Code of Alaric and remained in force even after the coming of the Moors.

The influence of the seven centuries of Moorish rule on Spanish culture and society was tremendous. However, Islamic Law was conceived to be personal; it could only apply to a Moslem. No attempt was ever made by the Moors to extend it to non-believers. Thus, in effect Spain had during that period two distinct but co-existing legal systems, one for Moslems and one for Christians. Only a few traces of Islamic law can be found in Spain today.

In the mid-thirteenth century Alfonso X (the Wise) enacted two compilations, the **Fuero Real** and the **Siete Partidas.** The latter never officially became law but is still used as an authoritative "source" of law. After the Conquest of Mexico the following especially important laws were enacted and made applicable to Mexico: **Nueva Recopilación** (1567); **Ordenanzas de Bilbao** (1737), which became the Commercial Code and was used in Mexico even after Independence; **Novísima Recopilación** (1805); finally **Recopilación de las Indias** (1680) with new editions published from 1681-1804. This was a compilation of laws and royal decrees exclusively applicable to the colonies.

This body of law, enacted by the Spanish authorities but applicable only to the colonies of the new world, was called the **Derecho Indiano.** There was no parallel in legal development for the English colonies of North America. Much of the Derecho Indiano was intended to protect the Indians against exploitation by greedy Spaniards; however the law was occasionally ignored by the Spaniards who controlled Mexico, and occasionally it was perversely used to oppress the Indians.

Although the Spaniards demolished the Aztec Capitol and later rebuilt it, they did not totally destroy the Empire. Instead, they kept and used the well organized system of political control. The Spanish colonial government was headed by the Viceroy as direct representative of the King. He presided over the **Audiencia** (somewhat equivalent to a Supreme Court), which, like the Viceroy, exercised both administrative and judicial functions. Mexico was sub-divided into provinces. The **corregidores** (governors) and the **alcaldes** (town mayors) were in charge of the geographical subdivisions. The **alcaldes** also had some judicial functions. This entire governmental system in Mexico and in the other Spanish colonies of America was overseen by a central board, the Council of the Indies.

This colonial arrangement was in sharp contrast to the structure of government which was evolving in the English colonies to the north. Those colonies were established separately at different dates for different purposes. Some were business enterprises or plantations, others were refuges for religious dissenters, others were royal domains. Although each of the original thirteen colonies was legally created by a charter from the King, the charters varied considerably and reflected the diverse nature of the colonies. The English Privy Council exercised a supervisory function somewhat analogous to the Spanish Council of the Indies, but there was no central royal authority over all the English colonies comparable to the Spanish Viceroy. In New Spain the governmental organization was hierarchical and centralized in the Viceroy, but in the English colonies authority was localized. This difference ultimately had profound repercussions on the constitutional law of the two countries.

Other differences stemming from the different purposes of colonization also had their effect on politics and law. The English colonists came to the new world primarily to carve out a middle class existence free of religious and governmental oppression. They were basically small farmers, artisans, and tradesmen. They saw the Indians only as an obstacle to settlement. Through a series of battles, barters, and treaties, they managed to push the

Indians away from the area of coastal settlement. In contrast, Spanish colonization was motivated by a search for gold and a desire to Christianize the heathen Indians. Accordingly, the early colonists were mostly soldiers, priests, and adventurers. The crown of Spain aided the new settlers in achieving these aims in various ways. One of the most important institutions to establish the relationship between Spaniard and native was the law of property.

Real property in New Spain belonged to the King of Spain by reason of conquest. But the Crown soon distributed the land to colonial Spaniards and brought two new institutions to Mexico: European style (near feudal) private property, and the **encomienda** system. The **encomienda** was a form of trusteeship or commission by which the Crown entrusted the Indians to the care and supervision of the Spanish landholders. Its purpose was two-fold; it would provide the colonists with manpower and revenue to develop their newly acquired lands, especially the mines; and it would insure the conversion of the Indians to Christianity by the **encomenderos.** This well-intentioned system became an instrument of oppression. The Indians, who were legally vassals of the King and not slaves, were in fact enslaved by the colonists. The Crown officially abolished this cruel system in 1713, but its feudal character remained, though not in name, until the twentieth century.

In colonial times the strictly Indian communities still had their own leaders or **caciques** and held the land communally. Some remained practically independent from Spanish rule, while others were entrusted to the **encomenderos.** This meant that they would have to provide those Spaniards with manpower and tribute. The Crown promulgated laws to protect Indian property, but the colonial government ignored many of them. The colonists, including the church authorities, obtained vast grants of the best land and left the Indians with little or worthless land. With only unproductive soil to sustain them, many Indian communities became dependent on the opportunistic landholders for bare subsistence. The resulting poverty, indebtedness, and subhuman conditions were one of the main causes for Mexico's rise against Spain. But independence did not resolve the problem, and it consequently became a moving force in the Mexican Revolution of the twentieth century. It has profoundly affected Mexican constitutional and labor law to the present time.

The Spanish law was the dominant feature in the Mexican legal environment for several centuries. Since Mexico's economy was basically an agricultural and mining one, the law of land, commercial law, and mining law were the most important of the Spanish contributions. Spanish law continued in effect, both officially and unofficially until well after independence had been achieved in the first quarter of the nineteenth century. This is a direct parallel to the persistence of the English common law in the United States after the Revolution of 1776. In both cases the law was so intertwined in the cultural fabric of society that it remained impervious to radical change even though patriots in both countries clamored for "American" law.

§ 1.1(C). The Nineteenth Century.

The century running roughly from 1810 to 1910 in Mexico can be regarded as an era of great change in which the country underwent repeated social convulsions. Starting as a simple agricultural colony with mining as the only other important industry, Mexico became a fiercely nationalistic, industrializing, urbanizing society. It moved from a static feudal pattern of organization with a hierarchy based mainly upon race to a dynamic nation with libertarian ideals bent upon social reform. This change can most easily be

viewed as occurring in two distinct political periods, the period of political turmoil and the period of political stability. The year 1870 is an approximate dividing point.

§ 1.1(D). The Period of Turmoil.

The period of turmoil begins with the movement for Independence in 1810 and ends with the return of Juarez to the presidency (1867-1872). During this period at least 40 different forms of government were tried, and many colorful heroes rose and fell. Among heroes of the Independence movement were the priest, Miguel Hidalgo, and the statesman, José María Morelos. Among leaders of the conservative side were Augustín de Iturbide who managed to have himself crowned Emperor of Mexico in 1822 and General Antonio Lopez de Santa Anna. Santa Anna was in and out of power numerous times over a 30 year period as president, dictator, and commander of the army. It was under his leadership that Mexico lost roughly one-third of its territory to the United States.

Perhaps the most popular leader on the side of liberal revolution in the nineteenth century was Benito Juarez, the first Indian to succeed in attaining a position of great power in Mexico. It was Juarez' forces which eventually won a long struggle for constitutional democracy, although even this victory proved to be temporary. The struggle received a severe setback during the French intervention, 1864-1867. During that period Emperior Maximillian of the Hapsburg dynasty reigned over the "Second Mexican Empire" at the invitation of conservatives. He was overthrown and executed by the Juarez forces after being abandoned by his French allies.

This half century or so of constant political turmoil witnessed many experiments in government, some of them having lasting impact. A brief review of some of the chief constitutional documents proposed or enacted is therefore in order.

Under the influence of the French Revolution and Napoleon's seizure of power in Spain, a new and moderately liberal constitutional arrangement had been adopted in the mother country and was extended to the colonies in 1812. However, the movement for Independence was already gaining momentum in Mexico. Under the leadership of Morelos a group known as the Congress of Anáhuac convened in 1813 and drafted a constitution even before independence had been achieved. This document, called the Constitution of Apatzingan, recognized self-determination, racial equality and abolition of special privileges to clergy and the military. It provided for separation of powers, a collegial presidency, some basic human rights and the establishment of Catholicism as the religion of the state. Most important were its recognition of the agrarian problem and provisions for distribution and restitution of lands to the peasants. While this constitution never came into effect, the ideas it expressed served as a model for future change.

Ironically, Independence was actually brought about by the conservatives, led by Iturbide, a man who had fought against both Morelos and Hidalgo. After Napoleon had been defeated in Europe, Ferdinand became King of Spain. He soon abolished the liberal Constitution of 1812 but was compelled to reinstate it in 1820. The independence forces grew even stronger, and the Viceroy appointed Iturbide Commander of the Army, expecting him to crush the insurgents. Instead, fearing drastic liberal reforms, Iturbide joined the rebels and declared the Independence of Mexico. Independence itself did not bring significant legal changes outside of constitutional law.

Soon after Iturbide's ill-fated attempt to rule as Emperor, the Constitution of 1824 was adopted. It was the end result of bitter disagreement between Centralists (conservatives) and Federalists (liberals) and represented the latter's victory. This first Mexican Constitution was very clearly inspired by the United States model. It established a federal

republican government with separation of powers, and guaranteed some human rights including popular suffrage.

Nevertheless, the conflict between Centralists and Federalists continued. In 1836 a new Constituent Congress abrogated federalism and promulgated a new constitution which established a centralist democratic republic. The document was divided into seven parts, and was thus entitled The Seven Constitutional Laws. Perhaps most interesting was its second law providing for a Supreme Conservative Power. This was a governmental organ in charge of protecting the constitution and its guarantees. It bore a similarity to the later institution of **amparo**, but it was a political and not a judicial organ. However, Santa Anna, returning from the wars to the north, and disliking the strong separation of powers flavor of the Seven Laws, had them superseded with the Organic Bases of 1843 which also maintained a centralist government.

The conservatives were not able to maintain power very long. The fall of Santa Anna ushered in a period of constitutional revision known as The Reform. In 1847 the Federalist Constitution of 1824 was reinstated. In 1855, after sporadic fighting, the Juarez Law reorganized the system of justice. It abolished all special tribunals except for ecclesiastical and military courts and these were stripped of their civil jurisdiction. In 1856 the Mortmain or Lerdo Law prohibited corporations, mainly the church, from owning land. Aimed at reducing the church's power and increasing the number of working owners, the law attempted to force the church to dispose of its lands.

Finally, to cap the liberal accomplishments, a new constitution was enacted in 1857. It was a moderate document aiming to unify both radical and reactionary extremists. It was nominally federalist, but with centralist overtones, allowing the unicameral Congress to impeach state governors and the supreme court to decide on disputed local elections. All three branches of government were elected through indirect voting. The electors were government functionaries whom the president was constitutionally allowed to dismiss. The anticlerical Lerdo Law was incorporated, but to avoid faction the drafters refused to provide either for religious tolerance or the establishment of Catholicism. The document also included individual guarantees of human rights and provided for the Mexican version of judicial review, **amparo**.

The Constitution failed to unify the political factions. Instead, Civil War broke out again with the Conservatives trying to oust the liberals (1858-61). Two opposing governments were in force in Mexico at one time. The liberals gained the upper hand in 1861, and government under the 1857 constitution returned to the capital, presided over by Juarez. Finding a depleted national treasury Juarez declared a moratorium on all foreign debts incurred by the defeated rival government. This was one of the key factors leading to the French intervention. After the French had been thrown out, the constitution of 1857 officially remained in effect until the twentieth century. As we shall see, this proved to be illusory.

In spite of the constant political upheaval in this period, several very important ideas were introduced into Mexico which took root and eventually changed the legal system very drastically. The French and American Revolutions provided both inspiration and rationalization for a new order.

Among the most important ideas associated with the American and French Revolutions, and which we will put here under the general concept of liberalism, are the maximization of individual freedom, equality, government by popular representatives, and separation of powers. These ideas were regarded as advances upon and in contrast to: class-structured society (including slavery) based upon race, wealth, or social position;

government by monarchy or aristocracy; and monolithic all-powerful centralized government, usually labeled tyrannical. The newer points of view and other ideas related to them spread throughout the western world in the nineteenth century and were espoused by revolutionary and reform leaders in all countries.

Mexico was no exception to this spread of liberal political thinking, and despite its own peculiar social and political problems, the new ideas worked their way into the fabric of government and law. The movement for Independence itself was a manifestation of the acceptance of the idea of popular government as opposed to monarchy. All of the constitutions proposed in the period of turmoil provided for representative legislatures elected by a voting populace whose qualifications for the franchise were not onerous. Politicians of all stripes at least gave lip service to the ideal of power to **el pueblo.** The moves made during the Reform to reduce the political and economic power of the church, although certainly the result of the long standing rural poverty associated with the church's landlord role, also reflected an anti-aristocratic sentiment because the higher church authorities tended to side politically with the aristocrats and conservatives.

The most important implementation of the ideal of individual freedom consisted of the various guarantees contained in constitutional documents of the period. These guarantees sometimes tended to be phrased in loftier and more abstract terms than those found in the U.S. Constitution, the latter reflecting the traditional common law concern with procedures rather than principles. The differences relating to religious freedom between the U.S. and Mexican constitutions also reflected a quite different social experience. The English colonies had been a hodge-podge of religious sects, some of them regarded as dangerous in Europe, and they had learned toleration among themselves by necessity. In contrast, the established church in Mexico had no consequential rivals. Thus the constitution-makers of Mexico tended to fall into two opposed camps — pro-church and anti-church. Although the church's power was vastly reduced in the nineteenth century, the ambiguity of the church-state relationship was not well resolved until the twentieth century.

The translation of individual rights from ideal guarantees to concrete actualities demanded more than statement in constitutional documents. In the United States this was accomplished by the development of the doctrine of judicial review, the use of the writ of habeas corpus, and the use of similar procedural devices. Mexico did not lag behind in providing a means of constitutional challenge. The writ of **amparo** was an original Mexican legal invention designed to implement constitutional guarantees. This procedure was first officially sanctioned in legislation of the state of Yucatan in 1840. It appeared in various statutory and constitutional drafts at the national level beginning in 1843. The institution was finally given official national status under the Acts of 1847 which were theoretically amendments of the newly revived constitution of 1824. Statutes promulgated by Juarez under the constitution of 1857 further elaborated the institution. More detailed discussion of **amparo** follows in § 1.2(H), **infra.**

There probably was some U.S. and French influence in the origination of the concept of **amparo,** but an historical antecedent which may have played a more important part was the Supreme Conservative Power, mentioned above, created by the Seven Laws in 1836. This consisted of a panel of five commissioners charged with insuring that the Seven Laws (constitutional provisions) were carefully observed. It was conceived to be a fourth arm of government in addition to the legislative, executive and judicial. The failure of this institution may have paved the way for **amparo** which centered the machinery for constitutional challenge in the judiciary.

As we have noted, separation of powers was also a key principle of nineteenth century

liberalism. All of the governmental schemes proposed in the Mexican period of turmoil provided for separate and independent branches of government. The institution of the Supreme Conservative Power may be viewed as a further extension of the principle. In addition, federalism in Mexico was also viewed as another type of separation of powers. The centralist versus federalist controversy was a manifestation of old ideology fighting the new. Although Mexico had never achieved much of a real federal system of government, the liberal ideology was triumphant, and the forms of a weak federalism have been observed, more or less, to the present time.

The most important realization of the separation of powers idea actually achieved in Mexico was with the judiciary. Especially under French influence, the judicial role was seen as interpreting and applying the law as made by the legislature. The enactment of the great codes of Mexico in the French tradition has allowed the judiciary to maintain a real or apparent independence from policy making and has deeply influenced the theory of judicial decision making.

Interestingly, in the United States where the common law system of **stare decisis** has been followed, judicial policy-making has continued over the years in defiance of the strict idea of separation of powers.

The enactment of the first Civil Code in 1870, the Commercial Codes of 1854 and 1884, and the Criminal Code of 1871 were themselves responses to the separation of powers idea. In accordance with the French model, it was thought appropriate to provide comprehensive codes of law to regulate all the major areas of human behavior. Policy thus made explicitly and openly by the legislature, the representatives of the people, would be scrupulously applied by the courts. The power of ecclesiastical, military, and other tribunals was to be eradicated or confined to matters of a non-legal nature.

The separation of powers between the legislature and the executive won acceptance in theory during the period of turmoil, but never became much of a reality in practice. Many of the laws of this period as well as later periods were enacted and promulgated by the president alone, theoretically pursuant to a delegated authority from the legislature. This lack of correspondence between accepted ideology and governmental practice gradually became a feature of the Mexican legal system which unfortunately persists to the present time. We cannot say that any nation or culture is free of discrepancies between ideals and practice in government and law. Certainly the United States has had its share of hypocritical practices. However, the degree of difference in Mexico, especially at certain points in her history, has been especially noteworthy. The independence of the legislature from executive influence or control is one of those areas where practice and theory have departed substantially.

§ 1.1(E). The Period of Stability.

The foregoing discussion leads rather appropriately into the next period of history to be considered, since during the presidency of Porfirio Diaz the constitution of 1857 was largely ignored (not repealed or overthrown, but ignored). To review our political chronology, Juarez returned to the presidency after the fall of Maximillian. He died in 1872 and was succeeded by his vice president, another liberal but controversial leader, Sebastian Lerdo de Tejada. Lerdo himself was succeeded by a young general, Porfirio Diaz, in 1876. Diaz remained in power until 1911 when his regime was overthrown by the Revolution. The 35-year span of his control is called the Porfiriate by Mexican historians. This, plus the last years of Juarez and the term of Lerdo, make up the period of political stability.

Diaz proved to be one of the original and most successful of the Latin American dictator sterotypes. With favors and gifts he consolidated his power, he rigged elections, he manipulated laws and men with money, influence, and sometimes with force. He was successful in suppressing all opposition. His regime was free of internal strife and external war in contrast to the first half century of Independence. Under Diaz, the country slowly began to undergo industrialization. Commerce began to thrive. Railroads, electric power, and the age of the machine came to Mexico. But peace and the beginnings of prosperity were bought at a price. Political liberties and human rights were suppressed. Elections, and indeed the entire political operation of the constitution, became a charade. Behind the symbols of liberalism Diaz exercised a power reminiscent of the Viceroys of old.

But perhaps the most important story to be told about the period of stability is an economic rather than a political one. England, the United States, Germany, and France had been undergoing a process of industrialization which produced goods and services in amounts and at prices which were unprecedented in world history. The other western nations were eager to emulate this experience. But industrialization meant large capital investment and the employment of advanced technology. How could a country like Mexico which had little capital and technical know-how travel the route to industrialization?

Diaz and his advisers saw the answer in the encouragement of foreign investment and the importation of foreign technology. Indeed, dispensing with the democratic process and the guarantees of individual liberty were regarded as inconveniences well worth the price because only with political stability would investors begin to build the new Mexico. The present-day policies of some of the emergent African nations provide an interesting parallel to this part of Mexican history.

The prevailing economic philosophy in the United States and Europe was laissez faire. The Diaz regime subscribed to this point of view wholeheartedly. New industry was not to be regulated by the government, except perhaps to be encouraged by favorable licenses and franchises. Attempts by labor groups to force wages higher than the "market" would be drastically suppressed. The highest possible profits would be encouraged to stimulate further investment. Even mineral rights which previously did not belong to the owner of the surface under Spanish law were handed over to private ownership.

Much of the land itself came into the hands of foreign investors. The laws which Juarez and his compatriots had fought for were intended to break up the large landholdings **(latifundios),** especially of the church, and return the land to the peasants who were given the first opportunity to purchase these holdings at very modest prices. However, ignorance on the part of the peasants, perhaps aided by a fear of excommunication, and lack of cash led them to do nothing. In default of purchase by the persons who worked the soil, the land was auctioned off to other purchasers. These usually turned out to be the wealthy Mexican elite of pure Spanish descent or foreigners. To compound the inequity, the law by its terms was applied to all corporate owners of land. This included the communal Indian lands which had been held more or less in the same way since before the Spanish conquest. The communal lands were added to the new **latifundios,** and the Indians were forced out of their homes into employment on the **haciendas** where they were virtually serfs.

The Diaz regime was successful in doing what it intended. The number of miles of railroad track in Mexico increased from 335 in 1876 to over 15,000 in 1911. Telegraph, electric power, street railways, and telephone service had been established in the major cities. Substantial industries had been established in oil, smelting, textiles, brewing and

distilling, steel, and paper. A commercial banking system had been established largely by French and British interests. Most of the industry was foreign owned. Of all foreign investment, United States investors held just under 40% and the British and French held slightly less than 30% each. It is estimated that foreigners actually owned about one-fourth of the land itself at the end of the Porfiriate. Much of this was held along the northern border by U.S. owners. It is also estimated that foreigners owned over half of the total wealth of Mexico in 1911.

The rapidly increasing presence of the foreigner warped Mexican society into a strange configuration. Not only did ownership of physical assets fall under the control of non-Mexicans, but the ranks of management in enterprise were dominated by foreigners. Corporate executives and technical personnel were typically British, French, or U.S. nationals. The lesser-paying and less prestigious jobs went to Mexicans. Even in those cases where both foreigners and locals held the same kind of job, as in the railroad industry, the foreigners were often paid higher wages. Discrimination against Mexicans in Mexico became a way of life.

Another important consequence of the Diaz policies was to allow complete exploitation of Mexico's natural resources. Of course, the mining of gold and silver had always attracted foreigners to Mexico. Under Diaz many new metals were extracted from the earth along with coal, sulfur, timber, and especially important in the later years of the Porfiriate, oil. The value of these extracted resources did not readily pass into the hands of the Mexican people. Labor was, as it always had been, cheap. The profits from the sale of these resources tended to find their way into foreign corporate treasuries or into the hands of the Mexican elite.

Entry into the Mexican entreprenurial upper class was largely closed to other Mexicans because of racial and other social factors. The original Spanish attitude toward the Indians as an inferior race suitable for servile labor had never entirely disappeared. What had changed was the racial composition of the society as a whole. One authority has determined that in 1805 the population of Mexico was 46% Indian, 36% mestizo (mixed), and 18% **Criollo** (Spanish or other European). By 1910 these figures had changed to 38%, 53%, and 7.5% respectively. Thus, any racial discrimination on the basis of Indian blood (generally associated with skin color) was directed at a larger and larger part of society as time passed. At the end of the Porfiriate the group targeted for such discrimination had become the great bulk of the population. The Indians had long tolerated this role, but the mestizo especially felt himself frustrated and without a place in society.

These racial distinctions were generally paralleled by economic and social classification. "Middle class" positions which might have gone to poorer Mexicans were often held by foreigners. Poverty and skin color were substantially correlated. Perhaps more important than race were other cultural factors. Public elementary education as it had developed in the United States was unknown in Mexico. Private education for those who could afford it was the standard. Commonly the Mexican elite sent their children to Europe or the United States for secondary and college-level training. Reinforcing class differences, the expectations of the Mexican peasant were not high. Unlike his Yankee small-farmer counterpart, he did not own land, and placed little value on formal schooling. Rather than acquisition of material goods, he found satisfaction in enjoying to the fullest the simple things in life and in holding a deep reverence for things spiritual.

As industrialism progressed, a new group of non-agricultural workers began to emerge. They came from the poorer strata of Mexican society, and they were drawn to the cities. Some were treated reasonably well by their employers, but others were worked long and

hard for little pay. As the population of Mexico jumped from slightly over nine million in 1876 to over 15 million in 1910, much of the increase was absorbed into the urban labor force. Dissatisfaction with working conditions and low wages grew throughout the country. Secret workers' societies and guilds sprang up, dedicated to improving the lot of the urban laborer. The first real trade union, The Grand Circle of Free Workers, was formed in the textile industry in 1906. In that year, a strike occurred in the mining industry in Sonora. The following year saw a strike in the textile mills in Veracruz. The latter resulted in the death of possibly 2,500 workers at the hands of federal troops. Other attempts to organize and exert economic pressure on employers were frustrated and suppressed by the Diaz regime.

As a final corrollary to the other social consequences of the Diaz regime, we should note the attitude of the Mexican elite. They tended to admire everything foreign. European tastes, especially French, were cultivated and encouraged. Literature, art, philosophy, education, styles of dress, social customs, were all "better", the more European they were. In contrast, local customs, dress, art, etc. were regarded as coarse and inferior. Economic, technological, and intellectual progress were identified with foreigners. We have already noted the racial connotations associated with this attitude.

We may summarize the social conditions at the end of the period of political stability in terms which emphasize the imminence of revolution. There was foreign domination of the industrial and commercial sectors of the economy. There was a growing urban labor force whose needs were met with repression. There was a deprecation of things Mexican and a glorification of things foreign by the important decision-makers in the country. Agricultural enterprise was carried on in large **latifundios,** which bore striking resemblance to European feudal manors. Few peasants owned land, some of them (Indians) having been only recently dispossessed. Finally, the libertarian ideals of individual human rights, equality, separation of powers, and democratic representation which had been fought for and won and lost repeatedly in the nineteenth century had again been lost. With the benefit of historical hindsight, we can indeed say that the times were ripe for revolution.

§ 1.1(F). The Revolution.

The period of violence and social upheaval which is called the Revolution began in 1910 and lasted a decade. Various governments rose and fell. The United States intervened with military force, led by General "Black Jack" Pershing. Heroes and villains were abundant. Among the former were Francisco I. Madero who fought for libertarian values, Emiliano Zapata who led the Indians in reclaiming confiscated lands, Luis Cabrera who did the intellectual spadework for agrarian reform, Alvaro Obregón who fought for the betterment of urban labor, and Venustiano Carranza, general, politician, and compromiser who managed to shepherd through the adoption of a new constitution in 1917. This document, still known as the Querétaro Constitution for the city where it originated, remains in effect today, although amended several times.

In Mexican political theory, the Revolution is a continuing, albeit peaceful struggle which is still being waged today. The principal political party which holds all major offices in Mexico was instituted in the late 20's and is conceived as embodying the principles of the Revolution as its present name suggests, **Partido Revolucionario Institucional (PRI).** While democratic representative governments in the English or North American style has not been a feature of Mexican politics, there has been room for the assertion and recognition of varied interests internally through the PRI and externally through the

governmental machinery. In addition, under the guidance of the PRI Mexico has avoided continuing dictatorships of the Porfirian type and has enjoyed internal and external peace, more or less, since 1920. The succession of presidents under the Queretaro constitution has been as follows:

Presidential Administrations in Mexico, 1915 - 1983

President	Dates of Office
Venustiano Carranza	February 5, 1915 — May 21, 1920
Adolfo de la Huerta	May 22, 1920 — November 30, 1920
Alvaro Obregón	December 1, 1920 — November 30, 1924
Plutarco Elias Calles	December 1, 1924 — November 30, 1928
Emilio Portes Gil	December 1, 1928 — February 4, 1930
Pascual Ortiz Rubio	February 5, 1930 — September 1, 1932
Abelardo L. Rodriguez	September 2, 1932 — November 30, 1934
Lázaro Cárdenas	December 1, 1934 — November 30, 1940
Manuel Avila Camacho	December 1, 1940 — November 30, 1946
Miguel Alemán	December 1, 1946 — November 30, 1952
Adolfo Ruiz Cortines	December 1, 1952 — November 30, 1958
Adolfo Lopez Mateos	December 1, 1958 — November 30, 1964
Gustavo Díaz Ordaz	December 1, 1964 — November 30, 1970
Luis Echeverria	December 1, 1970 — November 30, 1976
José Lopez Portillo	December 1, 1976 — November 30, 1982
Miguel de la Madrid Hurtado	December 1, 1982 —

As might be expected, the major changes in the legal system which accompanied the Revolution related directly to the grievances which brought about the Revolution. This included agrarian reform (to break up the **latifundios**), labor legislation (including welfare and educarion), anti-foreign or nationalistic measures, and the return of libertarian political institutions. All of these subjects are covered extensively by the constitution of 1917 and will be discussed briefly in the next section on constitutional law.

The revolutionary march to achieve the objectives set forth in the modern Mexican constitution has been constant, but not uniformly rapid. Considerable progress was made, especially toward nationalistic goals, during the term of Lázaro Cárdenas. This was in part because Mexico was suffering the effects of the Great Depression, and strong measures seemed appropriate, as they did in the United States. Cárdenas also received assistance from the foreign oil industry (mostly U.S.) through its amazingly stubborn pigheadedness in 1938. In a crisis brought about by the refusal of the oil firms to meet rather mild demands by the Mexican government, Cardenas nationalized the industry. In general, all of the administrations of the Mexican government have sought, as each has seen its role, to maximize for the Mexicans the benefits of foreign investment and trade while at the same time minimizing its bad effects.

A final historical word should be said about the economic growth of Mexico since the Revolution. The country has become one of the most industrialized in the world. Only its proximity to the United States makes it seem less developed than it would otherwise appear. The standard of living has steadily improved, and a substantial middle class has now emerged. This seems especially important for the law, since it is among the economic middle class that law seems to function best in western societies. On the negative side, it

should be noted that the benefits of industrialization have not been evenly spread, and dire pockets of poverty still exist. Worse yet, the advances made may well be neutralized by the even more rapid increase in population.

§ 1.2. The Constitution.

The Mexican Constitution, called the Political Constitution of the United States of Mexico, provides for the organization of a government which mirrors the U.S. system in most essentials. There are 31 states, a federal district, and a federal government. The latter is divided into legislative, executive, and judicial branches. The president, state governors, members of the federal congress and the state legislatures, are all elected by universal suffrage of both men and women. Foreigners may not participate in the political process.

In theory the power of the federal government in Mexico is limited to specific areas, and the states hold the residual governmental power. As in the United States this division is more theoretical than actual. In fact, the federal government in Mexico is even more powerful, vis-a-vis the states, than in the United States. Much of this authority is derived from the desirability for a uniform commercial policy throughout the country. Also, the role of the dominant political party (PRI) with the president as its most important elected official tends to provide an extra-legal means of centralizing important decisionmaking in the federal government. This practice of centralized government reflects the long Mexican tradition of rule from the center.

§ 1.2(A). The Legislative Branch.

The federal congress is composed of senators (two from each state and the federal district) and deputies (elected on a population basis). Regular sessions meet each year beginning September 1 and may not be continued beyond December 31. During adjournment a permanent committee functions for housekeeping purposes; it can also call special sessions. The enactment of legislation follows essentially the same pattern found in the U.S. congress. Each bill must pass both houses by majority vote; it is then sent to the president who may veto or promulgate it. In theory a veto may be overridden by a two thirds vote in each house. As has been suggested, the real policy-making tends to be done in the executive branch, and the congress serves to formally ratify that policy. As in the United States, serving in the Congress is often a stepping stone to higher office in the cabinet or even to the presidency.

§ 1.2(B). The Judiciary.

The federal court system is made up of a supreme court, circuit courts, and district courts in the pattern familiar to U.S. lawyers. The supreme court hears cases in either plenary session or by divisions. Most cases are heard by one of the four divisions or panels of the court: criminal, administrative, civil, and labor. Plenary sessions are limited to constitutional questions and other especially important matters. By dividing its work according to function the court gains the advantage of expertise on the part of the justices in each division.

The method of appointment of judges and justices has been changed from time to time for political reasons, and the independence of the court has accordingly been undermined. However, under present circumstances the justices of the supreme court serve during good behavior, i.e. they cannot be removed except through impeachment. For further description of the court system, see § 1.6, **infra.**

§ 1.2(C). The Executive Authority.

By far the most important part of the Mexican government is the labrynthine bureaucracy of the executive branch headed by the President. The pervasive authority of this bureaucracy is derived from long standing practice, statutory and constitutional provisions, and a well institutionalized tradition of near-absolute political power associated with the office of the president.

§ 1.2(D). Formal Authority.

The constitution vests in the President and his ministers a wide array of broad powers. These include: the power to conduct foreign relations, to control the armed forces, to initiate and veto legislation, to appoint and remove public officials, and others.

Election is by direct popular vote. In order to be chosen president, an individual must be male, 35 years old by election day, and a native-born citizen who is the son of Mexicans, themselves citizens by birth, and must have resided in the country a full year (official missions excepted). A presidential candidate cannot be a minister of a religious sect nor have any ecclesiastical status. Anyone who wants to be President and who is in the military, in the national cabinet, or holds the governorship of a state or territory must resign at least six months prior to election day. Should a President become too ill to carry on, or if he should die in office, an interim President is appointed by the Congress. Mexican Presidents may never be re-elected and there is no Vice-Presidential office within the political system. Political thinking dictates that any person placed in a sacronsanct secondary position would diminish, however slightly, the paternal image of the President. Then, too, a Vice-President might become too ambitious for the highest position once smitten with partial divinity, and that would be counter-productive.

The executive branch is organized into secretariats and departments in very much the same way that the U.S. government is organized. The Department of the Federal District is one of the cabinet level offices, and the government of Mexico City rests in its hands.

§ 1.2(E). Traditional Authority of the Institution.

The role that the President plays has evolved from centuries of having a single authoritarian figure at the head of the government. The people of Mexico have always had one person to whom they could look as a living representation of the government, whether it be the monarch of the Aztecs, the leaders of the conquering Spanish armies, the Viceroys of New Spain, or finally the Presidents of the Republic. As the best example the Viceroy of New Spain (later Mexico) was the supreme ruler and a great nationalistic, paternalistic figure for millions of colonial subjects. The President of Mexico became a surrogate for the Viceroy, a role made necessary by the political break with Spain and the continuation of the political culture that was part of the Spanish colonial legacy. Each occupant of the Mexican Presidency thus becomes while in office the lineal descendant of a centuries-old tradition. He is never directly challenged by politicians or media because that would shake the very basis of secular government. He is the **"jefe of jefes"** who makes all final decisions.

All benefits received from the government come from the President. He is a father-figure, always caring for his children. Each new public work is still his gift to the people, who (especially in the rural areas) petition him for the things they need in the same way that the Viceroy was petitioned centuries ago. The passage of time has changed much, but these deep-rooted practices with their supporting norms and symbols have not entirely

died—they live on in the institution of the Presidency of Mexico in the closing years of the twentieth century.

It is the **office** which has become institutionalized; it provides great authority and power while at the same time it puts a premium upon moderation and mildness in the political style of the President in order to balance contending pressures. The office gives its holder such strength that even a relatively mild man seems to be able to stand independently of his predecessor, even a dynamic predecessor. The practice is established that an ex-President must leave his successor alone to carry out the duties of office as best as he is able, and in support of this practice there is the understanding that no ex-President is to be punished or harrassed. Whatever differences may exist between the outgoing President and his successor are worked out privately, a fact which in turn tends to maintain the legitimacy of the presidency in the eyes of Mexican citizens. Once he has taken office, the man who is to govern Mexico for six years must never lose the father-image which is attributed to him. He must remember that while his attributes are institutionalized in large part, he still must present personality characteristics consistent with his role. As a benevolent father he must provide the people with public structures, sanitation plants, schools, and roads; if he fails to provide these things, he has failed in his most important function. It is paternal government, but is only legitimate if it is benevolent paternal government. Within an expanding economy it is possible to provide modest benefits for everyone, and there are constant pressures to produce both material and psychic benefits. These pressures are the price that a president must pay for standing at the heart of the political drama and playing the charismatic lead role.

§ 1.2(F). Functions of the Office.

The President has a wide variety of ceremonial duties connected with his office. Scarcely a day goes by that he is not involved in the dedication of some new public building or public work, whether it be a highway or a new sewage plant. Often such dedications are occasions for fiestas in the countryside at which the President, surrounded by a large group of his co-workers, appears before the people in a kind of holiday atmosphere in order to speak to them of the ongoing accomplishments of his administration and the PRI. Conventions of farmers, workers, or professional people all provide occasions for the appearance of the President, as do gatherings on patriotic days. Finally, there are the visiting dignitaries to be met, and educators, scientists and public benefactors of all kinds to be congratulated and honored.

Presidential authority in relation to the military is extensive. Not only are there powers of appointment but there is also the authority to order troop movements relating to internal security and external defense. The power over internal troop movements in a country such as Mexico, which has had little necessity to defend its borders, looms much larger than does the defense function. The specific role of the military in Mexico over recent decades has given rise to the impression that the military is no longer as important a mainstay of the Presidency as it once was.

As we have indicated, initiation of legislation is carried on almost entirely by the President. Though legislators have the right to initiate bills, they seldom do. In addition to the President's vast field of action with regard to the initiation of Legislation and his work to secure its passage, there is also a presidential veto power which never comes into play in practice because the legislature does not amend bills without prior consultation with the executive, thus eliminating the necessity of employing a veto. The veto remains, however, as a legal means at his disposal.

Following passage of legislation, there remains under Mexican law a number of important functions for the President to carry out. He must promulgate the law, which is an act recognizing the authenticity and regularity of the legislation. Publication of the law in the official gazette of Mexico, the **Diario Oficial,** is also a presidential act carried out in company with other administrative officers. After promulgation and publication a **reglamento** must be issued. The **reglamento** is a form of sub-legislation by which a number of basic rules giving effect to the more general provisions of a statute are laid down. A valid **reglamento** has the same force of law as has the statute to which it refers. Presidents have also enacted legislation through decree, but this is an emergency power which has not been relied upon since World War II.

With regard to the judiciary the President has authority to appoint judges and seek their removal by Congress. The President may also intervene directly in this area of activity through his capacity to grant pardons. The courts are somewhat politically dependent upon the Presidency, but there are increasingly large areas in which judicial behavior conforms closely to the prescriptions of the constitution and the law. One study shows that the Supreme Court has come into conflict with the President in a number of cases and ruled against him. There are recorded 3,700 conflicts of this type from 1917 through 1960. In these conflicts, most of them involving the writ of **amparo,** just over 1,000 were decided against the President in behalf of those requesting suspension of action ordered by the chief executive. However, it should be noted that most of such favorable action occurred in the cases of economically powerful persons or groups.

In no area is the leadership of the President more clearly assured than in that of foreign policy. The Constitution and other laws of the land as well as the expectations of the Mexican people assure his prerogatives in this field, as does also his key position in the PRI. Thus, it is the President who sets recognition policy and who ultimately decides to approve or disapprove treaties. Along with the Congress he is empowered to make a formal declaration of war, and he commands the armed forces. Political refugees must look to the President for asylum, and it is his order which brings expulsion of undesirable foreigners. Also included is the whole area of economic foreign policy—devaluation of the currency, trade agreements, tariff schedules, and many similar questions.

The President is also the ultimate power in state politics. He has the authority to replace personnel of state governments with those who promise greater service in satisfying his policy needs. Under article 76 of the Constitution, the President, acting through the Senate and the Ministry of Interior, is able to declare that the constitutional powers of a state have been suspended and appoint a provisional governor pending new state elections.

These are but a few of the particular powers that are inherent in the Presidency. The greatest power that the President has is his **total** control of the inner decision-making process concerning the affairs of the country. His whim is almost law; but there has evolved a more or less structured political decision-making process which involves several distinct steps.

The first stage of the process consists of the President's commitment to a particular policy. The President's commitment rarely is the result of the one specific group pressure. In an authoritarian regime, the autonomy of interest groups is limited; it is therefore difficult for them to support demands which adversely affect most other interest groups. The President, being the center of power, need not worry about tripping over a recalcitrant Congress, being blocked by a stubborn Minister, or being declared out-of-bounds by an independent judiciary. He enjoys freedom of action within the

governmental structure during his six-year reign. But there are more diffuse limitations present. He must produce benefits for the people, real or imagined, and he is constantly aware that he must use his staggering power with discretion, on pain of destroying the office and the system which has given him the power.

Continuing in the decision-making process, once the President has committed himself to a particular course of action, a phase of deliberation follows. A small number of people participate in the deliberations which are not made public. If a recommended decision is expected to provoke opposition, the President and his advisers will agree to make the decision only if they believe they will be able to demobilize its opponents during subsequent phases of the decision-making process. These advisers have been described as the President's "inner council". This "inner council" is made up of favorite sons, the incumbent President of Mexico and, one year out of every six, the President-elect; former Presidents, a few powerful national and regional political leaders, usually the ministers of government and also including national defense and other outstanding cabinet members; and, depending on the orientation of the family head, a few wealthy industrialists, or labor union leaders, or possibly both.

Once the Mexican President and his inner council are in agreement regarding the wisdom of making the decision, the President publicly associates himself with it. All important policies are formally initiated by the President and he both claims and receives full credit for the decision. Because of the patrimonial staff arrangements, all individuals who participate in the decision-making process do so at the President's pleasure; having been allowed to participate, they must and do attribute credit for their accomplishments to their leader. The authority of the President and, indirectly, the integration of the authoritarian coalition are thus reinforced. If implementation of the new policy is required through the legislative process, this follows, in fairly automatic fashion.

§ 1.2(G). Selection of the President.

The person usually considered for the presidency in recent years has been a cabinet officer. Cárdenas and Avila Camacho were respectively Minister of War and Minister of the Navy before their nominations. Alemán, Ruiz Cortines, Diáz Ordaz and Echeverriá were Ministers of the Interior. Lopez Mateos was Minister of Labor, and the past president, José Lopez Portillo, stepped up from Minister of the Treasury. There is a constitutional provision commanding a cabinet officer to separate himself from office six months ahead of the election date, but this does not really restrict presidential aspirations of cabinet officials in any significant way, since the candidate is chosen one year prior to taking office.

Perhaps the most interesting aspect of the Mexican Presidency is the politics of choosing who will be the party's candidate. It is full of mystery and has been labeled the **"tapado"** system because the decision to pick the president-designate is controlled by a few people (hence, his identity remains "covered" until it is revealed). There are no such things as party primaries as we know them in the U.S. with many candidates vying for their party's nomination for eventual contest in a general election. In Mexico, there is only one real candidate, that of the PRI, although other parties may present token opposition.

The **tapado** system is initiated by inquiries from the presidential incumbent as to the relative acceptability of several individuals, usually cabinet ministers. The President consults the few individuals who advise him most closely on policy and a slightly wider circle including cabinet officers, leaders of coalition groups within the PRI, and

spokesmen of powerful economic interests outside the party. It is important that the successful candidate for the nomination be known nationally and acceptable to all of the major groups which in one respect or another have a voice in the highest circle of decision-makers around the incumbent President. A successful nominee must not be too closely identified with any single major interest group and must avoid extremes. It pays to be moderate enough so that neither of the major wings of the party will oppose the nomination on the grounds of too close alignment with the other wing.

After receiving advice from various sources, the President goes into seclusion with perhaps a few trusted friends to determine who will be the choice. Daniel Cosío Villegas, Mexico's most noted commentator on presidential politics, said that foreign observers too often fail to accept the fact that the succession on Presidents can be dependent entirely upon arbitrary choice, even the caprice or whim of the outgoing President. He explained that the Mexican political system could realistically be viewed as built around a "sexennial absolute monarchy" and the "monarch" might very well choose a "prince who seems like himself." Thus although other factors may be present (such as the aspirant's masculinity, health, vitality, party participation, middle or lower-class origin, administrative skill, right geographical base, or the pendulum effect between the left and the right of the political spectrum), they must all take second place in the end to the incumbent President's preference. The personal idiosyncracies of the outgoing President have more than once produced surprise when the **tapado** was uncovered.

When a consensus has been reached, and the time appears propitious to the incumbent President, the Minister of Interior is informed of the choice, if he has not been included in the decision-making circle, and the President of the PRI is also told at this point. The public announcement comes from one of the major interest groups in the PRI coalitions with the privilege of spokesman being awarded to the presidential-designate himself.

Following announcement of the choice every politically articulate person affiliated with the PRI coalition strives to outdo the others in praising the future President. Shortly thereafter the official nomination of the new man occurs at a giant rally of the PRI in Mexico City. After many speeches the one and only real candidate is accepted unanimously by the nominating convention.

The "Campaign" follows. The many trips to all corners of the country made by the President-designate are in part a device for reaching people to create a favorable impression that will increase support for the regime. Such journeys also permit the candidate to study the most pressing problems and demands in all sections of the Republic. On these trips, conferences of national leaders, community leaders, businessmen, politicians, and technicians are held in the principal cities and even in some of the outlying towns to discuss problems of a given region. The conference device probably does a great deal, not only to improve the candidate's knowledge of a given regional situation, but also to broaden his understanding of the personalities involved in the various regions and localities of the country. In addition there is an opportunity to evaluate the capabilities of the staff chosen to arrange the meetings.

The next steps are the general election, which the PRI candidate always wins by a wide margin, and official acceptance of the vote which is conducted through formal agencies dominated by the PRI. The new President then begins choosing a new administrative team with all the patronage belonging to each office, and he carefully weighs the timing for the announcements of these appointments in order to obtain the best political effect.

With the exception of the PAN, the conservative minority party which tries harder than any other to give the PRI competition, other parties seem to interest themselves in

jockeying for position from which to attempt to influence the choice of the PRI nominee. Small parties such as the Communists usually attempt to achieve specific goals through supporting in cloakroom fashion the pre-candidate of the PRI coalition whose views come closest to theirs. This kind of activity appears to be regarded by the PRI coalitions as perfectly compatible with the interests of the whole party, since the minor parties in working to affect the nomination seldom exert much influence but do seem to derive psychological benefits from participation in the system.

§ 1.2(H). Individual Rights and Amparo.

The constitution guarantees certain individual rights analogous to the bill of rights in the U.S. constitution. These include: the right to a free primary and secondary education, freedom of occupation, freedom of expression—including the press, the right to peaceable assembly, the right to bear arms, freedom from self incrimination, and freedom of religion. The constitution also prohibits **ex post facto** laws, monopolies, torture, confiscation of property without compensation, and imprisonment for debt.

The procedural method of protecting the individual rights guaranteed by the constitution is through the **juicio de amparo** or writ of protection. As discussed in the historical background of Mexican law, the **amparo** is an original Mexican institution which has been imitated in other Latin American countries. Article 103 of the constitution states that federal courts have jurisdiction over controversies resulting from: 1) laws that violate individual guarantees, 2) federal laws restricting sovereignty of the states, 3) state laws invading the sphere of federal authority. Article 107 authorizes relief through **amparo** only for acts or laws issued by authorities and not to acts of individuals ("state action"), and will apply to concrete cases by petition of an individual. The exclusive authorities having jurisdiction of **amparo** cases are the federal supreme court, the collegiate circuit courts, and the district courts. There are really five types of **amparo** proceedings designed to serve different but related purposes. These are: 1) **amparo** as a defense of individual rights such as life, liberty, or personal dignity; 2) **amparo** against laws — defending the individual against unconstitutional laws; 3) **amparo** in judicial matters — examining the legality of judicial decisions; 4) administrative **amparo** — providing jurisdiction against administrative enactments affecting the individual; 5) **amparo** in agrarian matters protecting the communal ejidal rights of the peasants.

Parties to a **juicio de amparo** are: the injured party, the responsible party or authority, sometimes an injured third party, and the Public Ministry. The procedure may be either direct—*i.e.* brought directly to the Supreme Court or the Collegiate Circuit Court, or indirect—*i.e.* brought to these courts on appeal from the district courts.

The fact that administrative and judicial acts as well as the operation of legislation itself can be challenged through the amparo proceeding suggests that Mexico recognizes the principle of judicial review. This is true, although what is meant by judicial review must be carefully qualified. A statute, administrative act, or judicial decision which is successfully challenged through **amparo** becomes invalid and inoperative only as to the parties to the proceeding. Thus, if a tax or regulation is found by the supreme court to violate some provision of the constitution, the court will invalidate the tax or regulation as it applies to the complaining (injured) party. As to all other taxpayers or persons to whom the regulation applies, it remains in full force and effect. Thus, the courts do not have a general power to invalidate laws or official acts of government. Nevertheless, in individual cases they can relieve persons of unconstitutional burdens — can extend "protection".

This form of judicial review may seem unsatisfactory to Anglo-America seems to work well in Mexico. It preserves the idea that courts do not merely follow the will of the legislature, while at the same time it allows constitution to prevail over laws which are supposed to be subordinate t well with the realities of political life in Mexico.

§ 1.2(I). Agrarian Law.

Since one of the principal motives for the Revolution was to return t peasants, it is not surprising that agrarian reform is a prominent feature o constitution. Article 27 of the constitution is the basis for agrarian reform; i property originally belongs to the State which has the right to convey it individuals. The government has the right to expropriate by indemnific power to regulate private property when necessary for the public welfare. subsoil, Article 27 changed the previous law which considered the owner o also the owner of everything below. Now the government has direct domi substances and mineral deposits in the subsoil which are different from surface. Article 27 also includes the Calvo Clause which allows foreign dominion of land and to obtain concessions to operate mines only as long a with the same laws as Mexicans and do not invoke the protection of their

Article 27 provides for the breakup of the **latifundios** through the inst **ejido.** The **ejido** is a tract of land endowed to a "nucleus" of the populatic cultivable lands, the area necessary for urbanization, a parcel for a sc necessary to satisfy the collective necessities of the nucleus of the populati are five kinds of **ejidos:** agricultural, cattle-raising, forest, touristal and in **ejido** contains units or parcels allocated to each peasant family.

Through a complex legislative and administrative scheme the Mexican go broken up a number of large landholdings and established these communa enterprises. Compensation or indemnification has been paid to the lan usually not in cash. Government warrants or bonds have often been used valuation of the land for purposes of compensation are not standardized

One of the legal and administrative problems in redistributing land is which peasants should be given priority. The distribution of the parcels has out according to the following order of preference: 1) members of the **ejido** (e the original or successors of members who appear in the resolution and the o and who are working in the **ejido,** 2) **ejido** members included in the resol original census who have worked in the **ejido** although they are not at the pr as they can prove that they were unjustifiably prevented from doing s peasants belonging to that nucleus of the population who have legally culti or more years not to the detriment of any of the rightful **ejidatarios,** 4) sa having worked less than two years, 5) peasants from neighboring com peasants from communities lacking land. When land is insufficient, people a in inverse order as listed above. Within each group, the unmarried, young without family responsibilities are eliminated first.

Land reform can be a very emotional political subject in Mexico, and ev feels called upon to reaffirm his faith in this peculiar type of distributive justi there are rumblings and more than a little evidence that the **ejido** is economic The rural credit system allows for advance of money which is in many cases

The **ejidatarios** usually have little or no modern farming equipment and are not familiar with advanced methods of agricultural technology. The peasants produce little more than enough for themselves. Thus production often diminishes drastically when land is removed from a large mechanized operation and cut up into small family tracts. Nevertheless, the symbolism and social impact of the **ejido** plan are so powerful that the institution will no doubt survive for many years to come.

§ 1.2(J). Labor Law.

It seems strange to one familiar with the U.S. legal system to consider labor law as a part of constitutional law. But so it is in Mexico, at least in part. The oddity disappears when we stop to realize that the United States constitution was written in 1787, long before the industrial revolution came to the new world and long before large numbers of workers were employed by single corporate employers; whereas the constitution of Mexico was written in 1916 in the heat of civil strife in which the rights of the industrial laborer were a crucial issue. Indeed, article 123 of the constitution which addresses itself to labor and social welfare is so revered that a principal street in Mexico City has been named **"Calle Artículo 123"**.

Although the constitution does in fact provide for many specific details of labor law (such as the eight hour day), legislation enacted pucsuant to the constitutional mandate of article 123 provides a comprehensive scheme of protection and social welfare for the worker in Mexico. Mexican labor law is completely federal, but some limited authority is delegated to the states to establish local conciliation and arbitration boards.

One thrust of the labor law is to provide mandatory protection against oppressive working conditions. This would include requirements for an eight hour normal workday, special limits on children's and women's labor, mandatory vacation, mandatory days of rest, safety requirements, overtime pay, and a Christmas bonus equal to 15 days salary. In addition, employers are required to provide housing and education for their workers. Although this latter requirement has been in the constitution since 1917, it was ineffective for lack of implementing machinery until 1972. At that time a National Housing Fund was established, and employers have been required to contribute to the fund in the amount of five per cent of the wages they pay to employees. The fund in turn is used to provide public housing for workers.

The labor law also provides for minimum wages. However, unlike state and federal wage laws in the United States which establish an inflexible minimum, the Mexican minimum is geared to the type of work and the area of the country where the work is done. Thus, there is a sliding scale of minimum wages depending upon whether the work is carpentry or truck driving or whether it is done in rural Durango or industrial Monterrey. A national commission and several regional commissions of minimum wages have the authority to conduct investigation into all types of employment and fix the minimum amounts. These commissions are made up of representatives of the government, of the workers, and of the employers.

A second thrust of the labor law is the equivalent of what is called worker's compensation in the United States. Workers must be compensated by their employers for injuries or occupational diseases incurred as a result of the employment. Fault or negligence need not be shown, and contributory negligence is no defense. Liability is strict; however, the amount recoverable is limited by the law (as in the U.S.) and recoveries are typically not large. The relatively small amounts recoverable for injuries

under the labor law are especially significant, since they also serve as limits on tort recoveries generally under the civil code (see § 1.3, **infra**).

The third major import of the labor law is the regulation of labor-management relations. Although the law is couched in somewhat different terms than the U.S. National Labor Relations Act, its effects are very similar. Employees can organize into unions which are entitled to bargain collectively if they represent more than half the employees, and strikes are permitted. Even public employees are given the right to strike with some qualifications. One provision of the labor law guarantees an employee freedom of choice to join or not to join a union—a provision very much like the "right to work" laws found in some states of the U.S. However, another provision of the law specifically authorizes the parties to a collective bargaining agreement to establish a union shop or a closed shop, thus apparently nullifying the previous provision in some cases.

Several sections of the labor law are of special interest to U.S. readers because of their relative novelty. Workers are entitled to participate annually in the profits of the business enterprise. The percentage of the profits to which the workers are entitled is determined by a national commission established for that purpose. Half of the distribution is made to all eligible employees equally, and half is awarded in proportion to the wage rate of the employee.

In the absence of a provision to the contrary in a collective bargaining agreement, priority in hiring or promotion must be given to (1) Mexicans, (2) those who have seniority, (3) union members. A worker cannot be fired except for certain causes set out in the statute. An employer who violates this provision must reinstate the worker with back pay or pay an indemnification of three months salary, plus 20 days wages per year, plus a seniority bonus and a vacation bonus. Workers who have been employed for 20 years or more can only be discharged for especially serious breaches of statute (cause).

The labor law also provides that employee inventors are entitled to ownership of their inventions subject to the right of the employer to preference in the exclusive use of the invention for a reasonable royalty. If the employee has been hired to do research, the invention becomes the property of the employer, but the employee is entitled to supplementary compensation.

§ 1.3. An Introduction to Civil Law.

As our historical introduction has pointed out, the Mexican legal system draws heavily upon the continental civilian tradition and especially the French model. The heart of this tradition is the civil code. The first Mexican civil code was adopted in 1870, modeled in large part upon the classic Code Napoleon of 1804. The original code was replaced by another in 1884 which was itself replaced by the present code enacted in 1928, taking effect in 1932. In the course of this evolution, many provisions were adopted from the Swiss, German, Brazilian, and other codes, and many original Mexican provisions were also added.

§ 1.3(A). The Significance of the Code.

To the Angloamerican lawyer, the term "code" is almost equivalent to "statute", i.e., it means a piece of legislation relating to some legal topic. The topic may be large, as with the Uniform Commercial Code or the Internal Revenue Code, or it may be small such as the Uniform Gifts to Minors Act or the Guest Statute. To a Mexican the term code, and especially the civil code, means much more. It constitutes the basic structure of the legal

system. It is the source not only of most private law, but of the way in which the law is conceptualized and interpreted. Many of its provisions are very general, almost like our own constitutional provisions. For instance article 5 says, "No law or Governmental disposition shall be given retroactive effect to the damage of any person". Again, article 1882 provides, "He who without consideration enriches himself to the detriment of another is obliged to indemnify the latter for the latter's impoverishment in the measure in which he enriched himself."

As might be expected in such a broadly sweeping legal instrument, much space is given to definitions. The usual pattern followed by the code on any given topic is to start with definitions, then to state general principles, then to go to specific applications of or exceptions to the general principle. Different parts of the code, including definitions, are interrelated. The subject matter covered by the code is divided into four books entitled: persons, property, succession, and obligations. The category of persons includes matters pertaining to legal capacity, marriage, divorce, parental authority, guardianship, paternity, duty of familial support, and related items. The categories of property and succession, covered in our next section, correspond to the same terms used in Angloamerican jurisprudence. The category of obligations includes the subject matter dealt with in Angloamerican law under the headings of contract, tort, and restitution.

To understand the significance of the civil code in Mexican legal thinking, it is necessary to examine the philosophy which produced all of the great civilian codes. They are a product of revolution, first in France, then in other European and Latin American countries. In all of these revolutions there was a reaction to a prior legal system which worked to the benefit of an older landed aristocracy. In this reaction three themes stand out which might be labeled positivism, democracy, and freedom.

By positivism is meant an attitude which demands that law be definitively set down in one place in a form easily accessible and understandable to all. This requirement was prompted by the way in which sources of law had previously been intentionally or accidentally secreted away in royal decrees, holy scripture, occasional statutes, compilations of custom, judicial decisions, and scholarly textbooks. The obscurity of legal sources was felt to be an instrument of oppression manipulated by the aristocracy.

By democracy is meant an attitude that government and law must be the instruments of "the people." The people, through their representatives, must be the **sole** authors of legal rules in contrast with the older system in which law could be created by judges, monarchs, assemblies, customary practices, church tribunals, and even by scholars through their wily manipulation of legal terms and concepts.

By freedom is meant the nineteenth century liberal idea of maximizing the individual's choice of alternatives in arranging the affairs of his life. It is to be contrasted with dictation of these choices by government. This notion of freedom carries with it especially the idea of freedom to acquire and dispose of property.

With the benefit of historical hindsight we can see that a revolutionary regime intent upon fundamentally altering the legal system in accordance with the three themes described above would choose to enact a comprehensive code. Such a code would bear the stamp of legitimacy because it would be enacted by the representatives of the people. It would also be designed to place all of the important rules of law in one clearly understandable document. The document would also reflect a policy of liberalism.

§ 1.3(B). What the Code Accomplishes.

The philosophical origins of the civilian codes also explain the more specific aims of

codification which can be described as the four "c's". To achieve its objectives a code must be comprehensive, consistent, concise, and clear. The original French code could make some claim to being comprehensive because of the state of the law at that time. It did largely cover most areas of private law, i.e., the law which governs relationships between private individuals. It did not encompass commercial law, a subject left largely to the merchants who had their own court system. It did not purport to cover constitutional, criminal, administrative, or procedural law. Today the Mexican civil code, along with those of most of the other civilian countries, still covers those same basic subject areas of private law. Yet the law has changed and expanded so much, by legislation, court decision, and constitutional revision, that only a token claim can be made for comprehensiveness of the civil code.

Consistency is another matter. Present day codes are probably as logically self-consistent as any body of law will ever be. The use of definitions, uniform terminology, and general principles all work to assure a high degree of consistency, something that Angloamerican case law (and sometimes statutory law) rarely, if ever achieves.

The original French code was indeed concise. Compared to the private law of the Angloamerican system contained in thousands of volumes of case reports and statutes, the Napoleonic code reduced it all to 2281 short articles. Since that time, imitations of and improvements on the French code have become more and more verbose, mostly in response to new provisions felt necessary to adjust to changing social conditions. The Mexican code now contains over 3,060 articles.

The requirement of clarity is acknowledged by all code jurisdictions, but there is a split on the import of that term. The original French position, and the one still more or less followed by the Mexican code, is that the organization, concepts, and terminology of the code should be simple and straightforward enough to be understood by the educated layman. The alternative position, exemplified by the German code, is that the organization, concepts, and terminology of the code should be aimed at the professional lawyer. One viewpoint stresses openness and simplicity, the other stresses technical accuracy. Since the Mexican code has borrowed provisions from both sides, it could be regarded as a hybrid of sorts. Its basic thrust, however, is toward simplicity.

In Mexico's federal republic, the power to enact private law is generally given to the states. Thus, there is not one civil code, but thirty-one. This statement can be misleading, however. The cultural center of the nation is the federal district (Mexico City), and it has no serious rivals. Accordingly, the code enacted for the federal district and territories has been copied in most essentials by all of the states. In addition, where federal questions are raised in litigation, resort to the code for the federal district is authorized. Parties may also voluntarily make the federal code applicable to their transactions. Hence, in a very real sense it is possible to talk of a Mexican civil code (or uniform civil code). The discussion in this chapter will therefore all be with reference to the civil code of the federal district.

A more serious problem is the question of whether a situation is governed by the civil code or by the commercial code. A comprehensive commercial code exists and is generally applicable to commercial transactions. If it is found to be applicable in a given case, its provisions will prevail over anything contrary in the civil code. However, even when the commercial code is clearly applicable to the transaction, the civil code may be invoked to cover gaps, i.e., may be applied when there is no readily applicable article of the commercial code.

In those situations in which there appear to be no specific statutory provisions anywhere which are applicable, the Mexicans have adopted the classic civilian solution

(Article 19): "Judicial controversies of a civil nature shall be decided in accordance with the letter of the law or its juridical interpretation. In the absence of a law, they shall be decided in accordance with general legal principles."

Let us now turn from our general discussion to some of the specifics of the civil code from which we may be able to absorb more of the flavor of the Mexican legal system.

§ 1.3(C). Persons.

The law of persons in the Mexican system shows the influence of the church over many centuries. This is also true of Angloamerican law, although "the church" must be interpreted to include Protestantism as well as Roman Catholicism. Indeed, in England well past the time of the American Revolution, church courts administered parts of family law, and chancery largely took care of the rest, using principles of canonist origin. Except for the matter of divorce, the two religious traditions enforced and reenforced the same basic policies which would include: marriages must be monogamous; extra-marital sex relations are sinful and forbidden; children should be the result of a marriage relationship; marriage between close blood relatives is forbidden; parents have full authority over and responsibility for their children; each member of the family owes a duty of support to the others, depending upon age, circumstances, etc.

§ 1.3(D). Marriage and Children.

There are, however, some present day divergences in the two systems which should be noted. First of all, in Mexico the anti-clerical sentiment led to legislation in the nineteenth century which required all marriages to be performed by a civil magistrate in order to be legally valid. This was contrary to centuries of tradition in which clergymen had performed the ceremony and entered that fact in parish records. Today a church wedding has no legal effect in Mexico. As a result, some studies indicate that a large percentage of Mexican couples, particularly in rural areas, are not entitled to the benefits of the law of marriage, and their children are all technically illegitimate. Of course, many couples go through both the civil ceremony and a church ceremony.

The illegitimate status of children born to a marriage which is not officially recognized is mitigated by provisions which allow acknowledgment of the illegitimate child (called a "natural" child). It is further mitigated by the legal recognition of the relationship of concubinage.

A child born out of wedlock may be formally acknowledged through a public instrument by either parent. As exceptions to this, a man cannot acknowledge as his own the child of a married woman without a judgment declaring her husband not to be the father; and a child of legal age cannot be acknowledged without his consent. In addition, a child born to a couple living in a state of concubinage is presumed to be their child. The paramour and concubine are a single man and woman who legally could marry each other, but do not go through the civil ceremony. They must be living together as man and wife. This status would include the man and woman married before a priest, but not before a civil magistrate. The status of concubinage can be terminated by either party at any time.

The result of either acknowledgement or birth as a result of concubinage is that the child becomes entitled to the same rights and privileges as a child born during wedlock. This includes his familial relationship with ascendants, descendants, and collaterals.

The Mexican law also provides for adoption. This differs from acknowledgement of a

natural child in three ways. First, the person adopted need not be the child of the adopting persons. Second, the adopted person becomes related only to the adopting parents, not to ascendants or collaterals. Third, only a husband and wife may adopt—with the exception that a single person over the age of thirty may adopt a minor or incompetent who is at least seventeen years younger. Other requirements for adoption are essentially similar to Angloamerican law.

Assuming that a marriage has been duly legalized, some rights and obligations follow. The most important of these is, of course, support; however, it is the husband who must support the wife unless he is incapacitated. In view of present social trends, some other obligations are noteworthy: "Art. 168—The direction and care of the work in the home shall be in charge of the wife." "Art. 169—The wife may have an employment . . . when this does not conflict with the mission imposed upon her by the preceding article, or does not harm the morale of the family or its structure." "Art. 170—The husband may object to having the wife devote herself to the activities mentioned in the preceding article. . ." "Art. 288—In cases of divorce, the innocent wife shall be entitled to alimony, so long as she does not remarry and lives honorably. The innocent husband shall be entitled to alimony only when he is unable to work . . ."

Another consequence of a legally performed marriage is the election by the couple of one or the other of two schemes relating to marital property. Upon obtaining a marriage license, the couple must elect to hold their property separately or under the marriage community **(sociedad conyugal).** The latter scheme treats the property of the marriage partners essentially like that of a business partnership. Separate property, as the term indicates, provides for separate ownership in much the same way that most common law jurisdictions do. The parties to the marriage can enter into "articles of marriage" which can vary either of these schemes to suit individual needs. The code requires such articles to provide for a wide variety of contingencies. The articles of marriage are, of course, an analogy to the antenuptial agreement occasionally found in Angloamerican jurisdictions.

§ 1.3(E). Divorce.

The policy of the law on the subject of divorce has differed widely between Mexico and the United States in the past, but in recent years it has tended to converge. Under doctrine of the Roman Catholic church, marriage is a sacrament ordained by God. No man can undo what God has done, and therefore marriage is a permanent relationship ending only with the death of one of the spouses. Annulment (also sometimes confusingly called divorce) was always possible in the church if there was an impediment existing at the time of the marriage; but an annulment is merely a declaration that no valid marriage ever existed (e.g., brother tries to wed sister), and it never did purport to dissolve a legally existing bond. Although the church in Mexico lost most of its political influence during the nineteenth century, the permanence of marriage was a policy continued until the Revolution. Mexico did not allow divorce until 1917.

In that year, the civil code was supplemented by the law of domestic relations to provide 27 grounds for divorce. The 27th ground is the most remarkable: mutual consent. Not only is mutual consent a complete basis for divorce, but if the spouses are of legal age and have no children, they do not even have to go to court under the present code. They simply file the appropriate papers before an official of the civil registry, wait out a 15-day cooling off period, then receive a certificate of divorce.

This practice is in great contrast with most jurisdictions in the United States. In

England, before the American Revolution, judicial divorce was not recognized; occasionally parliament would pass a bill of divorce for some influential person. This pattern of legislative divorce was followed by many states after the revolution. When business became too heavy in the second quarter of the nineteenth century, legislatures began to delegate the divorce function to the courts specifying certain grounds to be proved, usually adultery and desertion. The number of grounds gradually expanded during the later nineteenth and twentieth centuries. Competition among states for the "divorce business" became one of the shabby features of American legal history.

These developments in the United States were strongly influenced by protestant thinking on the subject of marriage. Unlike Catholic doctrine in which marriage was a sacrament, protestants regarded it as a contract. It was a special kind of contract, to be sure, but it could be "breached" through the fault of either party. The legislative grounds for divorce spelled out the kind of "breaches" that could relieve the non-breaching spouse of the marriage obligation. The element of fault, and fault by one spouse only, was the key justification for divorce.

Such was the theory. In fact, divorce proceedings which were uncontested in the Angloamerican adversary process were largely granted by default. Where judges demanded rigorous proof, perjury became common. The adversary process was unable to meet the demands put upon it. As grounds for divorce were expanded to include mental cruelty, incompatibility, and the like, uncontested proceedings tended to become perfunctory, albeit still expensive.

Today, of course, all American States except Illinois and South Dakota have no-fault grounds for divorce, thus emulating Mexico.

Another minor but interesting feature of the Mexican law of divorce should be noted. Where children are involved, standing is granted to grandparents, uncles, aunts, brothers or sisters to ask the court for an appropriate disposition of the children or for their support.

§ 1.3(F). Obligations.

Let us now turn to the subject of obligations in Mexican law. The term "obligation", as used here, is derived from Roman law sources and has no counterpart in Angloamerican jurisprudence. Some civil law authors have defined an "obligation" as the passive side or counterpart of a right **in personam.** Roughly, the law of obligation refers to those acts voluntarily undertaken which lead to a legal liability on the part of one person toward another which is enforceable through the courts. The civil code lists seven "sources" of obligations. For simplicity's sake, we can reduce this to three Angloamerican categories: contract, tort, and restitution. To qualify this, we must say that contract includes gifts (which are enforceable) and irrevocable offers, and tort includes worker's compensation and breach of fiduciary duty.

Before discussing these subject areas, a word about remedies in Mexican law is in order. The Angloamerican lawyer is accustomed to think of liability generally in terms of money damages. This, of course, has historical origins which are tied in part to the old separation of law and equity. In contrast, the Mexican lawyer thinks in terms of fulfilling the obligation. Thus, if the obligation is to sell old horse Dobbin, then that is what a court judgment will require. If the obligation is to repair a party wall or to return misappropriated shares of stock, that is what the court will require if it is practically feasible. A money judgment can be awarded as a substitute, but it is not preferred. Since there are also exceptions to the Angloamerican preference for money judgments, the two

systems may end up with the same result in many cases. However, it is important to realize that the starting point is different.

§ 1.3(G). Contract.

The terminology of the Mexican law of contract clearly shows its Roman origins which are quite distinct from the Angloamerican sources of contract law. The Roman system did not recognize the general enforceability of promises; rather, certain types or categories of promise were enforceable. Thus, there was a law of contracts, but not a unified law of contract. When Roman law came into its second life, gradual evolution of societal needs combined with the innovative work of legal scholars to produce a more generalized theory of contract. This theory was embodied in the French **code civil** and thereby found its way into Mexican law. There is still a categorization of contracts into fifteen types in the Mexican code, each with certain peculiarities of its own; but the principle of the enforceability of any contract is also recognized. All that is required is (1) consent of the parties, and (2) an object to which the contract may relate.

In contrast, the Angloamerican law of contracts developed as an extension or offshoot of tort. The action of assumpsit underwent successive judicial manipulation in the fifteenth, sixteenth, and seventeenth centuries in the common law courts to become a general remedy for breach of agreement. No special categories of contracts were recognized, but the peculiar and obscure requirement of consideration emerged as a necessary prerequisite for enforceability. Although the Uniform Commercial Code has done away with the need for consideration in some cases, it still remains formally as a necessary element in the formation of a contract. The other two elements are, of course, offer and acceptance.

The end result of these two very different courses of legal evolution has been remarkably similar. There is much formal learning and doctrine in both systems going under such labels as conditions precedent and conditions subsequent, impossibility of performance, nullity, novation, non-existence, etc. Even assuming that these formalistic conceptions play a real role in contractual litigation, most cases would come out the same in either the Mexican or Angloamerican courts. A few differences should be noted.

Since there is no requirement of consideration in Mexican law, promises to make gifts can be enforced. This rule is hedged with several qualifications. Also an offer in some circumstances may be required to be kept open for a period of time. Third party beneficiaries are also recognized as having enforceable rights in a contract. This is now the general rule in United States jurisdictions, but has never been the rule in England. Finally, there is a general provision borrowed from the Swiss Code which has special relevance in this day of concern for the consumer. "Art. 17 - When any person, taking advantage of the supreme ignorance, notorious inexperience, or extreme poverty of another, obtains an excessive profit which is evidently disproportionate to the obligations assumed by him, the person damaged has the right to demand the rescission of the contract and, if this be impossible, an equitable reduction in his obligation."

§ 1.3(H). Restitution.

The concept of restitution, or unjust enrichment, is a very simple one, implemented in one way or another in every legal system. It is so simple that it can be overlooked as a separate and independent basis for judicial action. It means that when one person has obtained something of value which belongs to another, he is obligated to restore it—in kind or by substituting something else of value, usually money. Thus, if A intends to loan

his typewriter to B, and somehow it gets in the hands of C, C is obligated to return it or pay its value. This obligation is enforceable in court. The important thing to note is that C's liability is not based upon breach of contract (there was no contract), nor upon breach of any duty imposed by law (tort) such as due care. Nor is there any fiduciary relationship which could lead to liability. There need be no fault on the part of C at all. His obligation stems solely and completely from the fact that he has what belongs to A.

As a substantive basis of civil liability along with tort and contract, restitution has had a confusing history in Angloamerican law. Only with the publication of the **Restatement** of that subject in 1933 did any measure of clarity begin to appear. Subsequent scholarly work and appellate court analysis have also helped to remove the subject from the procedural and historical encrustations which have given it a deformed appearance in the past. The difficulty can be traced back to the forms of action in England. The action of debt was based upon the idea of restitution, but applied only to money. Detinue and trover applied the principle to chattels, but the latter form of action required proof of that mystical act by the defendant known as a "conversion." The action of ejectment to recover land was also basically a restitutionary remedy, but it had overtones of tort as well. The same can be said of replevin with respect to personal property. The most general proceeding to effect restitution at common law was a late blooming variation of the action of assumpsit. The implied-in-law (fictitious) contract became the form for recovery of "money had and received", "goods sold and delivered", **quantum valebant, quantum meruit,** etc. This use of the assumpsit procedure became known as **quasi-contract.**

Meanwhile, chancery had long given restitutionary relief in those cases where justice demanded it, but for some reason could not be worked into the structure of the common law forms of action. The chancery practice never hardened into set forms of action, but much typical litigation in courts of equity was based upon the principle of restitution, e.g., the bill of accounting, the imposition of a constructive trust, the rescission of contracts induced by fraud, mistake, or undue influence, and the return of what was paid.

It is no wonder, then, that the Angloamerican law of unjust enrichment is confusing and obscure. It is buried in precedents which talk in terms of quasi-contract, forms of action, equitable remedies, and the like. In contrast, the Mexican law of restitution is set forth cleanly and succinctly in 14 short articles of the civil code. Several of these articles were derived from the Code of 1884 and appear to be adaptations of the Napoleonic Code. However, several other provisions, including the general statement of the principle in article 1882, are derived from the Swiss Civil Code. This represents a real advance in terms of conceptualization. The Napoleonic Code had somewhat truncated the applicability of the general principle of restitution from what had been recognized by the Roman law; but the principle was gradually expanded by the French Courts in the nineteenth century, and both the German and Swiss codes embodied it in general provisions. The Mexican articles seem to be a distillation of the best thinking in this area because of their comprehensiveness and because they do not obscure the subject by the use of the term **quasi-contract.**

A peculiar and interesting Mexican twist has been added to the provisions on unjust enrichment. Only half of anything paid under a void contract against public policy (principally gambling) can be recovered by the payor. The other half goes to public charity.

§ 1.3(I). Tort.

A comparison of Angloamerican tort law with that of Mexico reveals a situation

analogous to the law of unjust enrichment. Article 1910 of the civil codes provides,—"He who acting illegally or against good customs causes damage to another, is obliged to repair it, unless he proves that the damage occurred in consequence of the fault or inexplicable negligence of the victim." This sweeping principle of liability covers the entire area of intentional torts, negligence, defamation, deprivation of goods ("conversion"), interference with business interests, etc. Although the language of the provision is somewhat obscure, it is essentially a restatement of article 1382 of the Napoleonic Code and article 823 of the German Code, both of which pretty well wrap up the essentials of the law of torts in one sentence.

In contrast, Angloamerican law recognizes a variety of "torts" which lead to liability, but there is no general theory of "tort". Again, this is traceable directly to the forms of action which emerged as the basis of civil liability in the common law courts. Trespass was available in cases of direct or intentional invasion of person or property. Case was available where the injury was indirect, but due to carelessness or breach of other duty. Trover could be used in cases of misappropriation of chattels. Slander, libel, invasion of privacy, misappropriation of literary or intellectual property, deception, nuisance, seduction, and other specific torts all have their own necessary elements as established by precedent, and each stands on its own feet, being logically unrelated to the others. Only in relatively recent years have Angloamerican courts been willing to consider tort as a general principle of liability, due in part to the influence of the **Restatement of Torts.**

The very limited number of code provisions which further elaborate the law of tort in Mexico generally deal with specific applications of the general principle. Exceptions to this are articles 1913 and 1915. The latter is a limitation on damages. As has been pointed out above, the prefered remedy in an action to enforce an obligation is to see that the obligation is carried out. In the typical tort case the obligation is to "repair" the injury to person or property. Although in some cases it may be possible for the defendant actually to repair damaged property or to replace it, more often his liability will be payment of a sum which would compensate for the loss. This would be measured by the amount necessary to repair or replace the property or the amount necessary to cover medical, hospital, and related expenses in cases of personal injury. Damages for pain and suffering are not recognized. Damages for temporary or permanent incapacity to work, or for permanent injury to the body, or for death, are limited to those set out in the Federal Labor Law (worker's compensation). In addition, compensation for lost wages are further limited to 25 pesos per day.

The result of these limitations in Article 1915 is that the typical recovery in a personal injury or death action is much less than one would expect to find in Angloamerican jurisdictions. The amount recoverable under the general tort provision (art. 1910) can be increased by the award of additional damages as "moral reparation". Such moral (punitive) damages are, however, limited to one-third of the actual damages.

Article 1913 is the other tort provision which calls for some elaboration. It imposes strict liability for damages caused by the use of a dangerous thing. Although there appear to be some similar provisions in the codes of other countries, notably the Russian Code of 1922, this article is probably a true Mexican innovation. It has been copied in other Latin American countries. The generality of the strict liability provision has given the Mexican courts considerable leeway in its interpretation. Perhaps most importantly, it has been applied to automobile accident litigation, although the Mexican Supreme Court has not authoritatively said that an automobile is always a "dangerous" thing. Plaintiffs' attorneys, of course, find strict liability appealing because it becomes unnecessary to

prove fault on the part of the defendant—causation will suffice. The future of the strict liability provisions in auto accident litigation may be a large and important one. Mexico may thereby arrive at a "no-fault" solution to this serious social problem.

§ 1.4. Property and Succession.

The law of property and the concept of ownership which prevails in most of the United States is derived from the common law of England, including that peculiar body of law known as equity. English property law evolved in medieval times from feudal origins. It was molded by the King's great common law courts and by his chancellor to meet the needs and expectations of a landed aristocracy. It was less influenced by outside ideas and doctrine, particularly Roman Law, than most other areas of English law.

This strangely feudal institution was imported to the shores of North America by the early colonists. It underwent some drastic revisions during colonial times and just after the Revolution. Such changes, like discarding the rule of primogeniture, were necessary to bring the law into conformity with a more egalitarian society which enjoyed a surplus of land and dealt in it as a commodity. However, the law kept its conceptual toughness, and even today legal thinking about property inevitably is done in the lexicon of the fee simple, the remainder, equitable estates, reversions, etc.

In particular there are two characteristics of Angloamerican property law that bear noting, since they are quite foreign to Mexican legal thinking. First, there is the idea that ownership can naturally be divided in time. The various estates which can be created in property such as life estates, remainders, reversions, conditional fees, terms of years, etc. are generally not acknowledged in Mexican law. Likewise, the division of ownership into equitable and legal interests also fails to fit into the Mexican conceptual scheme. The Mexican lawyer, like his civil law counterparts in other countries, feels more comfortable when an existing person can be identified as "the owner" of the property. As we shall see, this difference between civilian and common lawyer, while significant, may be more a matter of attitude than anything else.

§ 1.4(A). General Principles.

Before discussing how ownership can in fact be divided under Mexican law, it will be appropriate to examine some terminology and general concepts. Mexicans classify property in the Roman tradition into movables and immovables. These categories correspond for most purposes to our own categories of personal property and real property respectively. Mexican law also recognizes the distinction between rights and obligations **in rem** and rights and obligations **in personam.** The distinction applies to both movable and immovable property and carries much the same consequences as the terms do in our own law. Thus, A mortgages Blackacre to M as security for a loan. He then sells Blackacre to B subject to the mortgage which B does not assume. Both M and B presumably have rights **in personam** against A. M also has a right **in rem** against all the world which attaches to Blackacre until the mortgage debt is satisfied.

§ 1.4(B). Types of Property Interests.

Turning now to the concept of property recognized under Mexican law, we find the traditional Roman components of ownership, the **jus disponendi,** the **fructus,** and the **usus.** These are the classifications of rights which an owner enjoys with respect to his

property. The **jus disponendi** is the right to dispose of it - by gift, sale, will, or even destruction. The **fructus** is the right to the fruits or income produced by the property such as rent, interest, dividends, crops from land, etc. The **usus** is, of course, the right to use or enjoy the property. In theory these attributes collectively constitute ownership and cannot be separated. However, as the following discussion indicates, there are some ways in which ownership can be split.

§ 1.4(C). The Usufruct.

A **usufruct** which may be created by contract or by operation of law, is a temporary right **in rem** to the use of and fruits of the property. In effect the **usus** and the **fructus** are temporarily assigned to the **usufructary** which also has the power to alienate the **usufruct** to another within some limitations. A modified and much more limited form of **usufruct** is also recognized. This is the right of use and habitation. It is limited to the temporary use of a dwelling, and it is not alienable. As the reader will probably surmise, these interests in property are analogous both in concept and in social function to the common law life estate and widow's dower interest respectively.

§ 1.4(D). Servitudes.

Another separate interest in property recognized by the Mexican law is the servitude. This is a right **in rem** which corresponds to the common law easement. In theory, an easement is an interest in the servient tenement or estate which is viewed as a benefit to the dominant tenement, while a servitude is viewed as a burden upon the servient tenement. It is doubtful whether this conceptual distinction makes any practical difference. Being a right **in rem** the servitude "runs with the land" as does an easement under the common law. The servitude is an important legal concept for handling problems of drainage, canals, aqueducts, pipelines, rights of way, utility lines, etc.

§ 1.4(E). Security Interests.

The Mexican law also recognizes the security interest as a true right **in rem.** There are several types of security interests, which may be created. These correspond to analogous interests recognized in Angloamerican law, but there seems to be less flexibility under the Mexican system, particularly as it affects commercial transactions. For instance, the chattel mortage, so common in the United States, is not recognized in Mexico. Similarly, the idea of a "floating lien" on inventory or other goods is only approximated in certain very restricted situations.

The most common (and venerated?) security device in both Mexican and Angloamerican law is the real estate mortgage **(hipoteca).** The only significant variation between the U.S. and the Mexican versions of this institution would appear to be on the question of what fixtures are included in the mortgage lien. In Mexico livestock, farm machinery, crops, and other agricultural items may be covered by the lien in some situations. There are also special provisions governing property used in maritime shipping and commercial aviation.

A mortgage must be properly recorded in the public register of property to be effective against third parties. The recording system is discussed further below. A mortgage may be transferred in favor of a third party by mere endorsement of the negotiable instrument which it secures, without notice to the mortgagor or other formality. However, cautious lawyers recommend notice of the endorsement of the negotiable instrument and transfer

of the original deed of mortgage for practical reasons. Mortgages in which the loan exceeds 500 pesos must be executed before a notary. There is no general registry of property for movables; therefore, chattel mortgages cannot be effective against third parties which is the principal reason why they are not used.

A real estate mortgage provides a first lien on the mortgaged property which takes priority over other liens except for taxes, past due wages, and other liens perfected prior in time. By express statutory provision, if the mortgaged property becomes insufficient to secure the principal obligation, the mortgagee may judicially demand the execution of additional security. If the mortgagor refuses, the principal obligation is accelerated, and foreclosure can be brought. Foreclosure may be accomplished by summary judicial proceedings which culminate in a public auction at which the property is sold. The minimum basis or bidding at such an auction is two thirds of the value of an official appraisal. Anyone may bid. If there are no bidders, the mortgagee may opt to have a second auction reducing the minimum bidding price by 20%, or else the mortgagee may take title to the property for a price equal to two thirds of the minimum bidding price, less 20%.

The pledge **(prenda)** is another very old security device used with movable property. Again, it is analogous to the pledge found in Angloamerican law, but in Mexico it is necessary to distinguish between the civil pledge and the commercial pledge, the former governed by provisions of the civil code and the latter by the commercial code. A principal difference is that under the commercial pledge the creditor, or in some cases a third party, must be given actual possession of the property, while under the civil pledge a constructive **(juridical)** possession will usually do. Curiously, this seems to be the opposite of what might be expected considering the needs of commerce. Obviously, the necessity to dispossess the owner-borrower makes the pledge device undesirable in many ways - the owner cannot use the property, protect and maintain it, or sell it substituting other property. A device of limited applicability is available to get around some of these objections. A commercial pledge may be created by depositing goods in a storage room or warehouse on the debtor's premises, if the keys to the warehouse are given to the creditor. If the goods are fungible, the debtor may remove and replace them with similar goods, presumably obtaining access with the approval of the creditor. Usually keys are delivered to the warehouse before a notary, and a sign is placed in the warehouse advising all persons of the pledge arrangement.

Securities and negotiable instruments may also be pledged by transferring possession. The pledgor must endorse the instruments, usually adding "in pledge" **(en garantía** or **en prenda),** and, if the securities are registered, must transfer them as pledged on the books of the issuing corporation.

The conditional sales contract is another common security device in Mexico. There are two types, the sale subject to rescission **(venta sujeta a cláusula rescisoria)** and the sale with title reserved **(venta con reserva de dominio).** They function essentially the same way that a conditional sales contract functions in the United States with one very important exception. Under the pertinent provisions of the Uniform Commercial Code such sales can be recorded and thereby they become effective against third parties in the United States. However, in Mexico although some kinds of contract can be recorded in the public register, third parties cannot be put on notice of security interests in movables unless the movable can be absolutely identified, typically by serial number. Thus, a lien created by a conditional sales contract will be effective against third parties in the case of automobiles, typewriters and the like; but as to the great bulk of goods which move in commerce, the creditor does not get this protection.

The conditional sales contract is nevertheless widely used in Mexico because it does achieve certain other ends desirable from the standpoint of both creditor and debtor. It permits the buyer-debtor to have the possession and use of the property while retaining the security interest in the seller-creditor as between the two of them (an **in personam** interest in the property). It also can be enforced by a summary procedure which is equivalent to the classic "replevin" or "claim and delivery" proceedings available in many United States jurisdictions. Although self help is frowned upon in Mexican law, summary repossession of the property can be achieved through judicial attachment, and if the case is uncontested by the debtor (as it often is), this repossession will dispose of the case.

Three other types of security device deserve mention. They all function in special limited circumstances. The first is the **habilitación o avío,** or enterprise credit. An instrument establishing this kind of credit creates a security interest in the movables — raw materials, inventory, equipment, finished product — which a business enterprise purchases and processes in the course of its productive activity. This is perhaps as close to a floating lien as the Mexican law comes in the sense that the lien attaches whenever raw materials or equipment are purchased with the proceeds of the loan, and it follows the goods through to the finished product (the crop in an agricultural enterprise). However, the lien is fixed on those items of property, and cannot be transferred to after-acquired items. The **habilitación o avío** is governed by commercial law and is only available to secure loans for the costs of business enterprise production.

A related security interest can be created by refectionary **(refaccionario)** credit. Again intended to encourage production, the refectionary credit is limited to industrial or agricultural business enterprises. Unlike the **habilitación o avío** the refectionary credit can be secured by a lien on **all** movable and immovable property of the enterprise, except raw materials. In both types of security agreement the property affected by the lien must be specifically described in the instrument. This security is typically executed to cover fixed assets.

Finally, the trust **(fideicomiso)** is occasionally used as a device to create a security interest. A fuller discussion of the **fideicomiso** follows below. It will suffice here to point out that it is used in unusually complicated transactions such as land development through sub-division. The lender or principal creditor in such a transaction is prohibited from also acting as trustee, thus preventing some potential abuses. Securing with a trust the interest of a foreign lender requires a permit from the central bank.

§ 1.4(F). Co-Ownership.

Turning our discussion now from the security interest to other types of division of ownership recognized by Mexican law, we find that co-ownership by two or more persons of the same property is quite common. This is the equivalent of tenancy in common under Angloamerican property law, and not joint tenancy, since no right of survivorship is recognized. A co-owner under Mexican law has a right to a physical division of the property, if feasible, or in the alternative, a right to force a judicial sale and divide the proceeds. An exception to this general proposition is the situation in which division of ownership or sale would not be practical, e.g., party walls, common walkways, wells or septic tanks serving several houses, etc. Recent legislation in aid of condominium development also requires common ownership of stairways, halls, and the like in condominium buildings.

§ 1.4(G). The Trust.

A final form of split ownership now recognized in Mexico is the **fideicomiso,** or trust. Mexico, along with several other Latin American nations, borrowed the trust device from Angloamerican law through the enactment of legislation in the second quarter of the twentieth century.

The conditions for the evolution of the trust in English law were created by the judicial functioning of the chancery. The chancellor would enforce the provisions of written instruments according to principles of good faith and morals through his use of the contempt power. The chancellor did not purport to affect the law involved—something only of concern to the common law courts—but he would see that equity was done. The result of this bifurcated approach was that certain rights in property were enforceable at law and others were enforceable in chancery. This eventually became conceptualized in terms of "legal title" and "equitable title." Thus, the owner could transfer his property to another, the trustee, on certain conditions for the benefit of a third person, the beneficiary. The legal title (enforceable at law) rested in the trustee, but the equitable title or interest (enforceable in chancery) was in the beneficiary. The trust instrument itself determined the powers and duties of the trustee with respect to the property. Who was the owner? Well, all three parties had sufficient interest in the trust property to enforce their respective rights.

This sort of split ownership did not readily fit into civilian conceptions of property. As we have noted, the separation of rights into "legal" and "equitable" was completely foreign to a Roman-based system, and without reinforcement from other areas of law, it did not take root. The early legislation in Mexico was treated as creating a sort of irrevocable agency between the settlor and the trustee. Later developments have changed the **fideicomiso** concept more toward the Angloamerican model. The trustee is now viewed as the "owner" of the property who is under a duty to manage it according to the terms of the trust instrument.

A peculiarity of the Mexican **fideicomiso** is that only certain licensed banking institutions can become trustees or fiduciaries and can charge substantial fees. This, of course, limits to some extent the social uses of the trust device. The formal power of attorney with its basis in the law of agency is frequently used in Mexico in some property management situations in which a trust would be used in the United States. A power of attorney for property management purposes is irrevocable under Mexican law and, therefore, it is also used as a security device.

From what has been said before, it will be clear to the reader that the "constructive trust" and the "resulting trust" of Angloamerican law are unknown to the Mexican system. These remedial devices, modeled by courts of equity on the analogy to the actual trust, are probably unnecessary because a full complement of substantive law provisions dealing with unjust enrichment (restitution) are contained in the civil code.

§ 1.4(H). Transfer of Ownership.

The transfer of ownership in property is accomplished under Mexican law in much the same way that it is in the United States. Property can be bought, sold, given away, willed, inherited, or acquired by prescription. A voluntary transfer itself may be accomplished by contract, by written deed or will, or by physical delivery of movables. Involuntary transfers are accomplished, as they are in the United States, by judicial action, by inheritance, or by prescription. As a general rule, no formalities are required for the

effective transfer of property voluntarily, but some kinds of transactions are required to be formalized through the action of a notary, by recordation in the public registry **(registro público)**, or otherwise. Among the most important of these property transfers are the making of wills and the alienation of land (immovables).

§ 1.4(I). The Recording System.

The system of recording instruments which affect title to immovables is derived from German and Spanish sources. Any instrument which creates, extinguishes, modifies, or otherwise affects rights **in rem** in immovables may be recorded. Special statutes provide for recordation of certain other documents. Typically the instruments recorded will be formal documents executed before a notary, judicial documents, or documents issued by administrative authorities. The governing code provisions establish a system for recording which in theory is based upon the principles of "publicity, legality, specification, priority, and sequence."

The principle of publicity, much heralded in civilian legal systems, accomplishes essentially the same policy as that of most recording acts in the United States. An instrument which transfers an interest in property is normally effective as between the parties to the instrument whether it is recorded or not. However, to be effective against third parties, the document must be properly recorded. Nevertheless, interpretation of the pertinent code provisions by the Mexican courts have narrowed the application of this principle considerably. A person is not considered as a third party if he has actual notice of the previous transaction, or if he did not act in good faith, or if he was not diligent in searching the records of the registry. The degree of diligence required is an open question, and it appears that the burden of proving due diligence may be on the third party.

The principle of legality refers to the proposition that the registrar is supposed to refuse to record any instrument which does not meet legal requirements, or in other terms, he is required to register only valid titles. His decision is appealable to the courts. In theory this means that the registrar is required to determine from the records of the registry whether a grantor has the power to convey the property. He must also determine whether the parties to the instrument have the legal capacity to act, whether the instrument complies with external formalities, and whether the property is properly identified. He is liable personally for negligence in performing these duties. In practice most registrars are not trained lawyers, and their evaluations are likely to be perfunctory. In addition, many local registries contain effectively only a grantee index in which cross references may or may not be noted in the margins. The absence of a workable tract index and a grantor index can make it nearly impossible to determine with certainty the true record title. A registrar is authorized to issue a certificate of title relating to a parcel of property showing the condition of ownership. There is no guarantee behind this certificate, however, and no liability can be imposed upon the registrar for a mistaken certification unless neglivence can be proven. In view of the inadequacies of the recording system itself, this may be quite difficult. Thus, the real burden of thoroughly checking a title rests upon the parties or their lawyers, and the principle of legality remains largely theoretical.

The principle of specification means that every recorded instrument establishing rights **in rem** must contain an accurate description of the property, and must specify the type of ownership created and the nature of the obligation imposed. If a lien is created on more than one parcel of property, it is necessary to allocate the amount of the lien to each parcel.

The principle of priority is the same as that often expressed in Angloamerican law as

"first in time, first in right." The first instrument to be recorded will prevail as far as rights **in rem** are concerned, subject of course to the application of the other principles discussed herein. If a registrar refuses to record an instrument because of invalidity, he must nevertheless enter a preventive inscription on the record to preserve the priority of the instrument in case it should later be determined that it is recordable. Temporary inscriptions, good for thirty days, for the same purpose are also used.

The principle of sequence is a requirement that instruments transferring a parcel of property or interests therein must be linked in chronological order so as to show the source of each grantor's interest. Therefore, a party seeking to record an instrument must indicate the source of his grantor's title. The Mexican supreme court has fashioned a somewhat rigorous interpretation of this principle which has been referred to as "diabolical." In the case in which two parties are each asserting ownership based upon a record title, the first to record (principle of priority) does not necessarily prevail. Rather, the chain of title must be traced back to the earliest recording from a common grantor, or if no common grantor appears, then the priority of different grantors must be established. This undercuts the "priority principle" to some extent and also places a strong burden of title search on the parties. Once again the principle of legality which is supposed to establish the registrar's evaluations as a reliable guide is defeated.

Although the overall effectiveness of the Mexican land registration system has been questioned, it is curious that the institution of private title insurance has not gained a foothold, nor has there appeared that specialist in title search whom we know as the abstracter. This may be due in part to the persistence of the fiction that the registrar really evaluates the title to property in performing his function. However, attorneys and notaries do the serious title searching.

§ 1.4(J). Wills.

In addition to the formal requirements of land registration, the other important type of property transfer which requires the observation of extensive formalities is disposal by will. In general, the use of the will under Mexican law serves the same social functions as the will in Angloamerican law. Indeed, testamentary disposition of property was a Roman invention which worked its way into England through the church's application of canon law. It was unknown to the common law of the King.

Certain formal requirements imposed or allowed by the law of wills in Mexico are different from the Angloamerican tradition and are worth noting. First of all, some wills are better than others, or to put it more accurately, some formalities can be dispensed with under the right circumstances. The preferred category is known as the ordinary will, the other is the special will.

Ordinary wills are those made under normal circumstances and are classified as public open wills, public closed wills, and holographic wills. A public open will is executed before a notary and three witnesses with the full panoply of formalities—signatures, reading aloud, certification, and enrollment in the notary's records. The public closed will is much the same thing except that it is privately executed, signed by the testator, sealed in an envelope, and then presented to the notary. Further signatures by witnesses and testator and certification by the notary is done on the envelope. The notary makes an entry in his protocol and then returns the will to the testator.

The holographic will, like its Angloamerican counterpart, is one which is written entirely in the hand of the testator. Many formalities, including the use of sealing wax and a fingerprint, are required for validity. However, the fact that the will is written in the

hand of the testator presumably provides sufficient authenticity to do away with the requirement of witnesses. A holographic will must be deposited in the general archives of the notarial office to be effective.

The second category of wills, special, includes private, military, maritime, and foreign. Each of these dispenses with many of the formalities of the ordinary will because of extreme circumstances. These are: impending death, impending military engagement, a voyage on the high seas, or presence in a foreign country. In the latter case, a will executed in accordance with the laws of that country is recognized as valid. In the other cases the will has only a temporary effect.

There are rules regarding capacity to make a will which are basically similar to those found in the United States. These include a requirement that the testator be of sound mind. If there is any doubt about this, provision is made for visitation of the testator by a judge and two physicians. If they find the testator to be lucid, they so certify in a formal record, and the will is immediately executed before a notary in the usual way.

Although the early Roman law allowed complete freedom of testamentary disposition, this is no longer possible in Mexico or the United States. However, the policy in the two countries is different and perhaps reflects a different attitude toward the family and the ties of kinship.

Under English law up to the time of our revolution, real property could not be disposed of by will at all, although personal property could be. Rather, realty descended to the eldest son, or, more commonly, it followed a path dictated by a deed of entailment which created successive life estates in the grantees. Such an entailment could be accomplished by the owner of real property during his lifetime through the execution of an intricate deed of conveyance. The widow of a decedent, however, was entitled to retain a one third interest in all of the realty of the decedent for her lifetime—her dower interest.

Since the rules of primogeniture and entailment operated to tie up real property in families for generations, it did not meet the needs of the young United States after the revolution. Accordingly, the states passed legislation changing the rules of descent and making real property devisable along with personal property, i.e., it could all be disposed of by will. The widow's mandatory dower was kept, however, or she was given a statutory share, usually one third of the entire estate. The end result was and is that a testator in most of the United States is free to will his property to anyone, subject to a claim by his widow (and sometimes by the widower) to one third of the estate. The children can be excluded entirely.

The Mexican law, reflecting the strong civilian tradition, has arrived at a different result in two ways. First, the obligation owed to near relatives is viewed in terms of "support" rather than a share of the decedent's property. Secondly, several persons may be entitled to such support, depending upon their circumstances, and not merely the widow. In fact, the widow is likely to receive less than she would under Angloamerican law.

The extent of the duty of support is provided by the general law of persons. It consists of providing food, clothing, lodging, medical care, and in the case of children, an elementary education. The duty can be met through monetary payment. The obligation of support owed by a decedent has an outside limit equal to the amount which the person entitled to it would receive if the property passed intestate. It must, however, be equal to half of that amount as a minimum. Any designation by the decedent above that limit will be given effect.

The persons to whom the duty of support are owed include: the male children of the decedent under 21 and those over 21 who are incapacitated for work; the female children of the decedent under 21 and those over 21 who have not married; the surviving widow so

long as she remains a widow and "live honorably;" the surviving widower, if he is incapacitated for work; the ascendants; the concubine of a deceased single male, provided she "observes good conduct" and does not marry; and finally brothers, sisters, aunts, uncles, and cousins to the fourth degree, provided they are in need.

At first blush this does, indeed, seem to be quite an obligation to be satisfied from a decedent's estate. However, we must remember the limitation to intestate shares, and in addition, any person who is deemed to have sufficient property to support himself is not entitled to support from a decedent. A further limitation is a provision which negates the duty of support when there is a relative more closely related who can provide such support. As suggested above, provision of a **usufruct** for the surviving spouse with the rest of the property passing to the children would satisfy support requirements in many typical situations. The key difference in most cases from Angloamerican law is the requirement of taking care of the children.

As has been discussed above, the trust has been introduced in Mexico; however, its use in testamentary disposition is forbidden. The **usufruct** is not considered a disposition by trust, of course. Also, provisions in wills which create obligations on a devisee or legatee to make payments from the property for certain charitable purposes will be given effect even though such provisions might be regarded as establishing trusts.

§ 1.4(K). Intestate Succession.

Intestate succession in Mexico works essentially as it does in the United States. Title to the property is viewed as vesting immediately upon death in the heirs who have a right to partition and also a right of preference in purchasing the shares of other heirs. The rules of succession differ in some respects from those in the typical U.S. jurisdiction. The chart below, modified from Butte, Selected Mexican Cases 263 (1970), will illustrate. Note that the concubine, who does not figure in Angloamerican law, is a woman with whom the deceased lived as husband during the five years prior to his death, or by whom he had children. Both he (romantically called the "paramour") and she must have been legally unmarried during the period of concubinage.

The rule of succession operates so that all of the deceased's property goes to the first class of heirs in the order listed. Those further down on the chart receive nothing. Thus, if a deceased left no wife, concubine, or descendants, but did leave parents, the parents get everything (divided equally). Again, if the deceased left only a wife and two brothers, each brother would receive one-sixth and the wife would receive two-thirds.

Descendant leaves surviving as heirs:	**If the spouse survives, he or she takes:**	**If the concubine survives, she takes:**
1. Descendants (immediate children divide equally; their descendants take by representation).	A child's share*	A child's,* if the children are hers by the deceased.**
2. Ascendants.	One half.	One fourth.
3. Brothers and sisters.	Two thirds.	One third.
4. Spouse, but no descendants, ascendants, brothers or sisters.	All.	—

Descendant leaves surviving as heirs:	If the spouse survives, he or she takes:	If the concubine survives, she takes:
5. Collaterals to fourth degrees.	—	One third.
6. Only concubine, one half goes to public charity.	—	One half.
7. None. All goes to public charity.	—	—

*If the surviving spouse or concubine holds property, the child's share he or she is entitled to is diminished by the amount of that property.

**Other rules apply if the children are not all of the deceased and the concubine.

§ 1.4(L). Leases.

Leases of real property are commonly used in Mexico as they are in the United States. However, the lessor is viewed as the sole "owner" of the property, and the lessee does not acquire a property interest in the premises. Thus, leases are governed entirely by the law of contract.

§ 1.4(M). Prescription.

A brief word should be said about prescription under Mexican law. Property may be acquired by occupation and use if the possession is (1) as owner, (2) quiet, (3) continuous, and (4) public. The latter requirement seems to correspond roughly to the Angloamerican requirement that the possession be "notorious and adverse". Real property can be acquired in five years if in good faith, ten years, if not. Personal property must be possessed three years in good faith or five years otherwise.

§ 1.4(N). Unique Mexican Policies.

The foregoing discussion covers the highlights of those areas of law which most Angloamericans would consider under the heading of property. However, there are certain unique features of Mexican property law which are dictated by social policies of great importance in Mexico. These include national ownership of all minerals in the subsoil, the preservation of cultural treasures (anthropological artifacts, etc.) through mandatory national ownership, and the law of agrarian reform. The law governing these areas is mentioned here because it is, indeed, a part of property law. But, because it has been legislated in implementation of recent social policy, and as a result of certain direct constitutional mandates, the further description of it has been included in the chapter on constitutional law where historical and political explanations are most appropriate.

§ 1.5. Business and Investment Law.

The law of the business community is complicated and voluminous; therefore, we shall attempt to describe only some of the highlights where a comparison between Mexican and United States law may provide special insights. The principal sources of law in this area are the commercial code **(código de comercio)**, bankruptcy law **(nueva ley de quiebras y de suspensión de pagos)**, general law of mercantile companies **(ley general de sociedades**

mercantiles), general law of negotiable instruments and credit operations **(ley general de títulos y operaciones de crédito)**, the foreign investment law **(ley para promover la inversión Mexicana y regular la inversión estranjera)**, and the law on transfer of technology **(ley sobre el registro de la transferencia de technologiá y el uso y explotación de patentes y marcas)**.

§ 1.5(A). Commercial Law.

The law relating to commercial transactions has a history traceable to ancient times. However, the greatest development of that law came about during the sixteenth and seventeenth centuries. That period witnessed a tremendous expansion of trade in western Europe and a consequent growth in the ways and means of resolving merchant disputes. The merchants themselves undertook the judicial function, and merchant courts were common in England as well as on the continent. They drew upon the "custom of merchants" as their principal source of law. On the continent (and in Mexico) the merchant courts operated outside other court systems until the nineteenth century when their jurisdiction was ultimately fused with that of the ordinary courts. In England, the King's common law courts had earlier forced their own jurisdiction on mercantile cases in the late seventeenth and eighteenth centuries, although they did not attempt to change the law, continuing to give effect to the "custom of merchants."

Thus, commercial law was in a very real sense an international law, given force and effect by the nationalistic regimes of the nineteenth and twentieth centuries, but nevertheless deriving from accepted practices common to businessmen throughout western Europe and America. Of course, the wave of codification which swept the western world in the past century and a half resulted in commercial codes springing up in most countries, but the basis for the codified law was the previous case law and custom universally recognized. It is therefore not surprising that a comparison of Mexican commercial law with that found in the United States under the umbrella of the Uniform Commercial Code reveals very few significant differences.

One of the key concepts running through the law of commerce is that of negotiability. A written instrument may take the form of a promise to pay or a direction to pay. If the instrument meets the requirements for negotiability — which are essentially the same in the United States and Mexico — then it may be transferred very much as money is transferred, i.e. the transferee takes the instrument and the value thereof free from most defenses or claims between the original parties to the instrument. The most common negotiable instruments in Mexico are the **letra de cambio** (bill of exchange), the **pagaré** (promissory note), and the **cheque** (check). Collectively these are called **titulos de crédito.** For another interesting type of negotiable instrument, unknown in the United States, see the discussion below of "bearer shares."

The law of secured transactions is another important aspect of commercial law. This governed in Mexico by the commercial code or the civil code, depending upon whether the type of transaction constitutes a "commercial act". The different types of security devices are discussed in some detail above in § 1.4(E).

Another significant feature of the commercial landscape is the law of bankruptcy. In Angloamerican law the high court of chancery first exercised its jurisdiction in piecemeal fashion in cases of insolvency before the time of the American Revolution. Although the federal constitution assigned jurisdiction in bankruptcy to the national government, Congress did not see fit to enact a comprehensive bankruptcy act until 1898. The federal bankruptcy law has since been amended and revised, but in its approach, procedure, and

remedies it reveals its English chancery lineage. It essentially provides a fair way to allocate an insolvent's assets among his creditors.

The Mexican law of bankruptcy **(nueva ley de quiebras y de suspensión de pagos)** traces its origins, as in so many other areas, to the Roman law. The civil code provides for a proceeding called **concurso** which amounts to a bankruptcy for non-merchants. However, in the Latin tradition the full fledged bankruptcy is limited to merchants. Unlike the policy of United States bankruptcy law, the Mexican bankruptcy carries strong moral and punitive overtones. Bankruptcies are classified as fortuitous, culpable, or fraudulent. The second (culpable) category which includes bankruptcy due to the negligence or reckless conduct of the bankrupt can carry a stiff prison sentence, and the fraudulent category carries an even harsher one. Both may entail loss of political and professional rights.

Creditors in a bankruptcy proceedings are classified into five groups. Each group is entitled to receive its full share in the distribution of the bankrupt's estate before the next group can receive anything. The five groups in order of priority are: singularly privileged creditors (unpaid employees during the preceding year or unpaid claims for funeral and last illness expenses of bankrupt); statutory lien creditors; secured creditors; general unsecured commercial creditors; and general unsecured civil creditors. Expenses of administering the bankruptcy come before any payments to creditors except the singularly privileged class.

Another feature of the Mexican bankruptcy which differs from its United States counterpart is the "rehabilitation of the bankrupt." Under United States law the debts of the bankrupt are discharged by the bankruptcy proceeding, no legal liability remains, and no legal disabilities are imposed. However, in Mexico the bankrupt remains under legal (political and professional) disabilities until he has served any criminal sentence imposed and until he has paid off all of his former obligations in full. When this is accomplished, he is regarded as rehabilitated.

§ 1.5(B). Business Organization.

As in the United States, business in Mexico is carried on in a variety of forms, each having some advantages and disadvantages. The principal forms, in addition to the sole proprietorship, are: partnership **(sociedad en nombre colectivo),** limited partnership **(sociedad en comandita simple),** limited partnership with shares **(sociedad en comandita por acciones),** limited liability company **(sociedad de responsibilidad limitada),** and corporation **(sociedad anónima).** These forms of organization correspond with the Angloamerican counterparts of the same name with the exception of the limited liability company. They differ from each other primarily with respect to the personal liability of owners for business debts, control of management, and ease of transferability of ownership interests. The limited liability company does not have a formal direct United States counterpat in most states. It is essentially a corporation, but ownership interests cannot be transferred without the approval of the other owners.

With the exception of small business operations and family owned businesses, by far the most popular and convenient organizational form in both Mexico and the United States is the corporation. The corporate form offers several appealing features. Shareholder's liability is limited. Equity (or ownership interest) can be easily transferred since shares of stock are usually negotiable instruments. Ownership can be anonymous for Mexican investors through the use of bearer shares. These are shares of stock which are not registered to an owner, but whose rights and privileges are held by the "bearer" or

person possessing the certificate. Bearer shares are negotiated by simple physical delivery.

The formation and organization of a corporation in Mexico bears close resemblance to that found in the United States. Shareholders elect a board of directors who are charged with the management of the enterprise. Officers of the corporation are appointed by the directors. Two special features of corporate organization should be mentioned, the contractual nature of the corporation and the **comisario.**

Under Angloamerican law a corporation is theoretically created by the state. It is a franchise, a grant of privilege which flows from the sovereign. In prerevolutionary days only the King or parliament could charter a corporation. In nineteenth century America state legislatures chartered corporate entities. Today this chartering function is still theoretically carried out through general enabling acts which prescribe the procedure through which a corporation may be formed. The ultimate step in this procedure is the issuance of articles of incorporation by a government functionary, usually the Secretary of State. In contrast under Mexican law the formation of a corporation is a contractual act between the incorporators presided over by a notary. One of the consequences of this theory is that one person cannot form or own a corporation. Actually the law requires at least five shareholders for the regular corporation **(sociedad anonima)** at all times.

The **comisario** is an official watchdog elected by the shareholders to oversee the activities of the directors; there is no counterpart to this office in Angloamerican law. A combination of auditor and ombudsman, the **comisario** has no power of management himself, but he may audit all operations of the company. In general the **comisario,** or **comisarios** if more than one is appointed, have the right to inspect all books and records of the corporation, to call shareholder's meetings, to authenticate minutes of shareholder's meetings, to receive periodic reports and financial statements from management, and to fill vacancies on the board of directors between shareholders' meetings.

A variation of the ordinary corporation often found in Mexico today is the variable capital company **(sociedad anónima de capital variable).** This form of organization allows increases or decreases (to a fixed minimum) in the capital of the company without the necessity of formally changing the articles of incorporation. Thus, additional shares can be issued from time to time with a minimum of formalities.

§ 1.5(C). Investment by Foreigners.

In view of the problems Mexico experienced with foreign investors during the Porfiriate as outlined above in § 1.1., it is not surprising that foreign investment is now carefully regulated by the Mexican government. Indeed, the trend ever since the Revolution has been to "Mexicanize" business enterprise in Mexico. This trend has accelerated in recent years, although the nationalization of the petroleum industry in 1938 and the promulgation of the emergency decree of 1944 stand out as historical milestones in the process of "Mexicanization."

There are some types of investment by foreigners, generally called "indirect," which are not subject to special regulation. Ordinary passbook savings accounts and certificates of deposit with Mexican banks do not come within the ambit of government control. Such investments are of course more typical of the individual (as opposed to corporate) foreign investor. They can yield as much as a 12% return or better, but are subject to the hazard of devaluation. Notes and bonds of corporate entities, including banks, can also be freely purchased by foreigners as long as they in no way represent an equity interest in the corporation. As to land and border industries, see the discussion below.

Under the heading of "direct" investment come all securities which represent an equity

interest in corporate enterprise, i.e. which carry some degree of control over the business. The most common type of such security is the share of common stock. Ownership of this type of investment by foreigners is governed by the Foreign Investment Law of 1973. This act continued the policies initiated by the emergency Decree of 1944 and codified in one statute a number of related regulations and special laws which had come into being since 1944. The act specifies the conditions under which foreign investment may participate in the national economy in order to achieve the social and economic objectives of the Mexican people.

The act creates the Foreign Investment Commission, an administrative body, whose function is to supervise foreign investment and carry out the specific mandates of the legislation. The Commission is made up of ministers from different departments of government. It establishes rules and guidelines and adjudicates questions raised under the Law. The Commission must approve any new investment by foreigners whether through purchase of shares in a new or existing corporation or through reorganization of existing enterprises. In general the Commission follows a policy of favoring investments which stimulate employment, help low income geographical areas, help the Mexican balance of payments situation (e.g. by exporting), complement existing Mexican industry, and promote Mexicanization.

The Foreign Investment Law also provides for a Registry of Foreign Investment to be kept by the Secretary of National Properties and Industrial Promotion. In this registry records are kept of all foreign investors, of all foreign-controlled companies, of all Mexican companies with foreign participation, of all trusts with foreign beneficiaries, of all negotiable investments owned, pledged or transferred to foreigners, and of all resolutions and decisions of the Foreign Investment Commission.

Under the Foreign Investment Law three categories of enterprise are established in which the maximum degree of foreign participation is fixed. Since the act has not been applied retroactively, there are many older foreign companies (such as automakers) which still control 100% of their Mexican subsidiaries. This has not generally been possible since 1973. The three categories of enterprise are: (1) government owned—including the railroads, electric power, nuclear energy, the petroleum industry, and basic petrochemicals; (2) limited to 100% Mexican ownership—including radio and television, air and maritime transport, natural gas, forestry, gas distribution and telephone; and (3) open to foreign participation—including all others not deemed "vital" by executive order. Within the latter category foreign investment is limited to 49% of ownership and control of most companies. However, ownership of companies engaged in the exploitation of national mineral resources is limited to 33%, and ownership of companies engaged in the manufacture of tractors or automobiles is limited to 40%. Special exceptions can be made by the Commission, although to date such exceptions have been rare. Recent pronouncements by high officials of the Mexican government have indicated that Mexico may begin granting majority participation in enterprises which substantially help to alleviate the problems of unemployment and balance of payments (exporting industries).

In the past attempts have been made by foreigners to circumvent governmental regulation of investment by purchasing bearer shares or by having a Mexican national purchase shares in his own name for the benefit of the foreigner. Thus, the gardener, the maid, and the cook may be the nominal owners of shares in **A.B.C., S.A.**, but the foreign master of the household really controls their disposition. Such surrogates are called **prestanombres.** This practice as well as ownership of bearer shares by foreigners is outlawed by the Foreign Investment Law. Stiff sanctions have been applicable since 1973, and it is probable that these illegal practices have diminished considerably.

Another important area in which the Mexican government has sought to exercise control over foreign enterprise in Mexico is through regulation of technology. In order to promote Mexican technology, the government enacted the Law on Transfer of Technology in 1973. This act requires that, to be effective, all contracts and related documents by which the use of technology is transferred from a foreign company to a Mexican company must be registered in the Registry of the Transfer of Technology. The Registry is under the jurisdiction of the Secretary of National Properties and Promotion of Industry. The scope of "technology" is wide; it includes all patented inventions, trademarks, formulas, designs, models, plans, engineering data, etc. Registration may be denied by the Registry in the interests of Mexicanization. By filtering all leasing, royalty, and similar agreements through the scrutiny of government control which the Registry provides, the law attempts to protect Mexican industry from excessive royalties, to prevent price ceilings from being set, to diversify sources of supply, and to protect and promote native Mexican technology.

Mention should be made of two additional areas in which foreign investment is given special treatment under Mexican law, land ownership and border manufacturing **(maquiladoras).** Foreigners are prohibited from acquiring land in the restricted zone which includes any land within 100 kilometers from the border or 50 kilometers from the coast. A foreign corporation cannot own any land at all. A foreigner may purchase real estate outside the restricted zone if he has migrated to Mexico (see below) and obtains a permit to do so from the foreign ministry. It is possible for foreigners to acquire equitable title (beneficial ownership) in property within the restricted zone such as a villa in Acapulco. This is done by establishing a trust **(fideicomiso)** with a Mexican bank as trustee holding the legal title. Such a trust is limited to a duration of 30 years and is non-renewable.

The second case of special treatment is that of border manufacturing. In order to meet a staggering unemployment problem in the northern border towns the Mexican government established a plan to encourage labor intensive manufacturing industries to establish plants in those locations. Since the program was initiated the areas affected have been expanded to include the coasts and southern borders. Foreign industries (mostly United States) which have responded to the program are exempt from the requirements of the Foreign Investment Law; these enterprises can therefore be 100% owned and controlled by foreigners. Long term leases on real estate (30-40 years) have been authorized to meet the problem of foreign ownership in the restricted zone. The Mexican labor force must be utilized, and 100% of all products must be exported. These exports are subject only to the ordinary customs code, not to the Foreign Investment Law.

§ 1.5(D). Immigration.

It may seem strange to discuss the Mexican law of immigration in a chapter on business law. However, the reader will recall that one of the practices which the Revolution sought to abolish was foreign domination of business enterprise. One of the most visible, and therefore, most detested, means of maintaining that domination was to place foreigners in managerial and white collar positions, relegating native Mexicans to more menial jobs. The post-Revolutionary law of immigration was intended to prevent the recurrence of this kind of practice by foreign companies, and it has accomplished this task very effectively.

The two major classifications of non-Mexicans in Mexico are immigrants and non-immigrants, as determined by the intent to remain indefinitely. Among the category of non-immigrants are tourists, transients, visitors, and provisional visitors. Tourists must

obtain a visa or permit good for no more than 180 days. Transients are those traveling through Mexico to another destination. Visitors are foreigners who have entered Mexico to transact some kind of business, although they are not permitted employment in Mexico. This category includes students, athletes, lecturers, and political refugees as well as businessmen. They may obtain a permit good for 180 days with one extension allowed. The category of provisional visitor is a catch-all for persons who have no papers.

Persons who enter Mexico with the intention of remaining are classed as immigrants. A visa to enter in this status must be obtained from the foreign ministry. Such visas will not be granted unless the individual qualifies under one of the following categories: **rentista,** investor, confidential employee, or scientist. A **rentista** is one who lives off income derived from foreign sources or who establishes a trust with a Mexican bank which will provide a minimum income as established by law. A **rentista** is permitted employment in non-mercantile commercial activities. Investors are those who derive their income from local Mexican investments; they too must bring in a specified minimum of capital for investment. The confidential employee is a high level management employee or technician. For a company to bring in foreigners in this capacity it must have operated in Mexico for more than two years and must have capital stock of a value of 600,000 pesos in the federal district or 200,000 elsewhere. The company must show that the foreign employee possesses skills, training, or experience which are not available in Mexico. If a qualified Mexican employee is available to handle the job, the visa will be refused. There can be no duplication of functions between the foreigner and other employees. Where the employee is essential to a new company's operation, the two year requirement may be waived. The last category, that of scientist, requires simply that the immigrant prove to the satisfaction of the foreign ministry that he is a scientist.

Once a person has been admitted to the country as an immigrant in one of the categories listed above, he is denominated an **inmigrante.** An **inmigrante** can only work at the specific job for which he was admitted. His visa must be reviewed annually, and it will be renewed automatically if he continues the specified employment. The **inmigrante** cannot leave Mexico for more than 90 days during his first and second years in the country, and he cannot spend a total of more than 18 months outside Mexico during the five years from his date of entry. After five years have elapsed the **inmigrante** becomes an **inmigrado.** According to law the **inmigrado** has all of the rights of a Mexican citizen except the right to vote, to hold public office, and to own land in the restricted zone. Also, the **inmigrado** cannot remain outside of Mexico for more than two consecutive years nor for more than five years total out of ten. Pursuant to administrative regulations issued under the law, limited restrictions can be imposed upon employment as well, and this is in fact done in the case of **inmigrados** from certain countries.

§ 1.6. Courts and Civil Procedure.

The Mexican court system traces its ancestry back to the **audiencias** of New Spain which functioned as both administrative and judicial bodies under the Viceroys. During the nineteenth century when the ideas associated with liberalism and positivism swept the western world, the doctrine of separation of powers became widely accepted. This dictated that courts be made separate arms of government limited to application of the law which could be created only by the legislative branch. Ultimate acceptance of a federal system in Mexico meant that there would be two hierarchies of courts—state and federal.

The constitution of 1917 now in force in Mexico did not alter this basic scheme which is of course familiar to students of U.S. government. The present constitution has been amended a number of times with respect to the selection of federal judges. The very fact that the constitution has been and can be easily amended by the President and congress in this respect reveals that the federal judiciary's independence is not nearly as assured as it is in the United States. See the discussion below of politics and the courts. At present the federal judges formally serve during good behavior after an initial probationary period.

§ 1.6(A). Court Structure.

The federal courts are organized on a three layered basis similar to those in the U.S. There are individual district judges, intermediate appellate courts, and one supreme court. Although the courts of the federal district are technically federal, their function is more analogous to the state courts. The supreme court consists of 21 judges who sit in plenary session (**en banc**) for some cases and divide into separate panels for others. The principal cases required to be heard by the entire court are those involving jurisdictional and constitutional questions. The four panels or chambers of the supreme court are: criminal, civil, administrative, and labor.

In addition to the regular court structure separate judicial bodies have been created from time to time which also play an important role in the overall system. The most important of these are the labor boards and commissions which hear all cases arising under the national labor law; the tax court which adjudicates revenue cases, and the military courts. The supreme court has final appellate jurisdiction over all federal tribunals, and as a practical matter through the use of **amparo** over all state courts as well.

The states have organized their court systems along federal lines; however, some of the smaller states do not have the intermediate appellate court. At the trial level in both the states and federal district courts (individual judges) are usually designated as either penal or civil. In outlying areas one judge may act in either capacity. In the federal district some trial courts are also specially designated as domestic courts to deal with family law cases. Tribunals with jurisdiction over petty offenses and small claims also exist in the states and the federal district which are analogous to justices of the peace or police magistrates in the United States. There are no separate probate courts in Mexico.

§ 1.6(B). Jurisdiction.

The jurisdiction of the various courts in Mexico is a complicated and conceptually difficult matter as it is in the United States. The question of jurisdiction can be broken down into four categories for purposes of analysis: federal state jurisdiction, the constitutional competency of a court, the jurisdictional competency of a court, and the jurisdiction of a court over the persons involved in the controversy.

The division of jurisdiction between federal and state courts very roughly parallels that found in the United States. The constitution allocates jurisdiction to the federal courts in the following instances: cases involving the federal constitution, cases involving a conflict of federal and state law, cases which arise from the "performance and application" of federal laws or treaties, suits between states or a state and a resident of another state, maritime cases, cases in which the federal government is a party, all **amparo** proceedings, and questions of jurisdiction between state or federal courts. All other cases are in theory left to the state courts. However, the Mexican supreme court has construed these grants of jurisdiction very broadly. For example, litigation arising out of an auto accident on a

federal highway which involves damage to the highway or its appurtenances comes with the ambit of the federal courts. The reader should also keep in mind that many legal entities which are private corporations in the United States are federal governmental bodies in Mexico. Thus litigation involving the railroads, electric power, airlines, gasoline, hospitals, etc. is likely to be a federal matter. These factors, combined with the fact that **amparo** can be used as method of appealing questions of state law, mean that the federal courts in Mexico have a much larger share of the judicial power than their U.S. counterparts.

A broader jurisdictional concept is that of constitutional competency. This is the determination of which **type** of tribunal is allocated power to hear a given controversy. For example, the labor boards have exclusive authority to hear disputes arising under the labor law; but in a given case a question may arise whether the dispute is governed by the labor law or by the law of contract in the civil or commercial codes. Likewise the scope or area of competency of the military tribunals presents similar questions. Decisions on these kinds of questions are made by the supreme court. The reader will notice that the question of federal versus state jurisdiction really comes within the broader Mexican category of constitutional competence.

The question of jurisdictional competency goes not to the type of tribunal which should hear the case, but the specific court or courts in which the case must be brought. The rules establishing jurisdictional competency are usually found in the codes of procedure applicable to the different courts or in the legislation creating the court. The rules turn out to be very similar to those found in the United States. Thus, in matters involving real estate, the court sitting where the real estate is located has jurisdiction. The place where a contract is to be performed or the place where a tort was committed determine the appropriate court. Domicile of the defendant is usually an additional option, or the parties may establish competency by agreement. Where there are two or more courts designated as competent for a given case the first to actually take jurisdiction usually prevails.

The final jurisdictional problem is that of power over the person. A plaintiff submits to the jurisdiction of the court by initiating the proceedings. The defendant usually must be served with process (except in **in rem** cases) either within or outside the territory in which the court sits, although by filing an answer or counterclaim the defendant is also deemed to have submitted to the court's power. Special appearances to challenge the court's jurisdiction are permitted. If this is done in the court in which plaintiff has started the case, it is called a **declinatoria** proceeding. The defendant must indicate to the court which other court he believes is competent to hear the case. The defendant may in the alternative proceed in the court he thinks has competence by asking for a writ of **inhibitoria** against the plaintiff's court. If the two courts are not in agreement the records are transmitted to the supreme court for a decision on the jurisdictional question.

Although much of the law of jurisdiction in Mexico is similar to that of the United States, two important divergences should be pointed out. Mexico, like most civilian countries, does not recognize presence in the territory alone as a basis for a court's competence. Thus, a plaintiff cannot (as he can in the United States) file suit in a given state court, have process served on the defendant as he passes through that state on a train, and thereby obtain jurisdiction. Mexican law requires that there be some appropriate connection between the defendant and the place where the court sits (doing business, committing a tort, etc.) in order to establish competency. The second principle thrusts in the other direction. Under Mexican law Mexican courts have competence to try offenders

for crimes committed outside of Mexico, provided that the accused is a Mexican or the crime was committed against a Mexican, and further provided that the offense is also a crime in the place where it was committed. Thus, a person accused of stealing a Mexican citizen's wallet in New York City could be prosecuted in a Mexican court.

§ 1.6(C). Procedure.

Procedure in Mexican courts is governed by codes of civil procedure for each of the states, the local courts of the federal district, and the federal district courts. Although there are variations, most of the procedures are similar and follow long standing civilian practice. The typical judicial proceeding is initiated by the filing of a complaint **(demanda)** by the plaintiff **(actor)**. In some commercial cases the suit can be started by attaching the defendant's property. Generally parties may be liberally joined and may intervene on an equitable basis. The defendant **(demandado)** is served with process and must file an answer **(contestación)** within a short period of time.

These pleadings appear somewhat strange to the Angloamerican lawyer who is accustomed to stating only facts in his pleadings. The typical Mexican complaint will consist of three main parts: statement of facts **(recitación de los hechos)**, considerations of law **(consideraciones de derecho)**, and prayer for relief **(conclusión)**. In the considerations of law the plaintiff cites the governing code provisions or other legislation and explains their applicability to the case. Thus, the complaint serves as a brief of the law to the court as well as a statement of the facts. The defendant's answer follows the same pattern. He may accept plaintiff's statement of facts or he may set forth his own version. He may cite other code provisions deemed applicable or he may offer a different interpretation of the same provisions cited by the plaintiff. Further pleadings are permitted, but are not common.

The next step in the procedure is the introduction of evidence **(ofrecimiento de pruebas)**. This does not occur at one hearing at which all parties and witnesses are present. There is no trial as such. Rather, evidence is introduced at a series of hearings and is almost always reduced to writing by a secretary of the court. Documentary evidence of a public nature such as notarial records can be introduced without any authentication. Private documents must be authenticated by a witness.

When a witness testifies, the judge asks the questions, although lawyers for either side can request the judge to ask certain questions or to explore a certain subject in his interrogation. There is no cross-examination. In the busier courts sometimes the judge is not present at these hearings and the court secretary asks the questions as well as types the answers. Usually the typed version of the interrogation is submitted to the witness for corrections and this is signed. Depositions of witnesses who are unable to testify before the court may be introduced, and written interrogatories to the parties are also occasionally used. A judge may personally inspect items of physical evidence including premises. He will enter a memorandum of his findings in the record.

All of the foregoing evidence becomes a part of the written record of the case **(expediente)**. Since there are practically no exclusionary rules of evidence, and all testimony is reduced to writing, the **expediente** (called **toca** in **amparo** proceedings) will usually be quite voluminous. The judge is not likely to have been present when documents were entered into the record, and perhaps was not present when some of the witnesses testified, so he must depend almost entirely on his reading of the **expediente** to guide him toward a decision. This review of the written record is usually deferred to the end of the evidentiary period.

The Angloamerican reader will note that nothing has been said about discovery. In the U.S. discovery procedures are intended to permit disclosure of relevant facts to the respective parties prior to trial so that a complete case can be structured and no surprises will pop up at the trial. Since there is no trial in Mexico, there is no need for discovery as such. It is of course possible to obtain an order from the court directed to one of the parties or a third party to produce certain evidence or to testify about something. However, when this is done the evidence so produced simply becomes a part of the **expediente.** If surprising testimony does turn up, the surprised party can always explore the new matter further or produce counter-testimony at the next hearing, since there is no significant limit on the number of hearings or amount of evidence which either party can offer in good faith.

Orders to produce evidence or other orders and rulings may be entered by the court upon motion of one of the parties at any time during the proceeding. These interlocutory rulings on incidental matters may often be appealed to a higher court immediately either through the normal appellate procedure or by bringing an **amparo** proceedings. Thus, a case may be substantially delayed while these interlocutory appeals are pending.

When all of the evidence is in and the judge has reviewed the **expediente,** the lawyers for the parties may appear and conduct oral argument. The judge is then ready to make his final decision in the case, again in writing. The judgement **(sentencia)** follows a standard format, usually one or two pages in length, in which there are vague findings of fact and law and an order granting the appropriate relief. The judgment may order specific relief such as turning over certain property to the plaintiff, or it may simply order payment of money. A money judgment is enforced by a type of sheriff called an **actuario** who is an officer of the court, often a lawyer. He can levy execution on any of defendant's property to satisfy the judgment. If the court orders specific relief and the defendant does not comply, he may be held in contempt of court and fined or imprisoned.

If the case is appealed, the **expediente** is transmitted to the appellate court. This court reviews it, may hear oral argument, and then makes its own decision on both factual and legal issues. There is no attempt to make careful distinctions between matters of fact and matters of law since the appellate court can make its decision on the very same record which was the basis of the trial court's decision.

§ 1.6(D). Reporting Court Decisions.

The judgment of the appellate court also follows a standard format and is usually more extensive than the trial court's judgment. In most cases it will contain the names of the parties and date of the decision followed by a "whereas" which is then followed by a summary statement of the facts of the case point by point. This is followed by the word "considering," then the various applicable legal (statutory) authorities are cited and discussed. Finally, "It is therefore decided" is followed by the ruling of the court. Although this format of court opinion would appear to distinguish carefully between questions of fact and questions of law, the actual discussion found in the cases usually does not do so. In some cases the opinion is given in a very brief one or two paragraphs.

These appellate judicial opinions are of course kept as a record of the court, but they are not ordinarily published. Most of the states publish a legal review **(revista juridica)** which contains information about the bar and discussions of current legal questions in essay or article form. Occasionally appellate court opinions of unusual significance will be reported in these reviews, but there is no attempt to report in a systematic or comprehensive manner.

At the national level the opinions of the supreme court are now published on a regular basis in the **Semanario Judicial de la Federación** (S.J.F.). Although this publication was begun in 1870, its value left much to be desired by common law standards. During this time the reports were uneven in quality, were selective, were not well indexed or cross-referenced, and in some years did not appear at all. Since 1957 when the current or sixth series (**sexta época**) began publication the caliber of reporting has been good, although many of the cases are summarized or "extracted" and are thus not as helpful as they might be. Other court decisions are occasionally reported in a variety of legal publications.

§ 1.6(E). Judge Made Law.

The rather casual attitude toward reporting of cases in Mexico is a reflection of the civilian position that courts do not make law and that there is no formal requirement for courts to follow prior precedents. This is the traditional position, and it is acknowledged by Mexican lawyers today. However, most lawyers also recognize that a court is likely to decide similar cases the same way as a matter of logical consistency, and hence they may informally keep an eye on what the courts are doing. There is seldom citation to previous case authority in legal discourse. Also, the type of reporting available plus the style of opinion typical of most courts make it difficult to compare and analyze cases in the way that common lawyers are accustomed to do. It appears, however, that the study of case law (**jurisprudencia**) may be slowly growing in Mexico, possibly due to United States influence.

There is one area in which judicial decisions have gained a foothold in the formal world of Mexican law. When a court has ruled on the same point of law in five successive decisions by a specified minimum majority of votes, that ruling becomes binding on all lower courts in the system and on the court itself which has made the five decisions (called **jurisprudencia** in the limited sense). However, that court can subsequently reverse itself ("interrupt" the **jurisprudencia**) by the same minimum majority of votes. Thus, if the supreme court sitting in plenary session rules on an issue consistently in five different cases by a majority of 14 votes, that interpretation becomes binding on all lower courts and on the supreme court itself unless and until it reverses by the same 14 vote majority. The same principle is applicable to the court sitting in chambers and to other appellate courts but with different numbers of majority vote applicable. This is Mexico's only formal recognition of the principle of **stare decisis.**

We have seen that through use of the **amparo** proceeding litigants can ask the federal courts in Mexico to declare laws unconstitutional. It is possible to square this exercise of judicial power with the idea that courts do not make law by strictly limiting the judicial effect of a finding of unconstitutionality to the parties in the case.

§ 1.6(F). Politics and Courts.

In view of the traditional civilian idea of a very limited role for the judge, and considering the political power of the president vis-a-vis the judiciary in Mexico, it might be concluded that the federal courts are inclined to favor the government and favor the constitutionality of government action in any litigation. Several studies, however, have suggested that this is not necessarily true and that the Mexican judiciary does exercise some independent power of its own. The degree of political influence upon the court emanating from the president or other powerful persons or groups is difficult to measure, of course, but statistics have been compiled which suggest that the matter is much more

complex than one might expect. By quantitatively analyzing **amparo** cases on the basis of who wins (aggrieved party or government) one authority has concluded that there are certain issues on which the courts are likely to defer to the government and other issues on which they will uphold the rights of the individual.

Those areas in which the courts seem to lack independence and are subject to influence by politics were found to be cases involving: free exercise of religion, deportation of "undesirables," challenges to elections, dismissal of public officials, and large agrarian land expropriations. Those areas in which the Mexican courts were found to have asserted themselves against other organs of government were: review of military court decisions, confiscation of small farmers' property by the government, treaty interpretation, income and property taxation, and criminal due process cases.

It is undoubtedly too much to expect that the Mexican judiciary would play the strong and innovative political role that the United States Supreme Court has played. There are simply too many historical, ideological, and political factors pushing in the other direction. On the other hand, through the careful utilization of **amparo,** the Mexican courts have done much to protect individuals from governmental oppression so that on a worldwide scale they perhaps would rate rather high.

§ 1.7. Criminal Law and Procedure.

The origins of Mexican and Angloamerican criminal law and procedure are quite different, and although they have tended to converge in some ways during the past century and a half, they remain clearly distinct. The common law of crimes was created by the King's courts through the use of judicial precedents. The courts drew upon feudal custom and occasional royal legislation, adding, extending, and modifying the law through interpretation.

In England the method of initiating serious criminal proceedings since the 12th century was through indictment by grand jury — an extension of the Norman institution of the Royal Inquest. Since the end of the 13th century crimes great and small were tried to a petit jury as they still are today. The role of jury as impartial trier of fact and the role of judge as passive referee of rules, coupled with the active participation of the lawyers for the adversaries in marshaling and presenting evidence in one splendid, continuous hearing called a trial have been bedrock features of criminal procedure for more than four centuries.

The civilian tradition, on the other hand, dates from Roman times, and owes much of its form to the development of the Roman law by the medieval church. Several central ideas in civilian criminal procedure, still present in Mexico, are in contrast with the common law background. First, proceedings are initiated by appropriate **authority** rather than by grand jury—whether the authority be bishop, baron, or subordinate minister. Secondly, the case is built by a judge or panel of judges, bit by bit, through the reduction of evidence to writing in a series of hearings which could extend over a long period of time. Thus, there is no real "trial" as such, although of course there is a final hearing which precipitates a decision. Third, different kinds of evidence receive different weights in a formal scheme instead of the exclusionary rules of evidence familiar to common law. Finally, and most important, the role of the court is viewed not as referee, but as active investigator seeking to find the truth. Assisting the court in this endeavor are "judicial police" or investigators.

Both the common law and civilian systems were modified during the first half of the nineteenth century to conform with classic liberal notions of fairness. These reforms were

very much inspired by the influential works of Cesare Beccaria and Jeremy Bentham. As a result, certain safeguards for the criminally accused have been provided by constitutional mandate in both Mexico and the U.S. Some of these safeguards, such as limitations on arrest, search and seizure, and representation by counsel, were a part of the common law a century or so before they became guarantees in civilian systems.

As with the French civil code, the French penal code and system of procedure became models to be imitated by many other countries in the civilian orbit. Mexico's earlier French-inspired law was substantially modified through Italian influence in the 1930's.

§ 1.7(A). Substantive Crimes.

The law of substantive crimes in Mexico is so similar to that of the United States that it does not warrant a very long discussion. This is primarily because the fifty states have codified and organized their law of crimes in a pattern which is historically quite "civilian". The same categories of crimes are recognized in both countries, e.g. varying degrees of homicide are recognized, offenses against property are broken down into theft, burglary, robbery, embezzlement, fraud, etc., although of course the terminology is not exactly equivalent to the Angloamerican. A few differences of emphasis should be pointed out.

The Mexican treatment of the convicted criminal is in theory entirely rehabilitative. Lack of funding for prisons and rehabilitative facilities make this quite theoretical in most instances. However, other features of the criminal law do point in this direction. A male convict is allowed the privilege of the **visita conjugal,** i.e. his wife is entitled to visit him privately in jail for sexual purposes. Likewise, prisoners can receive food, clothing and bedding from their families or friends—a factor which may reflect on the quality of these items furnished by the prison. The Mexican system also provides for **libertad preparatoria,** a parole, which is granted after three fifths of the prison term has been served if the convict has observed good behavior and can get a job. Perhaps more important than any of these policies is the length of the possible sentence which can be imposed for any given crime. It is typically shorter than terms provided for similar crimes in the U.S. Thus, the penalty for premeditated murder is 20 to 40 years, for rape two to eight years, for simple battery three days to one year. An interesting penalty is provided for the husband or wife who kills the lover of the spouse when caught in the act of adultery—three days to three years.

Another significant difference between the Angloamerican and Mexican criminal law is in the area of drugs (including marijuana). In general Mexican law is much harsher than that of the U.S. on the drug violator. Any trafficking in drugs is punishable with a term of three to twelve years plus a fine. Other drug offenses carry even stiffer penalties. Trafficking includes mere possession of the drug unless the possessor is an "addict." Addicts may possess sufficient amounts to satisfy their habits without violating the law, and the addiction itself is not an offense. Persons convicted of drug offenses are not permitted probation **(condena condicional),** nor are they entitled to parole **(libertad preparatoria)** as other prisoners are.

§ 1.7(B). Criminal Procedure.

It is the area of criminal procedure which provides the great contrast between Mexican and Angloamerican law. Preliminarily it should be noted that in both countries petty offenses can be handled summarily by a police magistrate, justice of the peace, or

analogous minor judicial functionary. In these cases procedure is informal and perfunctory. If the offense is more serious, U.S. jurisdictions of course require indictment, arraignment, and jury trial in the common law tradition. In Mexico the serious offenses are dealt with in a series of steps which can be divided into three somewhat different stages — investigation, instruction, and trial. These stages really overlap and run into each other, but they are useful for purposes of analysis. In the following the specific procedures of the federal district courts will be described. State procedures are similar.

§ 1.7(C). The Investigative Stage.

A criminal proceeding may be initiated in either of two ways. A witness, victim, police officer or other person having knowledge of the facts may file with the police a **denuncia** or report of a criminal act. The **denuncia** is always reduced to writing and may or may not have been preceded by extensive police investigation. If the offense is regarded as a public offense, as most are, the local prosecutor **(procurador)** is obligated to follow through with prosecution. This is called proceeding **ex officio.** The prosecutor's office is a part of a larger ministry **(ministerio público)** roughly equivalent to the office of attorney general.

Some offenses are considered "private", and require the official complaint **(querella)** of the victim before proceedings can be started. These private offenses include adultery, rape, abduction, statutory rape, embezzlement, defamation, and a few others. The **ministerio público** cannot prosecute without the victim's official complaint, and the victim of the crime can stop prosecution at any point by forgiving the offense. This completely exonerates the accused and requires his immediate release if he is in jail.

Assuming that an investigation has begun either **ex officio** or upon the complaint of the aggrieved victim, the accused may or may not have been taken into police custody. First, assuming he has not, the police and the **ministerio público** may continue their investigation including the calling of witnesses and the taking of statements (usually called "declarations"). When the prosecutor feels he has a good case, he seeks a **consignación** from the judge of a penal court. He must present the police record which includes the **denuncia,** police reports, witness statements, etc. and ask the court to issue a warrant for the arrest **(orden de aprehensión)** of the accused. The warrant will issue if the judge decides that a sufficient case has been established. The accused is then arrested. In the case of private offenses the prosecutor must also present the official complaint **(querella)** to the court.

It is possible that the accused has already been arrested without warrant before police investigation has been completed. This is possible where the police have caught the accused in the act **(en flagrante delito)** or in the case of some serious crimes when escape is likely. In this situation the prosecutor has 72 hours in which to complete his investigation, make his record, and seek **consignación.**

Regardless of when the accused is arrested, he must be brought before the judge within 48 hours from the time of arrest. During this time he may be interrogated by the investigating authorities. He is not entitled to counsel during interrogation, but the police may permit counsel to be present. Any confession obtained by the police may be entered into the record of the case. When the accused is brought before the judge, the second stage of the proceedings has been reached.

§ 1.7(D). The Instruction Stage.

One of the matters to be considered when the accused is brought before the judge is

possible release on bond **(libertad bajo fianza).** If the offense charged carries an average prison term of more than five years, the accused is not entitled to bail. If the offense is not so serious, bond may be set by the judge in accordance with the gravity of the crime, the financial condition of the accused, and other circumstances.

The accused is entitled at this public hearing to be advised of the nature of the charge against him, the name of his accusers, and of his right to counsel. If the accused has not obtained a lawyer, the court will appoint a defender for him following his **declaración preparatoria.** This is a general statement which the accused is asked to make about the case. The accused cannot be forced to make a statement, but if he does the judge will follow up with questions intended to clarify the facts and discover any information which could lead to the accused's conviction or release.

This important hearing has many of the features of an arraignment under Angloamerican law. However, the charge is not precisely formulated, and the accused does not plead to the charge; rather he simply tells his story or remains silent.

At this point those essential features of the police record along with the **declaración preparatoria** have become the court record in the case. The accused is immediately given the opportunity to present evidence (build the record) in his own behalf to establish his innocence or some other defense. He is also entitled to a personal confrontation in court with his accusers and any witnesses who have testified against him. This is called the **careo** (from **cara** face). The introduction of evidence, including testimony of witnesses (almost always reduced to writing), may proceed in a series of hearings before the court at such times as may be convenient to the accused, the witnesses, the attorneys, etc.

The types of evidence which may be introduced into the record are not dissimilar to those found in Angloamerican trials. They include documents, expert testimony, statements of witnesses, confessions, judicial reports of examination of premises or physical evidence (view), identification of physical evidence, etc. What seems unusual to the Angloamerican oriented observer is that questioning of persons (the accused, experts, others) is undertaken primarily by the judge and is then reduced to writing by the secretary of the court. The **ministerio público** and the defender may be permitted to ask questions also, but do not have a right to do so.

While evidence is normally not excluded from the record (unless it is presented frivolously or for base reasons), the weight given to different kinds of evidence is accorded formal values by the code of criminal procedure. For example, a judicial confession (made before the judge) is entitled to "full weight" under most circumstances, while an extra-judicial confession may only give rise to a "presumption." Likewise, public documents are ordinarily full proof of what they purport to be while private documents lead to presumptions.

After the accused has had a full opportunity to obtain and introduce all evidence favorable to him, the court is required to enter an order either releasing the accused or formally charging him and ordering trial. The order of release is called **libertad por falta de meritos** and is entered if the judge feels that the case against the accused has not been adequately established. Entry of this order does not preclude the possibility of reopening the case again if further evidence becomes available.

The order formally charging the accused and ordering trial is called **auto de formal prisión.** This order must state with precision the exact charges against the accused. These may vary from the original charges brought by the **ministerio público,** but they cannot be amended after entered in the **auto de formal prisión.** Both this order and the **libertad por falta de méritos** can be appealed.

§ 1.7(E). The Trial Stage.

The foregoing stage in the proceedings may have taken an extended period of time or may have been very short, depending upon the circumstances of the case. It is followed by a final hearing before the judge in which any last minute testimony may be introduced, arguments are made by the attorneys on each side, the accused may testify if he wishes, and aggrieved parties (victims) may also be allowed to testify in appropriate cases. The judge will hear evidence in mitigation of the crime as well as evidence bearing on the question of guilt.

The judge's decision is based upon the entire record in the case with which he is usually familiar. Prior to 1971 the final hearing (trial) and decision in the case was made by a panel of three judges who relied almost entirely on the written record and the arguments of counsel. Recent amendments have changed this in the interests of expediting the procedure and of allowing the influence of "demeanor" evidence to have some effect. Under the present system the same judge who has handled the case through the instruction stage will normally be the trial judge.

The judgment **(sentencia)** of the court will either find the accused guilty or will exonerate him of the charge completely. Unlike the Angloamerican verdict of "not guilty," the effect of the Mexican judgment is a positive finding of innocence. If there is a finding of guilt, the **sentencia** will also impose a penalty for the crime. Of course, the **sentencia** is appealable.

§ 1.7(F). Rights of the Accused.

Although we have alluded to some of the rights accorded to a person accused of a crime in describing the steps of criminal procedure, a more direct summary is in order. These are rights guaranteed by the Mexican constitution.

The accused has a right to counsel at all times beginning at the point of the **declaración preparatoria.** If he cannot afford private counsel, the court must appoint a public defender.

The accused has a right to the process of the court to compel testimony of witnesses, examine physical evidence, obtain documents, etc.

The accused has a right to be confronted personally by all witnesses against him.

He has a right to bail in cases where the average penalty is five years imprisonment or less.

The entire proceedings must be concluded within four months if the crime carries a maximum penalty of two years imprisonment or less. For more serious crimes the proceedings must be terminated within one year.

The accused is not required to testify against himself.

Under Angloamerican law the failure to accord the accused any of his rights may result in a motion to quash the proceedings or in the exclusion of evidence with the possible consequence of a dismissal of the case. In Mexico the exclusionary remedy is not available. The standard remedy is a penal sanction against the official (police or **ministerio público**) who violated the accused's rights. Obviously, because of institutional pressures such a remedy is not likely to be invoked and is less than wholly satisfactory. However, there is the additional remedy of **amparo** in the federal courts (discussed above, § 1.2(H)), which operates much like a **habeas corpus.** In many cases this will serve as a real backup to the accused's formal constitutional rights.

§ 1.8. The Profession and Legal Education.

To understand how a legal system really operates it is important to know something about those who operate it. The way the legal profession sees its role, and in turn the way that perception is shaped through institutions has a great deal to do with how law interrelates with society. In Mexico we find a system of legal education and professional life which is basically oriented to civilian traditions, but which also bears the imprint of United States influence. Mexican formal legal education especially follows the European pattern, as indeed, does that of most of the world. This means that law is studied as an undergraduate university subject. The peculiar institution of the professional law school at the graduate level which originated in the United States is unknown in Mexico; in fact it has been partially imitated only in Canada, Australia and perhaps a few other selected spots on the globe. Thus, in legal education it is the United States which is out of step with the world, although some would say a step ahead. In contrast, the practicing profession in Mexico looks a great deal like its U.S. counterpart, although differences in legal technique emphasize somewhat different talents and skills. In both countries lawyers have been pre-eminent as civic leaders and government officials.

§ 1.8(A). Preparation for Law Study.

Since a university degree in law is the key to entering the profession, the aspiring lawyer must begin by preparing himself for the university in a preparatory school (sometimes called **colegio**). This usually lasts a period of three years and follows three years of what is called secondary school. In the past students were required to pursue either a humanities curriculum or a science curriculum in the preparatory school, and most of those interested in a law career chose the former. However, more recently the preparatory schools have changed to a somewhat diversified general curriculum. As might be expected, some preparatory schools are better than others. The best are private. Indeed, it is not uncommon for a farsighted (and wealthy) parent to secure a place for his child in a future class at a prestigious school at the time the child is born. Since the quality of pre-university education varies greatly at different institutions the degree of preparation attained by their graduates also varies greatly. What is fairly uniform is the age at which the student enters the university—eighteen. The entering law class now typically includes a substantial percentage of women.

§ 1.8(B). Law in the University.

The standard law curriculum at all of the universities in Mexico consists of five years of mostly required courses. What are the aims and goals of this curriculum? What is the function of the law degree? Here we must observe some divergence of perspective between the students and the educators.

Most of the students choose the law curriculum as the easiest path to a socially respectable academic degree which will be appropriate for a career in politics, government, or business. It is the rough counterpart of a liberal arts college education in the United States. Students are quick to note that mathematics and science are not required, either for admission or in the university coursework. The alternative curricula open to aspiring politicians and businessmen are not as attractive because the degrees earned (e.g. in philosophy, or history, or economics) are not as prestigious as the

Licenciado en Derecho. The degree in business administration is relatively new in Mexico and does not carry the same respectability as the law degree. Therefore, most of the "law" students do not initially see themselves as preparing for professional careers as lawyers, although of course there are some who do. The traditional Latin American obsession with politics persists in Mexico and has its impact upon legal education. Of course, many U.S. law students also seek political careers, conceivably as many as in Mexico. However, the professional direction of legal education is so apparent that practically all of the U.S. students see themselves at least tentatively in the role of lawyer or judge.

From the standpoint of the Mexican law faculty in the university, legal education is viewed differently. In addition to giving students a broad understanding of their social system, the educators consider as equally important the mission of preparing young people for careers as attorneys—to staff the bar with well grounded, knowledgeable practitioners. Indeed, the few innovations made in legal education in Mexico in recent years appear to lead in that direction. However, the curriculum remains basically academic, and no significant effort is made to teach lawyer skills or the use and applications of law in context.

Almost all of the universities in Mexico grant the law degree. However, the quality and reputation of the schools vary considerably as they do in the United States. Generally, the provincial universities in the state capitals are the lowest in the pecking order, although there are exceptions like the two schools in Monterrey. In the capital there are six law degree granting institutions: **Escuela Libre de Derecho, Instituto Panamericano de Humanidades, Universidad Anáhuac, Universidad Iberoamérica, Universidad La Salle,** and **Universidad Nacional Autónoma de México.** These all enjoy a high reputation.

The grandfather of them all is the **Universidad Nacional Autónoma de México (UNAM),** the oldest institution of higher learning in the Americas. It is much larger in terms of both law students (about 8,000) and part time faculty (about 300) than other law schools. In recent years **UNAM** has favored open admissions and has extended student control over educational policy in many areas. The result, in the eyes of many Mexican lawyers, is that the quality of education has deteriorated considerably—too many holidays, graduation requirements reduced, exams made easy, etc. However, the lion's share of the acknowledged legal scholars are still associated with **UNAM.**

The **Escuela Libre,** (best translated as the Independent School of Law) an offshoot of **UNAM,** was started when a group of students and teachers decided to continue their law studies during the Revolution (1910-1917) while **UNAM** was shut down by student strikes. The school has continued to the present time with only a faculty of law, thus being a true "law school" and the only one in Mexico. The more typical organizational status of the law component of higher education is that of a "department" analogous to the departments of history, chemistry, etc., although they tend to be called "faculties" of law in the European tradition. This is the organization of **Iberoamérica, UNAM, Anáhuac,** and most of the state universities. The **Instituto Panamericano de Humanidades,** a relatively new institution, does call its law division a "law school."

The cost of legal education also varies considerably from school to school. At **UNAM** and many of the state universities tuition and fees are practically nominal. At the **Escuela Libre** the tuition and fees, not including any living expenses (room and board), are about 4,000 pesos per year. At **Anáhuac** they currently run about 8,000 pesos per year.

§ 1.8(C). Curricular Chart.

Standard Curriculum At Three Leading Institutions Of Legal Education (1976-77)

	INSTITUTO PANAMERICANO DE HUMANIDADES	UNIVERSIDAD ANAHUAC	ESCUELA LIBRE DE DERECHO	
First Semester	Introduction to the Study of Law Roman Law I Economic History Sociology	Introduction to the Study of Law Roman Law I Economic Theory Sociology	Introduction to the Study of Law Civil Law I* Roman Law I Economics I Sociology French Seminar	**First Year**
Second Semester	Economic Theory Civil Law I* Roman Law II History of Medieval and Modern Law	Economic History Civil Law I* Roman Law II Seminar		
Third Semester	Civil Law II Criminal Law I General Theory of Procedure Social Problems and Doctrines I Legal Research I	Civil Law II Criminal Law I General Theory of Procedure Seminar	Civil Law II Criminal Law I Roman Law II General Theory of the State Economics II Civil Procedure I Seminar	**Second Year**
Fourth Semester	Civil Law III Criminal Law II Civil Procedure Social Problems and Doctrines II Legal Research II	Civil Law III Criminal Law II Civil Procedure Seminar on Civil Responsibility		
Fifth Semester	Civil Law IV Criminal Procedure General Theory of the State Administration and Organization I Legal Research III	Civil Law IV Criminal Procedure General Theory of the State Seminar	Civil Law III Criminal Law II Commercial Law I Labor Law Civil Procedure II Constitutional Law I Seminar	**Third Year**
Sixth Semester	Administrative Law I Constitutional Law Commercial Law I Administration and Organization II Legal Research IV	Administrative Law I Constitutional Law Commercial Law I History of Mexican Law Seminar		
Seventh Semester	Administrative Law II Commercial Law II Labor Law I Administration and Organization II Special course-visiting lecturer	Administrative Law II Commercial Law II Labor Law I General History of Law	Civil Law IV Commercial Law II International Law Administrative Law I Criminal Procedure Constitutional Law II Legal History Social Security Law Seminar	**Fourth Year**
Eighth Semester	Labor Law II Rights and the *Amparo* Remedy Commercial Law III International Law Special course-visiting lecturer	Labor Law II Rights and the *Amparo* Remedy International Law Business Corp. Trusts Seminar		

* The courses in civil law include the following subjects, usually taught in this order: Persons, Family, Property, Obligations, Succession.

Standard Curriculum At Three Leading Institutions Of Legal Education (1976-77) — Continued

	INSTITUTO PANAMERICANO DE HUMANIDADES	UNIVERSIDAD ANAHUAC	ESCUELA LIBRE DE DERECHO	
Ninth Semester	Philosophy of Law Tax Law I Conflict of Laws Labor Law III Legal Research V	Philosophy of Law Conflict of Laws Agrarian Law Law of the Notary	Administrative Law II Conflict of Laws Tax Law Philosophy of Law Finance History of Mexican Law Elective**	**Fifth Year**
Tenth Semester	Tax Law II Agrarian Law Legal Research VI Elective Elective	Tax Law Forensic Practice Special Remedies in Labor Law Special Civil Remedies		

** Electives: Law of the Notary, Secured Transactions, Agrarian Law, Bankruptcy.

§ 1.8(D). Earning the Law Degree.

Teaching in law, as well as many other disciplines, is largely limited to the lecture method. Occasionally questions are permitted at the end of a lecture. Class size may reach four to five hundred students, but often attendance is not required. It thus develops that some students attend and take notes which are then reproduced and distributed or sold to the other students. A good set of notes becomes a learning tool comparable to the commercially produced "outlines" and "summaries" covertly used in many U.S. law schools.

The casebooks and the case method universally found in U.S. law school are not used in Mexico. The student buys and reads a textbook for each course which is roughly comparable to what is known in the United States as a "hornbook." These texts are small treatises written by the professors (and sometimes by practicing attorneys) which also serve as handy references for lawyers in practice.

The faculty of law at a typical institution consists of three to six full time academics and anywhere from 20 to 50 part time teachers drawn from practice. The academics are entirely theory oriented, and many are excellent legal scholars in the finest European tradition. The part time teachers, strangely enough, do not bring a pragmatic practice-oriented approach to the classroom; rather they seek to emulate the professors by lecturing in a very philosophical, very serious, very theoretical manner. Such a style is felt to be necessary to maintain academic respectability. As a result the practical experience of the part time teacher is never shared with the students.

Examinations are given at the end of the semester or year depending on the school. These exams are almost always oral and are open to the public. The student is called before his professor or a panel of professors and practicing attorneys. He picks a ball out of a jar with a number on it which corresponds to a topic. The student is then expected to recite everything he knows about the topic. The examiners can either interrupt or hold their questions until the end. This type of examination usually takes from 30 to 45 minutes, although sometimes the student is unprepared and defaults immediately. Obviously this sort of system takes a considerable amount of time. At the **Escuela Libre**

where courses are given on an annual basis the exams take up the entire summer. At schools on a semester basis it takes 10 days to two weeks for the examination of all students in one course.

In addition to passing the requisite number of examinations, a student will normally be required to submit a thesis, or short dissertation, on some facet of the law. Sometimes the thesis must be defended orally. At some schools the student also submits what is called the written resolution of a case. This is the closest equivalent to a U.S. style law exam. The student is given a hypothetical set of facts, and he is required to explain how the case would be "resolved" by the legal system.

Within an educational system relying on lectures, textbooks, and oral exams, the student gets very little opportunity to develop skill in writing or in cultivating his own legal reasoning ability. As a result some of the schools have instituted required seminars in which 10 or 15 students work with a professor on a specific case. Research in the library and memo writing are required. Advanced students who are serious about entering the practice of law will often obtain clerking positions **(pasantes)** with law offices in which they can further develop these practical skills. Such clerking is, however, outside the formal educational system except at the **Escuela Libre** where some clerking is mandatory.

The final requirement for the degree of **Licendiado en Derecho** is a certificate of social service. For many years the law required that students serve from six months to a year doing gratuitous work for the community, usually through a public defender's office, in the jails, in government offices, or in legal aid. This requirement was generally ignored by the schools, and a letter from a law firm or employer stating that the student had done his "social service" was sufficient to obtain the certification. However, beginning just a few years ago this requirement has been taken seriously, and many schools now make the student do his social service. In some cases this gives the student worthwhile practical experience (at the expense of his gratuitous clients?).

When the academic work of five years has been satisfactorily completed, the thesis approved, and the social service certified, the student is awarded his degree which is also his license to practice law. There is no bar exam nor any further screening process. Degrees from all accredited schools are recognized throughout Mexico. Probably less than half of those who begin law study graduate.

§ 1.8(E). Professional Opportunities.

Upon leaving the university the law graduate may enter into any number of varied occupations. A majority do not go into the professional practice of law. Many are absorbed by the huge government bureaucracies and placed in jobs which may be law related, but are basically administrative. Some go into positions with private business, and others may manage the family property. Each government department maintains a substantial staff of in-house lawyers, but this practice has not caught on in the private sector so that very few companies have legal staffs. Politics of one sort or another still provides the preferred career for many.

For those who do wish to engage in the professional practice of law, it is possible to hang out a shingle and hope that business will come along. Probably a few lawyers each year manage to start this way and continue. However, it is much more likely that the entry into practice will be through family connections or close friends who can either bring the new attorney into a small firm or who can provide him or her with a substantial client or two to assure that there will be sufficient business.

For the small nucleus of graduates who have achieved real distinction in their academic work at a school of high reputation, two additional professional opportunities may be available. They may pursue their academic studies, usually including study abroad, and then seek one of the few full time positions on a university law faculty; this career pattern requires completion of the doctorate and follows the European model. Or, these graduates may be hired by a prestigious "silk stocking" law firm which serves a number of very substantial clients, domestic or foreign. There are a dozen or more such firms in Mexico City and a handful in some of the other major urban centers. These firms are not large by U.S. standards, the typical firm having from ten to 25 attorneys. However, the largest firm in Mexico—Goodrich, Dalton, Little, and Riquelme—currently lists 24 partners and 26 associates, and the second largest firm—Santamarina y Steta—has over 40 lawyers.

Just as in the United States many law graduates end up in official legal positions as judges, notaries, or public prosecutors and defenders. Appointments to such positions usually do not occur immediately upon graduation from the university; rather, they come for the most part as political rewards for the faithful who have worked in private practice, for the government, or elsewhere. In this respect the Mexican system mirrors that of the U.S. and is markedly different than that of France and the many European and Latin American countries which follow the French model. Under that model a law graduate chooses a career in the judiciary or in the ministry of justice (public prosecution) immediately upon graduation, serves a period of apprenticeship, and then gradually moves up the ladder of prestige in the civil service with age. Lateral movement to other branches of the profession such as private practice or teaching is almost unknown. As we have indicated, Mexican lawyers do not regard their profession as so compartmentalized, and movement from government to judiciary to part time teaching or to practice is not uncommon.

There are bar associations in most of the states as well as two national organizations, the **Colegio de Abogados de Mexico** and the **Barra Mexicana**. Although these formal associations do many of the same things that the organized bar in the United States does, they are not as influential politically and they do not play a significant role in the ordinary attorney's professional life. Only a small percentage of practicing lawyers belong to an association, and the membership tends to be dominated by older well-established lawyers who also do part time teaching and writing. Although the associations often publish journals which contain both scholarly and journalistic articles, this is the extent of their educational function.

§ 1.8(F). The Judiciary.

The judge in Mexico is usually a political appointee from the highest to the lowest courts. He functions in much the same way that U.S. judges do. In the courts of first instance (trial courts) the judges in some ways have an easier job than their U.S. counterparts because juries are not used and "trials" as we understand them are not held in civil cases. On the other hand, the judges interrogate witnesses, make summaries of evidence, and fashion a written record from which a judgement in the case can be made. At the appellate level, except for the Supreme Court itself, judges do not write extensive opinions as U.S. appellate judges do. A simple one page judgement normally suffices because the system of judicial precedent is not followed.

§ 1.8(G). The Notariate.

The notary in the Mexican system is an official of considerable importance as he is in all civilian countries. The history of the notary goes back to Roman times, but the modern institution is traceable directly to Napoleonic France. The office is puzzling because it combines what U.S. lawyers might consider unrelated functions. Although there is no single counterpart to the notary in the Common Law system, some of the tasks he performs are carried out in the U.S. by private lawyers, some by county clerks and recorders, some by the (state) secretary of state, and some by notaries public.

The qualifications and method of appointment of the notary are a matter of local rather than federal law. Each state and the federal district have a set number of notaries (150 in the federal district) who perform duties established by statute. They must be lawyers in all jurisdictions, and in some cases they must serve an apprenticeship. Appointment to a notarial position occurs only upon the retirement or death of an incumbent and is purely political in most states; however, in the federal district and a couple of states appointment goes to those who score highest on a vigorous competitive examination. Since the notary's fees are established by law, and the number of positions is limited, a notary who provides good service can expect to be well remunerated. Much of the notary's business is brought or referred to him by private practitioners.

The law governing the notary's operation is very complex, enough so that the universities offer courses in notarial law. The principal functions can be broken down into four categories. First, the notary is an authenticator of facts. He can authenticate by declaration in writing any of a number of legally important facts which he has seen or heard personally such as the signature of parties to a will or contract. Such a declaration constitutes full and irrebutable proof in court.

The second function of the notary is that of legal draftsman. This is related to his role as authenticator and as recorder. He must give expert advice on the meaning and effect of many legal instruments, and he must be sure that the technical expression in the instrument corresponds with the intention of the parties. In performing this service for more than one party, the notary must act "objectively" and not as a partisan for either side. In connection with this drafting function, notaries also collect for the government stamp taxes, registration fees, and other exactions incident to these formal transactions.

A third major notarial function is that of searching title to real estate. Although in theory the registrar issues a certificate of title when land is transferred, the real title investigation is undertaken by the notary, or by a private attorney.

The fourth function is that of public recorder. The notary keeps a record of every transaction or item of business which he performs either with complete copies of the instruments involved or by abbreviated notations in his official books **(protocolo).** Eventually these records are sent to a central archive, either after a fixed period of years or when the notary ceases to function. The oldest such archive is the **Archivo de Notarias del Distrito Federal** which has been accumulating documents since 1525! The notary must supply interested parties certified copies of any documents in his **protocolo,** and this certification can serve as proof of the document in court.

Notaries have organized professionally in Mexico; in the federal district their association is known as the **Colegio de Notarios.** The **Colegio** does many of the things that the organized bar in the United States does. It deals with grievances against notaries, assists the district government in the selection and testing of notaries, takes disciplinary actions, and publishes the **Revista Del Notariado Mexicano** (Mexican Notarial Review).

APPENDIX A

ENGLISH LANGUAGE BIBLIOGRAPHY

ON

THE MEXICAN LEGAL SYSTEM

I. Note on Primary Sources

The primary source of law in the Mexican legal system is legislation supplemented by regulations and sometimes appellate court opinions. No effort has been made to include the occasional English translations of these sources in the bibliography for two reasons. First, it is difficult if not impossible to determine whether any given translation of legislation is up to date. There is no systematic publication in English which guarantees this; and of course an out of date statute may be more misleading than no statute at all. Secondly, many of the important and detailed rules of law and statements of policy in Mexico take the form of regulations issued by the pertinent departments. These regulations are almost never translated into English. Likewise, case reports are seldom translated.

For the reader who wishes to pursue English translations of Mexican legislation attention is directed to the publications of some of the international accounting firms (Arthur Andersen, Ernst and Ernst, Haskins and Sells, Price, Waterhouse & Co.) or to those of the Commerce Clearing House of Chicago, or to those of the Pan American Union, Washington, D.C. Each of these agencies publishes translations of various statutes from time to time usually relating to business, labor, investment, etc. A good translation of the Civil Code for the Federal District was done by Otto Schoenreich in 1950, supplemented once in 1958. Unfortunately this excellent work is out of date too. A Mexico City publisher, Traducciones, Apartado Postal 52-Bis, Mexico 1, D.F., Mexico, also occasionally publishes English translations of Mexican statutes.

Some of the secondary materials listed in this bibliography do include translations of specific laws, regulations, and cases.

II. Bibliographical Compilations

American Association of Law Libraries, Union List of Basic Latin American Legal Materials (K. Wallach, ed. 1971).

Bayitch, S., Latin America and the Caribbean: A Bibliographical Guide to Works in English (Univ. Miami Pr. 1967).

Bibliography of Mexican Law, 68 L. Lib. J. 415 (1975).

Brinsmade, L., **Mexican Law: An Outline and Bibliography of English Source Materials Relating to Certain Aspects Thereof,** 6 Int'l Lawyer 829 (1972).

Clagett, H. and D. Valderrama, A Revised Guide to the Law and Legal Literature of Mexico (Lib. Congress 1973).

Pages, J., **A Selective Legal Bibliography of Works in English and Spanish on Mexican Law,** 4 Calif. West L. Rev. 366 (1968).

Rank, R., The Criminal Justice Systems of the Latin American Nations: A Bibliography of the Primary and Secondary Literature (F. B. Rothman Co. 1974).

Revilla, E., **A Selected Bibliography on Mexican Real Property Law,** 12 Ariz. L. Rev. 374 (1970).

Stern, W., **Survey of the Libraries of the Facultad de Derecho de la Universidad Nacional Autonoma de Mexico,** 29 Bull. Int'l. Assoc. L. Lib. 8 (1972).

III. Mexican Legal System Generally

A National Profile: Mexico (Ernst and Ernst 1971).

Allison, R., **Recent Legal Developments in Latin America,** 4 Int'l Lawyer 646 (1970).

Allison, R., **Recent Legal Developments in Latin America,** 2 Int'l Lawyer 262 (1968).

Bayitch, S., Latin America (Univ. Miami Pr. 1961).

Butte, W., Selected Mexican Cases (Univ. Tex. mimeo 1970).

Davis, H., **Legal and Political Thought in Mexico,** 8 Inter Am. L. Rev. 95 (1966).

Digest of Laws of Foreign Countries: Mexico, Martindale-Hubell Law Directory (Donelly & Sons, Annual).

Epstein, E., **Introduction to Recent Developments in Mexican Law: Politics of Modern Nationalism,** 4 Den. J. Int'l L. & Pol. 1 (1974).

Flores, A., **Mexico and the Indian,** 16 Americas 9 (1964).

Glassman, R., **The Limiting Social and Structural Conditions for Latin American Modernization,** 36 Soc. Res. 182 (1969).

Grimes, C.E., and C.E.P. Simmons, **Bureaucracy and Political Control in Mexico: Towards an Assessment,** 29 Pub., Admin. Rev. 72 (1969).

Johns, **The Triumph of Lawless Force and Lawless Privilege: A Brief History of Mexican Legal Traditions,** 2 Int'l J. Com. Applied Crim. Just. 49-60 (1978).

Karst, K., and K. Rosenn, Law and Development in Latin America: A Case Book (Univ. Cal. 1975).

Kerr, R., A Handbook of Mexican Law (Gordon Press 1976).

Lacey, F. and M. Sierra de la Garza, **Mexico: Are the Rules Really Changing?,** 7 Int'l Lawyer 560 (1973).

Latin American Law, 1962 Proceedings of the Section of International and Comparative Law at 188 (Am. Bar Assoc. 1963).

Maccoby, M., **On Mexican National Character,** 369 Annals 63 (1967).

Mayagoitia, A., A Guide to Mexican Law (rev. ed., Univ. N. Mex. Pr. 1977).

Mayagoitia, A., A Guide to Mexican Law (Mex. City 1976).

Mayagoitia, A. Garza, **A Layman's Guide to Mexican Law** (1977).

Mexico and Guatemala, The Legal Systems: Selected Readings (1979).

Molina, Pasquel, **A Brief Survey of the Mexican Legal System,** 60 Philippine L. J. 515-552 (1975).

Needler M., **The Political Development of Mexico,** 55 Am. Pol. Sci. Rev. 308 (1961).

Ross, S., **Mexico: Cool Revolution and the Cold War,** 44 Curr. Hist. 89 (1963).

Silver, K., **Nationalism in Latin America,** 334 Annals I (1961).

Tannenbaum, F., Mexico: The Struggle for Peace and Bread (2nd ed. N.Y. 1960).

Weisbaum, E., et al., **Mexican Law for Norteamericanos: A Panel,** 68 L. Lib. J. 395 (1975).

Wiarda, H., **Law and Political Development in Latin America,** 19 Am. J. Comp. L. 434 (1971).

Zea, L., **Latin American Thought and Social Reality** in Essays in Legal History in Honor of Felix Frankfurter at 253 (M.D. Forkosch, ed. 1965).

IV. Specific Topics

ADMINISTRATIVE LAW

Bichara, T., **The Communications Law of Mexico,** 4 Calif. West. L. Rev. 299 (1968).

Bledel, E., **Food Regulation in Latin America,** 28 Food, Drug & Cosm. L. J. 585 (1973).

Ebenstein, W., **Public Administration in Mexico,** 5 Pub. Admin. Rev. 102 (1945).

Latin American Food Code, 18 Food, Drug & Cosm. L. J. 194 (1963).

Rorem, **Mexico's Organic Law of Federal Public Administration: A New Structure for Modern Administration,** 1 Hastings Int'l & Com. L. Rev. 367-388 (1978).

ADOPTION — See FAMILY LAW

AGRARIAN LAW (See also ECONOMY AND ECONOMIC DEVELOPMENT)

Agricultural Development and Agrarian Reform, Interamerican Economic and Social Council Report on the Alliance for Progress: First Year (Mex. City 1962).

An Agricultural Policy to Expedite the Development of Latin America, 6 Econ. Bull. Lat. Am. 1 (1961).

Alexander, R., **Agrarian Reform in Latin America,** 41 For. Affairs 191 (1962).

Barraclough, S., and A.L. Domike, **Agrarian Structure in Seven Latin American Countries,** 42 Land Econ. 391 (1966).

Barraclough, S., **Agricultural Policy and Land Reform,** 78 J. Pol. Econ. 906 (1970).

Carroll, T., **The Land Reform Issue in Latin America,** in Latin American Issues: Essays and Comments at 161 (A.O. Hirschman, ed. 1961).

Crossley, J., **Agrarian Reform in Latin America,** in Yearbook of World Affairs at 123 (London 1963).

Dovring, F., **Land Reform and Productivity in Mexico,** 46 Land Econ. 264 (1970).

Dozier, C., **Agricultural Development in Mexico's Tabasco Lowlands: Planning and Potential,** 5 J. Devel. Areas 61 (1970).

Karst, K., **Latin-American Land Reform: The Uses of Confiscation,** 63 Mich. L. Rev. 327 (1964).

Karst, K., and N. Clement, **Legal Institutions and Development: Lessons from the Mexican Ejido,** 16 U.C.L.A. L. Rev. 281 (1969).

Mexican Agrarian Rights: Who Do They Benefit?, 8 Cal. W. Int'l L. J. 130-170 (1978).

Simpson, E., **The Ejido: Mexico's Way Out,** in Latin American Legal Institutions: Problems for Comparative Study at 574 (K. L. Karst, ed. 1966).

Stravenhagen, R., **Social Aspects of Agrarian Structure in Mexico,** 33 Soc. Res. 463 (1966).

Tannenbaum, F., The Mexican Agrarian Revolution (Archon Books 1929).

Warriner, D., Land Reform in Principle and Practice (Oxford 1969).

Williams, S., **Popular Capitalism: A Selective Route to Agricultural Development,** 3 Int'l Rel. 457 (1969).

AGRICULTURE — See AGRARIAN LAW

AMPARO — See CONSTITUTIONAL LAW

ATTORNEYS — See LEGAL PROFESSION AND EDUCATION

AUTOMOBILE ACCIDENTS — See TORTS

AUTOMOBILE INSURANCE — See INSURANCE

BANKRUPTCY — See COMMERCIAL LAW

BANKS AND BANKING (See also COMMERCIAL LAW, INVESTMENT)

Brothers, D. and L. Solis, **Recent Financial Experience in Mexico,** 2 Economia Latinoamericana 77 (1964).

Campos, R. and D. Felis, **Two Views on Inflation in Latin America,** in Latin American Issues: Essays and Comment at 69 (A. O. Hirschman, ed. 1961).

Crawford, H.P., **The Bank of Mexico,** 23 U. Cinc. L. Rev. 281 (1965).

Fiscal Reform, 15 For. Tax. Wkly. Bull. 5 (1965).

Measurement of Price Levels and the Purchasing Power of Currencies in Latin America, 1960-62, 8 Econ. Bull. Lat. Am. 195 (1963).

Molina-Pasquel, R., **The Mexican Banking System,** 11 Miami L. Q. 470 (1957).

Robinson, H., **Secondary Markets for Home Mortgages: Latin American and Carribean Experience,** 10 J. Int'l L. and Econ. 89 (1975).

Saldana, J., **Mexican Financial Institutions: A Banker's Viewpoint,** 4 Calif. West. L. Rev. 306 (1968).

Seers, D., **The Great Debate on Inflation in Latin America,** 19 World Today 139 (1963).

Shelton, D., **The Banking System: Money and the Goal of Growth,** in Public Policy and Private Enterprise in Mexico at 111 (R. Vernon, ed. 1964).

BAR — See LEGAL PROFESSION AND EDUCATION

BEARER SHARES — See CORPORATIONS

BOUNDARIES — See INTERNATIONAL LAW

BORDER INDUSTRIALIZATION (See also INVESTMENT)

American Chamber of Commerce of Mexico, The Mexican Border Industrialization Program (N.Y. 1971).

Comment, **Developments in Mexican Border Industrialization,** 4 Tex. Int'l. L. F. 164 (1969).

Cowan, C., **Mexican Border Industrialization Program,** 8 Comp. Jurid. Rev. 17 (1971).

Dellman, C., **Urban Growth along Mexico's Northern Border and the Mexican National Border Program,** 4 J. Devel. Areas 487 (1970).

Epstein, E., **Mexico's Border Industrial Program: Legal Guidelines for the Foreign Investor,** 4 Den. J. Int'l. L. & Pol. 89 (1974).

Inman, H., and A. Tirado, **Mexican Dividend: "Las Maquiladoras,"** 9 Int'l. Lawyer 431 (1975).

Walker, H.O., Jr., **Border Industries with a Mexican Accent,** 4 Colum. J. World Bus. 27 (1969).

BUSINESS ASSOCIATIONS — See CORPORATIONS

BUSINESS LAW — See COMMERCIAL LAW, CORPORATIONS, INSURANCE, INVESTMENT, PATENTS, TAXATION

CHURCH AND STATE (See also CONSTITUTIONAL LAW)

Brown, L., **Mexican Church-State Relations 1933-1940,** 5 J. Church & St. 202 (1964).

Comment, **Church and State in Latin America,** 8 J. Church & St. 173 (1966).

Greenleaf, R., **North American Protestants and the Church-State Inquisition 1765-1820,** 8 J. Church & St. 186 (1966).

Michaels, A., **Racism and Sinarquismo: Popular Nationalisms Against the Mexican Revolution,** 8 J. Church & St. 234 (1966).

Schmitt, K., **The Mexican Positivists and the Church-State Question 1976-1911,** 8 J. Church & St. 200 (1966).

Wilkie, J., **The Naming of the Cristero Religious War Against the Mexican Revolution,** 8 J. Church & St. 214 (1966).

Williman, J., **Adalberto Tejada and the Third Phase of the Anti-Clerical Conflict in Twentieth Century Mexico,** 15 J. Church & St. 437 (1973).

CIVIL CODE

Camales, **The New Mexican Civil Code,** 10 Tex. B.J. 414 (1947).

The Mexican Civil Code (Oceana 1980).

CIVIL PROCEDURE — See JUDICIARY

CIVIL RIGHTS — See CONSTITUTIONAL LAW

COMMERCIAL LAW (See also CORPORATIONS, INVESTMENT)

Bankruptcy and Composition: The Commercial Laws of the Republic of Mexico, in Digest of Commercial Laws of the World at 24 (Nat. Assoc. Credit Mgrs. 1966).

Bass, J., **Security Interests in Moveable Property in Mexico,** 4 Tex. Int'l. L. F. 96 (1968).

Barrera-Graf, J., **Some Principles of the Negotiable Instruments Legislation in Mexico,** 34 Tex. L. Rev. 426 (1956).

Bills of Exchange, Promissory Notes, and Checks: The Commercial Laws of the Republic of Mexico, in Digest of Commercial Laws of the World at 35 (Nat. Assoc. Credit Mgrs. 1966).

Domke, M., **Commercial Arbitration in Mexico,** 1 Int'l Arbit. J. 162 (1945).

Hansen, R. and J. Young, **Bankruptcy in Mexico,** 4 Tex. Int'l. L. F. 140 (1968).

Kozolchyk, B., **Commercial Law Recodification and Economic Development in Latin America,** 4 Lawyer Am. 189 (1972).

Kozolchyk, B., **Law and the Credit Structure in Latin America,** 7 Va. J. Int'l. L. 1 (1967).

Munger, J., **Rights and Priorities of Secured Creditors of Personalty in Mexico,** 17 Ariz. L. Rev. 767 (1974).

Murphy, E., **Drafting Mexican-U.S. Commercial Agreements,** 5 Int'l. Lawyer 577 (1971).

Siqueiros, J., **Commercial Arbitration in Mexico,** in Commercial Law of Mexico and the United States, at 181 (Austin, Tex. 1966).

Warren, W., **Mexican Retail Installment Sales Law: A Comparative Study,** 10 U.C.J.A. La. Rev. 15 (1962).

Yntema, H., The Law of Negotiable Instruments (Bills of Exchange) in the Americas (Univ. Mich., 2 Vol., 1969).

COMMUNITY PROPERTY — See FAMILY LAW, PROPERTY

CONFLICT OF LAWS

Bayitch, S., and J. Siqueiros, Conflict of Laws: Mexico and the United States (Univ. Miami Pr. 1968).

Elder, P., **Habeas Corpus Disembodied: The Latin American Experience,** in Twentieth Century Comparative and Conflicts Law at 463 (A. W. Sythoff, Leyden 1961).

Gallardo, R., **The Law of Domicile in Latin-American Conflicts Law,** 2 InterAm. L. Rev. 61 (1960).

Siqueiros, J., **Private International Law in Mexico and the United States: A Brief Comparative Study,** 5 Calif. West. L. Rev. 257 (1970).

CONSTITUTIONAL LAW (See also CHURCH AND STATE, JUDICIARY)

Baker, R., Judicial Review in Mexico (Univ. Tex. Pr. 1971).

Baldwin, F., **A Constitutional Comparison: Mexico, The United States, and Uganda,** 10 Calif. West. L. Rev. 82 (1973).

Baldwin, F.N., Jr., **Comparative Constitutional Law: Mexico, Uganda, United States;** Cases, Articles, Comments, Questions (1974).

Camargo, P., **The Claim of "Amparo" in Mexico; Constitutional Protection of Human Rights,** 6 Calif. West. L. Rev. 201 (1970).

Clagett, H., **The Mexican Writ of "Amparo",** 3 Geo. L. J. 418 (1945).

Clark, D., **Judicial Protection of the Constitution in Latin America,** 2 Hast. Const. Q 405 (1975).

Collier, J., **Political Leadership and Legal Change in Zinacantan,** 11 Law & Soc. Rev. 131 (1976).

Creel, L., **"Mexicanization": A Case of Creeping Expropriation,** 22 S.W.L.J. 281 (1968).

Elder, P., **Judicial Review in Latin America,** 21 Ohio St. L. J. 570 (1960).

Fitzgerald, G., The Constitutions of Latin America (Chicago 1968).

Fix-Zamudio, H., **Latin American Procedures for the Protection of the Individual,** 9 J. Int'l Comm. Jurists 60 (1968).

Fix Zamudio, **A Brief Introduction to the Mexican Writ of Amparo,** 9 Cal. W. Int'l L. J. 306-348 (1979).

Forneir, F., **The Inter-American Human Rights System,** 21 DePaul L. Rev. 376 (1971).

Grimes, W.W., **We Might Learn Something from Mexico's Constitution,** 11 J. Bar Assoc. D.C. 116 (1944).

Lacey, **Protection of Foreigner's Rights in Mexico,** 13 Int'l Law 83-100 (1979).

Manson, R., **Political Stability in Mexico: The Changing Role of Traditional Rightists,** 35 J. Pol. 594 (1973).

The Mexican Amparo, in Latin American Legal Institutions: Problems for Comparative Study at 614 (K. L. Karst, ed. 1966).

Notes on Judicial Review in Mexico and the United States, 5 InterAm. L. Rev. 253 (1963).

Purcell, S., **Decision-making in an Authoritarian Regime: Theoretical Implications from a Mexican Case Study,** 26 World Pol. 28 (1973).

Ramirez, F.T., **International Expansion of the Mexican Amparo,** 1 InterAm. L. Rev. 163 (1959).

Roel, S., **History of Mexican Constitutional Experience: From Zitacuaro, 1811, to Queretaro, 1917,** 4 Calif. West. L. Rev. 251 (1968).

Ronning, C., **Human Rights and Humanitarian Laws in the Western Hemisphere,** 38 Soc. Res. 320 (1971).

Rosenn, K., **Judicial Review in Latin America,** 35 Ohio St. L. J. 785 (1974).

Schwarz, **Rights and Remedies in the Federal District Courts of Mexico and the United States,** 4 Hastings Const. L. Q. 67-108 (1977).

Schwarz, C., **Exceptions to the Execution of Administrative Remedies under the Mexican Writ of Amparo,** 7 Calif. West. L. Rev. 331 (1971).

Stokes, W., **The Centralized Federal Republics of Latin America.** in Essays in Federalism at 93 (Claremont, Cal. 1961).

Trevino, J., **Expropriation in the Americas: Mexico,** in Expropriation in the Americas at 113 (A. F. Lovenfeld, ed. 1971).

CONTRACTS — See CIVIL CODE, COMMERCIAL LAW

COPYRIGHTS — See PATENTS, TRADEMARKS & COPYRIGHTS

CORPORATIONS (See also COMMERCIAL LAW, INVESTMENT)

American Management Assoc., Doing Business in Mexico: Prospects in a Growing Market (N.Y. 1964).

Angelo, M., **Comments on the Mexican Decree of December 28, 1962, Permitting the Issuance and Sale of Convertible Debentures,** 32 Fordham L. Rev. 149 (1964).

Barnhill, C., **Mexican Business Associations,** 4 Tex. Int'l L. F. 79 (1968).

Batiza, R., **Current Attitudes on Mexico's Treatment of the Foreign Enterprise,** 17 Rutgers L. Rev. 365 (1963).

Bernal-Molina, J., A Statement of the Laws of Mexico in Matters Affecting Business (Inter. Am. Dev. Comm. 1961).

Carillo, Jr., **State Control of the Public Sale of Securities in Mexico,** in Commercial Law of Mexico and the United States: Selected Topics at 117 (Austin, Tex. 1966).

Comment, **Legal Status of Unregistered Foreign Business Organizations in Mexico,** 51 Colum. L. Rev. 774 (1951).

Commentary on the Mexican Corporation, Proceedings Inter Am. Bar Assoc., Ninth Conf. (Dallas, Tex. 1956).

Crawford, H.P., **Capital Structure of Mexican Corporation,** 28 Tulane L. Rev. 45 (1953).

Cusi, E., **Appropriate Use of Corporations and Other Types of Business Organization Available Under Mexican Law,** in 2 Institute on Legal Aspects of Doing Business in Mexico at 61 (San Antonio Bar Assoc. 1964).

Dalton, J.N., **Mexican Corporate Activities,** 15 J. Bar Assoc. Kan. 400 (1947).

Dillenbeck, R.R., **Shareholder's Suits in Mexican Law,** 9 Am. J. Comp. L. 78 (1960).

Eberstadt, R., **Financial and Other Aspects of a Subsidiary Operation in Mexico,** in Sources and Methods of International Financing at 163 (Am Mgmt. Assoc. 1961).

Epstein, **Business-Government Relations in Mexico: The Echeverria Challenge to the Existing Development Model,** 12 Case W. Res. J. Int'l L. 525-547 (1980).

Ernst and Ernst, Characteristics of Business Entities: Mexico (Int'l Bus. Series 1967).

Gaither, R., **The Necessary Steps to Take in Forming a Mexican Corporation,** in 2 Institute on Legal Aspects of Doing Business in Mexico at 1 (San Antonio Bar Assoc. 1964).

Gannon, T., Doing Business in Latin America (Amer. Mgmt. Assoc. 1968).

Garcia-Cueller, S., **Corporate Law and Practice in Mexico,** in Doing Business in Mexico: Prospects in a Growing Market at 4 (Am. Mgmt. Assoc., ed. 1964).

Gomez, H., **The Law of Latin American Business Associations: A Survey,** 14 S. W. L. J. 169 (1960).

Gonzalez-Baz, A., **A Survey of Mexican Laws Affecting Foreign Businessmen,** 4 Den. J. Int'l. L. & Pol. 37 (1974).

Haro, R., **A Brief Comparison of the Law of Business Organizations in the United States and Mexico,** 7 Am. Bus. L. J. 225 (1970).

Hoagland, A., Company Formation in Mexico (N.Y. 1972).

Inman, H., **Legal and Economic Aspects of Incorporation in Mexico,** 1 Geo. Wash. Int'l Studies in Law & Econ. Dev. 86 (1966).

Institute on the Legal Aspects of Doing Business in Mexico (San Antonio Bar Assoc. 2 Vol. 1963-64).

Kalmanoff, G. and B. Ritchkiman, Joint International Business Ventures in Mexico (N.Y. 1959).

Lauterbach, A., **Aspects of Industrial Relations in Latin America: Executive Training and Productivity,** 17 Ind. & Lab. Rel. Rev. 357 (1964).

Martinez-Escobar, R., How to Do Business in Mexico (Mex. City 1972).

Mejorada, C., **Special Treatment by the Mexican Government of Foreign Owned Businesses and Investment,** in 2 Institute on Legal Aspects of Doing Business in Mexico at 69 (San Antonio Bar Assoc. 1964).

Note, **A Sociedad De Responsibilidad Limitada under Mexican Law Possesses Characteristics Sufficient to Confer Corporate Status Upon the Entity for Purposes of U.S. Tax Law,** 16 Va. J. Int'l. L. 445 (1976).

Partnerships and Other Business Organizations: The Commercial Law of the Republic of Mexico, in Digest of the Commercial Laws of the World at 40 (Nat. Assoc. Cred. Mgrs., ed. 1966).

Price, Waterhouse & Co., Doing Business in Mexico (N.Y. 1975).

Price Waterhouse & Co., Doing Business in Mexico (N.Y. 1979).

Prieto, **American Business in Mexico,** 14 Tex. Bus. J. 1 (1951).

Protectionism in Mexico, in Public Policy and Private Enterprise in Mexico at 241 (R. Vernon, ed. 1964).

Radway, **Doing Business in Mexico: A Practical Legal Analysis,** 14 Int'l Law 361-376 (1980).

Ramirez, G., and J. Ritch, **The Public Sale of Shares in Mexico,** 2 Geo. Wash. Int'l. Studies in Law & Econ. Dev. 23 (1967).

Ryan, J., **The Mexican Corporation,** in Handbook for the Foreign Investor in Mexico at 91 (Mex. City, 2nd ed., 1960).

Shafer, R., Mexican Business Organizations: History and Analysis (Syracuse Univ. Pr. 1973).

Selected English Language Materials on Doing Business in Latin America, 16 Rec. Assoc. Bar N.T. 1 (1961).

Trevino, J., **The Concept of Doing Business in Mexico by Foreign Enterprises,** in Commercial Law of Mexico and the United States: Selected Topics at 1 (Austin, Tex. 1966).

Villa, V., **Mexico; Tax and Business Information** (1976).

Wright, H., Foreign Enterprise in Mexico: Law and Policies (N. Carol. Pr. 1971).

COURTS — See CONSTITUTIONAL LAW, JUDICIARY

CRIMINAL LAW AND PROCEDURE

Barona-Labota, J., **The Organization of the Police in Mexico,** 20 Int'l Rev. Crim. Pol. 218 (1965).

Becker, J., **The Dope Trail,** 1 Contemp. Drug Prob. 413 (1972).

Canter, L., **Penal Law and Judges in Mexican Jurisprudence,** 4 Calif. West. L. Rev. 227 (1968).

Kos-Rabcewicz-Zubkowski, L., **The 1971 Reform to the Mexican Penal Codes,** 4 Lawyer Am. 233 (1972).

Medina, D., **Mexican Law on Obscenity,** 7 Lawyer Am. 337 (1975).

Miller, R., **Mexican Jails and American Prisoners,** 51 Labor J. 439 (1976).

Murray, D., **Criminal Procedure in the Federal District and Federal Territories of Mexico,** 19 Miami L. Q. 251 (1964).

Murray, D., **The Mexican Criminal Jury,** 7 Ariz. L. Rev. 71 (1965).

Pena-Nunez, J., **The Evaluation of the Methods Used for the Prevention of Juvenile Delinquency in Latin America,** 21 Int'l. Rev. Crim. Pol. 45 (1968).

DIVORCE — See FAMILY LAW

ECONOMY AND ECONOMIC DEVELOPMENT (See also AGRARIAN LAW, INTERNATIONAL LAW, INVESTMENT)

Belaunde, V., The Economic Basis of Politics in Latin America, 342 Annals 54 (1962).

Carrasco, R., **The Problems of Economic and Social Development in Latin America,** 5 World Just. 57 (1963).

Freithaler, W., Mexico's Foreign Trade and Economic Development (Praeger Co. 1964).

Gordon, M., **Developed, Developing and Dependent Nations: Central American Development in a New Economic Realignment,** 11 J. Int'l. Law & Econ. 1 (1976).

Hydro-electric Resources in Latin America: Their Measurement and Utilization, 7 Econ. Bull. Lat. Am. 73 (1962).

Industrial Development in Latin America, 14 Econ. Bull. Lat. Am. 3 (1969).

Integral Rural Development Programs in Latin America, 13 Econ. Bull. Lat. Am. 49 (1968).

Janer, C., **Latin America's Communal Response to the Energy Crisis: The Latin American Energy Organization (OLADE),** 6 Lawyer Am. 639 (1974).

Karst, K. L., and K. Rosenn, **Law and Development in Latin America,** 19 Am. J. Comp. L. 431 (1971).

Kaufman, C., **Urbanization, Material Satisfaction, and Mass Political Involvement: The Poor in Mexico City,** 4 Comp. Pol. Studies 2 (1971).

Ledo, P., **Developing Nations: A Mexican Point of View,** in Nobel Symposium: Smaller States in International Relations at 171 (Oslo 1971).

Martin, E., **The Economic Revolution in Mexico,** 49 Dept. State Bull. 959 (1963).

Martin, E., **Trends in Latin American Economic Development,** 48 Dept. State Bull. 918 (1963).

Martinoya, C., et. al., **Nuclear Plans and Nuclear Programs in Latin America,** in Inter-American Symposium on the Peaceful Application of Nuclear Energy at 241 (Rio de Janiero 1961).

Nafziger, J., **Controlling the Northward Flow of Mexican Antiquities,** 7 Lawyer Am. 68 (1975).

Orleans, F., **Mexico Needs Housing,** in 1 Institute on Legal Aspects of Doing Business in Mexico at 87 (San Antonio Bar Assoc. 1963).

Ortiz de Zevallas, L., **To Plan Our Cities,** 14 Americas 29 (1962).

Perkinson, J., **Science Technology, and Development,** 16 Americas 1 (1964).

Progress in Planning in Latin America, 8 Econ. Bull. Lat. Am. 129 (1963).

Purdy, W., et. al., **Cooperatives and Other Forms of Market Organization,** in International Seminar on the Development of Agricultural Marketing Cooperatives in Latin America and the Carribean (San Juan, P.R. 1959).

Riesenfeld, S., **Legal Systems of Regional Economic Integration,** 22 Am. J. Comp. L. 415 (1974).

Recent Evolution of the Latin American Economy, 11 Econ. Bull. Lat. Am. 1 (1966).

Stinyard, E., **Behind the Economic Scene in Mexico and the Effect of Modern Management Techniques in Mexico,** in 1 Institute on Legal Aspects of Doing Business in Mexico at 100 (San Antonio Bar Assoc. 1963).

Tancer, R., **Tourist Promotion in Mexico,** 1972 L. & Soc. Order 559 (1972).

U.N. Econ. Comm. Lat. Am., Human Resources of Central America, Panama and Mexico 1950-1980 (N.Y. 1960).

Valdez, A., **Developing the Role of Law in Social Change: Past Endeavors and Future Opportunities in Latin America and the Carribean,** 7 Lawyer Am. 1 (1975).

Valdez, A., **Legal Development and Social Change in Latin America and the Carribean,** 62 A.B.A.J. 484 (1976).

Vaughn, D., and W. Feindt, **Initial Settlement and Intracity Movement of Migrants in Monterey, Mexico,** 39 J. Am. Inst. Planners 388 (1973).

Wionczek, M., **Incomplete Foreign Planning: Mexico,** in Planning Economic Development at 150 (E. Hagen, ed. 1963).

Wionczek, M., **The State and the Electric Power Industry in Mexico 1895-1965,** 39 Bus. Hist. Rev. 527 (1965).

EDUCATION — See LEGAL PROFESSION AND EDUCATION

EJIDO — See AGRARIAN LAW

ENERGY — See ECONOMY AND ECONOMIC DEVELOPMENT

ENVIRONMENTAL LAW

Cabrera, Acevedo, **Legal Protection of the Environment in Mexico,** 8 Cal. W. Int'l L. J. 22-42 (1978).

Commerce Clearing House, Mexican Anti-Pollution Laws and Regulations (Chicago 1972).

International Joint Commission and the International Boundary and Water Commission: Potential for Environmental Control Along the Boundaries, 6 N. Y. U. J. Int'l. L. 1 (1973).

Johnston, C., **Effluent Neighbors: The Mexico-United States Water Quality Dilemma,** 3 Calif. West. L. Rev. 152 (1972).

Juergensmeyer, J. and E. Blizzard, **Legal Aspects of Environmental Control in Mexico,** 12 Natural Res. J. 580 (1972).

Utton, A., Pollution and International Boundaries: United States-Mexican Environmental Problems (Univ. N. M. Pr. 1973).

Zaldwair, E., **Nuclear Liability Legislation in Latin America,** in Inter-American Symposium on the Legal and Administrative Problems Connected with Peaceful Atomic Energy Programs at 149 (San Juan, P. R. 1960).

EXPROPRIATIONS — See CONSTITUTIONAL LAW, INTERNATIONAL LAW, INVESTMENT

FAMILY LAW

Baade, H., Form of Marriage in Spanish North America, 61 Corn. L. Rev. 1 (1975).

Baeck, P., Recognition of Mexican Divorces in Europe, 1 Int'l. Lawyer 202 (1967).

Berke, J., **Mexican Divorces,** 7 Pract. Lawyer 84 (1961).

Borah, W., and S. Cook, **Marriage and Legitimacy in Mexican Culture: Mexico and California,** 54 Calif. L. Rev. 946 (1966).

Borah, W., and S. Cook, **Marriage and Legitimacy in Mexican Culture: Mexico and California,** in The Law of the Poor at 622 (J. Ten-Broek, ed. 1966).

Caballero, R., **A Re-examination of Mexican "Quickie" Divorces,** 4 Int'l. Lawyer 871 (1970).

Duff, E., **The Marital Regime in Latin America,** 8 InterAm. L. Rev. 137 (1966).

Note. **Divorce by Personal Jurisdiction of the Parties: A Support of the Mexican Bilateral Divorce,** 29 Alb. L. Rev. 328 (1965).

Note, **Mexican Bilateral Divorce: A Catalyst in Divorce Jurisdiction Theory?** 61 N.W.U.L. Rev. 584 (1966).

Padilla, R., **The Civil Code of Mexico,** in Marriage and Divorce in Mexico at 27 (Chula Vista, Cal. 1966).

Sommerich, O., **Recognition of Mexican Divorces in Europe,** 1 Int'l. Lawyer 39 (1966).

Stern, W., **Developments in the Law of Mexican Marriages and Divorces,** 24 Calif. St. Bar J. 305 (1949).

Stern, W., **Marriages by Proxy in Mexico,** 19 So. Cal. L. Rev. 109 (1945).

Stern, W., **Mexican Marriages and Divorces,** 20 Calif. St. Bar J. 53 (1945).

Stern, W., **More on Alabama and Mexican Divorces: The Mexican Law,** 7 Pract. Lawyer 78 (1961).

FEDERAL JURISDICTION — See CONSTITUTIONAL LAW, JUDICIARY

FINANCE — See BANKS AND BANKING

FOREIGN INVESTMENT — See INVESTMENT

FOREIGN RELATIONS — See INTERNATIONAL LAW

FOREIGN TRADE — See COMMERCIAL LAW, INTERNATIONAL LAW, INVESTMENT

FORESTRY — See MINING AND FORESTRY

GOVERNMENT — See ADMINISTRATIVE LAW, CONSTITUTIONAL LAW, HISTORY

HISTORY (See also CONSTITUTIONAL LAW)

Allison, R., **Recent Legal Development in Latin America,** 3 Int'l. Lawyer 859 (1969).

Bailey, N., **Latin America Since the War,** 14 J. Int'l. Aff. 115 (1960).

Bowden, J., **Spanish and Mexican Land Grants in the Southwest,** 9 Land & Water L. Rev. 467 (1973).

Brandenburg, F., **Mexico: 1966 and Beyond,** 50 Curr. Hist. 32 (1965).

Bullejos, S., **The Reform, Diaz, and the Revolution 1910-1960,** 13 Americas 7 (1961).

Chevalier, F., **Land and Society in Colonial Mexico: The Great Hacienda** (Univ. Cal. Pr. 1963).

Clire, H., **Mexico: A Matured Latin-American Revolution 1910-1960,** 334 Annals 84 (1961).

Cumberland, C., **Mexican Revolution: The Constitutionalist Years,** (Univ. Tex. Pr. 1972).

Diskin, M., **Persistence of Tradition in the Urbanization of Oaxaca Valley,** in Laws, Change, and Urban Soceity at 191 (P. Orleans & W. Ellis, ed. 1971).

Duncan, W., **The Mexican Constitution of 1917: Its Political and Social Background,** 5 InterAm. L. Rev. 227 (1963).

Fitzgibbon, R., **Dictatorship and Democracy in Latin America,** 36 Int'l. Aff. 48 (1960).

Kane, N., **Bankers and Diplomats: The Diplomacy of the Dollar in Mexico 1921-1924,** 47 Bus. Hist. Rev. 335 (1973).

Margadant, Floris, **Official Mexican Attitudes Toward the Indians: An Historical Essay,** 54 Tul. L. Rev. 964-86 (1980).

Note, **Legal Relations in Afro-Indian Relations in Colonial Mexico,** 55 J. Negro Hist. 131 (1970).

Solis, L., **Mexican Economic Policy in the Post-War Period,** 61 Am. Econ. Rev. 1 (1971).

HUSBAND AND WIFE — See FAMILY LAW

INDIVIDUAL RIGHTS — See CONSTITUTIONAL LAW

INHERITANCE — See SUCCESSION

INSOLVENCY — See COMMERCIAL LAW

INSURANCE

Robbins, P., and W. Netherton, **Mexican Automobile Liability and Insurance Law,** 3 Ariz. Bar J. 5 (1967).

Robbins P. and W. Netherton, **Mexican Automobile Liability and Insurance Law,** 47 Mich. St. Bar J. 22 (1968).

Rodriguez, J. G., **Mexican Automobile Liability Insurance Coverage,** 21 Fed. Ins. Counsel Q. 35 (1971).

Timmons, W., **Justice Mexican Style; or Should You Drive in Mexico?** (El Paso, Tex. 1969).

Vasquez, R., **Integration of the Reinsurance Business in Latin America,** 29 Int'l. Ins. Monitor 360 (1974).

INTERNATIONAL LAW (See also CONFLICT OF LAWS, ECONOMY AND ECONOMIC DEVELOPMENT, INVESTMENT)

Barnes, R., **Problems in Immigration and Customs Laws on the Mexican Border,** in 2 Institute on the Legal Aspects of Doing Business in Mexico at 41 (San Antonio Bar Assoc. 1964).

Barnes, W., **Legal Issues in Inter-American Relations,** 11 Tex. Int'l. L. F. 63 (1969).

Brownell, H., and S. Eaton, **The Colorado River Salinity Problem with Mexico,** 69 Am. J. Int'l. L. 255 (1975).

Chamizal Boundary Agreement, 2 Int'l. Leg. Mat. 874 (1963).

Comment, **Export Sales to Mexico,** 4 Tex. Int'l. L. F. 116 (1968).

Dawson, F., **International Law, National Tribunals, and the Rights of Aliens: The Latin American Experience,** 21 Vand. L. Rev. 712 (1968).

Ericson, A., **The Impact of Commuters Across the Mexican Border,** 93 Mon. Lab. Rev. 18 (1970).

Garcia-Amador, F., **The Latin American Contribution to the Development of the Law of the Sea,** 68 Am. J. Int'l. L. 33 (1974).

E. De La Garza, et. al., **Should People Stay Home? Regulation of Free Movement and Right of Establishment Between the U.S., Canada, and Mexico,** 68 Proceedings Am. Soc. Int'l. L. 38 (1974).

Healey, H., **Revisions to the Mexico-United States Air Transport Agreement 1965-1970,** 32 J. Air L. & Comm. 167 (1966).

International Water Law Along the Mexican-American Border (C. Knowlton, ed. 1968).

Jacobini, H., **International Law in Latin America,** 7 Lawyer Am. 605 (1975).

Jessup, P., **El Chamizal,** 67 Am. J. Int'l L. 423 (1973).

Kennedy, J., **United States and Mexico Agree to Conclude Convention for Settlement of Chamizal Boundary Dispute,** 49 Dept. State Bull. 199 (1963).

Keywan, T.G., Jr., **Do We Live in Alien Nations?** 3 Calif. West. Int'l. L. J. 75 (1973).

Lieuwan, E., **Militarism in Latin America: A Threat to the Alliance for Progress,** 19 World Today 193 (1963).

Lillich, R., **The United States-Mexican International Boundary and Water Commission,** 68 Proceedings Am. Soc. Int'l. L. 226 (1974).

Moore, J., **The Chamizal Zone: Rivers and Revolutions of the Border,** 17 S. W. L. J. 86 (1963).

Note, **The Calvo Clause: Its Current Status as a Contractual Renunciation of Diplomatic Protection,** 6 Tex. Int'l. L. F. 289 (1971).

Note, **Execution of Foreign Sentences in the United States: A Treaty with Mexico,** 9 St. Mary's L. J. 118 (1977).

Note, **Needed: A Ground Water Treaty Between the United States and Mexico,** 15 Nat. Res. J. 385 (1975).

Panel: North American Market? U.S.-Mexican-Canadian Perspectives on Terms of Trade and Rationalization of Production, 68 Proceedings Am. Soc. Int'l. L. 92 (1974).

Payne, D., **Chamizal: A Unique Appraisal Experience,** 18 Valuation 6 (1971).

Pike, F., **Corporatism and Latin American-United States Relations,** 36 Rev. Pol. 132 (1973).

Sepulveda, C., **Areas of Dispute in Mexican-American Relations,** 17 S. W. L. J. 98 (1963).

Szekely, A., **Mexico's Unilateral Claim to a 200 Mile Exclusive Economic Zone - Its International Significance,** 4 Ocean Dev. & Int'l. L. 195 (1977).

Taylor, P., **Mexican Migration and the 160-Acre Water Limitation,** 63 Cal. L. Rev. 732 (1975).

Tibbals, T., **The Mexican-United States Broadcasting Dilemma,** 4 Calif. West. Int'l. L. J. 141 (1973).

United States and Mexico Reaffirm Friendship and Good Will, 57 Dept. State Bull. 673 (1967).

U.S. and Mexico Sign Convention Settling Chamizal Boundary, 49 Dept. State Bull. 480 (1963).

INTESTACY — See SUCCESSION

INVESTMENT (See also CORPORATIONS, COMMERCIAL LAW)

Alvarez, Soberavis, **Legal Aspects Concerning the Technology Transfer Process in Mexico,** 7 Ga. J. Int'l. Com. L. 17-31 (1977).

Aranda, L., **Acquiring Property in Mexico's "Forbidden Zone": Estate Planning Considerations,** 115 Trusts & Est. 666 (1976).

Batiza, R., **Mexico: New Law on Investment Companies,** 5 Am. J. Comp. L. 625 (1956).

Bernstein, M., Foreign Investment in Latin America (Knopf Co. 1966).

Camp, H., and C. Rojas-Magnon, **Recent Developments Under the Mexican Foreign Investment Law and the Law Regulating the Transfer of Technology,** 8 Lawyer Am. L. (1976).

Cervin, B., **Requirements for Local Participation in Private Direct Foreign Investments in Mexico,** 33 Tex. B. J. 609 (1970).

Colloquium on Certain Legal Aspects of Foreign Investment in Mexico, 7 Ga. J. Int'l. & Comp. L. 1 (1977).

Comment, **Nationalism as a Factor in Legislation Restricting Foreign Investment: Extractive Industries in Mexico,** 45 Ind. L. J. 616 (1970).

Ebb, L., **Transfers of Foreign Technology in Latin America: The Birth of Antitrust Law?,** 43 Fordham L. Rev. 719 (1975).

Ellsworth, D., **Mexico Opens the Door to Resort Development,** 5 Real Est. Rev. 36 (1975).

Ereli, E., **The Central American Common Market,** 43 Tulane L. Rev. 1 (1968).

Ereli, E., **The Andean Common Market,** 8 Houst. L. Rev. 487 (1971).

Glade, W., **Prices in Mexico: From Stabilized to Destabilized Growth,** 21 Proceedings Acad. Pol. Sci. 188 (1975).

Gordon, M., **The Contemporary Mexican Approach to Growth with Foreign Investment: Controlled but Participatory Independence,** 10 Calif. West. L. Rev. 1 (1973).

Grunwald, J., **Foreign Private Investment: The Challenge of Latin American Nationalism,** 11 Va. J. Int'l. L. 228 (1971).

Gutierrez-Quiroz, G., **Investment in Real Property in Mexico: The Overview of Constitutional and Statutory Restrictions,** 12 Ariz. L. Rev. 279 (1970).

Hollman, S., **Mexican Restrictions on Foreign Investment and Technology,** 20 Pract. Lawyer 55 (1974).

Hyde and Ramirez De La Corte, **Mexico's New Transfer of Technology and Foreign Investment Laws; To What Extent Have the Rules Been Changed?,** 10 Int'l Law, 231-252 (1976).

James, D., **How to Live and Invest in Mexico** (Mex. City, 1960).

Jova, J., **Private Investment in Latin America: Renegotiating the Bargain,** 10 Tex. Int'l. L. F. 455 (1975).

Kryzda, **Joint Ventures and Technology Transfers,** 12 Case W. Res. J. Int'l L. 549-573 (1980).

Laughron, H., and J. Foster, **Foreign Investment in Mexico: The Emergency Decree of 1944,** 39 Tul. L. Rev. 538 (1965).

Linowitz, S., **Why Invest in Latin America?** 49 Harv. Bus. Rev. 120 (1961).

Martinez de Escobar R., **General Restrictions on Individual Foreign Investment in Mexico,** 6 Tex. Int'l. L. F. 217 (1971).

Mexican Law Symposium: The Juridical Regulation of Transnational Enterprises, 8 Cal. W. Int'l L. J. 1 (1978).

Mexico's Forbidden Zones: The Presidential Decree of April 29, 1973, 1973 L. & Soc. Order 455 (1973).

Miranda, F., **Foreign Companies Investing and Doing Business in Mexico,** 28 Bus. L. Rev. 121 (1973).

Miranda, F., **Foreign Investment and Operation in Mexico,** 2 Ariz. L. Rev. 187 (1960).

Moore, J. and H. M. Rollins, **Analysis of Current Mexican Restrictions on Direct Foreign Investment,** 5 Tex. Int'l. L. F. 245 (1969).

Multinational Enterprise in the Context of Latin American Economic Integration: The Andean Agreement Model, 11 San Diego L. Rev. 245 (1973).

Murphy, **Andean Common Market and Mexico: A Foreign Investment Profile,** 13 Tex. Int'l L. J. 307-326 (1978).

Murphy, **Echeverrian Wall: Two Perspectives on Foreign Investment and Licensing in Mexico,** 17 Tex. Int'l L. J. 135-154 (1982).

Peckham, C., **Dual Mexican-American Nationality: A Vehicle to Investment,** 1 Calif. West. Int'l. L. J. 115 (1970).

Perez, G., **An Introduction to the Legal Structure of Mexico for the Foreign Investor,** 4 Calif. West. L. Rev. 1 (1968).

Perez-Verdia, A., Jr., **How a Non-Resident Alien May Engage in Business Operations and Invest in Mexico,** 6 Tex. Int'l. L. F. 209 (1971).

Ramirez, G. and H. Height, **Mexico's New Transfer of Technology and Foreign Investment Laws - To What Extent Have the Rules Changed?** 10 Am. J. Int'l. L. 231 (1976).

Rogers, W., **United States Investment in Latin America: A Critical Appraisal,** Va. J. Int'l. L. 246 (1971).

Schill, C., **The Mexican and Andean Investment Codes: An Overview and Comparison,** 6 L. & Pol. Int'l. Bus. 437 (1974).

Schliesser, P., **Recent Developments in Latin American Foreign Investment Laws,** 7 Int'l. Lawyer 357 (1973).

Should Investment Capital Stay Home: A Mexican-U.S. Dialogue, 68 Proceedings Am. Soc. Int'l. L. 58 (1974).

Siquerios, J., **Administrative Aspects of Foreign Investment in Mexico,** 4 Calif. West. L. Rev. 269 (1968).

Symposium: Mexican Foreign Investment Laws, 4 Den. J. Int'l. L. & Pol. 1 (1974).

Tancer, R., and J. Zanotti, **The Mexican Law of Foreign Real Estate Investment in the Prohibited Zones: An Overview** (N.Y. 1974).

Threat to U.S. Private Investment in Latin America, 5 J. Int'l. L. & Econ. 221 (1971).

U.S. Antitrust Laws and Mexican Foreign Investment Laws: A Comparative Survey, 13 Hous. L. Rev. 571-585 (1976).

Vilaplana, V., **The Forbidden Zones in Mexico,** 10 Calif. West. L. Rev. 47 (1973).

Weiner, S., **Investment Incentives in Mexico,** 4 Tex. Int'l. L. F. 64 (1968).

Wesley, R., **Procedural Malaise of Foreign Investment Disputes in Latin America: From Local Tribunals to Factfinding,** 7 L. & Pol. Int'l Bus. 813 (1975).

Wionczek, M.S., **Mexican Nationalism, Foreign Private Investment, and Problems of Technology Transfer,** in Private Foreign Investment and the Developing World at 191 (P. H. Addy, ed. 1971).

Wise, S., Invest and Retire in Mexico (Mex. City 1973).

JUDGMENTS — See CONFLICT OF LAWS, JUDICIARY

JUDICIAL REVIEW — See CONSTITUTIONAL LAW

JUDICIARY (See also CONSTITUTIONAL LAW)

Biles, R., **Position of the Judiciary in the Political Systems of Argentina and Mexico,** 8 Lawyer Am. 287 (1976).

Cabrera, L., **History of the Mexican Judiciary,** 11 Miami L. Q. 439 (1957).

Evans, A. E., **Treaty Enforcement and the Supreme Court of Mexico,** 5 Am. J. Comp. L. 267 (1956).

Grant, J., **Judicial Legislation and the Jurisdiction of the Federal Courts: A Comparative Study of the United States, Argentina, and Mexico,** 24 U.C.L.A. L. Rev. 193 (1976).

Nader, L., **Styles of Court Procedure: To Make the Balance,** in Law in Culture and Society at 69 (Aldine Pub. Co., Chicago 1969).

Schwarz, C., **Judges Under the Shadow: Judicial Independence in the United States and Mexico,** 3 Calif. West. Int'l L. J. 260 (1973).

Wagner, W. J., **The History and Role of a Supreme Court in a Federal System,** 20 Mont. L. Rev. 171 (1959).

LABOR LAW

Abrams, M. J., **Effect of Local Labor Legislation on United States Mining and Petroleum Investments in Chile, Mexico, and Venezuela,** 36 Rev. Jur. U. P. R. 41 (1967).

Blum, A., and M. Thompson, **Unions and White Collar Workers in Mexico,** 26 Indust. & Lab. Rel. Rev. 646 (1972).

Buen, **Child Labor in Mexico,** 3 Com. Lab. L. 220-228 (1980).

Cepeda-Villareal, R., **Aspects of Mexican Labor Laws Especially as They Affect Foreign Owned Businesses,** in 2 Institute on the Legal Aspects of Doing Business in Mexico at 54 (San Antonio Bar Assoc. 1964).

Cepeda-Villarcal, R., **Certain Aspects of Mexican Labor Law Especially as They Affect Foreign Owned Businesses,** 6 Calif. West. L. Rev. 234 (1970).

Cormack, J. M., **The Operation of the Mexican Labor Law,** 7 S.W.L. J. 301 (1953).

Galvin, M., **Unionism in Latin America** (Cornell Univ. Pr. 1962).

Leal de Araujo, L., **Extension of Social Security to Rural Workers in Mexico,** 108 Int'l. Lab. Rev. 295 (1973).

Medical Care Benefits Under the Mexican Social Insurance Scheme, 88 Int'l. Lab. Rev. 157 (1963).

Meed, G., **Unions and National Development,** 15 Americas 25 (1963).

Mexican Labor Law as of January 1, 1978 (CCH 1978).

Meyers, F., **Mexican Industrial Relations from the Perspective of the Labor Court** (1979) (Univ. of Cal., Inst. of Industrial Relations, Industrial Relations Monograph Series, 24)

Miller, R., **Labor Legislation and Mexican Industrial Relations,** 7 Indust. Rel. 171 (1968).

Murg, G. E., and J. C. Fox, **Labor Relations Law: Canada, Mexico, and Western Europe** (1978).

Note, **Latin America and International Arbitration Conventions: The Quandry of Non-Ratification,** 17 Harv. Int'l. L. J. 131 (1976).

Recent Trends in Labour Legislation for Hired Agricultural Workers in Latin America, 84 Int'l Lab. Rev. 101 (1961).

Salinas, P., and V. Reuther, **The Role of Unions,** 13 Americas 27 (1961).

Sandoval, J., **The New Mexican Federal Labor Law: An Analysis (Part I),** 2 Lawyer Am. 386 (1970).

Sandoval, J., **The New Mexican Federal Labor Law: An Analysis (Part II),** 3 Lawyer Am. 11 (1971).

Selected Topics on Mexican Labor Law, 2 Tex. Int'l. L. F. 41 (1966).

The Settlement of Labor Disputes in Mexico, 103 Int'l. Lab. Rev. 477 (1971).

Summers, L., **Private Versus State Arbitration in Latin America,** 4 Calif. West. Int'l. L. J. 121 (1973).

Tanner, R., **Immigration, Importation, and Labor Law Application to Foreign Businessmen in Mexico,** 4 Den. J. Int'l. L. & Pol 63 (1974).

Watanabe, S., **Constraints on Labor-Intensive Export Industries in Mexico,** 109 Int'l. Lab. Rev. 295 (1974).

Ylianes-Ramos, R., **Mexican Profit Sharing Law, Restraining or Promoting Business in Mexico?,** in 2 Institute on Legal Aspects of Doing Business in Mexico at 98 (San Antonio Bar Assoc. 1964).

LAND REFORM — See AGRARIAN LAW

LEGAL PROFESSION AND EDUCATION

Einaudi, L., **University Autonomy and Economic Freedom in Latin America,** in Student Politics in Latin America at 12 (D. Spencer, ed. 1965).

Harrison, L., **Learning and Politics in Latin American Universities,** 27 Proceedings Acad. Pol. Sci. 23 (1964).

Maxwell, R., and M. Goldman, **Mexican Legal Education,** 16 J. Leg. Ed. 155 (1963).

Mayda, J., **Problems of Legal Education in Latin America,** 12 J. Leg. Ed. 407 (1960).

Murke, D., and J. Fox, **Notaire in North America: A Short Study of the Adaptation of a Civil Law Institution,** 50 Tul. L. Rev. 318 (1976).

Perry, F., **Understanding the Mexican Attorney: Legal Education and the Practice of Law in Mexico,** 10 Int'l. Lawyer 167 (1976).

Ross, S., **Mexico: Government Control of Education,** 40 Curr. Hist. 346 (1961).

Sepulveda, C., **Student Partnership in University Affairs: The Mexican Experience,** 17 Am. J. Comp. L. 284 (1969).

LIENS AND ENCUMBRANCES — See PROPERTY

MARRIAGE — See FAMILY LAW

MEDICINE AND HEALTH (See also LABOR LAW)

Fabrega, H., and D. Metzger, **Psychiatric Illness in a Small Ladino Community,** 31 Psychiatry 339 (1968).

Epidemiology in the Americas: International Treaties for the Prevention of Disease, 15 Va. J. Int'l. L. 151 (1974).

Price, R., **The Protomedicato in New Spain,** in Int'l. Symposium on Soc., Med. & Law at 77 (Jerusalem 1973).

Roemer, H., **Development of Medical Services under Social Security in Latin America,** 108 Int'l. Lab. Rev. 1 (1973).

MINING AND FORESTRY

Black, T., **Ownership of Minerals in the Bancos along the Rio Grande,** in 2 Institute on Legal Aspects of Doing Business in Mexico at 115 (San Antonio Bar Assoc. 1964).

Borek, T., **Evaluating a Developing Institution: Mexicanization of Mining,** 13 Ariz. L. Rev. 673 (1971).

Browning, D., **Historic Bases of Mexican Mining Law,** 7 InterAm. L. Rev. (1965).

Lozando, Rocha, **Operating a Mine in Mexico: An Overview of the Legal Considerations,** 27A Rocky Mtn. Min. L. Inst. 553-633 (1982).

Mainero, C., **Legal and Practical Aspects of Mexicanization under the Mining Law of Mexico,** 18 Proceedings Rocky Mt. Min'l. Law Inst. 595 (1973).

Mainero, C., **Mining in Mexico,** 4 Calif. West. L. Rev. 287 (1968).

Miranda, **Exploring For Minerals in Mexico; An Overview of Legal Considerations,** 27A Rocky Mtn. Min. L. Inst. 431-552 (1982).

Miranda, F., **The Mining Law of Mexico,** 14 Proceedings Rocky Mt. Min'l. Law Inst. 277 (1968).

Morales, Dominguez, **Political and Social Aspects of the Mexican Mining Industry,** 27A Rocky Mtn. Min. L. Inst. 409-429 (1982).

Perez, C., **The Mexican Mining Concession: Its Features, Regulation and Practice,** 12 Ariz. L. Rev. 356 (1970).

Portorelli on Conservation, 14 Americas 3 (1962).

Verity, **Comparative Study of the Mineral, Oil, and Gas Laws of the United States and Mexico,** 6 Proceedings Rocky Mt. Min'l. Law Inst. 435 (1961).

MORTGAGES — See COMMERCIAL LAW, PROPERTY

MOTOR VEHICLES — See TORTS

NEGLIGENCE — See TORTS

NOTARIES — See LEGAL PROFESSION AND EDUCATION, PUBLIC RECORDS

OFFICIAL RECORDS — See PUBLIC RECORDS

OIL AND GAS (See also MINING AND FORESTRY)

Bermudez, A., **The Mexican National Petroleum Industry: A Case Study in Nationalization** (Stanford Univ. 1963).

Brinsmade, L., **Problems Relating to Oil and Gas Operations in Latin America,** in Proceedings of the A.B.A. Sect. Int'l. & Comp. L. at 30 (Chicago 1961).

Murphy, E., **Oil Operations in Latin America: The Scope for Private Enterprise,** 2 Int'l Lawyer 455 (1968).

OWNERSHIP — See PROPERTY

PARTNERSHIPS — See CORPORATIONS

PATENTS, TRADEMARKS AND COPYRIGHTS

Barrett, P., **Role of Patents in the Sale of Technology in Mexico,** 22 Am. J. Comp. L. 230 (1974).

Batalla, E., **A Glance at the Law and Practice in the Matter of Working Patents in all Iberoamerican Countries,** 56 J. P. O. S. 746 (1974).

Bayitch, S., **Empresa in Latin American Law - Recent Developments,** 4 Lawyer Am. 399 (1972).

Brill, D., **Transfer of Technology in Mexico,** 4 Den. J. Int'l L. & Pol. 41 (1974).

Cooper, **The Mexican Law of Inventions and Trademarks** (The Trademark Forum), 66 Trade-Mark Rep. 319-323 (1976).

Delgado, J., **Trademark Filling Requirements,** 1965 Amer. Pat. L. Assoc. Bull. 324.

Gomez, B., **How to Draft Patent Claims for Mexico,** 1965 Amer. Pat. L. Assoc. Bull. 315.

Guevara, A., **Socialized Medicine and Its Effect on Trademarks,** 53 Trademark Rep. 1109 (1963).

Lanahan, J., **Trademarks in Mexico: A United States Perspective,** 66 Trademark Rep. 205 (1976).

Law on Inventions and Trademarks, Effective February 11, 1976, 75 Pat. Trade-Mark Rev. 346-368, 397-412 (1977).

McAuliffe, J., **Consideration of Inter-American Conventions,** 52 Trademark Rep. 25 (1962).

McAuliffe, J., **Latin American Trademark Developments,** 4 Indust. Prop. 228 (1965).

McAuliffe, J., **Latin American Trademark Developments,** 55 Trademark Rep. 95 (1965).

McAuliffe, J., **Reacting to Trademark Developments in Latin America,** 65 Trademark Rep. 503 (1975).

Mouchet, C., **Some Notes on Copyright in Latin America,** 7 Copyright Bull. (1971).

Randel-Medina, D., **Mexico's New System for Appelations of Origin,** 12 Indust. Prop. 91 (1973).

Regulations of the Law on Inventions and Marks with Respect to Transfer of Technology and to the Coupling of Marks (of October 8, 1976), 16 Indus. Prop., Mexico 1-002:1-2 (1977).

Regulations to the Law of Inventions and Trademarks in Matters Relating to the Transfer of Technology and Association of Trademarks; Effective October 14. 1976, 75 Pat. Trade-Mark Rev. 442-445 (1977).

Sepulveda, C., **Mexican Law on the Registration of the Transfer of Technology,** 13 Indust. Prop. 32 (1974).

Sierra, J., **Trademarks in Mexico: Registration, Maintenance and Renewal,** 53 Trademark Rep. 1105 (1963).

Soni, M., **Administrative Procedures Necessary to Secure a Patent in Mexico,** 6 Calif. West. L. Rev. 247 (1970).

Vargas, Jr., **Major Innovations Regarding Trade and Service Marks in the Newly Revised Mexican Law on Inventions and Marks - A Maximum Perspective,** 66 Trademark Rep. 188 (1976).

PENAL LAW — See CRIMINAL LAW AND PROCEDURE

PERSONAL INJURY — See TORTS

POLITICS — See CONSTITUTIONAL LAW

PROBATE — See PROPERTY, SUCCESSION

PROPERTY (See also INVESTMENT)

Batiza, R., **The Evolution of the Fideicomiso (Trust) Concept Under Mexican Law,** 11 Miami L. Q. 478 (1957).

Batiza, R., **Trusts in Mexico,** in Civil Law in the Modern World at 128 (A. Yiannopoulos, ed. 1965).

Brojz-Martinez, Mr., **The Mexican Doctrine of Imposed Joint Ownership,** 11 Miami L. Q. 461 (1957).

Chayet, A., and L. Sutton, **Mexican Real Estate Transactions by Foreigners,** 4 Den. J. Int'l. L. & Pol. 15 (1974).

Goldman, R., and J. Paxman, **Real Property Valuations in Argentina, Chile and Mexico,** in 2 The Valuation of Nationalized Property in International Law at 129 (R. B. Lillich, ed. 1973).

Goldschmidt, R., **The Trust in the Countries of Latin America,** 3 InterAm. L. Rev. 29 (1961).

Guerro, R., and L. Sutton, **Acquisition of Foreign Property, Investment in Corporations and Probate Law in Mexico,** 10 Real Prop. Prob. & Trust J. 427 (1975).

Meek, M., **Land Transfer and Finance in Mexico,** 4 Den. J. Int'l. L. & Pol. 25 (1974).

Miller, R. L., **Investing in Real Property in Mexico,** 44 Lab. Bull. 561 (1969).

Molina-Pasquel, R., **Mexican Fideicomiso: The Reception, Evolution and Present Status of the Common Law Trust in a Civil Law Country,** 8 Colum. J. Trans. L. 54 (1969).

Revera-Fraber, O., **An Introduction to Secured Real Estate Transactions in Mexico,** 12 Ariz. L. Rev. 290 (1970).

Vega, J., **Mexican Real Estate** (Univ. Ariz. Pr. 1976).

PROSECUTION — See CRIMINAL LAW AND PROCEDURE

PSYCHIATRY AND LAW — See MEDICINE AND HEALTH

PUBLIC PROSECUTOR — See CRIMINAL LAW AND PROCEDURE

PUBLIC RECORDS

Carral y de Teresa, L. **The Public Authority of the Acts of Notaries and Registrars on Mexican Law,** 11 Miami L. Q. 449 (1957).

Kozolchyk, B., **The Mexican Land Registry: A Critical Evaluation,** 12 Ariz. L. Rev. 308 (1970).

Margadant, G., **The Mexican Notariate,** 6 Calif. West. L. Rev. 218 (1970).

Rojo, J., **The Assessment System in Cuernavaca** (Mex. City 1964).

Villalon-Iguarta F., **The Public Registry of Property in Mexico,** 11 Miami L. Q. 457 (1957).

SECURED TRANSACTIONS — See COMMERCIAL LAW

SECURITIES — See CORPORATIONS, INVESTMENT

SHARES AND SHAREHOLDERS — See CORPORATIONS

STOCK AND STOCKHOLDERS — See CORPORATIONS

SUCCESSION (See also FAMILY LAW, PROPERTY)

Garcia-Leos, H., **Aspects of Mexican Probate Law of Interest to the North American Attorney,** in 2 Institute on Legal Aspects of Doing Business in Mexico at 82 (San Antonio Bar Assoc. 1964).

Note, **Succession in Mexico, 16** Syracuse L. Rev. 622 (1965).

TAXATION

Caraza, Escobedo, **Taxation of Extractive Industries, National Report: Mexico.** 63A Cahiers Dr. Fisc. Int'l. 391-408 (1978).

Caraza, R., and A. Jackson, **Tax, Legal and Practical Considerations for Doing Business in Mexico,** Proceedings Tax Inst. U.S. (1966).

Crockett, J., **Tax Patterns in Latin America,** 15 Nat. Tax J. 93 (1962).

Diamond, W., Foreign Tax and Trade Briefs: Mexico (Mathew-Bender 1971).

Gillis and McLure, **Excess Profits Taxation: Post-Mortem on the Mexican Experience,** 32 Nat'l Tax J. 501-511 (1979).

Gunspel, H., **The International Tax Law of Mexico,** in Taxation of Foreign Income by United States and Other Countries at 57 (Tax Inst. Am. 1966).

Harvard Law School, Taxation in Mexico (Little, Brown 1957).

Helguera, E., **Mexican Tax Policy on Foreign Investments,** in Tax Policy on United States Investment in Latin America at 128 (Tax Inst. Amer. ed. 1963).

Hoyo D'Addona, R., **Administration and Control of Tax Collection in Mexico,** 19 Bull A.B.A. Sect. Tax 37 (1966).

Kern, N., **Trends in Latin American Taxes,** 20 Tax Exec. 139 (1967).

LaVega-Miller, R., **Mexican Taxation: Law and Practice,** 4 Den. J. Int'l. L. & Pol. 79 (1974).

Massone, **Recent Developments in Latin America: The Mexican Value Added Tax,** 33 Bull. Int'l Fisc. Doc. 539-545 (1979).

Mavrette, I., **The Tax Structure and the Economic Development of Mexico,** 19 Publ. Fin. 158 (1964).

Mexican Income and Commercial Receipts Tax Laws as of January 1, 1977 (CCH 1977).

Mexican Income and Commercial Receipts Tax Laws as of February 1, 1978 (Including Income Tax Regulations) (CCH 1978).

Mexico, in Tax Incentives for Private Industrial Development in Less Developed Countries at 56 (Int'l. Bank Recon. & Dev., ed. 1962).

Miranda, F., **Mexico's Tax Incentives for "Mexicanized" Companies,** 25 Tax Lawyer 419 (1972).

Nieto, G., **Income Taxation of Foreign Business in Mexico,** 29 Proceedings Inst. Fed. Tax N.Y.U. 59 (1971).

Oldman, D., **Mexico City's Property Tax Problems,** 58 Proceedings Nat. Tax Assoc. 471 (1966).

Steta, J., **Mexican Taxes on U.S. Corporations Doing Business in Mexico,** 19 Bull. A.B.A. Sect. Tax 50 (1966).

Tax Features of Employees' Participation in Profits, 15 Foreign Tax Wkly. Bull. 5 (1964).

TESTAMENTARY DISPOSITION — See PROPERTY, SUCCESSION

TORTS

Butte, W., **Strict Liability in Mexico,** 18 Am. J. Comp. L. 805 (1970).

Ellis, W., **Civil Liability in Mexico,** 13 Fed. Ins. Coun. Q. 9 (1963).

Ellis, W., **Civil Liability in Mexico,** in Selected Articles from the Federation of Insurance Counsel Quarterly at 695 (N.Y. 1966).

Keslo, R., **Mexican Law of Damages in U.S. Courts,** in Selected Articles from the Federation of Insurance Counsel Quarterly (N.Y. 1966).

The Texas Dissimilarity Doctrine as Applied to the Tort Law of Mexico, 55 Tex. L. Rev. 1281-1305 (1977).

TRADEMARKS — See PATENTS, TRADEMARKS AND COPYRIGHTS

TRANSFER OF TECHNOLOGY — See INVESTMENT, PATENTS, TRADEMARKS AND COPYRIGHTS

TRUSTS — See PROPERTY

WAGES AND HOURS — See LABOR LAW

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APPENDIX B

GLOSSARY OF MEXICAN LEGAL TERMS

abogado.	Lawyer, attorney.
actor.	Plaintiff, complainant; **actor criminal**-prosecutor.
actuario.	Aide or clerk of the court, usually a lawyer (although not necessarily) whose duties include serving process, attaching property, and collecting duties.
acusado.	Accused, defendant.
alcalde.	Mayor.
amparo.	Protection, shelter; a constitutional remedy for the protection of civil rights; **juico de amparo** - writ or special proceeding for relief against violation of constitutional rights.
audiencia.	A court or tribunal with trial and appellate powers; historically an administrative body as well as a court; also a hearing or trial before a court.
auto de formal prisión.	An order in a criminal proceeding formally charging the accused and requiring final hearing (trial).
cacique.	Chief, political boss; historically Indian leaders of Indian communities.
calpulli.	Village run by clan or heads of families; historically a forerunner of the **ejido.**
careo.	A hearing in a criminal proceeding at which the accused is allowed to confront personally the witnesses against him.
castigo.	Penalty, fine, punishment.
cheque.	Check.
colegio.	College, school, professional association; **colegio de abogados** - bar association.
comisario.	An official of a corporation who audits or supervises the activities of management on behalf of the shareholders.
conclusión.	Finding, decision, judgment, prayer for relief.
concubina.	Concubine, female member of the concubinage relationship.
concubinario.	Paramour, male member of the concubinage relationship.
concubinato.	Concubinage; the relationship of man and woman living together as husband and wife although not officially married; neither can be married; roughly equivalent to the so-called "common law" marriage.

condena condicional.	Probation in criminal cases, suspended sentence.
consignación.	A motion or order to hold an accused for further criminal proceedings.
contrato.	Contract.
corregidor.	Magistrate, governor, mayor.
corte.	Court.
criollo.	A native born Mexican of pure Spanish or other European ancestry.
daños.	Damages in civil litigation; also called **daños y perjuicious.**
declaración preparatoria.	The original statement of the accused in a criminal proceeding.
delegación de policía.	Police station, police precinct.
delito.	Offense, legal wrong, crime.
demanda.	Complaint or petition in a civil proceeding; states the name of the court, names and address of the plaintiff and defendant, amount of money or other relief demanded, the facts and the law upon which the case is based; contradictory pleading is not permitted.
demandado.	Defendant, respondent in a civil proceeding.
denuncia.	Accusation, complaint, information in a criminal proceeding.
derecho.	Law, right, claim; law in the broad sense of **the** law as opposed to **a** law **(Ley).**
ejido.	A village size community in which families share common land for agricultural purposes; instituted by the government, the **ejido** is the heart of the land reform system.
en garantía.	Given as security, pledged.
encomendero.	An Indian historically placed in the care and supervision of a Spanish landowner under the **encomienda** system.
encomienda.	A feudal land system introduced into Mexico during colonial times in which the Crown placed Indians under the care and supervision of Spanish landowners; originally motivated by humanitarian reasons, it became oppressive.
en flagrante delito.	Crime detected in the act, redhanded; permits arrest without warrant.
escritura.	Legal instrument, deed, contract; **excritura de título** - deed to realty.
expediente.	The record in a judicial proceeding.

fideicomiso.	Mexican trust.
habilitación o avío.	The enterprise credit, a security interest in the movable property of a business enterprise. See also **refaccionario.**
hacienda.	A large agricultural estate, often economically self-sufficient; the Minister of the Treasury; the total estate or patrimony of an individual.
herencia.	Inheritance, legacy, estate.
hipoteca.	Real estate mortgage.
impuesto.	Tax, assessment, impost.
inmigrado.	A foreigner in Mexico who has spent five years in **inmigrante** status and has been approved as a permanent resident with full rights to employment, etc.
inmigrante.	A foreigner in Mexico who intends to remain permanently and who has been admitted with authority to work in a particular occupation; a necessary probationary step to full resident status **(inmigrado.)**
interdicción.	Injunction; legal restriction placed on an individual because of his incapacity due to mental illness, status as a spend-thrift, or bankruptcy.
interrogatorio.	Interrogatory, question posed to a witness or party.
inversión.	Investment; **inversión extranjera** — foreign investment.
juez.	Judge.
jurídico.	Juridical, legal.
jurisprudencia.	Case law, judge-made law.
justicia.	Justice.
juzgado.	Court, tribunal, judge.
latifundio.	Large landholdings, an estate.
ley.	Law, statute, act; law in the specific sense of a law as opposed to the law **(derecho).**
ley civil.	Civil law.
ley del trabaio.	Labor law.
ley de quiebras.	Bankruptcy law.
ley fiscal.	Tax law.
ley penal.	Criminal law.
ley procesal.	Procedural law.
libertad bajo fianza.	Freedom on bail, bond, recognizance.

libertad por falta. de méritos.	Order of dismissal of a criminal proceeding for lack of merits.
libertad preparatoria.	Parole.
licenciado en derecho.	Licensed attorney, lawyer, member of the bar.
maquiladoras.	Labor intensive industries on borders and seashores of Mexico authorized to incorporate with 100% foreign participation and to import 100% of their equipment and raw materials from foreign sources provided all of their production is exported.
matrimonio.	Marriage, the status of marriage.
ministerio público.	District attorney, prosecutor, attorney general.
notario.	Official who performs acts of certification, authentication, drafting, and keeps official public records; notary.
ofrecimiento de pruebas.	Offer of proof.
orden de aprehensión.	Arrest warrant.
orden de cateo.	Search warrant.
pagaré.	Promissory note.
parte.	Party; part, share, interest.
pasante.	Law clerk, student, apprentice.
pena.	Penalty, punishment; also **penalidad.**
perito.	Expert, appraiser, expert witness.
posiciones.	Questions forming interrogatories submittee by one side to the other to obtain admissions in civil litigation.
prenda.	Pledge, chattel mortgage with possession.
prestanombres.	Persons who hold shares of stock for others (usually foreigners) who are not legally entitled to own them.
procedimiento.	Procedure, process, method; **procedimiento civil** - civil procedure, **procedimiento penal** - criminal procedure.
procedimiento de interdicción.	Guardianship proceedings.
proceso.	Process, procedure, action, trial.
procurador.	Prosecutor, district attorney.
propriedad.	Property.
protocolo.	Registry, official register, notary's book of documents and records.
quejoso.	Complainant in an **amparo** proceeding.

querella.	Official complaint of aggrieved party in a criminal proceeding for a "private" offense.
recitación de los hechos.	Statement of facts in a pleading.
refaccionario.	A credit granted for the purchase of fixed assets secured by the assets so purchased as well as with any other assets of the borrower.
registro público.	Public registry, serves function of county clerk or recorder of deeds.
sentencia.	Judgment, order, sentence; may be interlocutory or final (definitive).
separación de bienes.	A system of individually owned property in contrast with community property **(sociedad conyugal).**
servidumbre.	Easement, servitude, right of way.
sociedad anónima.	Corporation.
sociedad anónima de capital variable (s.a. de c.v.)	Corporation with variable capital stock.
sociedad conyugal.	A system of community property; in contrast to **separación de bienes.**
testamento.	Will, testament.
testigo.	Witness; testimony, evidence.
toca.	Book in which the documentary evidence in a case is kept and which may be sent to an appellate court.
tribunal.	Court, board, commission.
tribunal contesioso administrativo.	Administrative law court; adjudicates conflicts between enacted laws or regulations and the powers of the public administration.
tribunal de primera instancia.	Trial court, court of first instance.
tribunal fiscal.	Tax court.
tribunal superior de justica.	(State) supreme court, appellate court.
venta con reserva de domino.	Sale with title reserved, a type of conditional sales contract.
venta sujeta a cláusula rescisoria.	Sale subject to rescission, a type of conditional sales contract.
visita conyugal.	Right of prisoner to visitation from wife.