An Introductory Lesson to Mexican Law: From Constitutions and Codes to Legal Culture and NAFTA

Jorge A. Vargas
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JORGE A. VARGAS*

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* Professor of Law, University of San Diego School of Law. LL.B., summa cum laude, National Autonomous University of Mexico (UNAM), Mexico City; LL.M. and J.S.D. (Candidate), Yale Law School. Professor Vargas was a guest lecturer on Mexican law at New York University School of Law, International Global Program in 1999, and a Visiting Professor at Stanford Law School in 1994. He is the founder and Director of the Mexico-United States Law Institute, University of San Diego 1983–1987. Professor Vargas was awarded the academic distinction of University Professor 2002–2003 by the University of San Diego. The Author wishes to express his personal thanks to Daniel B. Rodriguez, Dean and Professor of Law at the University of San Diego School of Law, for the generous Summer Research Award 2003 granted for the preparation of this work. The Author verifies the accuracy of the Spanish language cites and all English translations. He maintains a website on Mexican law located at http://www.mexlaw.com. The Author expresses his personal thanks to Adriana Cordoba, J.D. 2005, and Juan Fogelbach, J.D. 2006, for their diligent and efficient research assistance during the preparation of this Article.
I. The Growing Presence of Mexican Law in the United States

Until recently, the presence of Mexican law in the United States was a rarity. The law in force in contemporary Mexico in the 1970s was as distant and arcane for American legal practitioners as Aztec law was for the Spanish Conquistadors in 1519. American companies, banking institutions, government officials, U.S. courts and enforcement agencies,

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as well as universities and colleges, conducted their daily activities in that decade paying little or no attention to the legal system of Mexico. Moreover, for most Americans at that time, our neighbor to the South simply appeared as a blank space beyond the long and tragic boundary which the Treaty of Guadalupe Hidalgo established between the countries in 1848.

In the 1990s, two dramatic events came to drastically alter this traditional reality: first, the entering into force of the North American Free Trade Agreement (NAFTA) on January 1, 1994; and second, the enactment of Mexico’s Foreign Investment Act of 1993, and its 1998 Regulations.

As a trilateral agreement, NAFTA not only eliminated trade barriers and revolutionized the Mexican economy but, perhaps more importantly, it profoundly transformed the very fabric of Mexican society. Like any other penetrating contemporary social instrument—save for Mexico’s 1910 revolution—NAFTA has directly impacted Mexico’s traditional value system, modernizing its culture and language and infusing progressive ideals favoring justice, human rights, freedom, and democracy. The enactment of Mexico’s Foreign Investment Act of 1993,2 a major federal statute among the cascade of legal enactments produced by the administration of President Carlos Salinas de Gortari, completely changed the country’s philosophy in the areas of business, trade, and investment. Supplanting a legal regime, reflected in the old 1973 statute, that strangled foreign investment, the 1993 Act promoted foreign investment, minimized the discretion of Mexican federal authorities in this area, and opened avenues for a more efficient and expeditious flow of foreign businesses and investors to Mexico.

A. A Triad of Intertwined Factors

Today, three factors contribute on a daily basis to “import” Mexican law into the United States in a gradual but steady manner: geography, people, and wealth.

1. Geography

Geographical contiguity to the United States should be considered among Mexico’s most valuable and strategic assets. That old adage attributed to Porfirio Diaz, Mexico’s dictator of early last century, “Oh,
Mexico, so close to the United States and so far away from God,” has now lost its original meaning. As mentioned earlier, the long international boundary between both countries unites the world’s major power with a developing, emerging democracy. This physical contiguity offers tremendous benefits and business incentives to both U.S. and Mexican entrepreneurs.

2. People

The Mexican people are Mexico’s best resource. With 100 million inhabitants, Mexico today continues to strengthen its recently gained position as a midsized power in Latin America and the Caribbean, and its voice is listened to with attention and respect in international and diplomatic fora, at the bilateral and multilateral levels. Earlier this year, the U.S. Census Bureau reported that the Hispanic population has become the largest ethnic minority in the United States. Interestingly, 67% of this group is formed by Mexicans and Mexican-Americans. From the U.S. perspective, thirteen million American tourists visit Mexico every year. Thousands of retirees live in Mexico on a permanent and semipermanent basis, in picturesque towns and cities like San Miguel Allende, Morelia, Cuernavaca, Taxco, La Paz, Ensenada, Rosarito, Guadalajara, Guanajuato, Monterrey, and Mexico City.

The constant flow of people across both countries allows them to engage in a variety of activities. They conduct business and trade, engage in tourism and excursions, shop incessantly, and attend school from kindergarten to Ph.D. programs. In recent years, binational marriages between Americans and Mexicans have increased considerably, as well as the number of adoptions and divorces and, of course, international civil litigation.

3. Wealth

Today, Mexico is our most prolific trade partner, having displaced

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Japan first and Canada more recently. To give an idea of the volume of wealth that moves across both countries, the United States sells more goods and services to Mexico than it does to Germany, the United Kingdom (UK), and France combined, to the People’s Republic of China (PRC), Singapore, and Hong Kong combined, or to the rest of Latin America. It may be surprising to learn that California exports more to Mexico than it does to Japan.4

One-third of the largest U.S. corporations operate in Mexico including, for example, IBM, Ford, Compaq, Hewlett-Packard, Coca-Cola, Pepsico, Lucent Technologies, DaimlerChrysler, Anheuser-Busch, General Motors, Procter & Gamble, and Wal-Mart.5

Since the end of World War II, the United States has been the largest foreign investor in Mexico, with investments totaling $85 billion and representing some 70% of Mexico’s total direct foreign investment (DFI). Other investors include the UK (6%), Germany (4%), France, Spain, and Switzerland combined (3.5%), and the Netherlands and Japan combined (2%).6 After the PRC, Mexico is one of the top destinations of DFI on a global scale. Before NAFTA, U.S.-Mexico trade amounted to $86 billion dollars annually. Trade between the two countries today exceeds $225 billion dollars annually. The U.S. Department of Commerce

4. U.S. Census Bureau, U.S. International Trade in Goods and Services, Series FT-900(03), in Statistical Abstract of the United States: 2003 816–19 (123d ed.). In 2002, total U.S. exports to Mexico totaled $97.47 billion, while Germany, the United Kingdom, and France totaled $26.63 billion, $33.20 billion, and $19.02 billion respectively, totaling $78.85 billion, an amount of $18.62 billion less than exports to Mexico. The PRC, Singapore, and Hong Kong figures are $22.13 billion, $16.62 billion, and $12.59 billion respectively, totaling $46.94 billion, an amount of $50.53 billion less than exports to Mexico. See also California Department of Finance, CA Statistical Abstract: 2003 188, table k-12. Total California exports to Mexico in 2002 were $16.08 billion, making it the number one recipient of California exports. Japan ranks second at $11.11 billion.

5. Economic Commission for Latin America and the Caribbean (ECLAC), Foreign Investment in Latin America and the Caribbean, 2000, table 1.11; see also 38 STATISTICAL ABSTRACT OF LATIN AMERICA AND THE CARIBBEAN 957 (James W. Wilkie et al. eds., 2002).

6. SECRETARÍA DE ECONOMÍA, SUBSECRETARÍA DE NORMATIVIDAD, INVERSIÓN EXTRANJERA Y PRÁCTICAS COMERCIALES INTERNACIONALES, DIRECCIÓN GENERAL DE INVERSIÓN EXTRANJERA, available at http://www.economia.gob.mx (last visted August 28, 2003). From 1999 to 2003, foreign direct investment (FDI) in Mexico averaged $15.97 billion annually. The United States contributed $10.66 billion, or 67%, of the total amount. The contributions of the United Kingdom and Germany were $432 million and $363 million respectively, or 2.7% and 2.5% respectively. France, Spain, and Switzerland’s combined total investment was $1.02 billion, or 6.4%. Holland and Japan’s total combined investment was $1.97 billion, or 12.3%.
reported that, in 2002, Mexico had a $35 billion surplus over the United States.\(^7\)

Undoubtedly, geography, people, and wealth will continue to play decisive and prominent roles in introducing Mexican law to the United States. At the same time—and this is only natural—our country reciprocates by exercising a profound and pervasive influence upon Mexico, an influence that is already constructing Mexico’s present and gradually shaping its future.

II. HISTORICAL BACKGROUND OF MEXICAN LAW

Mexico’s legal system is placed within the civil legal tradition. Professor John H. Merryman considers that civil law “the oldest, most widely distributed and most influential,” as compared with the other two highly influential traditions: the common law and the now largely extinct socialist system.\(^8\) Accordingly, the historical origins of certain areas of Mexican law may be traced back to the Romano-Germanic tradition, based on the Roman law notion of the *Ius Civile*. Thus, some of the legal principles laid down by the Roman genius of Gaius and other norms included in Justinian’s monumental work, the *Corpus Iuris Civilis*, may be found in Mexico’s Federal Civil Code almost two thousand years later. However, it should be pointed out that most of these principles, rules, and norms reached Mexico through Napoleon’s brilliant Code of 1804.

First discovered and then conquered by Spain in the 16th century, Mexico became the most precious gem in the Spanish empire’s crown during its three hundred years of Spanish rule in the Americas (1519–1821). The prevailing laws of Spain were originally applied, such as the *Ordenamiento de Alcalá* and Castilian law in particular, because the Reyes Católicos, Ferdinand and Isabella, ruled in the Kingdom of Castile. Numerous other regulations, including the *Fuero Juzgo* and the *Siete Partidas*, also governed in the newly discovered lands. However, the contrasting differences found in these lands, and their unique indigenous populations, soon led to a clash between the Spanish rules and the indigenous customary norms. Adhering to the policies advanced by Juan de Soriano Pereira in his *Política Indiana* (1647), a new hybrid regime was formulated in the *Novísima Recopilación de las Leyes de los Reynos de Indias* (1681), which was applied by the Consejo Real y

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7. U.S. Census Bureau, *supra* note 4. In 2002, total U.S. exports to Mexico were $97.47 billion, while imports from Mexico totaled $134.62 billion. The difference results in a U.S. trade deficit of $37.15 with Mexico.

Supremo de las Indias (1524), a prominent organ endowed with legislative, consultative, administrative, and judicial power. It was not until September 27, 1821, that Mexico became an independent nation. In essence, this marks the beginning of Mexican law. The Federal Constitutions of 1824 and 1857, the enactment of the Leyes de Reforma under the Presidency of Benito Juárez in 1860, and the codification efforts in the late 1880s all exercised a profound influence on the construction and content of Mexico’s legal system.

A. Mexico’s Federal Constitutions of 1824 and 1857

As an independent country in 1821, Mexico thought long and hard to determine what kind of constitution was best for the newly born nation. On October 4, 1824, Guadalupe Victoria, then President of Mexico, announced that the Constitutional Congress held in Mexico City had enacted a constitution which adopted the form of government of a popular, representative, and federal republic. For its exercise, the Supreme Power of the Federation was divided into the legislative, the executive, and the judicial. The federal judicial power was vested in a Supreme Court, to be composed of eleven Justices, and in Circuit Tribunals and District Courts. Formed by one hundred representatives, the constitutional assembly included many prominent citizens and leading jurists in the early history of Mexico, such as Nicolás Bravo, Ignacio Rayón, Miguel Ramos Arizpe, Valentín Gómez Farías, Miguel Domínguez, Fray Servando Teresa de Mier, and Manuel Cresencio Rejón, the author of the Mexican institution of Amparo.

In the words of Lorenzo de Zavala, President of the Constitutional Congress, the Federal Constitution of 1824 was clearly inspired by the U.S. Constitution. Felipe Tena Ramírez, a leading constitutional law specialist, quotes Zavala as saying that the deputies of the newly formed Mexican states attended the Constitutional Congress full of enthusiasm for the federal system and their manual was the Constitution of the United States, which provided the text and model to the new legislators.

From a constitutional law perspective, it is interesting to point out that
the notion of a “federated republic” at that time was conceived as a form of government that would allow each of the states, which composed the republic, to structure and adopt local governments tailored to the special characteristics of the federated entity in question. This political adaptability, according to Zavala, was one of the advantages of the federal system: for the people to give themselves laws in symmetry with their respective customs, localities, and other circumstances—in sum, to enter into the full enjoyment of free men’s rights.\textsuperscript{14}

1. The First Federal Constitution of 1824

Although Mexico’s Federal Constitution of 1824 was a superb constitutional document, it had a shining omission—it had no catalogue of individual rights. Because the U.S. Constitution served as the model for its Mexican counterpart, it was somewhat unexpected that the Constitution of 1824 did not include an explicit enunciation of individual rights. This ostensible omission was corrected by the Federal Constitution of 1857. The first twenty-nine Articles of this fundamental law contained a detailed catalogue of constitutional rights, included for the first time in a Latin American constitutional document. Article 1 of the Constitution provided, “The Mexican people recognize that the rights of men constitute the basis and object of social institutions. As a consequence, it declares that all the laws and all the authorities in the country must respect and support the guarantees granted by this Constitution.” This catalogue of constitutional rights—or “guarantees” as they were called in Mexico—enunciated by the Federal Constitution of 1857, closely mirrored those in the Constitution of the United States. In essence, this continues to be the basic catalogue of fundamental rights listed by the current Federal Constitution of 1917.

The Federal Constitutions of 1824 and 1857 provided Mexico with the legal foundations to establish a federal, democratic, and representative republic as its form of government, a nation where the national sovereignty originally resides in the people. This sovereignty is exercised through the powers of the union, divided into the legislative, the executive, and the judicial. This legal foundation has provided Mexico, since its inception, with the central pillars upon which to erect and sustain its legal system.

\textsuperscript{14} Id. at 164. Zavala is quoted as saying that the Tamaulipas may modify their legal codes to one hundred articles if they wish, while the Jalisciences will become a great pueblo of the social order.
2. The Reformation Laws and the 1857 Constitution

It may be difficult to find a country other than Mexico where there has been such a profound and drastic separation between the State and the Church, in particular the Roman Catholic Church. Today, Article 130 of Mexico’s Constitution delineates in detail the policy that sets the tone of the relations between the State, the Churches, and other religious organizations. The *Leyes de Reforma* (Reformation Laws) are at the core of this separation.

The Reformation Laws were enacted under the administration of Benito Juárez, who became the President of Mexico pursuant to the Federal Constitution of 1857. In 1859, in the midst of national civil strife, the Three Year War, and with the temporary venue for his government in the City of Veracruz, President Juárez published a national manifesto in which he enunciated a “reformation program” designed to implement certain drastic measures (or “social reforms”) which had been incorporated in the 1857 Constitution. The relative success of this program was predicated upon the adoption of these indispensable measures, *inter alia*: (1) to adopt a total independence between the affairs of the State and those of a purely ecclesiastical nature, (2) to declare that all assets administered by the clergy belong to the nation, and (3) to close convents for nuns and to dissolve other religious associations.

To accomplish the objectives set forth by these measures, President Juárez enacted by presidential decree these *Leyes de Reforma*: the Nationalization of Ecclesiastical Properties (July 12, 1859), the Civil Marriage Act (July 23, 1859), the Civil Registry Act (July 28, 1859), the Civil Status Act (July 28, 1859), the Decree Ceasing All Intervention of the Clergy in Cemeteries (July 31, 1859), the Decree Declaring Public Holidays and Prohibiting Government Officials from Attending Religious Ceremonies (August 11, 1859), the Freedom of Religions Act (December 4, 1860), the Secularization of Hospitals and Charitable Institutions (February 2, 1861), and the Extinction of Convents for Nuns throughout the Republic (February 26, 1863).

During the three hundred years that preceded Mexico’s political independence from Spain, the Roman Catholic Church, through its different religious orders, gradually accumulated a substantial amount of wealth. Although this wealth adopted various manifestations, its major component consisted in the possession and ownership of vast extensions of real property throughout the country. The accumulation of this wealth
was utilized by the Catholic Church to first counterbalance, and later openly oppose, the public policies advanced in Mexico by republican governments. This was particularly the case during President Juárez’s administration.

Prior to the enactment of the *Leyes de Reforma*, all acts pertaining to the civil status of persons which took place in that nation—births, adoptions, marriages, and deaths—involved religious formalities and ceremonies under the strict and exclusive control of the Church. In general, these acts were not only a source of spiritual and religious power by the Church over its parishioners but also a relatively steady and profitable source of income.

Therefore, the Reformation Laws became the official and legal instrument used by the administration of President Juárez to counteract the powerful and pervasive influence which had been exercised by the Catholic Church throughout Mexico for centuries. Evidently, these measures, which profoundly affected the interests of the Catholic Church in the 19th century and whose effects are still evident today, deepened the separation between State and Church. The adoption of these measures, which are still in place in Mexico today, also colored, in a distinct manner, three of the major areas of Mexico’s legal system: civil law, administrative law, and constitutional law.

**B. Codification Efforts in Mexico**

The efforts to produce the five basic codes which sustain the legal system in any civil law country—that is, the Civil Code, the Code of Civil Procedure, the Penal Code, the Code of Penal Procedure, and the Code of Commerce—date back to 1822, one year after Mexico acquired its political independence. However, the most fruitful results did not materialize until the late 1880s.

Following the European tradition, the important task of codifying a major branch of Mexican law was the work of an eminent group of jurists working as a special commission appointed by the executive, at the federal or state level. Interestingly, in Mexico, some of the most important pioneering codification efforts were initiated at the state level.

From a substantive viewpoint, three major sources appear to be a constant in all of these codification efforts. The first is the powerful influence exercised by leading European countries, in particular Spain and France, followed by Italy and Germany. The second is the doctrinal authority of certain European and Mexican authors. And the third is the official policies advanced by the government of Mexico in certain areas of the law, as reflected in contemporaneous legislative enactments.
1. The Civil Code

The Civil Code is of central importance to Mexico’s legal system. In general, this code is present at each and every step of the life of Mexicans, as well as that of foreigners when they are present in Mexico and engage in certain acts or transactions. In a nutshell, the Civil Code is so important because it is at the core of Mexico’s social fabric: it incorporates the country’s family law, regulates personal and real property, details a variety of major contracts, and governs trusts and estates. A section at the end of this code sets forth and details the services provided by the Civil Registry and by the Public Registry of Commerce and Property in Mexico.

Traditionally, the Civil Code is divided into four major sections, known as “books.” The book of individuals addresses the legal capacity and rights of individuals and legal entities, ranging from birth, paternity, adoptions, and guardianships to marriage, divorce, kinship and support, parental authority, emancipation, and majority. This section provides the legal bases for Mexican family law. The book of assets includes laws relating to real estate, personal property, usufructs, easements and servitudes, and adverse possession. The book of decedents’ estates relates to last wills and testaments, testamentary and intestate successions, concubinage relations, and executors. The book of obligations and contacts comprises general obligations, contracts and their formalities, types and transfers of obligations, payment, associations and companies, and guarantees in general.

The first Mexican Civil Code was enacted by the State of Oaxaca in 1828. This code was not only the first one in Mexico but the first throughout Latin America. The Civil Codes of Zacatecas (1829), Jalisco (1833), and Veracruz (1860) followed.15

At the national level, President Juárez asked Justo Sierra, an eminent jurist who served as his Minister of Education, to produce a draft of a federal civil code. The draft, which was composed of four books, was completed in 1860. This draft was greatly influenced by the Spanish Civil Code draft authored by García Goyena in 1851, the French Civil Code of 1804, and the Civil Code of Louisiana. From the domestic tradition, the Federal Constitution of 1857, the Leyes de Reforma, and

15. Cruz Barney, supra note 1, at 563, 565; see also Rodolfo Batiza, Los Orígenes de la Codificación Civil y su Influencia en el Derecho Mexicano 168 n.4 (1982).
the Civil Marriage Act of 1859 were also influential in the drafting of this national work. The Sierra draft was revised in detail and was later published as the Civil Code of the Mexican Empire by Maximilian of Hapsburg in 1866.\(^\text{16}\)

Other major codification efforts attributed to Minister of Justice Antonio Martínez de Castro are the civil codes produced for the Federal District and the Territory of Baja California in 1870. In turn, this code was supplanted by the Civil Code of 1884, whose text was virtually adopted by all states in the Republic of Mexico. The 1910 revolution generated a heavy load of social, economic, and political transformation, which required profound changes in Mexico’s legal system. Thus, a drafting commission composed by four jurists and chaired by Ignacio García Téllez produced the current Civil Code of 1928,\(^\text{17}\) which entered into force on October 1, 1932.\(^\text{18}\) The sources of this Code include the Civil Codes of Switzerland, Spain, France, the Soviet Union, and other Latin American nations (Chile, Argentina, Brazil, Guatemala, and Uruguay).\(^\text{19}\)

The legal innovations introduced by the Civil Code of 1928 include the legal equality of men and women,\(^\text{20}\) property rights,\(^\text{21}\) civil liability in tort cases,\(^\text{22}\) strict liability in personal injury cases (known in Mexico as extracontractual “objective liability”),\(^\text{23}\) professional liability,\(^\text{24}\) the promise to contract,\(^\text{25}\) the exercise of judicial discretion in certain cases,\(^\text{26}\) the recognition of unions as legal entities,\(^\text{27}\) and the equal authority and privileges of husband and wife regarding the household.\(^\text{28}\)

Two closing commentaries should be made regarding the Civil Code. First, the Civil Code of the Federal District has had a traditional dual role in Mexico. It was the local code for the Federal District (that is, Mexico City) in ordinary matters, and for the entire Republic in federal matters. However, this legal duality changed in 2000. Today, Mexico

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16. CRUZ BARNEY, supra note 1, at 565–66.
17. D.O., 26 de marzo de 1928, as amended by D.O., 14 de julio de 1928, 3 de agosto de 1928, and 31 de agosto de 1928.
18. D.O., 1 de septiembre de 1932.
19. CRUZ BARNEY, supra note 1, at 571; see also RODOLFO BATIZA, LAS FUENTES DEL CÓDIGO CIVIL DE 1928 13 (1979).
20. C.C.D.F. art. 2.
21. Id. art. 840.
22. Id. art. 1912.
23. Id. art. 1913.
24. Id. arts. 1935–1937.
25. Id. arts. 2243–2247.
26. Id. art. 21.
27. Id. art. 25, ¶ IV.
28. Id. art. 168.
has a Federal Civil Code, and a separate Civil Code for the Federal District. This amendment introduced substantive reforms and updated the legislation in the area of family law.

Secondly, as indicated earlier, the Civil Code for the Federal District, given Mexico’s highly centralized political system, was reproduced almost verbatim by each of the states since 1884. Until now, there has been little, if any, difference between the Federal Civil Code, on the one hand, and each of the Codes of the thirty-one States on the other. It is likely that in the future, as changes occur throughout the country, each state will revise and update its own local civil code in order to reflect these changes.

2. The Code of Civil Procedure

The Code of Civil Procedure of the Federal District was promulgated on May 15, 1884, which reproduced most of the provisions contained in the corresponding code promulgated on August 13, 1872. The current code was enacted on August 29, 1932, and has been amended several times. In 1896, Porfirio Díaz, then President of Mexico, published the Federal Code of Civil Procedure, which was then amended in 1908. The current Federal Code of Civil Procedure dates back to 1942 and was amended in 1988 to adopt the policy of “Limited Territoriality,” which allowed the application of foreign law to Mexico. This amendment also added a new section on “International Procedural Cooperation.” This code was recently amended.

3. The Penal Code

The first Mexican Penal Code was enacted by the State of Veracruz on April 28, 1835 and was amended in 1849. It was not until 1871 that the Penal Code for the Federal District, known as the Martínez de Castro Code, was promulgated. After the 1910 revolution, a new Penal Code was published in 1929. This code was then substituted by the current code which, in turn, has been amended many times.

34. D.O., 15 de diciembre de 1929.
35. D.O., 14 de agosto de 1931.
4. The Code of Penal Procedure

The Code of Penal Procedure for the Federal District appeared on September 15, 1880, to be repealed by the 1894 Code. The sources for this code included pertinent legislative enactments from France, Spain, Italy, Belgium, Portugal, Germany, and Japan. This code was replaced by a code promulgated on October 2, 1929. The current Code of Penal Procedure dates back to 1931.36

The first Federal Code of Penal Procedure was published in the Diario Oficial de la Federación (D.O.) of December 16, 1908.37 The current code dates back to 1931, and has been amended many times, including a major revision in 2002.38

5. The Code of Commerce

The current Code of Commerce was promulgated in 1889.39 Its content was highly influenced by the Spanish Commercial Code of 1885. Since then, the Code of Commerce has been amended numerous times. Based on the UNCITRAL model, a special section on Commercial Arbitration was added in 1993.

C. Constitutionally Derived Statutes and Acts

The subject matter of a few Articles of the Federal Constitution has been considered to be of such special significance for economic, political, legal, or historical reasons, that these provisions have been interpreted by Congress as the legal bases for the enactment of federal statutes which govern in detail, or establish a special legal regime over the subject matter in question. For example, Article 27 of the Constitution confers upon the Mexican nation full and absolute sovereignty over its own natural resources, in particular oil, and all solid, liquid, or gaseous hydrocarbons. Since this resource is of strategic importance for Mexico’s social and economic development, the Federal Congress used this constitutional provision to enact a federal statute that regulates the exploration, utilization, and exploitation of oil and other hydrocarbons (for example, Ley Reglamentaria del Petróleo). These

36. CRUZ BARNEY, supra note 1, at 582. A commission formed by Alfonso Teja Zabre, Luis Garrido, Ernesto G. Garza, José Angel Cisneros, José López Lira, and Carlos Angeles prepared the code, which was published in the Diario Oficial de la Federación on August 14, 1931.

37. The Diario Oficial de la Federación is translated “Official Daily of the Federation,” and is usually abbreviated D.O. or D.O.F. It is similar to the Federal Register.


39. D.O., 7 de octubre de 1889, as amended by D.O., 13 de octubre de 1889.
statutes are known in Mexico as *Leyes Reglamentarias de la Constitución*, or constitutionally derived statutes or acts.

1. **Leyes Reglamentarias**

These statutes are of a federal nature and refer to a very specific subject area. From a hierarchical point of view, they are immediately below the Constitution, and their provisions are obligatory throughout the Republic of Mexico and considered to be of public order or public interest.

Examples of such laws include the Professional Activities Act,\(^{40}\) the Amparo Act,\(^{41}\) the Federal Act of Workers at the Service of the State,\(^{42}\) laws involving natural resources, in particular oil and nuclear energy,\(^{43}\) Supreme Court jurisdiction,\(^{44}\) municipalities,\(^{45}\) the obligation of the federal government to provide assistance to states in cases of invasion or of foreign violence,\(^{46}\) the obligation of state governors to enforce federal laws,\(^{47}\) and employers’ obligations to provide training to employees.\(^{48}\) Most, if not all, of Mexico’s strategic economic areas are governed by these *Leyes Reglamentarias*.

2. **Federal Statutes and Regulations**

Like any other country, a considerable portion of Mexico’s legal system is found in the legislative enactments which, under the form of statutes and regulations, are regularly passed, amended and repealed by the Federal Congress, or by the state legislatures like those in the United States. These statutory materials regulate administrative matters, constitutional and civil rights, economic and business activities, utilization and exploitation of natural resources, industrial and technological developments, environmental protection, taxes, etc.

In Mexico, attention should be given specially to federal statutes and the corresponding regulations, because these legislative enactments

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41. *Id.* arts. 103 & 107.
42. *Id.* art. 123, ¶ B.
43. *Id.* art. 27.
44. *Id.* art. 105, ¶¶ I & II.
45. *Id.* art. 115.
46. *Id.* art. 119.
47. *Id.* art. 120.
48. *Id.* art. 123, ¶ XIII.
virtually control all areas of business interest to foreign investors and entrepreneurs. These regulations concern immigration rules to enter and exit Mexico in possession of the proper visa, the conduct of business activities in Mexico, investment in Mexican companies, engagement in a partnership or a franchise, the operation of maquiladoras engaged in import and export, the acquisition of real estate for commercial purposes, the hiring and training of employees, environmental impact statements, patents, the hiring of professional services from an attorney or a Notario Público, and the payment of fines and taxes. These activities are all governed by federal statutes applied by federal authorities.

For any of these federal legislative enactments to enter into force they must be published in the D.O. The date of publication in the D.O. is important because it provides the reader the necessary information to determine whether the legislative text is the latest one in force.

The official website of Mexico’s Chamber of Deputies of the Federal Congress, lists in alphabetical order the titles of 220 legislative enactments in force and the corresponding texts in Spanish, including the Leyes Reglamentarias, the Federal Civil Code, the Code of Commerce, the Code of Military Justice, the Federal Code of Institutions and Electoral Procedures (COFIPE), the Federal Code of Civil Procedure, the Federal Code of Criminal Procedure, the Fiscal Code of the Federation, and the Federal Criminal Code. This is the most complete, current, and official source of legislative enactments of the Government of Mexico.

An alternative to finding the text of a specific legislative enactment (that is, statute, code, regulation, international treaty or convention, or ley reglamentaria) when its date of publication in the D.O. is known, is to access the website of Secretaría de Gobernación (SEGOB), where one may find the text of the legislative enactment in question by accessing the D.O. of the date when the enactment was published. This is a public service provided by SEGOB. The text of the legal enactment is in Spanish.

Only a very limited number of these statutes and regulations have been translated into English. Since they tend to be amended, it is important to obtain the text of the statute or regulation which was in force in Mexico at the time when the corresponding legal act or transaction took place. The National Law Center for Inter-American Free Trade at the University of Arizona includes a commercial database of selected English translations of Mexican laws.

D. No Principle of Stare Decisis in Mexico

It is generally recognized that Mexico, unlike the United States and other countries under the Anglo-Saxon legal system, does not adhere to the stare decisis doctrine. Couched in these terms, this assertion may lead some to believe, erroneously, that in Mexico judicial precedents are unimportant and that judges pay no attention to them because they carry no legally binding force in deciding subsequent judicial cases. However, under certain circumstances federal judicial precedents rendered by Mexico’s Supreme Court, and by the Circuit Collegiate Courts, exercise a clear and persuasive influence upon judges when they decide cases involving identical or similar legal issues. These persuasive decisions are known as Ejecutorias. Furthermore, decisions by the Supreme Court and by Collegiate Circuit Courts may become legally binding to lower courts and authorities—thus acquiring precedential value—when special formalities regarding the legal substance and the requisite number of these decisions are complied with. These important legally binding decisions are known as Jurisprudencias.\footnote{Jorge A. Vargas, Mexican Law: A Treatise for Legal Practitioners and International Investors § 2.31 (1998) [hereinafter Vargas, Mexican Law Treatise].}

Accordingly, it may be said that the federal judicial decisions known in Mexico as Jurisprudencias and Ejecutorias may be validly compared, mutatis mutandis, to the legally binding precedential value attributed in the United States to certain judicial decisions under the stare decisis doctrine.

Under Mexican law, Jurisprudencia is a term of art used to refer to the event whereby five uninterrupted and consecutive judicial resolutions rendered by the Supreme Court of Justice, or by a Circuit Collegiate Tribunal, sharing the same legal holding, become obligatory to all lower courts, provided that these federal decisions have been approved by eight Justices (Ministros) when decided by the Supreme Court en banc, or by four Justices when generated by a Supreme Court Chamber. Under the Amparo Act, Jurisprudencias are obligatory to the Supreme Court Chambers (Salas), when created by the Supreme Court en banc, Unitary and Circuit Collegiate Tribunals, district courts, military tribunals, state courts and federal district courts (Mexico City) in ordinary matters, and administrative and labor courts at the local and federal levels.

It should be indicated that, in very special cases, a Jurisprudencia may
be interrupted by a contrary judicial resolution pursuant to the requisite procedure prescribed by the Amparo Act. In this case, the corresponding judicial resolution must clearly enunciate the reasons which were taken into account to support the interruption. Contrary to other decisions, the federal judicial resolutions that create or modify Jurisprudencias, including the dissenting votes of Supreme Court Justices and Circuit Collegiate Magistrates, must be published in the Federal Judicial Weekly (Semanario Judicial de la Federación), jointly with the Ejecutorias generated by the Supreme Court (either working en banc or in Chambers) or the Collegiate Circuit Tribunals.

Ejecutorias are each of the individual federal judicial resolutions of Mexico’s Supreme Court and the Circuit Collegiate Tribunals rendered to decide a given legal issue or question. When five of these uninterrupted and consecutive Ejecutorias (also referred to as Tesis) are rendered advancing an identical legal holding, as explained earlier, the fifth one of these resolutions becomes Jurisprudencia, as statutorily mandated by the Amparo Act, thus becoming obligatory to all lower courts.

In a judicial sense, each of these individual resolutions marks a successive progression in the five step process required by the Amparo Act for the successful formal creation of a given Jurisprudencia. However, this process may be interrupted at any time, thus aborting the prospects of reaching a fifth, “jurisprudential” resolution. Within this judicial progression, each individual Ejecutoria carries a specific degree of “judicial persuasiveness” which may be relatively low, in the first and second Ejecutorias, for example, or very high, in the fourth Ejecutoria, which is placed so close to reaching a new Jurisprudencia.

Each of these Ejecutorias is published in the Federal Judicial Weekly, thus sending a clear message to all the judges and public authorities in Mexico, as to the “judicial thinking” being developed by the Supreme Court or by the Circuit Collegiate Courts with respect to a specific legal issue. This message clearly influences the decisions to be rendered by lower courts in addressing the same legal question as well as legislators and public officials in formulating legislation or public policies. The persuasive value of each of these individual Ejecutorias becomes stronger as they become closer to reaching the fifth consecutive and uninterrupted resolution. In other words, each of these Tesis or Ejecutorias clearly delineates the trend or judicial path suggested by Mexico’s highest courts regarding a given legal issue or question.
III. IS “AZTEC LAW” PART OF MEXICAN LAW?

A. Early Jurists and Aztec Law

Early in the twentieth century, certain leading Mexican jurists (as well as some Europeans) showed interest in studying the customary norms and institutions developed by the major ethnic groups which existed in precolonial Mexico, in particular the Aztecs, the Mayans, and the Toltecs. A number of works on Aztec law rely on ancient manuscripts written by Catholic priests and missionaries in the sixteenth and seventeenth centuries such as Clavijero, Orozco y Berra, Motolinía, and Sahagún, in which they described the perceived impression of the existence of customary norms that may have been indicative of a legal system. Mendieta y Núñez is of the opinion that no systematic study has ever been written on ancient Mexican ethnic law.

Possibly the most widespread myth about Aztec law is that Mexican law institutions contain notions which date back to the ancient Aztecs, who founded Tenochtitlan, where Mexico City now stands, in 1325. With the exception of the Ejido, whose origin is associated with the communal property regime introduced by the Aztecs in their barrios (or neighborhoods) in Tenochtitlan, known as Calpulli or Calpullalli, and which were a part of a much larger and diversified property system, finding Aztec law remnants in today’s Mexican law may be a fruitless research effort.

According to Mendieta y Núñez, depending on the kind of group who had the right to possess real estate in Tenochtitlan, property was divided into these six types: Tlatocalalli (king’s lands), Pillalli (lands of the nobility), Altepeltalli (lands of the people), Calpullalli (lands of the barrios), Mitlichimalli (lands for the war), and Teotlalpan (lands of the gods). Rather than having individual parcels, the Calpullalli lands belonged to a given barrio as communal lands for the collective benefit of the inhabitants of that specific neighborhood. This communal type of land was somewhat similar to the original notion of the Ejido, as

53. A review of the most significant books on this subject, written by Jacinto Pallares (1904), Miguel S. Macedo, Francisco León Carbajal, Ramón Prida (1921), Manuel M. Moreno, Alfonso Toro (1934), Carlos H. Alba (1949) and Toribio Esquivel Obregón (1937), appears in the classic work by Lucio Mendieta y Núñez, El Derecho Precolonial (1981).

54. See Vargas, Mexican Law Treatise, supra note 52, at § 1.13.

55. Mendieta y Núñez, supra note 53.
established by Article 27 of Mexico’s Federal Constitution in 1917. As a result of an amendment to this Article in 1994, the communal notion of the *Ejido* was drastically transformed and no longer exists today with its original legal contours.\(^5\)

**B. The Myth of Aztec Law in Today’s Mexican Law**

Evidently, Mexican law, as a legal system governing the political entity which is Mexico, appeared when the country became independent in 1821. The overwhelming majority of codes and other legislative enactments—including statutes, regulations and treaties, as approved by the Senate—are relatively modern and contemporary developments. Examples include constitutional law (inspired by the U.S. Constitution and the French Declaration of Citizens’ Rights), administrative law (enacted to regulate government entities and their relations with Mexican citizens), civil and family law (controlled by the Civil Code), commercial transactions (governed by the Code of Commerce), civil and criminal procedure (established to guarantee due process and other constitutional rights, and to expedite the rendering of fair and objective justice), and international law (as a result of Mexico’s diplomatic relations and the entering into treaties with other nations). In summary, Mexico’s legal system today contains more traces of Roman law than Aztec law.

**C. Mexico as a Multiethnic Nation**

In 1994, then Article 4 of Mexico’s Federal Constitution was amended to read:

> The Mexican nation has a pluricultural composition originally based on its indigenous peoples who are those who descend from the populations that

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56. Jorge A. Vargas, *Mexican Legal Dictionary and Desk Reference* 139–40 (2003); see also Jorge A. Vargas, *Mexico’s Legal Revolution: An Appraisal of Its Recent Constitutional Changes, 1998–1995*, 25 Ga. J. Int’l & Comp. L. 497, 531–32 (1996) [hereinafter Vargas, *Mexico’s Legal Revolution*] (viewing *ejido* reform within the broader context of President Salinas’s strategy for modernizing and globalizing the Mexican economy). The *ejido* is a land tenure for Mexican peasants who are to cultivate and develop the land for usually agrarian purposes. Originally, the *ejido* followed an administrative procedure rooted in Article 27. The *ejido* is unique because its assets are committed to a specific social and public goal. This means that the assets are inalienable—cannot be sequestered nor transferred unless the conveyance complies with the corresponding legal mandates. However, due to pervasive inefficiency, predominantly attributable to a lack of a proper agricultural financial system which would lead to innovative technology, training, and infrastructure, President Carlos Salinas de Gortari changed its unique legal structure in 1993. President Salinas feels that such change will promote the territorial integrity of the indigenous communities, the granting of individual property rights to each *ejidatario*, and the freedom of *campesinos* to choose the most convenient form to become organized.
inhabited in the country’s current territory at the beginning of colonization and
who maintain their own social, economic, cultural, and political institutions or
part therein.57

As a consequence of the Ejército Zapatista de Liberación Nacional
(EZLN) armed rebellion in 1994, and the amendment to the original
Article 4 of the Federal Constitution (now included in Article 2 by D.O.
of August 14, 2001) in which it was acknowledged that Mexico is a
multicultural nation and that Mexican courts are to take into account the
legal practices and customs of indigenous peoples, Mexican anthropologists,
sociologists, and jurists are finally beginning to direct their academic
interests to investigate, document, and describe the customary normative
systems (that is, Mexican ethnic law) which may exist in some of
the fifty-six ethnic groups which currently exist in Mexico.58  The
National Indigenous Institute (INI) and the Instituto de Investigaciones
Jurídicas/National Autonomous University of Mexico (IIJ/UNAM) have
been publishing seminal works on this subject. However, this relatively
recent revival of interest on the customary law of indigenous peoples
centers on current Mexican ethnic law rather than the ancient Aztec law.

One of the most intriguing aspects associated with this legal policy is
the question of how the current judicial court system in Mexico will
incorporate, or to take into account—as Article 2, section A, paragraph
II, of the Constitution mandates—the customary normative systems
followed by indigenous peoples in the resolution of legal disputes in that
country. How are Mexican judges to apply indigenous ethnic law in
pending cases before Mexican courts? No federal or state statute has
been passed on this matter.

IV. LEGAL EDUCATION OF MEXICAN ATTORNEYS

A. A System Patterned After a European Civil Law Model

Following the European model, high school graduates in Mexico may
pursue a legal education career at a university level. This path requires
five years of studies (ten semesters) and a successful defense of a written
thesis (Examen profesional) and culminates in the granting of a
Licenciado en Derecho degree from the school of law (Facultad de

57. MEX. CONST. art. 2.
58. Jorge A. Vargas, NAFTA, the Chiapas Rebellion, and the Emergence of
Chiapas Rebellion].
**Derecho.** Licenciado is the first academic degree that may be obtained at a university level, and may be equivalent to a bachelor’s degree. Master’s and doctorate degrees may be pursued at the graduate level in Mexico or abroad. Accordingly, in Mexico there are Licenciados in architecture, engineering, chemistry, philosophy, etc., although the term Licenciado, or simply “Lic,” is commonly used to refer to an attorney (Licenciado en Derecho).

Unlike the United States, Mexico does not have a bar examination. However, to render professional legal services, one is required to have a university title granting the degree of Licenciado en Derecho and the corresponding official authorization issued by the General Directorate of Professions (Dirección General de Profesiones) of Mexico’s Secretariat of Public Education (SEP), known as Cédula Profesional (a kind of professional patent). In accordance with Article 4 of Mexico’s Federal Constitution, and the General Professions Act (Ley General de Profesiones), the Cédula Profesional entitles the holder to engage in the professional practice of law anywhere in the Republic of Mexico. Recently, local and federal courts in some states are requiring legal practitioners to register the data contained in their Cédula Profesional with the secretary of the court as an administrative requirement to practice the legal profession in that court.

Mexican attorneys, especially those working in border cities neighboring the United States (for example, Tijuana, Mexicali, Ciudad Juárez, Nogales, Reynosa, Matamoros, etc.) and those in large urban centers like Mexico City, Monterrey and Guadalajara, have adopted some of the working practices of U.S. firms. For example, they use contracts for the rendering of their professional services, enter into retainer agreements, charge on an hourly basis and have billable hours, and take cases on a contingency basis.

Bar associations (Barras or Colegios de Abogados) in Mexico are voluntary professional associations which have little or nothing to do with the professional training or capabilities of their members, and even less with the sanctioning of unethical or criminal behavior of attorneys. In general, these associations tend to center their activities on conducting periodic meetings of their members and organizing an annual legal conference. The practice of the legal profession is governed by the federal General Professions Act, and similar enactments at the state level, including the so-called Arancel, which is an officially approved local tariff that establishes authorized legal fees for the rendering of specific professional services by attorneys.
B. U.S. Attorneys in Mexico

No U.S. attorney (or any other foreign legal practitioner) is allowed to engage in the practice of law in the Republic of Mexico unless expressly authorized by the General Directorate of Professions of the Secretariat of Public Education. Traditionally, foreign attorneys have been required to obtain a Licenciado en Derecho degree from a Mexican school of law, and then to get the corresponding Cédula Profesional which authorizes the holder to practice law anywhere in Mexico.

In the past, very few U.S. attorneys successfully utilized an Amparo lawsuit to eventually obtain the needed official authorization (Cédula Profesional) to practice law in Mexico. In recent years, as a result of NAFTA’s Chapter XII (Trade in Services), crossborder trade in services or crossborder provision of services have facilitated access of U.S. professionals to associate with certain Mexican law firms, especially in areas pertaining to financial services, accounting, industry, and advanced technologies. However, the provision of legal services continues to be a delicate area among the NAFTA parties. In principle, NAFTA provides that each party is to allow attorneys who are licensed in any of the other two parties to render professional legal services but only on the law of the country where he and she is licensed, under the category of “foreign legal consultant.” In this regard, Mexico has insisted that the rendering of these services must be granted on the basis of full reciprocity. Thus, Mexico would only allow U.S. attorneys to render legal services on U.S. law in Mexico when the United States permits Mexican attorneys to render legal services on Mexican law in the United States. Although Mexico and the United States have been negotiating on this question, so far no agreement has been reached. Informally, certain Mexican law firms have managed to obtain the necessary official authorization to permit U.S. attorneys to render professional legal services on U.S. law in that country on a limited basis.

V. LEGAL CULTURE IN MEXICO

Recently, a California newspaper published an article pointing out that Mexican campesinos who visit Mexico City may cross in front of the majestic building of Mexico’s Supreme Court in Avenida Pino Suárez, immediately adjacent to the Zócalo, thinking that it is a Catholic church. In general, it would be quite surprising for an average resident of Mexico City to name the President of the Supreme Court, any of its
Justices, or the President of the Superior Tribunal of Justice of the Federal District.

Unlike the United States, where major newspapers print articles, commentaries, or editorials on decisions rendered by our Supreme Court, the publication of this type of news in Mexico would be exceptional at best. Radio and television stations in Mexico do not include legal or judicial news in their daily programs. Notwithstanding that most television shows in Mexico tend to be an imitation of U.S. programs, or the simple dubbing in Spanish of many of them, it may take years or decades to see Mexican counterparts to “The People’s Court,” “Perry Mason,” or “Court TV.”

A. Early Institutional Violence in Mexico

The reason for this lack of popular legal culture among Mexicans is quite simple. A cursory review of that country’s history would reveal that Mexico has not been a country of law and order—quite the contrary. Until the twentieth century, the Mexican nation and its inhabitants were immersed in an interminable series of civil revolts, wars, attacks by foreign powers (including the United States several times), and coups d’état, all of which culminated in the violent, destructive, and prolonged revolution of 1910. During these violent and anarchic times, the rule of law was placed at a secondary level when the form of government, the need to bring peace to the entire nation, and even the very existence of the country were at stake.

During those tragic years, the rule of law in Mexico was ephemeral at best. Suffice it to mention that in his excellent work, Leyes Fundamentales de México 1808–1999, Felipe Tena Ramírez enumerates and reproduces the texts of no less than twenty constitutional documents which governed the legal and political life of Mexico from the initiation of its independence in 1810 until the enactment of the Federal Constitution of 1917, which continues to be in force, although amended some 500 times.

B. The PRI Model

Actually, the contours of modern Mexico did not emerge until the end of World War II. The country entered at last into a process of relative social and political stability, industrialization, commercial development, demographic growth, and legal and political consolidation. Legally, the country endeavored to update and modernize its legal system. From a political viewpoint, Mexico, rather than marching towards a true democracy and a republican form of government, fell under the control of the Partido Revolucionario Institucional (PRI). As the official and
governmental party, PRI started consolidating a political program which eventually led the party to the political control of the country for over seven decades.

It is difficult to ascertain whether the PRI and its style of governing Mexico contributed to the formation and development of legal culture among Mexicans. Members of the PRI would say that it was this party that made the Mexico of today. Others may argue that the PRI’s style of government—centered around the President—went openly against the value of creating a popular legal culture.

For example, one of the PRI’s major accomplishments was its overwhelming success in political elections at the presidential, state, and local levels. During the last century the PRI was politically invincible in Mexico. However, the fact that the PRI never lost a presidential election for seven decades made Mexicans question the value, and even the need, of exercising the right to vote. “Why vote, if the PRI wins anyway?” was the permanent question. This electoral environment not only turned Mexicans away from casting their votes but also disenchanted them with the PRI’s model of “democracy.” Over time, political absenteeism became a growing and disconcerting reality. The fact that the PRI fraudulently controlled elections, manipulated voters, imposed PRI politicians against the will of the people, and produced Acarrreados (hauled voters) as an inherent part of the Mexican electoral process, inflicted a devastating blow to the Mexican electorate.

C. An Incipient Legal Culture

These practices, allowed and condoned by the PRI government for decades, utterly destroyed the notion of Mexico as a country of law and order. The importance and public awareness of complying with the legal rights and obligations of a good Mexican citizen, as mandated by the legal system, simply did not exist. These practices clearly demonstrated that there was neither law nor order in the nation at the time. In other words, these practices proved that the necessity of developing a legal culture for the benefit of Mexicans would run on an unavoidable collision course with the PRI government and against the manner in which the official apparatus was controlling and conducting the public affairs of Mexico.
1. Protection of the Environment

However, despite the PRI’s efforts to keep a grip over the nation’s political arenas at the federal, state, and municipal levels, the Mexican people gradually started developing an incipient legal culture in certain trendy areas in the 1970s and 1980s, such as consumer rights and environmental protection. Nationalism and the public policy to control the aggressive marketing and commercial strategies of transnational corporations to penetrate the Mexican market, in particular those from the United States, contributed to the initiation and development of this kind of legal culture. The passage of the Consumer Protection Act, and the Environmental Protection Act, both published in the early 1970s and clearly influenced by similar enactments in the United States, provided the legal bases for these developments.

2. Consumer Protection

In the area of consumer rights, Mexican consumers in large cities—especially in Mexico City, Guadalajara, and Monterrey—appear today to be familiar with their consumer rights and the mechanisms provided by the law to enforce them. To a large extent, this is attributable to the intense and permanent public campaigns launched by the PROFECO (the federal agency for consumer protection) over the last three decades, designed to educate Mexicans to assert and vigorously defend their consumer rights. Therefore, consumer protection may be among the most advanced and widespread aspects of popular legal culture in Mexico today.

3. Workers’ Rights

Mexico’s protective legislation of the rights of workers, whether as individuals or as members of a collective group, was explicitly formulated by Article 123 of the Federal Constitution promulgated in 1917. Mexico’s national ethos proclaims that the generous rights which protect the working class are a legal entitlement conferred upon them by the 1910 Revolution and incorporated in the constitutional text. Therefore, labor law is the traditional legal area with which Mexican nationals are most familiar.

It is no exaggeration to suggest that labor rights in Mexico are a vital and inherent component of any workers’ education, whether the worker provides his or her services in a factory, an office, a hotel, a restaurant, a maquiladora, etc., or whether the worker is hired by a private company or by a state or federal agency. Accordingly, the right to a minimum wage, to a healthy working environment, to extra pay for overtime work,
to special working conditions for minors and women, to associate and to form unions, to receive the long awaited *Aguinaldo*, or Christmas bonus, to share in the company’s profits are easily recognized as inviolable labor rights guaranteed by the Constitution. Unquestionably, the rights and social benefits of workers and employees, and conversely, the duties and obligations of employers, are distinct components of a popular legal culture which has been, for a long time, well embedded in the legal culture of Mexico’s working class.

4. Human Rights

From a contemporary perspective, no nation can claim to have a legal culture when its inhabitants are not familiar with the importance that human rights have, and the strict compliance these deserve within the legal context. As part of its foreign policy, Mexico became a party (with a few reservations) to the major international human rights covenants formulated by the United Nations since the late 1960s and early 1980s. However, whereas Mexico tends to enthusiastically adhere to U.N. multilateral conventions as a matter of principle, the actual implementation or enforcement of some of the key legal principles included in these conventions leaves much to be desired. Unfortunately, this was the case with human rights.

Mexico suddenly rediscovered the value and importance of human rights for domestic and international purposes in 1990. As a pivotal component of the major changes introduced to the Mexican legal system by the administration of President Salinas by means of an amendment to the Federal Constitution a National Commission of Human Rights (CNDH) was established in June of that year. Two years later, after the resounding accomplishments obtained by the CNDH, similar commissions were established for the Federal District and for each of Mexico’s thirty-one states.

For practical purposes, these thirty-three commissions on human rights operate as a national network. They are directly involved in investigating human rights violations allegedly committed by government officials at federal, state, and local levels. After gathering evidence collected by commission attorneys akin to human rights inspectors and the rendering of a public report in each case, the commission in question is empowered not to impose sanctions to the violators but, instead, to formulate recommendations directed at the public entity whose officials perpetrated the violation. Although these recommendations are not
legally binding or judicially enforceable, but merely recommendatory, they tend to target authorities to comply on a voluntary basis. As these commissions institutionally grow in experience and prestige, their recommendations are being strictly followed with increasing frequency.

All of these commissions—in particular the CNDH—have launched a most effective and permanent publicity campaign designed to educate and familiarize Mexican nationals with their human rights and the manner to proceed so as to receive a fair and legal remedy when these rights have been violated, giving special attention to the rights of indigenous peoples.

5. Still a Long Way Towards a National Legal Culture

Mexico is a country with diverse and contrasting social, cultural, economic, and political realities. These realities produce contrasting and asymmetrical levels on the breadth and scope of popular legal culture throughout the nation. Evidently, legal culture tends to have a higher level of concentration and practical implementation among Mexicans who live in urban centers, especially those in Mexico City, Guadalajara, and Monterrey. For it is in these urban centers where Mexican nationals who have a common level of education, economic means, national cultural patterns, and political experience mostly concentrate. In contrast, Mexicans who live in rural areas or in villages found in mountainous or isolated areas, usually lack not only a legal culture but the basic economic means to merely survive. It must be remembered that out of one hundred million inhabitants that Mexico has today, fifty million live at the poverty level, and half of these—all composed by indigenous peoples—live under the extreme conditions of abject poverty.59

Additionally, a large percentage of these indigenous peoples speak in non-Spanish dialects and continue to be illiterate.

Unless Mexico becomes a middle class country, similar to the United States or Canada, the level of legal culture in the Mexican nation is likely to be not only incipient, as it is today, but also varied and asymmetrical.

59. SECRETARÍA DE DESARROLLO SOCIAL, MEDICIÓN DEL DESARROLLO MÉXICO 2000-02 (June 2003); see also INDIGENOUS PEOPLE AND POVERTY IN LATIN AMERICA 100, 107 (George Psacharopolous & Harry Anthony Patrinos eds., 1994) [hereinafter INDIGENOUS PEOPLE]. According to the Encuesta Nacional de Ingreso-Gasto de los Hogares conducted by the Instituto Nacional de Estadística Geográfica e Informática (INEGI) in 2002, 51.7% of Mexicans lived in poverty because they could not afford necessary food items, basic health services, education, clothing, shelter, and transportation. INEGI also found that 20.3% of the country lives in abject poverty, meaning that they cannot afford their daily food consumption. Further, the World Bank points out that 80.6% of the indigenous population lives below the poverty line, as compared to only 17.9% of the nonindigenous population.
The government of Mexico has renewed its efforts to strengthen the educational system at all levels, encourage young people to engage in civic activities, launch and update national campaigns through radio and TV to promote consumer rights and environmental protection, and invite people to vote and participate in political activities in the hope of elevating the cultural level of Mexican nationals, thus developing a legal culture in Mexico.

VI. THE “AMERICANIZATION” OF MEXICAN LAW

The influence exercised by U.S. law upon Mexican law can hardly be characterized as a novel development. It may suffice to recall that Mexico’s first two federal constitutions—those enacted in 1824 and 1857—were clearly influenced by the U.S. Constitution.

In the past, the influence of U.S. law in Mexico was, at best, sporadic and superficial. It was sporadic because the interminable political conflicts that culminated in the 1910 Revolution did not provide the country with a stable political and legislative environment conducive to a steady and progressive legal system. It was superficial because of the evident contrasting differences not only between the respective legal systems of each country but, more importantly, because of the drastic economic and industrial asymmetries between these nations.

The “Americanization” of Mexican law started in the 1970s. At that time, the United States, and later the United Nations, played a decisive global role in emphasizing the importance of protecting the environment. In the late 1960s, a strong environmental crusade was vigorously initiated on U.S. college campuses and soon took off to first embrace the entire nation and later the whole world. This environmental movement was fueled by two seminal books: Rachel Carson’s *Silent Spring* (1962) and Charles A. Reich’s *The Greening of America* (1971). This led not only to the establishment of the Environmental Protection Agency (EPA)—which became the model of similar structures in numerous countries—but to the emergence of “Environmental Law.” At the international level, this trend culminated a few years later in the signing of the Stockholm Declaration at the conclusion of the United Nations Conference on the Human Environment in 1972. This conference awakened the international community to the importance of protecting the environment and was followed by the establishment of international and domestic institutional arrangements specifically designed to protect and regulate environmental matters.
Mexico was one of the very first countries in the world to establish a governmental structure “for the improvement of the environment” (Subsecretaría para el Mejoramiento del Medio Ambiente) and to promulgate federal legislation, and the corresponding regulations, to control and regulate environmental matters. Mexico’s first environmental statute, published in 1972, was multidisciplinary, its content channeled towards protecting the environment as a whole, and more specifically the soil, the water, the air, solid wastes, hazardous materials, the marine environment, and certain natural resources. Interestingly, from a substantive legal viewpoint, the Mexican statute was a sort of collage of text taken from a number of U.S. statutes, including, for example, the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the Resources Conservation and Recovery Act, the Federal Land Policy and Management Act, the Endangered Species Act, and the Coastal Zone Management Act.

With the adoption of U.S. legal texts and their minor adaptation to Mexican environmental conditions, certain U.S. legal definitions (for example, solid waste, hazardous material, and pollutant), legal notions (for example, environmental impact statements), technical standards (for example, the so-called Official Mexican Standards (NOMS)), and administrative procedures (for example, environmental visits or inspections, administrative appeal of an environmental decision) also found their way into Mexican environmental law. This served to Americanize Mexican environmental law.

A. From Constitutional Law to Modern Legal Areas

Obviously, there is no scientific definition of what constitutes the Americanization of Mexican law. However, one may say that the use of the word Americanization denotes the idea that the adoption or incorporation of U.S. law as part of Mexican law (or of one of its branches) is most complete or extensive. This would be the case where a U.S. legal institution is simply copied, reproduced verbatim, or incorporated, stock and barrel into Mexican law.

The Americanization of Mexican law is not an instantaneous phenomenon, but rather a fluid and dynamic process. This process may be slow and gradual, such as the legal interactions which take place on a daily basis in Mexican border cities which transact business with their counterparts on the U.S. side of the border. The Americanization process may also occur at a very accelerated pace when a set of special and complex factors bring about an important legal outcome, as with NAFTA.

Very few administrations in Mexico have produced such dramatic changes in the Mexican legal system as those made under President
Salinas (1988–1994). The scope and breadth of the legal transformations which he undertook were so vast and deep that in those days it was common to refer to them as a “legal revolution.”60 Those changes directly revamped about one hundred federal statutes and regulations in the areas of foreign investment, real estate, corporations, banking and financial services, international business transactions, environmental questions, import-export, energy, fishing activities, public administration, foreign trade, the Ejido reform, budgetary and monetary issues, and taxes.

Moreover, the strong adherence to a “neo-liberal economic philosophy” provided the economic and financial bases to drastically transform the country’s economy, thus offering an unprecedented Apertura, or Opening, which clearly favored foreign investment, international competition, and vigorous private sector involvement in key areas of the economy. During the Salinas administration, all of these occurred under the then popular but vague concept of “globalization.” The country’s public opinion during the last years of that administration—opinion that was equally shared by capitalist groups, the general populace, and high-ranking federal officials—enthusiastically proclaimed that Mexico had already become “a first world country,” as proven by the fact that Mexico had already become a member of the OECD.

B. NAFTA as an “Accelerator” of U.S. Trade and Culture

Today it can be said in retrospect that the cascade of legislative changes that the Salinas administration imposed on Mexico at such a rapid pace may have been motivated by the strong desire of transforming Mexico’s legal system to put it more in symmetry with NAFTA. In other words, Mexico’s legal system was Americanized so that NAFTA and its implementation would be gently eased into place in Mexico through the adoption of those legal changes.

The growing economic integration accomplished by the United States
and Mexico as a result of NAFTA, coupled with the increasing degree of legal harmonization of their respective legal systems that this economic phenomenon has produced, is no doubt affecting the cultural differences that until now have clearly distinguished the peoples of these two countries. An impressionistic view of U.S. society may suggest that a more visible, if not stronger, presence of Mexican culture is emerging in certain parts of the United States, especially in California, Texas, and the Southwest, and in cities such as Chicago, New York, Atlanta, and Miami.

Others may argue that NAFTA is, in the history of both countries, the most powerful instrument that has ever been put in place in the North American region, and that its effects go far beyond the traditional trade, business, and investment arenas which are the stated objectives of this trilateral agreement. However, it is unquestionable that there are other implicit objectives which flow directly from the implementation of the agreement. Two of them merit special consideration: first, the Americanization of Mexican law, discussed earlier; and second, the resulting Americanization of Mexicans, and their culture, a most controversial and sensitive question.

Contrary to the misapprehensions expressed by Canada that NAFTA may eventually carry the hidden price of producing a further cultural domination by the United States, Mexico entered into NAFTA negotiations without showing any cultural preoccupations vis-à-vis the United States. Granted, Mexico’s culture is universally known because it is rich, varied, and distinctive when one considers that it is firmly based upon its ancient indigenous origins. However, there should be little doubt that the constant bombardment on the part of the United States over Mexico during the last decades is beginning to make a visible dent in some cultural aspects of the lives of most Mexicans.

This vigorous and pervasive U.S. influence upon the culture of Mexicans may not be as ephemeral or superficial as some may believe, especially when one considers that the U.S. daily bombardment upon Mexicans affects not only their way of eating and talking, and their entertainment and dressing habits but—far more important—their education and manner of living, their social, economic and political expectations, and especially their value system. Has the time arrived for Mexicans to be concerned about a possible Americanization of their culture?

For a long time, journalists from Mexico and the United States, governmental agencies from both countries, international organizations, as well as nongovernmental entities, reported the systematic commission of human rights violations throughout Mexico. The overall impression deduced from these reports, both official and private, was that torture, extrajudicial killings, forced and involuntary disappearance of persons,
illegal detentions, arbitrary searches and seizures of private homes, homicides by the Mexican police, the military, and security forces, and rural violence, were chronic and pervasive problems.

The unprecedented violence and the numerous human rights violations committed by the Mexican Army to repress the Zapatista rebellion in Chiapas that began on January 1, 1994, especially during the first ten days of the conflict, generated an immediate and growing concern among human rights activists in Mexico and the United States. According to a detailed report printed by the Mexico City weekly Proceso, the human rights violations of the Mexican Army included direct bombing of civilian towns and villages, illegal detentions, outright arbitrary searches and seizures of private dwellings, abuses of authority, intimidation and threats both to individuals and to communities, torture, forced and involuntary disappearance of persons, homicide of civilians, and summary execution of civilians. Most of these charges were backed up by other sources, including Mexico’s National Commission of Human Rights, an official entity of the federal government.61

In its 1993 Human Rights Report (published in 1994), the U.S. Department of State included this comment on Mexico:

In 1993 there continued to be widespread human rights abuses and a frequent failure to punish violators despite the government efforts to do so. Important abuses included extrajudicial killings by the police, torture, illegal arrests, glaring prison deficiencies, and extensive illegal child labor in the informal economy. The Government has made strong efforts to end the “culture of impunity” surrounding the security forces through reforms in the Office of the Attorney General (PGR), continued support to the National Commission for Human Rights (CNDH), and establishment in 1993 of state-level commissions for human rights. These actions together with increased public awareness of human rights concerns have brought about a noticeable decline in the incidence of violations in Mexico.62

In general, this was the overall impression Mexico conveyed to the international legal community in the area of human rights during the early 1990s.

VII. CONCLUSIONS

Since their inception in 1821, the political relations between Mexico and the United States have been conducted in an atmosphere of

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61. Vargas, The Chiapas Rebellion, supra note 58, at 3.
resentment and tension. This situation was exacerbated when Mexico became the victim of the infamous war unilaterally initiated by the United States in 1846. The war was concluded by the Treaty of Guadalupe Hidalgo of 1848. As a consequence, Mexico “ceded” more than half of its territory, including what is now California, Arizona, New Mexico, Nevada, and Colorado, to the United States for fifteen million pesos). This is an area consisting of no less than two million square kilometers bought by the United States at less than 0.8 Mexican centavos per hectare!

It is only understandable that this war would deeply influence the tone and content of the subsequent bilateral relations between our two countries. The easiest way to describe these relations would be to rely on the common characterizations of “love-hate relations,” “asymmetrical contacts,” or “following a long, thorny and bumpy road” which have been utilized by U.S. and Mexican scholars over the years. Even today, 156 years after that violent and unjust war, Mexicans cannot forget it. Maybe they never will.

There is no doubt that the deeply ingrained sentiments generated by a war that scarred Mexico’s collective soul and psyche, have for decades constituted a serious deterrent to engage in what may be a less resentful and a more friendly relationship. The advent of the twentieth century gradually paved the way for more constructive contacts between both countries, principally induced by World War II and its aftermath.

Geography will continue to be an unchangeable factor in United States-Mexico relations whose importance is likely to play a more prominent role in years ahead. This is to be expected if the U.S. population continues to grow older, the economy and the job market continues to expand, demanding a larger number of younger workers for the United States to remain internationally competitive, and Mexico’s economy is to improve as a result of an increasing flow of U.S. investments into that country. All of this clearly suggests a stronger and more pervasive presence of Mexican law in our country, particularly along the border but also in cities where there are large Mexican-American communities.

Latinos have already displaced African-Americans as the largest ethnic minority in our country. As recently projected, the Latino population—principally formed by Mexicans—will reach the peak of one hundred million in fifty more years. This significant number of Mexicans in the United States will translate into a very large number of their relatives lawfully migrating from Mexico into this country. The more economically affluent Mexican-Americans become due to their better education and training, the more investment and business transactions are likely to take place between the United States and
Mexico, thus involving Mexican law. The current demographic trend is also likely to produce more litigation in civil and criminal areas between both countries. Today, American judges are already wishing they were more knowledgeable and familiar with Mexican law.

Not surprisingly, wealth has always been a crucial factor in our relations with Mexico. As the economies of the United States and Mexico grow and expand, fueled by globalization through the legal and institutional mechanisms established by NAFTA, WTO, and myriad bilateral and regional agreements, whether already in the books or to be negotiated in the future, the presence and importance of Mexican law in the United States will be unstoppable. Since World War II, the United States has been a vigorous and clearly dominant economic profile in Mexico.

The United States is in the midst of a demographic revolution, as demographers and immigration attorneys can attest. However, it seems regrettable that some need not open their eyes but open their minds to see it. As a sociological phenomenon, worker migration is not a United States-Mexico problem but an economic predicament of truly global proportions. As long as our country needs, demands, and relies on the exploitation of foreign labor, Mexican migratory workers—as well as workers from other developing countries—will continue to flow incessantly into this country to fuel the U.S. economy. These migratory workers are the “flow resources” of the twentieth and twenty-first centuries. To provide these workers with respect to their human dignity and to recognize and protect their human rights has become the true test and a difficult challenge to our nation today. Unfortunately, the erosion of constitutional and civil rights attributed to the fight against international terrorism does not help in the other fight directed at elevating and applying due process to all foreigners without distinctions based on ethnic origin, religion, or political ideologies.

From a Mexican perspective, the constant and pervasive influence the United States exercises upon Mexico and the Mexicans, night and day, year after year, is beginning to finally make a visible dent in that country. The U.S. influence on Mexico clearly goes beyond the Americanization of Mexican law. Surprisingly, it seems that urbanite Mexicans wholeheartedly embrace anything that bears the trademark: “Made in the U.S.A.” Movies, clothing, food, TV programs, music, cars, soft drinks, professional sports, etc., are being devoured by a new class of Mexican consumers. One wonders what is happening to
Mexican culture and values in the process. In contrast, other imports from the United States that may include democracy, justice, law and order, transparency, and the fight against corruption are yet to show a sound and steady progress. It is unconscionable that with the tremendous and varied resources that Mexico has, fifty million Mexicans live today in poverty and half of this number are indigenous people, especially children and elderly people.63 If wealth could be distributed more justly and evenly in Mexico, and if the United States and Mexico continue to work together and Mexico learns to cure certain social ills, Mexico would no doubt become a leader in this hemisphere.

63. SECRETARÍA DE DESARROLLO SOCIAL, supra note 59; INDIGENOUS PEOPLE, supra note 59, at 100, 207.