A BRIEF SURVEY OF THE MEXICAN LEGAL SYSTEM*

H. E. ROBERTO MOLINA-PASQUEL**

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**_Ambassador_ of Mexico in the Philippines.

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INTRODUCTION

This essay shall outline the structure and working of the Mexican legal system by an analysis of the Mexican constitution and the statutes and acts enacted to implement fundamental policies and programs of the Mexican State.

It shall also attempt to locate the place of the Mexican and Philippine legal systems in the field of comparative law.

It is well known that Mexico and the Philippines share common historical experiences, and, justifiably, we in Mexico feel a deep sense of kinship with the Filipino people. Some of the legal problems that the Philippines faces nowadays were encountered by Mexico before, and an awareness of the response of a sister state might provide insights and therefore help in finding the necessary solutions. History, politics and geography have worked to separate our two countries for many years and to obscure the fact that for many centuries we shared the same history, politics and culture. A renewed awareness of our past similarities will be mutually beneficial.

GEOGRAPHICAL DATA

Geographically, Mexico is located in the northern part of the American Continent, between parallels 15 to 34 of North latitude. Its area is two million square kilometers, equivalent to approximately 750,000 square miles. Its coastline measures 9,000 kilometers and its population numbers 52 million (1975) inhabitants.

According to historians and anthropologists, the first inhabitants of the American continent came from Malayan countries of Southeast Asia at the time when solid land filled what today is the Strait of Bering.

The fact is that the ethnographic characteristics of the people inhabiting the Western lands of the primitive American Continent, speci-

fically those who settled in the territories now known as Mexico, Central America and Peru, have similar skull characteristics and facial features as the Oriental people of the South Far East: almond shaped eyes, prominent cheekbones, bronze skin coloring, average height, etc.

HISTORICAL NOTES

The land of ANAHUAC (now Mexico) was conquered by the Spaniards in 1520 and was given the name of NUEVA ESPAÑA. Spanish blood, Spanish culture and Spanish religion were blended and imposed on the Indian Kingdoms, allied or subjugated, that numbered millions of people. The Olmecs, Totonacs, Tlaxcaltecs were among those who were allied. Among the subjugated and defeated, the Aztecs. Today, the average Mexican is a mestizo type with Indian and Spanish blood in variable proportions.

After the prolonged War of Independence with Spain that began in 1810 and ended in 1821, during the last century, Mexico suffered two foreign wars. First, the United States War which originated in the War of Texas of 1846-47. It was ended by a treaty imposed by the victor and resulted in the annexation to the United States of nearly one half of the Mexican territories, two million square kilometers, comprising what now are the States of Texas, New Mexico, Arizona, Colorado, California and others. The treaty was never ratified by the United States Congress.[1]

In 1863, the armies of Napoleon III of France invaded Mexico, at the suggestion of a group of Mexican traitors who thought that the Mexicans were not able to govern themselves and looked for a European prince to do so. The French armies, helped by the forces of the Mexican Conservative Party or monarchists succeeded in occupying the principal zones of the republic and imposed Maximillian, Archduke of Austria, as Emperor of Mexico.[2] A few years later, Napoleon III withdrew his armies from Mexico; the Mexican monarchists were defeated by the Mexican Liberal Loyalists and Maximillian was executed in 1867.

In 1910, a revolution erupted in Mexico that had been seething for more than a decade. The goal was to prevent the reelection of then President Porfirio Diaz who had been reelected every four years since 1877

[1]The War between Mexico and the U.S.A. started over the annexation of the Mexican province of Texas, to the U.S.A. in 1846. After defeating the Mexican Armies through the northern territories by land, and through Veracruz by sea, the American Army and Navy occupied Mexico City. The war was ended by the Treaty of Guadalupe, never ratified by the American Senate, forcing the annexation to the U.S.A. of the northern half of the Mexican Republic, what are now the States of Texas, New Mexico, Colorado, Arizona, California and parts of others.

[2]Until the departure of the French Army and the execution of Maximillian, the state of war was continuous. It is said that the French soldiers had control only over the soil they were standing on.

(except for the period of 1881-84), and who created a dictatorship that monopolized political power with a close group of collaborators. After this revolution's success in 1911, President Diaz resigned and was exiled to Europe. A second revolution of economic origin started in 1913 as an opposition to a *coup d'etat* by General Victoriano Huerta of the old Federal armies, who dissolved the Congress and installed himself as President-Dictator. This revolution was directed mainly against the economic slavery situation of the peasants in the country and the repression of labor by capitalists. Rural properties were then in the hands of less than a few hundred landlords, mainly absentees, paying starvation wages. Brutal repressive measures were taken against laborers such as the strikers in Rio Blanco, Ver., and Cananea, Son.

President Francisco I. Madero was the apostle of the non-reelection revolution. Venustiano Carranza, Governor of Coahuila and leader of the second revolution, was surrounded by advisers whose thinking was inspired by the ideas of the German labor movement.

The war ended in 1916 when an Assembly was convoked to frame a new Constitution. It resulted in the adoption of the Constitution of 1917, now in force. The doctrine contained in this Constitution is known as "Revolutionary Doctrine" which has been the political guideline of all Mexican regimes up to the present.

Politically, Mexico is a democratic republic, representative and federal. It is made up of 31 States free and sovereign, plus one Federal District. Its political structure is similar to that of the United States of America. Its republican organization follows the presidential system in a rigid constitutional scheme. Government is divided into three Departments, *Poderes*, or Powers: the Executive or Administration, headed by the President of the Republic; the Legislative composed of the House of Senators and the House of *Diputados* (Representatives), and, the Judiciary, composed of the Supreme Court, Circuit Courts, Unitary and Collegiate, and District Judges, in the federal sphere of jurisdiction.

Like the American Union, each of the States in the Mexican Republic has its own government with an executive, called Governor, directly elected by the people; a local Congress or Legislature; and a Judiciary made up of a Superior Court or Court of Appeals, Courts of First Instance, civil and criminal, and Judges of the Peace.

The first modern Mexican Constitution (1857) was inspired by the American Constitution. It was based on the same ethical and philosophical guidelines prevailing in the Western Hemisphere: the Christian civilization, liberalism, as Adam Smith conceived it, private property institutions and free market economic regime.

MODERN LEGAL TRENDS

The 1917 Constitution that took the place of the 1857 Constitution, pays more attention to the protection of labor and peasantry which constitute the majority of the people. Liberalism and individualism, however, remain guaranteed; a free exchange market in the currency system has meant that Mexico has no foreign exchange control at all.

Today Mexico has a legal system that is a compendium of what was inherited from Spain as a consequence of more than four centuries of domination, concepts borrowed from the Latin countries of Europe and the Anglo Saxon neighbor of the north, and indigenously evolved concepts that came with freedom and self-experience. Private law is therefore a system of civil law, while constitutional law and administrative law have been drawn essentially from the United States Constitution of 1787.

FOUNDATIONS OF THE 1917 CONSTITUTION

The most important foundations of the present constitution are the set of rules on State and Private property and Agrarian Reform, mainly Article 27 with 29 paragraphs, and those on labor, Article 123, with 43 paragraphs.

According to Article 27, all natural resources of the subsoil and the continental shelf belong to the Nation and not to the surface owners. Mining exploration is usually chartered to private enterprises; but oil exploration, exploitation and refining pertain exclusively to the State and cannot be chartered. Only *Petroleos Mexicanos,* PEMEX, a Government institution, has exclusive authority to deal with everything connected with oil and hydrocarbons. In 1937, Mexico expropriated all oil concessions and installations from American and European corporations. Due compensation was paid some years later.

The air space is subject to Government jurisdiction.

All rural lands that originally belonged to the villagers which were being exploited by tenants or *ejidatarios,* and which were unfairly sold by corrupt officials were to be returned to the original owners.[3] All other

[3]All Mexican towns and villages since its founding or origin in the colonial time and before, had a piece of land called *ejido* for communal use to be exploited through individual parcels of land or collectively. During the unfortunate days of the civil and foreign wars in the last century, abusive politicians and officials forced many of these towns and villages to sell their *ejidos,* apparently according to a statute ordering the sale of religious congregation lands or *mortmains.* The 1917 Constitution, Art. 27, Sec. VII, declared void all these sales and ordered the consequent restitution of the *ejidos.* For the new towns and villages that had no *ejidos,* lands were to be taken, through expropriation to be paid by the Government from neighboring farms, in order that all peasants should have their own parcel of land, enough for their yearly subsistence.

rural workers were given the right to a parcel of land for their subsistence, to be taken from the nearest big farm.

No farm, *latifundio*, exceeding 100 hectares is legal or allowed; the excess land must be distributed among *ejidatarios* or rural laborers.

Agrarian reform relative to the distribution of parcels of land from illegal holdings among new *ejidatarios*, will be fully accomplished in the near future.

The *ejidatarios*, organized in cooperatives, associations and unions, receive from the Government Agrarian Bank credit for seeding and harvesting. The Government through a parastatal organization called CEIMSA guarantees a minimum price for their products to avoid speculation and exploitation. The *ejidatarios* number more than half of the population, maybe more than sixty percent. Their political power, through their vote in the general elections, is substantial and sufficient to defeat any political opponent.

The agricultural production in Mexico has attained its highest figures through this system.[4] The relations between *ejidatarios*, small farmers, landlords and Government are dealt with in the *Código Agrario* 1970. One of the four Chambers of the *Suprema Corte de Justicia de la Nacion is* dedicated to decide agrarian legal matters.

The second pillar of the Mexican Constitution is Article 123. It deals with the nature of labor relations and the protection granted by the Government to laborers as the weak party in a bargaining arrangement. Notoriously, the strong parties in the labor relations are the employers, so the Government has granted the employees certain rights for their protection that they cannot waive. Examples are the minimum working hours and minimum wages. The waiver of this rights would not produce any legal effect.

The following are provided for in its different sections: the eight hours maximum duration of work for one day; limited night work; the 40 hours week; protection of women and minors; labor accidents protection; collective and individual labor contracts; cash salary payments; and seventh day payments; minimum wages; right to strike; medical services; social insurance; indemnification for unjustified dismissal; schools for laborers' children; profit participation; double overtime salary; vacations and dwellings for laborers. The labor proceedings before the *Juntas de Conciliacion y Arbitraje* are speedy and efficient.

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[4]The figures of agricultural production have been more or less stable during the last years. Production in 1970 was 8,879,400 tons; 1972, 8,355,400 tons and in 1974, 7,783,600 tons of grains and all kinds of agriculture products.

An example of the advanced ideas in the 1917 Constitution is the laborers' right, when dismissed without legal basis, to an indemnification of three months salary (Art. 123, Sec. XXI) plus twenty days of salary for every year of service. This right was deemed in those post World War I years more protective than the laws of the Bolshevik Russian Revolution in the same period.

Article 123 is formed by two chapters, "A" and "B". The first is formed by 31 sections, dealing with the rights and social security benefits for the laborers, the *obreros,* or employees of private persons or enterprises. The second chapter, with 14 sections, deals with the rights and social benefits of the civil servants, which are restricted in comparison with the status of the common laborer. This is because the Government, as employer, or the people's representative, has a different status than the private employer, which is concerned only with business. For instance, public service employees cannot strike until certain specific requirements are met. In case of such strike, the army substitutes the striking civil servants in order not to disrupt the public services involved.

The institution rendering medical and social services to the private laborer, the *Instituto Mexicano del Seguro Social* or IMSS, contributions to which are paid by the employers and the employees, is different from the *Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado,* or ISSSTE, which is formed by hospitals and clinics supported by the Government with the collaboration of civil servants.

THE BILL OF RIGHTS

The Bill of Rights in Mexico is of special interest due to its intimate link and affiliation with the *Amparo* remedy.[5]

The Bill of Rights or *Garantías Individuales,* extends in some instances protection beyond those contained in the Universal Declaration of Human Rights of the United Nations Organization.

Articles 1 to 13 state the fundamental human rights and freedoms. Articles 14 to 16 deal with due process of law and the foundation of

[5]The Amparo Remedy is an action claiming the nullity of a certain act of the Administration or a judgement of the Judiciary, that according to the claimant violates the "*Garantias Individuales*" (Human Rights) granted by the Constitution. Emilio O. Rabasa (1968) says of "*Amparo*": "it is one of the most original and noble institutions of Mexico's political life, and an efficient way to protect the individual freedom and the supremacy of the Constitution". Extensively dealt with by Mexican scholars, one of the most recent outstanding work on "*Amparo*" had been written by Ignacio Burgoa. Ample bibliography on the subject includes works of Rejón, Otero, Iglesias, Mariscal, Montiel y Duarte, Pallares, Rabasa, Vallarta, Azuela, Bassols, Carillo Flores, Cantu, Fix Zamudio, Tena Ramirez, etc.

the *Amparo* remedy. Articles 17 to 23 deal with the rights of detainees and the accused in criminal cases.

Apart from the basic guarantees of general freedom, freedom of speech and of writing, freedom of assembly and petition, freedom of movement, freedom of religion, and freedom from illegal searches and seizures, the following are significant portions of the Bill of Rights.

Slavery is prohibited and any foreign slave who enters the territory of Mexico automatically recovers his freedom.

Education is imparted both by Government and by private entities. However, elementary, secondary and normal education, and any education intended for workers and peasants may be engaged in only through a special permit granted by the State. Said authorization is by nature discretionary, and may be revoked by decision against which there can be no judicial remedy or recourse. Education is ordained to be completely independent of any religious doctrine and is founded on the ideal of scientific progress. Religious associations and priests of any cult or groups associated with any religious movement cannot in any way participate in the imparting of education whether elementary, secondary or normal, and education for workers or peasants.

The right to work is guaranteed for as long as the work is lawful. The exercise of this right may be curtailed only by judicial order if it infringes upon rights of third persons or endangers the State.

No one can be forced to work against his will or without fair compensation, except for penitentiary labor ordered by court in criminal cases. Only service in the National Guard, in juries, in municipal legislative and executive positions are compulsory. Professional services of a social character are compulsory and are paid for in accordance with provisions of law.

No contract reducing freedom or stipulating an irrevocable sacrifice of liberty whether for work, education or religious vow is permitted. Consequently, the establishment of monastic and religious orders is forbidden.

Labor agreements cannot exceed a term of one year if it adversely affects the laborers' rights. In no case may such contract contain a waiver or restriction of civil or political rights. The non-compliance with a labor contract by a worker only renders him civilly liable for damages but in no case shall it result in coercion against his person.

No one may be judged by special laws or by special courts, and no one may enjoy immunities. Civil servants and public officials receive no more compensation than those stipulated in the law.

Military law applies only to military personnel. In all military law cases where a civilian is implicated, his case must be turned over to a civil tribunal.

No person may be deprived of life, liberty or property without trial by court in which the essential formalities of procedure are observed and in accordance with laws issued prior to the commission of the act.

In criminal cases, imposition of penalty by mere analogy or by prior evidence is prohibited. Only such sanctions as are established by law may be imposed.

No treaty can be signed for the extradition of political offenders, or of offenders who have been slaves in the country where the alleged offense was committed, nor may treaties be entered into which restrict human rights and fundamental freedoms.

Due process in criminal cases includes the following rights:

a) right to bail proportionate to the gravity of the crime unless the offense is punishable with imprisonment of more than five years;

b) right against self incrimination;

c) right not to be detained for more than forty-eight hours without charge and to be informed of the crime of which a person stands accused and the name of his accuser;

d) to be confronted with witnesses against him;

e) to produce witnesses and evidence in his favor;

f) to a public hearing and to a trial by jury in case of crime committed through the press against public order or the national or international safety of the nations;

g) to be given all information requested for his defense;

h) to be heard by himself and counsel;

i) to be tried within four months if the penalty for the offense is less than two years imprisonment, and within one year, if the maximum penalty exceeds that period.

The penalty of multilation, branding, whipping, torture, excessive fine, confiscation of property and other cruel, inhuman or degrading treatment are absolutely forbidden.

Capital punishment may not be imposed for political offenses. The same may be imposed only for the following crimes: high treason during a foreign war, parricide, murder with treachery and premeditation, kidnapping, highway robbery, piracy and grave military offenses.

In times of peace, no member of the army can demand board or lodging in any private home without the consent of the owner, nor may ask for any other kind of services or goods.

In times of war, the military can ask for board and lodging or other assistance in the matter provided specifically in the corresponding martial law.

In the United Mexican States there can be no monopolies or trusts of any kind, or special tax exemptions nor prohibitions in the guise of protection of industry. The Government has the exclusive control over minting of money, mails, telegraph, radio and the issuance of bank notes through a single Central Bank. Certain privileges may be granted for a limited time to authors and artist for reproduction of their works or to inventors and those who improve their inventions. The law punishes severely and the authorities prosecute every concentration or monopoly of articles of prime necessity directed to obtain a rise in prices or any other devise to prevent free competition. Also forbidden are acts of producers, industrialists, merchants or common carriers or any other service tending to prevent free market or free competition or may force the consumers to pay exaggerated prices or which constitutes an advantage in favor of one or a few persons, or may damage the people or a social class.

Labor unions and organizations formed to protect their own class interests are not deemed to be monopolies.

Cooperative association to sell directly in foreign markets are not considered monopolies if those associations are under the supervision and protection of the Government.

In case of emergency, when the public peace is threatened, only the President of the Republic, upheld by his cabinet and with the approval of the Congress of the Union, may suspend the basic guarantees in the whole country or in certain defined places, in order to meet the situation. The suspension must not be limited to determined persons.

If the emergency occurs when the Congress is in session, it will give the necessary authority to the Administration. If Congress is not in session, it must be convoked immediately.

THE *AMPARO*

The *amparo,* the outstanding Mexican constitutional remedy to obtain a judgment from the federal judiciary declaring null and void certain acts of the administration or certain judgments of the judiciary, is regulated in the *Ley de Amparo,* the last one in force, published in January 1936, but substantially amended following the constitutional amendments for the protection of peasants and laborers.

In the third and fourth decades of the last century, the *amparo* was evolved through common procedures in the federal courts. It seems to have its origin in the remedy of *habeas corpus* of the American experience. In those years, *amparo* was only granted in criminal matters and was used to protect the lives, freedom and properties of citizens from the abuses of the administration.

After the 1857 Constitution was adopted, when its main guidelines were instituted in that Constitution, it developed as a remedy to challenge all kinds of acts of the administration and the judiciary, *actos en juicio y fuera de juicio,* in and out of judicial proceedings. From the criminal proceedings only, it was extended as remedy to obtain relief from final judgments of Courts of Appeals. By the end of the last century, the *amparo* was a clearly defined remedy against all acts and actions in or out of judicial proceedings, before or after the trial and against all acts of administration, of any branch of the Executive Department, *Poder Ejecutivo.*[6]

As a further development, approximately 40 years ago, the *amparo* remedy was extended as a procedure to challenge acts of Congress.

Probably for lack of access of Mexican jurists to the Spanish law and Spanish legal history, little attention was paid last century to what has been now recognized — the *amparo* was in fact used in a limited way before the Spanish Audiencia, the practice having originated in the law of the Kingdom of Aragon, in Spain. The tradition was that citizens had the right to complain and to get a redress from the highest Court of the country when their rights had been denied or violated.

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[6]According to scholars on *amparo*, in a very broad bibliography found in "*Panorama del Derecho Mexicano*" there are in reality four kinds of *Amparo*: a) the first is to protect the freedom as guaranteed in the Bill of Rights. In critical times, this remedy saved many lives from execution or long imprisonment. b) The second is the *Amparo* against statutes. This is the last established remedy by the Constitution notwithstanding the fact that the first *amparo* act in last century had the effect of voiding acts or statutes when *amparo* was granted against a specified act. c) The third is the *Amparo* as a procedural remedy, *amparo* judicial, which as it has been commented, is practically a *Casacion*, because it examines the legality of the judgment objected to. And there are four types of *Amparo Casacion*: the criminal, the civil, the labor and the administrative. The last case includes the remedy against the administrative Courts with full autonomy as the *Tribunal Fiscal.* d) The fourth and last, the *amparo administrativo*, that is, the traditional remedy the citizens have had as a defense against the administrative abuses. It may be considered from two standpoints: in the case of acts of the administrative authority in administering the general acts, it has worked as the remedy called in France, *contencieux-administrative.* From the other standpoint, and coinciding with fourth case of the previous category, the *Amparo administrativo* against a judgment of an administrative court like the Tribunal Fiscal, is a *casacion* type of *Amparo.* *Amparo* Law, is the only field where the judgments of the Supreme Court *Ejecutorias*, originate the only case of Mexican jurisprudence, or *Jurisprudencia Definida.* Article 193, and 193 bis, *Ley Organica del Poder Judicial de la Federacion.*

The Spanish scholar Fairén Guillén[7] says that the remote Spanish antecedents of the Mexican *amparo* were two remedies used in the XV and XVI centuries, in the Kingdom of Aragon, before the courts held by the *Justicias*. These remedies were called the *firma* and the *manifestacion*. It was essentially an order of suspension of certain acts of the King's Officials, or of the common courts, until its legality (not to say its constitutionality) could be checked by the *Justicia*.

Anyway, the *amparo* in Mexico has taken its own course of development. New techniques have been developed in Mexican legal science and a substantial work of the federal judiciary is in dealing with this matter. Highly specialized practitioners deal with this technical remedy that is considered to be one of the most important aspects of legal practice in Mexico.

There are, at first sight, two kinds of *amparo*. The first, the *amparo* proper, is a proceeding in which the act claimed as void violates an article or section of the *Garantías Individuales* or Bill of Rights. The case finishes when the Supreme Court decides that the claimant or *quejoso*, must be set free and declared immune to the prosecutory action. The second kind is used when the act to be annulled through the *amparo*, is a decision of the judiciary or of any administrative court.

In the second case, the *amparo* functions in the same way as the remedy of cassation, in French law known as *"Recours de Cassation"*. The Court responsible for the judgment sought to be revised in *amparo*, is alleged to have made a wrong application of the codes or statutes, or that there is constitutional violation. This is indirectly sanctioned by

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[7]"Antecedents Aragoneses de los Juicios de Amparo", by Victor Fairén Guillén, Universidad Nacional Authonoma de Mexico Press, Mexico 1971, Instituto de Investigaciones Juridicas, Serie de Estudios Historicos. The author explains the origin and development in Aragon, early in the XV and XVI centuries, of the judicial functions of the *Justicia*, a kind of justice for the Supreme Court Fellow, examining the similarities between the Kingdom of Aragon, the English people after the Magna Carta. It explains its similarities with the habeas Corpus remedy. See the remedy called *firma*, page 65, being an order on procedures by the Court of Justice, supported on the allegations for a defense of the claimant, guaranteed by a bond offered to cover all damages that might be caused for the delay in the accomplishment of the judgement in case of patrimonial execution, or in criminal matters for prison and confiscation. It was deemed to be a protection for the personal and political rights of the citizen. The name originate from the act of affirming the right of the claimant, *firma del derecho*, and is based on the offense made to the Aragonese claimant, an offense or wrong called *greuge*.

The *manifestacion*, see page 77, consisted in the order granted by the *Justicia* or his assistants, called *Letras*, addressed to a Court or to any official having arrested the claimant, pending or not pending a process addressed to have the prisoner delivered to the *Justicia*, in order that nothing could be done against that prisoner, until a judgement was issued. The Justice would examine the proceedings in order to see that all legal requirements had been accomplished.

In both cases, the *firma* and the *manifestacion*, the *Justicia* might deem null and void the proceedings and would not return the prisoner but release him in complete freedom as the claimed act was considered as being *desaforado*, unlawful.

Article 14 of the Constitution which provides that "nobody can be adjudged by a law different from that existing at the time the question arose". *Nadie puede ser juzgado por leyes privativas ni por tribunales especiales.* This means that any interpretation different from the orthodox one, or the misleading or wrong application of an article of any Act or Statute, is a violation of the Constitution.[8] The effect of an *amparo* judgment before the Supreme Court, if the *amparo* is granted, is that the court responsible for the wrong judgment must issue another judgment in lieu of that which is declared null and void, following the guidelines of the *Ejecutoria* granting the *amparo.* Sometimes this entails a full reversal of the annulled judgment.

The concept intimately connected with the *amparo,* in a way similar to, but not identical with it, is the injunction. Injunction is an example of a judicial decree ordering somebody not to do something. The suspension in *amparo* cases is an order specifically directing to maintain the *status quo* at the time the order is served until the *amparo* judgment is issued or denied.

The *suspension,* legally known as *suspensión del acto reclamado,* is a proceeding and a "docket" dealt with separately from the main action or *cuaderno principal.* In the first cuaderno called *incidente de suspensión,* no issue is dealt with in connection with the main action — the constitutionality or nullity of the claimed act — but only its suspension. The theory is that if in an *amparo* action alleging the nullity of an act of the administration, the carrying out of said act is not suspended, the remedy is rendered useless or impossible.

So, a suspension is needed to maintain things as they are. If, for example, the claimant of the *amparo* is shot dead, the subject matter of the remedy disappears and it would be useless to further state that death sentence should have been deemed null and void by reason of unconstitutionality. In the same way, if the claimant is imprisoned, the damages he suffers in his business, person, family and properties, are very difficult to repair.

The suspension is granted without any requirements, *de oficio,* in cases concerning risk to life or freedom, but in cases where only private interests are concerned, a bond, *fianza,* is required of the petitioner or claimant to answer for possible damages.

The *amparo* remedy, *juicio de amparo* or *Recurso de Amparo* is intended to decide controversies originating in:

[8]This point is extensively dealt with by Emilio O. Rabasa, "El Articulo 14, Estudio Constitucional", Mexico 1909; "El Juicio Constitucional", Mexico and Paris, 1919. These and other works by Rabasa, have been recently reprinted.

1) Statutes or acts of any authority violating the *garantias individuales* or Bill of Rights;

2) Violation by the Union of a State's sovereignty; and,

3) State invasion of the Federal jurisdiction.

The second and third categories of *amparo* are very seldom used and deal with the constitutional controversies on *jurisdiccion* federal, State or local. According to Article 1 of the Constitution, all inhabitants of the Republic enjoy all rights granted by the Constitution, including the right to *amparo*.

The parties in the process are the: 1) *quejoso* or claimant; 2) the *autoridad responsable* in the role of the defendant; 3) the *tercero perjudicado*, in the role of the counterpart. In criminal matters no formality is required to admit the complaint. It can be applied for by any person, in case of imprisonment, on behalf of a detainee. In civil matters, the personality of the claimant must be certified.

A civil suit must be commenced or submitted within 15 days following the date when the claimant had the notice of the *acto reclamado*, or action by the responsible authority. Its validity is deemed admitted if the complaint is filed after that period. In criminal matters, there is no time limitation to start the suit. (Articles 1, 4, 21, *Ley de Amparo*).

Copy of the complaint is sent as a summons to the responsible authority, who has to render a reply called *informe justificado* within a definite period. At the same time, the hearing is set where the claimant will produce or present his evidence.

Upon hearing, or on days following, the District Court issues a judgement stating if the federal judiciary, *la Justicia de la Union*, finds, *ampara y proteje*, or not, for the claimant against the protested acts, *actos reclamados*.

If this judgement is not appealed through a remedy called *revisión*, the judgement is executed and served upon the responsible authority. If the *amparo* is denied, the authority proceeds with its action as if no *amparo* had ever been petitioned. But if the *amparo* is granted, all proceedings are null and void and the responsible authority cannot repeat them. These proceedings are for actions before the Circuit Court.

The *amparo* before the Collegiate Circuit Courts, *Tribunales Colegiados*, or the Chambers of the Supreme Court, called *amparo directo*, is dealt with only by the demand and action and the information rendered by the *autoridad responsable*.

The Supreme Court proceedings exclude all kinds of evidence and

hearings. The high court only reviews the proceedings and decides on its constitutionality in "public audience", meaning that the discussions among the Justices are public. However, no interruptions or requests by the audience, the parties concerned included, are permitted under the pain of heavy sanctions, beginning with the expulsion of the interpelator and the suspension of the *audiencia.*

The decision of the Supreme Court is definite and constitutes according to the law and the doctrine, the legal truth, *la verdad legal,* against which no further actions or remedies can be made. The *autoridad responsable,* upon receiving a copy of the *ejecutoria,* that is the judgement of the Supreme Court, has to accomplish it under severe sanctions if it is delayed in its accomplishment. If the *amparo* has been granted, the proceedings are null and void, and a new judgement has to be issued, if it is the case of a judgement voided through the *amparo.* A new judgement has to be issued according with the *ejecutoria* guidelines. If the *amparo* is denied, the judgment by the *autoridad responsable* is carried out.

The suspension of the proceedings originating in the *amparo* might be revised through the remedy of review, when it is decided by the District Judge.

In the case of *amparo directo* before the Circuit Court or the Supreme Court, the suspension docket is filled as an annex to the proceedings where the *acto reclamado* or the judgement has been issued. The amount of the bond is determined by the responsible authority and the bond is extended to the responsible court. In case the *amparo* is denied, the *tercero perjudicado,* the counterpart of the claimant, proposes an account of the actual damages involved, (never moral damages) which is paid out of the bond.

NATIONALITY AND ALIENAGE

The Constitution provides that those born in the territory of the Mexican Republic are Mexican citizens. Those born abroad of Mexican father and a foreign mother or of a Mexican mother and an unknown father, are likewise Mexican citizens. Mexican ships of all kinds, including airplanes, are deemed to be national territory for this purpose.

A woman married to a Mexican national and those aliens who obtain a Certificate of Mexican nationality (it has been very difficult to obtain Mexican nationality by naturalization in the last decades) are Mexicans by naturalization.

Only Mexicans by birth can hold certain key positions in the Government, in the Armed Forces and in public services in Mexico.

Full political rights are enjoyed by Mexicans reaching the age of 18 years, married or single. Citizens are entitled to vote in all elections and to be elected; to form political parties and to serve in the National Guard.

The Mexicans have the following obligations: 1) to send their children to the school, public or private, for elementary education; 2) to send their children to the municipality for civic and military instruction and to serve in the National Guard for the defense of the country; 3) contribute to the public expenses by paying their taxes according to law, to the Federation, to the State, and to their municipalities.

The Mexican nationality may be lost by adopting a new nationality, or by pledging allegiance to a foreign government. Naturalized Mexicans may lose their nationality if they use a foreign passport, or live more than five years outside of Mexico, or accept or use a title of nobility which implies allegiance to a foreign country. Mexican citizenship is lost by working for a foreign government without the permission of the Federal Government, or by using foreign decorations or accepting them, or any titles or awards except for literary, scientific or humanitarian reasons.

It is absolutely forbidden for aliens to interfere in Mexican political matters.

According to Article 33 of the Constitution, the President has the power to expel from the Mexican territory any alien without previous legal action.

THE FEDERAL LEGISLATURE

The Legislative Department is formed by the Senate and the *Cámara de Diputados* or House of Representatives. Two Senators must be elected by each State and by the Federal District, to remain in office for a period of six years. The *Diputado* or Representative, is elected only for three years, one for every 200,000 inhabitants or any fraction exceeding 100,000, according to the official census, for each State of the Union; but there should never be less than two Representatives for one State, and one Representative for each territory.

Political parties have the right to the appointment of *Diputados de Partido* or Party Representatives, having the same rights and duties as the constitutionally elected *Diputados*. To be elected *Diputado*, the candidate must be 25 years old on election day. No minister of any religion or military person in active service, or high government official, can be elected.

To be elected Senator, the candidate must be at least 35 years old.

Neither Senators nor *Diputados* can be reelected for the immediately following term.

Each House constitutes an electoral college to judge the elections of its members, and decides any questions with respect thereto.

The regular session every year opens on the 1st of September and closes on the 31st of December.

Extraordinary sessions may be convoked for specific purposes by the Permanent Commission or by the President of the Republic.

The Congress is the department charged with the power to discuss and to enact general or federal acts or statutes to be administered by the respective Departments of the Administration.

The President, the members of both houses of Congress and the State Legislatures are the only ones entitled to initiate acts, statutes or codes, under Articles 71 and 72. Article 73 regulates the powers of the Congress in XXIX sections, listing the matters to be dealt with in those acts or statutes, which comprehend all business of federal jurisdiction.

Article 74 and 75 regulate matters within the exclusive jurisdiction of the *Cámara de Diputados*, and Article 76 enumerates the business under the exclusive jurisdiction of the Senate.

The Mexicans have created and developed a peculiar body within the Congress, called *Comisión Permanente,* meaning a Permanent Commission of both Houses, to decide important matters during the periods when the Houses are not in session, that is, usually from the 1st of January to the 31st of August. The *Comisión Permanente,* which in its early days was only meant to decide very urgent matters and to convoke Congress, is now empowered to exercise many of the attributes granted by the Constitution to the Congress or to each of the Houses. Now it can administer affirmation or oath of office (*recibir la protesta,* as in Mexico there is no legal oath) of a new President, substitute or interim; begin the study of statutes or proposed acts, convoke extraordinary sessions of the Congress, ratify the appointments of the Supreme Court Justices, Ambassadors, high Government Officials, and commanders of the Armed Forces.

The rules governing the presidential election, the President's absence, his powers and duties are detailed in Article 80 to Article 93, inclusive. These are the result of more than a century and a half of painful political experience in Mexico.

THE EXECUTIVE

The President is elected by popular vote in a direct election, for a six year term, and is not eligible for reelection.

The non-reelection principle was intended by the theoreticians of the Mexican Revolution to be forever engraved in the souls of all Mexicans. Hence, since 1917 all official documents and communications carry the slogan SUFRAGIO EFECTIVO. NO REELECCIÓN, meaning "Effective Suffrage. No Reelection". This is written before the signature of the official signing official documents or communications. The success of those patriotic minds in that intention is evident in the fact that there is no Mexican, when talking about the election of presidents, who would not declare that in Mexico, reelection is definitely forbidden by law.

The President leads the national and international policies of the Republic.

There is no Vice-President in Mexico. The Constitution directs the speedy appointment of an interim, provisional or substitute President while new elections are convoked to elect a new one.

The President freely appoints and removes the Secretaries of the State. There are, according to the *Ley de Secretarias y Departamentos de Estado,* Departments directed by a Secretary and two or three Assistant Secretaries or *Subsecretarios.* The official next in rank is called *Oficial Mayor,* in charge mainly of administrative matters.

The President also appoints the Justices, *Ministros,* of the Supreme Court, the Magistrates, *Magistrados,* of the Court of Appeals of the Federal District; ambassadors and diplomatic agents, heads or directors of the parastatal organizations, *empresas é instituciones descentralizadas.*

The President may declare war pursuant to a previous law of the Congress of the Union.

The Secretaries of State must appear personally to inform both Houses of the Congress, jointly or separately, on the state of their respective branches.

The President may make treaties with foreign powers. Said treaties must be ratified by the Senate.

He may grant pardons and amnesties.

The President appoints and freely removes from office, the Commanders, *Generales* and *Coroneles* of the Army and Air Force, and the

Admirals and Commodores of the Navy. These appointments, like the appointments of ambassadors, plenipotentiaries and other government representatives to other countries and to international organizations, must be ratified by the Senate. When the Senate is not in session, the *Comisión Permanente* approves them. So far, the disapproval cases are very rare. The presidential powers are detailed in Article 89 of the Constitution.

According to the *Ley de Secretarias de Estado,* the President appoints, for the studying, planning and dispatching of the business of the Administration or Executive Department, the following *Secretarias de Estado* (Departments):

1) The *Secretaría de Governación,* in other times or in other countries called the Ministry of the Interior, to deal with the officials of the states and of the municipalities. The municipality is the primary cell of the Mexican government. It is headed by a *Presidente municipal,* formerly called *alcalde,* mayor in English, before the 1917 Constitution, assisted by a board of municipal officers, called *síndicos* and *vocales.*

During the period of the dictatorship of President Porfirio Diaz, some officials called *jefes politicos,* would transmit to the municipalities the decisions of the Federal Goverment, but this produced abuse of power and corruption. Since 1917, these officials had been eliminated.

2) *Secretaría de Relaciones Exteriores,* or the Department of Foreign Affairs, which deals with the relation with other nations and international organizations.

3) *Secretaría de la Defensa Nacional,* formerly the *Secretaría de Guerra y Marina,* deals on all matters related to the army, the air force and parachutists, and all branches of the armed forces, except the local police of each State and the Navy or *Marina Nacionál.* The Army in Mexico is characterized by its peaceful role. Mexico has never started a war. It is the guardian of the constitutional institutions and is deeply respected by the people. In the last years, it counts with approximately 120,000 troops, distributed throughout the national territory. It does not perform police functions.

4) *Secretaría de Marina,* in charge of the navy, warships, naval schools and related matters.

5) *Secretaría de Hacienda y Crédito Publico,* equivalent to the Ministry of Finance, in charge with the collection of taxes, duties and all federal incomes and expenditures. It prepares the national budget and supervises the Banco de Mexico and all other banks and credit institutions.

6) *Secretaría del Patrimonio Nacional,* which takes care of the properties, immovable and movable, of the nation, dealing mainly with mines, federal lands and federal waters. It grants concessions for the exploitation of nation's resources and supervises the parastatal corporations.

7) *Secretaría de Industria y Comercio,* the Trade and Industry Department in charge of everything connected with production, distribution and consumption for the national economy, except cattle and forest products.

8) *Secretaría de Agricultura y Ganadería,* the Department in charge of livestock. It promotes and fosters agricultural exploitation, mainly the *ejidos;* administers the agricultural schools and research institutions, exhibitions and fairs, and the exploitation of the forests and timber resources. It is in charge of all flora and fauna matters.

9) *Secretaría de Communicaciones y Transportes,* or Communications and Transportation Department, which is in charge of the maintenance and organization of railroads, roads, telegraph, meteorological stations, charters for traveling, buses and buslines, international bridges, etc.

10) *Secretaría de Obras Públicas,* or Public Works Department, in charge of all kinds of constructions for the Federal Government, such as roads, bridges, airports, railroads, harbors and piers, buildings, etc.

11) *Secretaría de Recursos Hidraúlicos,* in charge of the nation's hydraulic resources, mainly dealing with the planning, construction, administration and functioning of channels, dams, irrigation systems, river works, etc.

12) *Secretaría de Educación Pública,* Department of Education, in charge of everything connected with the official schools at all levels, primary and secondary schools, universities, technical education, sports and museums. It supervises the private schools. It also sponsors fine arts activities like theatres, dramatics, literature, and sculpting. It watches over the professional diplomas registration. It administers museums, exhibitions, fairs and all kinds of cultural events.

13) *Secretaría de Salubridad y Asistencia,* or Public Health Department, in charge of the creation and administration of the public health centers, public assistance and social therapy in all the national territory. It supervises all private welfare institutions, the sanitation, hygiene and control of medicine and drugs in the entire Republic, etc.

14) *Secretaría del Trabajo y Provisión Social,* or Labor Department, deals with everything connected with labor, labor relations, labor code, social security for laborers, retirement and pensions, all kinds of medi-

care except for the social security service granted by the *Instituto Mexicano de Seguro Social,* and by the *Instituto de Seguridad Social de los Trabajadores al Servicio del Estado,* which are autonomous and regulated by special acts and statutes. This Department supervises the *Juntas de Conciliacion y Arbitraje,* or labor courts, and all the labor agencies.

15) *Secretaría de la Presidencia,* comprising what was previously the Secretariat of the President, which plans and organizes the work of all other departments.

16) *Secretaría de la Reforma Agraria,* or Department of Agrarian Reform in charge of the distributions of the land of *latifundios* to the *ejidatarios,* preventing the formation of new *latifundios,* and overseeing the work of the *ejidos.* It keeps the National Agrarian Registry and deals with everything connected with boundaries and land titles, and helps the *ejidatarios* to improve their production.

17) *Secretaría de Turismo,* the Department of Tourism, which plans and develops tourism, national and international. It creates and develops tourism services and the manufactures of handicrafts for tourist consumption. In Mexico, tourism is particularly important because it helps our balance of payments. We receive more or less two million tourists every year, and the money they spend adds to the foreign exchange.

18) *Departamento del Distrito Federal,* is the equivalent of Metro-Manila Government. This department tackles the municipal administration of the entire federal district, in old times formed by several cities that have been united into a metropolis that now forms in a continuous area of construction. It was created in the late 1920's to prevent social and political instability and corruption that resulted from heated election campaigns which came every two years. The Federal District has a Governor appointed by the President, with the same capacities and powers as a State Governor.

With the general conformity of the entire nation, and mainly of the inhabitants of the Federal District area, the abolition of the municipality of the City of Mexico was carried out and the creation firstly of the "Government of the Federal District", and more recently, the *Departamento Central,* whose head is, at the same time, Governor and Mayor. This has proved to be successful in eliminating many inconveniences that came with the double government in the Federal District.

The Congress of the Union has approved what in Mexico are called "Leyes Federales", uncodified administrative laws, regulating the activities of the Executive towards the citizens in all fields authorized by the Constitution. Each Act is administered by the corresponding Department. The essential legal doctrine underlying these legislations is that due pro-

cess of law must be observed in the grant of a charter or concession, or to cancel any rights having been granted to the citizens by the Constitution or by any Act or Statute. We have the following Statutes enacted by Congress:

(a) *Ley Orgánica de Educación Pública,* dealing with all educational acts of the Government.

(b) *Ley de Imprenta,* regulating the publication of newspapers.

(c) *Ley de Monopolios,* establishing rules and regulations for the prevention of monopolies which are forbidden by the Constitution (Art. 28). In principle, all kinds of raffles, lotteries, coupons or similar devises given by merchants to prospective purchasers of their products in order to attract more sales are forbidden.

(d) *Ley de Nacionalidad y Naturalización,* regulating the nationality and naturalization of aliens, their rights and duties and the naturalization proceedings.

(e) *Ley General de Bienes Nacionales,* which states what lands, waters or properties in general belong to the Nation.

(f) *Ley del Petroleo,* regulating the norms of the Constitution on the exclusive government activity on everything connected with oil and carbohydrates. The Government institution, a descentralized one, dealing with oil matters, is called *Petroleos Mexicanos,* internationally known by its abbreviation PEMEX.

(g) *Ley de Aguas de la Federación,* regulating the ownership and usage of waters of lakes, deposits, rivers and the territorial and economic zones in the seas.

(h) *Ley de Amparo,* which has already been discussed.

(i) *Ley del Control por el Gobierno Federal, de los Organismos Descentralizados y Empresas de Participación Estatal,* containing the rules for the government controlled corporations and institutions, organizations and enterprises owned by the Federal Government, existing by virtue of statute, or to be created later, for specific purposes.

As I have previously said, the Government, in order to facilitate its work and to do so expeditiously and with dispatch, creates departmental institutions or administrative units, and corporations, with a determined set of functions as for instance, to create and develop an economic activity, as in the case of *Petroleos Mexicanos* for oil, and the *Compañia de Luz y Fuerzas del Centro,* the electric power corporation established for the production and distribution of power in the Federal District, whose shares are fully owned by the Government. Another institution the INFONAVIT, or National Institute for the Construction of Dwellings for Laborers. This institute has built so far (1975) 500,000 houses for laborers.

(j) *Ley de Expropiación,* regulating expropriation proceedings and due payments.

(k) *Ley de Población, dealing* with emigration and immigration, aliens residence, and related matters.

(l) *Ley Federal del Turismo,* dealing mainly with facilities for tourists coming to visit Mexico.

(m) *Ley Federal de Estadística,* dealing with collection and publication of statistical data.

(n) *Ley de la Reforma Agraria,* dealing with all agrarian problems and proceedings, implementing Article 27 of the Constitution.

(o) *Leyes Sanitarias,* a set of acts on public health and sanitation, including regulations on medicines and drug registration in the Department of Public Health.

(p) *Leyes de Impuestos, Timbre, Renta, etc.,* treating with federal taxes to be paid to the Federal Government.

(q) *Impuestos del D. F.,* dealing with State taxes to be paid to the Department of the Federal District.

(r) *Ley de Minas,* dealing with mines, its concessions and exploitation.

(s) *Ley de Explotación Forestal,* dealing with forest laws and timber exploitation.

THE JUDICIARY

The third Department of the Mexican Government, the Judiciary, in Spanish *El Podér Judiciál,* was structured since the 1857 Constitution, as the one of the United States.

The organization, structure and functioning of the Supreme Court of Justice and the Circuit and District Courts, are provided in the *Ley Organica del Poder Judicial de la Federación,* issued by the Congress. The *Ley Orgánica de los Tribunales del Fuero Común para el* D. F. establishes the common Courts of Justice in the City of Mexico and the Federal District. The Supreme Court has no powers to issue any act or statute concerning its organization and functioning, but only its *Reglamentos Interiores de Trabajo.*

The Supreme Court, *Suprema Corte de Justicia de la Nación,* is the highest tribunal in the country. The Circuit Courts and District Courts are organized according to the law enacted by the Congress.

The Circuit Courts are of two kinds: the Collegiate Circuit Courts, formed by three *Magistrados,* Magistrates, whose jurisdiction is on *Amparo* matters, and the Unitary Circuit Courts, *Tribunales Unitarios de Circuito,* with appelate jurisdiction in common cases: criminal, civil and mercantile.

There are, according to the *Ley Orgánica del Poder Judiciál de la Federación*, District Courts in every State, and Circuit Courts in each of the five or six more important zones or regions in the country.

The *Suprema Corte* is composed of 21 *Ministros Numerarios*, Justices, and five *Supernumerarios*, what may be called Assistant Justices, working in banc, *en pleno* or by Chambers, *Salas*.

Every year, as stated in the secondary law, a President is elected among the Justices, who represents the Supreme Court in political events. The law regulates the integration and work of the four Chambers of the Supreme Court, each one formed by five Justices. They are *la Sala Penal* or Criminal Chamber, Administrative Chamber (No. 2), the Civil Chamber (No. 3), and the Labor Chamber (No. 4).

Their working hearings (*audiencias*) are public but only the Justices and the Secretaries take part in the proceedings. The parties and the public cannot participate.

Justices are appointed by the President of the Republic and confirmed by the Senate. They cannot be removed, except for undue or wrongful behavior as defined by law.

Circuit Court Magistrates and District Judges are appointed by the Supreme Court for a four-year term. If re-appointed for same or higher positions, they become "ratified" and cannot be removed, except by bad behavior, *cuando observen mala conducta*.

The Supreme Court may appoint Assistant *Supernumerarios*, District Judges, to expedite the administration of justice. All tribunals are inspected periodically by the Justices to ensure speedy execution of work.

Justices, Magistrates and Judges of the Federal Judiciary (the same as the Judges and Magistrates of the State Judiciaries) cannot accept any other kind of position, public or private, unless they are honorific appointments in scientific, literary or charitable institutions.

In Mexico, for political reasons and a mistaken tradition (in my personal opinion) there is no Department of Justice, *Secretaría de Justicia*,[9]

[9]During President Porfirio Diaz' dictatorship 1885-1910, the *Secretaría de Justicia*, Department of Justice, gave undue political instructions from the presidential staff to the *Jefes Politicos* and through them to lower authorities, deemed by the 1910-16 revolutionaries to have damaged the common people and political dissidents. The official position of the *Jefe Politico* was abolished and also the *Secretaría de Justicia*, which in those times was also in charge of Education, *Instrucción Pública*. The reestablishment of the *Secretaría de Justicia*, implying a remote possibility of unfair political attacks by dissidents, or opposition parties, has become an unsolved political issue.

to direct and handle relations between the Executive and the Judiciary. For this reason, it has been necessary to invest the Office of the Attorney General with this function.

The Attorney General is the head of the fiscal organization, *el Ministerio Público,* following the French tradition, representing the society, *la sociedad,* in charge of all prosecutions through his officers, *los Agentes del Ministerio Público.*

The Attorney General, *el Procurador General de la República,* is the legal Counsellor of the Executive, that is, the President and all State Secretariats.

THE STATES

All States follow the same political scheme. A Governor who is the chief executive of the state is elected for six years, in popular and direct elections. He cannot be reelected. A unicameral Congress of Representatives (*Diputados*) elected every three years proportionally to the number of inhabitants is the legislative department. The local judiciary is made up of Judges of the Peace, *Jueces Menores o Correccionales,* the lower category, Judges of First Instance, *de Primera Instancia,* in criminal or civil (including mercantile) matters and a Court of Appeals, called *Tribunal Superior de Justicia del Estado.*

The Constitution of each State regulates all details of the state judiciary.

STATE AND FEDERAL JURISDICTIONS

In the chapter of *Disposiciones Generales,* general regulations, it is stated as a principle that the Union's powers must be expressedly granted in the Constitution. In case a matter is not included expressly, it is understood that its jurisdiction pertains to the States of the Republic.

PROTESTA

It is also a principle that all public officials have to render a *protesta,* that is, the equivalent to taking the oath. The *protesta* means the promise to uphold the Constitution and the laws therefrom derived.

CHURCH AND STATE RELATIONS

According to Article 130, federal powers shall exercise supervision required by law in matters relating to religous worship. Marriage is a civil contract and this and other acts of civil nature are within the exclusive

competence of civil officials and authorities. The law recognizes only civil marriage and all religious ceremonies are not considered to be legal marriages.

The "churches", *las Iglesias* as abstract concept, have no legal personality in Mexico; the priests are depositories of the properties of the Nation, as their buildings belong to the Nation, including the objects used in the practice of any religion.

No legal validity is extended to studies in religious seminaries. Political associations cannot use religious terms in their names, and no political meetings can be held in the churches. Priests have no political rights.

Priests and other religious persons cannot be heirs of, or receive inheritance except from their relatives to the fourth degree.[10]

AMENDMENTS

The amendments to the Constitution in case of a legal proposal must be approved by at least two thirds (21 States) of the local Congresses of the States of the Federation. But first, the Federal Congress must approve the Amendments.

COMPARATIVE LAW

Let us now go into the comparative law categories and methods in order to consider where the Mexican legal system must be assigned.

It is important to determine the characteristics of the different groups or families of legal systems of the world, for once these are known it shall not be difficult to determine the assignment. Likewise it will be easy to advance an opinion on the place of the legal system of the Philippines in this year of 1975, and to consider where it should have been placed during the Spanish colonial era and the Commonwealth.

The study of Comparative Law is mainly concerned with the study and classification of the law in all the countries of the world. The first part of this study deals with the notions, the values, the elements serving as reference points for the evaluation of legal institutions, and of legal organizations.

The study cannot be carried out with mathematical precision but certain common denominators can be established to enable us to make the classification.

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[10]Article 130, par. 10 of the Constitution.

For this purpose, let us follow the scholarly procedure utilized by almost all comparatists.

Comparative Law is a rather modern discipline, born early in this century and developed only in the two decades after the First World War. In 1937, the first Conference on Comparative Law was held in Paris. It marked the beginning of general scientific studies and research on the subject, and the publication of books dealing exclusively with the subject.

The Pioneers in Comparative Law are no doubt Professor H. C. Gutterridge of England, and René David of France. Both published their books, the English in 1947 on "Comparative Jurisprudence"[11] and the French on "Comparative Civil Law" in 1950.[12] The latter's classifications of the world nations' legal systems has undergone some changes from that year to the fourth edition of his last book, which appeared in 1974.

Since the fourth decade of this century, a number of comparatists have contributed various monographs and treatises on the systematization and progress of comparative law. The subject is by no means static: the laws of the different nations of the world, subject-matter of comparative law, are continually changing and progressing. Cases in point are the nations of the African continent and the People's Republic of China.

I would prefer not to mention but a few names of comparatists for fear of leaving out other important ones.[13] Suffice it to say that there are two faculties exclusively dedicated to the teaching of comparative law. Both confer the degree of "Doctor in Comparative Law" after studies, which include the preparation and writing of an original monograph or "thesis" and undergoing oral examination by a panel of five

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[11]H. C. GUTTERRIDGE, COMPARATIVE LAW (1947).

[12]The First Treatise of René David, published in 1950 was the first important work of a latin comparatist and leading jurist, called *"Traite elementaire de droit civil comparé. Introduccion a l'etude des droits etrangers et a la methode comparative"* In this, his first book, René David classified the world's Law Systems in five categories: 1) The Occidental, Europe and America; 2) The Sovietic; 3) The Muslim; 4) The Indian; 5) The Chinese. In the first group he distinguished two subgroups, the French or Latin group and the English or Anglo-Saxon. See coinciding René Rodiére, Introduction au Droit Comparé. Edit. Cochs, Barcelona, Spain. Solá Cañizares' classification was: 1) Occidental Systems; 2) Sovietic Systems; 3) Religious Systems. The first edition of his book (Rene David's) "Les Grans Systemes de Droit Contemporains" was published by Dalloz, Paris, in 1964. The last edition here known was published in 1974.

[13]Among them, the Italians Mario Sarfati (1942), Mario Rotondi, Tulio Ascarelli; the Spanish F. de Solá Cañizares (1954) and Jose Castán Tobeñas (1957); the Germans Arminjon, Nolde and Wolfe (1950/52); the French René Rodiére (1967) and André et Susane Tunc; Boudouin (Belguim, 1965-67) visited Mexico. Solá Cañizares' book was the textbook in my Comparative Law class, in the U.N.A.M. He visited Mexico many times as Vice-Dean of the *Université de'Estrasbourg pour l'enseigment du Droit Comparé.*

professors. These universities are established in Luxemberg and Strassburg, two cities outstanding for their academic and non-political life.

However, other Institutes of Comparative Law have since proliferated. In the Western Hemisphere, the Mexican Institution for Comparative Law was founded in 1941; it immediately published a bulletin.[14] Other Latin American countries founded their own institutions attached to their faculties or schools of law. At present the principal South American law faculties have each a Section or Institute of Comparative Law.

BASES FOR CLASSIFICATION OF LEGAL SYSTEMS

The foundations of the classification or criteria taken as reference points (for grouping countries in the five families referred), are the following:

Firstly, the history of the legal system. This must be considered because it shows the development of the concept of the Rule of Law since early times to the modern era. In most of the countries the rule of law is supreme but not in the Fourth Family countries.

Secondly, the prevailing concept of rule of law.

Thirdly, the structure of the rights that the people enjoys is important to classify a legal system. The division of the law in branches, not only for scholarly or doctrinal purposes but for legislation; the division of law between public law and private law; the rules of constitutional and administrative law, also determine the classification of the legal system.

The fourth criterion for classification is based on the sources of the law in each country, *las fuentes del derecho, les sources du droit.*

The sources of law are different in the Nations, in the various families. For instance, if we think about civil responsibility in a civil law system, we must look into the civil code; in a Common Law country, in judgments and precedents on damages and in a socialist country, we should probably have to look in management or in relations between government agencies. If it is a matter relating to negotiable instruments law, in the Western countries, we have to look in the mercantile code or in judgments con-

[14]The *Instituto de Derecho Comparado de Mexico* published in 1965, in two volumes, a series of ten monographs called *"Panorama del Derecho Mexicano"*, containing sythesized expositions of the following Mexican Law branches: *Constitucional, Administrativo, Amparo, Agrario, Trabajo, Penal, Civil, Mercantil, Procesal, Internacional Publico e Internacional Privado*, in pages 358 (Vol. I) and 673 (Vol. II). Each monograph has an essential bibliography on the matter dealt with. Copies of these books may be found in the Embassy of Mexico's Library, the Ambassador's Section.

nected with the bills of exchange, checks or notes; but in a socialist country where these negotiable instruments do not have the daily life importance that they have in capitalist countries, probably we should have to look into international trade dealings.

Comparative Law studies may be done not only between two nations' law systems, but with respect to the same nation, in different epochs. For instance, in old England, in the 14th century, without a doubt the Cannon Law was subsidiary law in the English courts. When King Henry VIII quarreled with the Pope on account of his marriages and his wives, he broke with the Pope and the "canonists" and took his own path towards the common law system.

The law in the old Russia of the Czars was a civil law system, with little difference from the French one; but after the Russian Revolution of 1917, that nation, now converted into the U.S.S.R., drastically changed its economic, social and legal structure and abandoned all the moral, philosophical and legal foundations of its former system.

The sources of the law as recognized by scholars of all countries are mainly: a) the written law, b) judgments or decisions of courts, c) the customs or usages, d) the doctrine, that is, the opinions, comments, research and criticisms of scholars, and e) the general principles of law.

It is doubtful that there was a written law in the China of the Mandarins, or in the African nations before their colonization. It is also doubtful that the judgments of the courts existing in pre-colonial Africa if there were any, were ever recorded, and rules of law which may have been contained in a short number of judgments, could hardly constitute "jurisprudence" in the context of a *stare decisis* system.

CLASSIFICATION OF LEGAL SYSTEMS

I am going to refer to five families of legal systems; the first is the Roman-Germanic family, comprehending all Western Europe except the United Kingdom, and the American Continent, except the United States of America and Canada. They are ruled by a codified legal system.

The second is the Common Law family, formed by the United Kingdom, the United States and Canada, except the province of Quebec. The first and the second families follow the Western European philosophy, Christian morals, free market economic system.

The third family is the Socialist group, composed of the Soviet Union, China, eastern European nations, and all other countries with a socialist

economic and political regimes.[15] The group now includes some countries in Asia and Africa, apparently now including Ethiopia.

The fourth family includes countries with legal systems based on religious doctrines from sacred books or sacred traditions, like the Muslim countries and India. China and Japan until recently, were deemed included in this group. Contemporary China and Japan are now excluded from this group the former being in the third family or Socialist countries, and the latter in countries with codified system, but keeping its own peculiarities.

The fifth family includes those nations not included in the previous four. Its membership has dwindled to a few countries in Africa which nominally belong to the first group and some nations or islands in Oceania, where animism and fetishism are still observed.[16]

The first family or "Roman-Germanic Family" is characterized by its inspiration in the Christian philosophy and the morals therefrom derived. Its legal and philosophical concepts are based on notions of equity, justice, right and wrong, damages and benefits, honor and dishonor. Its economic system is premised on adherence to free market, free enterprise, liberalism and private property. These ideas and individualism, as they have been understood in the west, are at the bottom of the so called "capitalist countries".

Also called "codified" or "civil law systems", the Roman-Germanic family, nevertheless has laws that are not codified such as; for instance the *Pandectas* of Roman law. The codes in fact became institutionalized only early in the XIX Century starting with the five Napoleonic Codes. These days all nations belonging to this group have codes, the Civil Code, the Code of Civil Procedure, the Mercantile Code that includes procedural regulations, the Criminal or Penal Code and the Code of Criminal Procedure.

As a matter of principle, it might be stated that in countries with written law, the rule of law relative to state or government is different from that relating to private persons. The government, according to an administrative law principle, can do only what the law authorizes it to do. On the other hand, the private persons, the common people, can do anything that is not specifically forbidden by the law.

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[15]The supreme value being the collective State welfare in Socialist countries. In capitalistic countries the supreme value, for this purpose, is individualist: personal freedom and capability to own properties. The same behavior of an individual may produce quite different effects and sanctions, depending whether he lives in a capitalist or socialist country.

[16]The social, economic and legal evolution of a large number of African countries, Anglophones and Francophones, right now or in the near future, will fulfill the requirements to be considered as belonging to the First, Second and Third Families. As examples may be cited Ivory Coast, Kenya and Tanzania.

The second family or Common Law Family, is basically simi'ar to the previous one. It is based on the same Christian philosophy and liberal economic system: free market, private ownership of the means of production and personal and private property.

The main difference that we can cite are the sources of law. This difference is slowly disappearing as the system, consisting the *stare decisis* rule, is tending towards a codification of legal rules and dicta in books called Reports, *Corpus Juris*, or Restatements (instead or "codes") published or structured in the form of codes.

In any case, the common law system recognizes as legal source, first and foremost, the judgments of courts. The written law or statutes are the exception. Legal usages are of primary value and are as important as judgments.

The third family is the Soviet legal system. Religious philosophy is completely excluded. The main principles of the system are the philosophies of Marx and Lenin. Its essential features are state ownership of the means of production, and a centrally controlled economy. Private enterprise and liberal philosophy are rejected. A vanguard party, the Communist party, initiates both domestic and foreign policies of the nation.

The fourth family can be subdivided in four sub-groups: Muslim countries, India group, China and Japan, before the second world war.

1. The Muslim group of countries which adhere to the Koran has increased due to the acceptance of Islam by a number of African nations.

Here, the law is not an autonomous branch of learning or science; it is only an aspect of the Islam religion.

The sacred book, the Koran, contains the revelations of Allah (or God) to his prophets and to the "godsent", Mohammed. Since the Koran is not a code but a set of rules for living and worshipping the Divinity, the legal norms are rather insufficient to decide the controversies among Islams.

2. The Indian group, as a traditional legal system, followed the Hindu tradition. It must be pointed out that some parts of ancient India follow the Muslim religion, like Pakistan and Bangladesh.

The most notable of Hindu rules are those known as the *Laws* of *Manou*, which lay down norms of conduct.

Since 1947, when India became independent, and later, when the 1950 Constitution was adopted, the laws in force which were essentially of

English origin were continued. But in the last 25 years, India has taken its own direction with respect to the development of its laws.

3. The old Chinese and the old Japanese Law Systems were examples of the third group of the fourth family. They had parallel histories but very different sources and procedures. Basic changes in their social and legal structures have occured since the Second World War.

The Chinese Law of the Imperial China, was based on the philosophical tradition, ancestors worship and the power of the Emperor.

The present "People's Republic of China", follows the Marxist-Leninist philosophy marked by distinct Chinese adaptations known to have been formulated by Chairman Mao-Tse Tung. Codified norms or written law is subordinate to the political ideology.

The old Japanese law system, was considered with the Chinese as one of the most important of the Asian legal system. It was basically different from all other moral and legal systems in the world. It includes such legal institutions as the *"Harakiri"*, or legal suicide. The suicide military group in the Second World War called the *"Kamikasi"*, was an example of this tradition.

After the last world war, Japan became rapidly occidentalized. Its constitution and laws were patterned after those of the West. On the surface the life of the nation today is not any different from those led by peoples in America and European countries.

However, civil conflicts as they exist and are settled in western countries, are not institutionalized in Japan. The tradition of the Japanese people tends towards conciliation and compromise. Their traditional code of honor requires faithful compliance with an undertaking, and being taken to court for non-compliance with an obligation is a mark of dishonor. Therefore, private law is in a very real sense modified here by a very strong tradition.

4. At present, there are no known countries that still adhere to fetishism or animism. These are known to be practiced only by small scattered tribes, and with the rapid advance of civilization, these practices will soon be nothing more than a historical memory.

CLASSIFICATION OF THE MEXICAN LEGAL SYSTEM

After discussing briefly the essential features of each family in the world legal systems, we now return to the Mexican legal system to identify its basic characteristics and therefore its proper place in comparative law classifications.

For the purpose of this analysis, we must consider its historical foundations, including the legal systems that influenced its development; the teachings of its law schools consistent with the spirit of its people; and legislation. Special attention must be given to the constitutional provisions that follow the basic tenets of the Christian European civilization, adhere to liberal individualism, and identify individual freedom among the highest of constitutional values. Also as a consequence of the policy of liberal individualism, it adheres to the free market economy which means that all citizens are free to acquire and dispose of movable or immovable property and to devote the same to productive use, or otherwise produce or manufacture anything not forbidden by law.

Attention must be paid also to the structure of the rights and the idea or notion of the "rule of law" in my country. This leads us to the study of the Codes, of their uses and relative value; of jurisprudence and its importance in the whole system; of the very extensive use of doctrinal writing; the attention and devotion to legal doctrine given by judges and practitioners which are considered more important than precedents; and the paramount values of the *principios generales de Derecho* (general principles of Law).

In Mexico, the Spanish law was enforced since early in the colonization period, that is, the military conquest and the Christianization campaign.

Indians were subject to the Spanish Law: *"El Fuero Juzgo"* of the Tenth Century, with its terrible simplicity[17] condemning to death those doing anything against religion or against nature; the *"Siete Partidas"*, the magnificent codification of King *Alfonso El Sabio*[18] in the 13th century, that were simplified in several *"Recopilaciones"*.[19] The most common recopilation found in Mexico in the first third of the nineteenth century, in the hands of courts and lawyers, was the one called *"Febrero"* after its author's name, and the *"Febrero Mexicano"*,[20] a book written in

[17]The *Fuero Juzgo*, between A.D. 650 and 680, a Spanish Code of the VII Century, issued by the visigoth kings of early Spain, before the Arab invasion. Deemed the most complete of early Codes, rules on civil and mercantile matters; criminal punishments, and issued rules on military, medical practice, ecclesiastic assylum, heresy, etc.

[18]"Las Siete Partidas" a collection of Acts issued by King *Alfonso X, El Sabio*, of Spain (b. 1222, d. 1284 A.D.). An effort to unify the law of his time, based on Justinian Roman Codifications but displayed the Middle Ages Spanish way. King Alfonso X also issued the Fuero Real.

[19]The *Nueva Recopilacion de las Leyes de España*, 1796, and the *Novisima Recopilacion*, 1805, were the codified law and the unique source of the law until the new Five Codes, the Napoleonic style, published in Spain the XIX Century. The *Novisima* was strongly criticized.

[20]*Febrero Mexicano*. An abridged edition of the *Novisima Recopilacion*, published in Mexico in 1831, following the guidelines of the Spanish edition, by Mr. Febrero, Editorial Santiago Peréz.

accordance with the Spanish Law for Mexico, for use in Mexican tribunals.

When Mexico obtained its independence in 1821, all the States of the Republic issued their own Civil and Criminal Codes, following the French model. Its procedural codes followed the Spanish *"Ley de Enjuiciamiento"*, civil and criminal.

The codification of laws by the Mexican Federation was slow. It was only after the approval of the 1857 Constitution, establishing the Federation of the States of the Republic, that the centralized system sustained by the old Mexican monarchists (an inheritance of the Spanish unitary Audiencia system) was overcome and attention was given to private law. In 1870, the first civil code of Mexico for the Federal District and federal matters, was issued. It had Mexican characteristics, different from the Civil Code of Spain and was inspired by French law. Nothing at all in the private law was taken from the United States into the Mexican legislation. But the constitutional provision on Human Rights, the organization of the Executive and Legislative Departments as well as the Judiciary are borrowed from the United States. We must consider that when the Mexican Constitution of 1857 was adopted, the outstanding example of modern democracy for the world was the United States.

Law schools and faculties in Mexico teach the law course in five years. Legal education deal mainly with doctrine of scholars and only exceptionally deal with judgments. Even the subject "Procedural Law" consists of doctrinal or theoretical exposition dealing with the thought of the authors and not with practical proceedings.

The first criminal code for federal jurisdiction[21] was promulgated in 1872, and was an example of modern criminal law, influenced by the Italian and French schools of Beccaria, Carrara and Ortolan.

The Code of Civil Procedure and the Code of Criminal Procedure were mainly inspired by European examples.

The Mercantile Code, or *Código de Comercio,* still in force, published in 1889 for the federal jurisdiction, adopted commercial practices, and included a chapter on commercial procedure and bankruptcies. Many chapters have been repealed and substituted by specific statutes, such as the General Laws for Corporations (1932) Credit Titles (1932) relating mainly to checks, notes and bills of exchange; Transportation Contracts

[21]In some States of Mexico, Criminal Codes were published in 1832 and 1835. The first Federal Criminal Code was prepared by Antonio Martinez de Castro in 1871, and came in force in 1872. It was a model code for the time and was abrogated by the 1931 Criminal Code, now in force, as amended.

(1926) Bonds and Guarantees (1932) Insurance (1926) Banking (1899/1932/1941).

Labor law was detached from the Civil Code, as a new set of rules were included since 1917 in the Constitution. The Labor Code in force is dated 1931.

The present Codes in force today in Mexico were issued after the Revolution, repealing those previously mentioned. The Civil Code was published in 1928, but it came into force only in 1932. It has not been substantially amended. It contains some advanced concepts like the new doctrine of the "extracontractual responsibilities".

The Code of Civil Procedure issued in 1932 followed the prevailing Italian doctrines expounded on by a trinity of Italian proceduralists: Carnelutti, Chiovenda and Calamandrei.[22] It gave further importance to the oral civil proceeding, an European version of the American and English processes. It has been amended several times to attain the objective of speedy and fair administration of justice, mainly in 1967 and 1971.

The penal law has been changed from a conservative, simplistic system to one that has a fully developed theory of crime and its elements, *"la teoria y la doctrina de los elementos del cuerpo del delito"*. The Criminal Code in force was enacted in 1931.

The Code of Criminal Procedure as adjective legislation, implements the substantive requirements stated in the Constitution relative to rights of the accused. The one in force now for the federal district was issued in 1931. The Criminal Procedural Code for federal offenses was enacted in 1934.

Many procedural and substantive norms might be found in the *"Ley Orgánica del Poder Judicial de la Federación"* and in the *"Ley Orgánica de los Tribunales del Fuero Comun del Distrito Federal"*.

It is easily seen, therefore, that Mexico has a legislated legal system: codified regulations in the private law field, and all kinds of "acts" in the administrative field, corresponding to what in North America are called "statutes". Legal rules and norms contained in the codes and

[22]The doctrines of three eminent Italian proceduralists Calamandrei, Carnelutti and Chiovenda in the 1920 decade, were the most studied and discussed in Mexico. All the three were translated into Spanish. The fact that they flourished during the fascist era, did not prevent their enormous influence in Latin American countries; and in a way, they inspired many of the regulations of the 1931 *Codigo de Procedimientos Civiles para el Distrito y Territorios Federales*, in force since 1932. Certain authors, as Niceto Alcala Zamora, deem it was a back step and not a progressive body of rules. There is also a *Code of Federal Civil Procedure* of 1943; previously were in force those of 1897 and 1908.

federal or general acts are mandatory upon tribunals. Any judgement to the contrary does not constitute precedent.

The Supreme Court of Justice in Mexico, being the court of last resort in all matters, finally decides all cases properly taken for its consideration.

The judgments of the Supreme Court are embodied in the *"Semanario Judicial de la Federacion"*, a weekly Journal. When there are five consecutive judgements interpreting the same way a legal situation laid out through an *"amparo"* action, the judgment becomes *jurisprudencia definida,* that is, defined jurisprudence. It then becomes binding upon the federal tribunals.[23]

It may be added that some codified systems of Europe like those of Germany and Scandinavian countries, influenced the legal developments in Mexico, in the private law field.

The concept of private law and public law, the concept of rule of law, the concept of jurisprudence, the concept of general law principles, are in Mexico the same with those concepts in Latin and Germanic nations of Europe and America. In all of them the rule of law as contained in the Constituiton is superior to any codified norm or rule. This has been laid down by the Judiciary which interprets the Constitution.

The sources of law are in Mexico the written law, (*El Derecho Legislado*) be it called code or act; all requirements stated by comparatists for a system to belong to the First Family of law systems, are fulfilled by the Mexican one.

The Mexican legal system has maintained the same characteristics, since the colonial times up to date. The tradition has been continous and uninterrupted. Its essential features relate to the "Roman-Germanic Family", legal system.

The philosophical ideas underlying this system's structure and functions are Christian ethics, individual freedom, the free market and private ownership of the means of production subject to certain regulatory powers of the State in order to assure fair play and protect the economically weak social classes.

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[23]The *"Jurisprudencia Definida"* or definite jurisprudence of the *Suprema Corte de Justicia,* is an institution of amparo jurisdiction, that means it is binding only in *amparo* actions before the District Courts, the Circuit Courts, Unitary and Collegiate, and the Supreme Court Chambers and *"Plenos"*. According to Articles 192, 193 and 194, five consecutive judgements by any Chamber of the Supreme Court, constitutes what is Mexican Law *"Jurisprudencia Definida"*. The legal norms that are based or founded on said five judgements, are binding for all Federal Courts.

The idea that land originally belonged to the nation goes back to the Golden Bull of Pope Alexander VI. This now means a modification of the Roman concept of property.

Government intervention in economic affairs is only supportive of private enterprise and is not the same in nature as control of the economic process by socialist governments.

To summarize, the following are the significant features of the Mexican legal system that locate its place in the conparative law scheme:

(a) The history of the Mexican legal system, clearly indicates that it is a codified civil law system; and has remained so from the time of colonial conquest up to the present.

(b) The structure of the rights and duties in private and public law is characterized by individual freedom and the free enterprise system;

(c) The codes, acts and statutes are supplemented by doctrine of scholars, judgements, and usages;

(d) Written law, codes and statutes are not modified by usages or customs. These are only subsidiary sources of law. Customs are valuable only in mercantile matters, as credit titles and banking;

(e) There is abundant use of legal doctrine. The courts, in implementation of the Constitutional provisions, interpret the law;

(f) According to Article 14, last paragraph, of the Mexican Constitution, the general principles of the law must be used to decide all legal civil controversies in case there is no particular article or text in the codes, acts or statututes.

All these charactristics notably coincide with the features of legal systems belonging to the Roman-Germanic family discussed above.

THE PHILIPPINE LEGAL SYSTEM

On the basis of the criteria for classification above discussed, it would appear that the legal system of the Philippines, with its codified system of laws essentially inherited from Spain belongs to the Roman-Germanic group. However, the American dominion has left its own peculiar imprint upon the legal system. Thus, precedent or judge-made law which is a distinct feature of the common law, occupies as important a place as the codes in the determination of the binding rules of law.

This situation is not really uncommon or paradoxical. Puerto Rico and Japan may be cited as examples of states which have assimilated into their legal *corpus* the features of different legal systems.

The eminent Philippine legal scholar Don Melquiades J. Gamboa wrote thirty years ago that "the greater bulk of Philippine Law is Ro-

manesque" but that "there has been an increasing infiltration of common law principles into the Philippine jurisprudence". Notwithstanding the latter phenomenon, however, Dr. Gamboa posited that the Philippines' legal system can never entirely become a common law system, but rather a common ground where both systems meet.[24]

All legal systems seem to be in a state of flux: the tendency seems towards the increasing assimilation of characteristics of the different systems.

[24]The Philippine Law Journal, Vol. 49, No. 3, July 1974, page 314, published an article entitled "The Meeting of the Roman Law and the Common Law in the Philippines" by Melquiades J. Gamboa. He states that: "...although many common-law provisions and principles are being literally grafted on the law tree of the Philippines, the case-law method of adjudication, which is a condition *sine qua non* of the common-law system, is not adopted. The doctrine of *stare decisis* does not obtain in the Philippines in the same sense that is obtained in common-law countries. Precedent is only evidence of the law in the Philippines and not the law itself; consequently, the Philippine legal system can never be a common-law system, in the strict sense". To what extent do Philippine Courts nowadays pay attention to the *stare decisis rule* compared to 1946? The quoted article is a reprint of the article originally published in "4 Seminar 84-98 (1946)", that is, 30 years ago, on the occasion of the Meetings of the "Ricobono Seminar on Roman Law", in Washington, D.C., U.S.A., March 28, 1946.