

# Understanding the Mexican Attorney: Legal Education and the Practice of Law in Mexico

## Introduction

The work of more and more United States lawyers is bringing them into contact with Mexican lawyers. Trade, tourism and relations in general have always been important between the United States and Mexico. This is increasingly so in today's shrinking world. Mexico, in its enthusiastic quest for economic growth, is now looking to the whole world as its marketplace.<sup>1</sup> However, it recognizes the importance that the United States will have in any such program and intends to maintain a high level of commercial relations with this country.<sup>2</sup> After Canada, Mexico is the most important buyer of United States goods in this hemisphere, and our investment in Mexico is measured in the billions.<sup>3</sup> Accompanying these transactions is the inevitable emergence of legal problems.

Thousands of United States tourists drive across the border to Mexico every year. Automobile accidents can and often do occur. American insurance is usually not considered as sufficient indemnification by the Mexican authorities. As a result, the North American attorney may find himself called upon to negotiate either for the release of his client's car or the release of his client from a Mexican jail.<sup>4</sup> An increasing number of Mexican divorces obtained by United

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<sup>1</sup>INSTITUTO MEXICANO DE COMERCIO EXTERIOR, CARTA PARA LOS EXPORTADORES, Nov. 22, 1974, at 2.

<sup>2</sup>INSTITUTO MEXICANO DE COMERCIO EXTERIOR, CARTA PARA LOS EXPORTADORES, Nov. 8, 1974, at 2.

<sup>3</sup>At the end of 1971, U.S. private investment in Mexico totaled \$1,840 million; see Dept. of Commerce O.B.R. 73-74 (1973). U.S. exports to Mexico in 1973 totaled nearly \$3 billion, and the United States is Mexico's most important buyer; see Dept. of Commerce E.T. 74-051 (1974). Two-thirds of Mexico's foreign trade is with the U.S. and over 80% of all foreign investment in Mexico is U.S. owned; New York Times, January 26, 1975. Tourism generated \$40 billion in foreign exchange for Mexico in 1974, most of which came from U.S. tourists; HISPANO, March 3, 1975.

<sup>4</sup>Mexican laws governing liability and auto insurance are at variance with U.S. laws, and impoundment of the foreigner's auto or even incarceration can frequently occur when a Mexican automobile insurance policy is not purchased and the hapless tourist is involved in an accident. See Robbins and Netherton, *Mexican Automobile Liability and Insurance Law*, 47 MICH. S.B.J. 22 (1968).

States nationals require North American attorneys to work with and through their Mexican counterparts. The recent large oil strike in the steaming jungles of Tabasco and Chiapas in southern Mexico will doubtless turn Mexico into an important oil exporter. Any new source of oil is of major interest to the United States as a nation which is becoming increasingly dependent upon foreign energy supplies. However, Mexico has indicated that it may well adhere to the hard-line, high-price petroleum marketing strategy of the OPEC countries (through Mexico is not a member and does not presently intend to become one).<sup>5</sup> All these transactions require negotiations, agreements, compromises and contracts, every phase of which gives rise to peculiar problems.<sup>6</sup> The upswing in commercial and economic interdependence will require the North American attorney to be able to work closely with his Mexican counterpart. For this reason, an understanding of the Mexican attorney and the legal environment in which he works is certainly more than an academic exercise. For many, it is becoming a necessity.

Much of the terminology, concepts and theories which are used daily by the North American attorney either do not exist in Mexico or have very different legal significance. For this reason, the Mexican attorney may not attract a particular legal problem with the point of view exhibited by his United States counterpart. For example, the concept of *stare decisis* is a very important tool to the North American attorney. However, the term is not even found in a Mexican legal dictionary, nor is such a theory relied upon in legal transactions or litigation. The North American attorney constantly refers to the common law concept of tort. This term is not found in the Mexican attorney's vocabulary.<sup>7</sup> The term "jurisprudence" itself has a vastly different meaning to a Mexican attorney. A trial in Mexico is not the dramatic courtroom battle one finds in the United States. What one finds in Mexico would not even be denominated a trial in the Anglo-American tradition.

In order for the North American attorney to understand his Mexican counterpart more fully, it is useful to consider the structure and function of the legal profession in Mexico, the academic preparation of the Mexican lawyer and his

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<sup>5</sup>BUSINESS WEEK, Oct. 26, 1971, at 41. It is expected that the present sites in this region will produce 150-200,000 barrels per day in 1975, of which 110,000 barrels per day will be exported. By 1976, Mexican engineers calculate that the production of crude will reach 1,000,000 barrels per day. This will put Mexico on a par with such members of OPEC as Libya, Indonesia and Abu-Dhabi. "Industria Petrolera," *HISPANO*, 17 March 1975. See also *OIL AND GAS*, July 23, 1973.

<sup>6</sup>Not the least of which is socio-linguistic. See Murphy, *Drafting Mexican-United States Commercial Agreements*, 5 *INT. LAW.* 577 (1971).

<sup>7</sup>Although the terms *tuerto* and *entuerto* do exist in Spanish, (coming from the same Latin root as the English tort), they are not legal terms, and have a different significance.

While torts and contracts are treated as separate subjects or categories of the common law, in the civil law countries and in Mexico, they are treated as a part of the general subject of obligations; that is, those things which require one party or the other to respond in damages or render them liable for some act or omission on their part. Kelso, *INTERNATIONAL LAW OF COMMERCE*, 47 (2d ed. 1961). The Mexican-Spanish term closest in meaning to tort is *dano*, translated as damages, which is what the injured party suffers, and what the other party must pay.

admission to practice, all in the context of the Mexican civil law system. It should be noted at the outset that the Mexican attorney is normally a member of the intellectual elite. He is not impressed with a North American attorney who exhibits a total ignorance of the Mexican legal system. To a Mexican, an attorney is an educated man and an educated man is aware of the customs and practices of other peoples.

### The Civil Law Tradition

Mexico is a civil law country. Although Mexico is a Federal Republic, as is the United States, thus giving rise to varying state laws, most of the state codes are based on the code of the Federal District. In consequence, there is a great deal of similarity in this area throughout the Republic.

It hardly needs recalling here that the civil law tradition is based on the Roman *Corpus Juris Civilis* of Justinian and the *Code Napoleon* of France. The objective of these two codes was to set legal rules down in writing and popularize the law so that the average person could understand it. Law was to be written by the legislature and not amended, added to or nullified by judges.

The Mexican legal system is founded upon a version of the French Code.<sup>8</sup> Under this system, law is a body of rules governing conduct. Under the common law, one is more apt to find specific rules such as "no person shall drive without a muffler in a park," as opposed to the more general, civil law formulation: "no person shall unnecessarily disturb another." In a common law system, the judge is given a more creative role. In Mexico, the legislature is the more creative source of law.

The great French authority, Professor David, says that there is an optimum generality to which civil law rules should conform. They should not be so vague or general as to be unworkable, but neither so specific as to be good only in one situation.<sup>9</sup>

To find the law in the United States, one goes to the Constitution, the statutes and case law. Secondary sources such as treatises are given minimum weight in a court of law. In Mexico, as in most civil jurisdictions, the statute is the paramount source. But much importance is also placed on the treatises. Concepts underlying the legal principles are sought out in the treatises, which are given roughly the same weight as case law in a common law jurisdiction. They do not, of course, have the authority of a statutory enactment; but where no statute is found to cover the subject matter of a particular case, the doctrine espoused in the treatises is controlling, unless the case can be distinguished from those cases covered by the treatise.

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<sup>8</sup>GALINDO GARFIAS, *DERECHO CIVIL* 109 (1973).

<sup>9</sup>DAVID, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* (1968).

As might be expected with this technique it is extremely difficult to convince the judge that the legal writing espouses bad law. Because the code is generally not specific enough for any given case, the judge in deciding and interpreting, must look to the legal writings for his answers,<sup>10</sup> much as the common law judge looks to case law. The principles of *stare decisis* is not applied, although there is a vaguely similar notion in the Mexican concept of *Jurisprudencia*.<sup>11</sup> Galindo, the Mexican legal scholar, calls it the custom of the courts. *Jurisprudencia* can be invoked as binding precedent but only in certain cases. The precedential decision referred to must have been handed down by a plenary session of the Supreme Court of the Nation five times in a row without being interrupted by a contrary decision, and must have dealt with the interpretation of the Constitution, federal statute or international treaties. Such precedent is only binding on the Supreme Court, lesser federal tribunals, and arbitral tribunals.<sup>12</sup> So it is that the legal tradition in which the Mexican attorney works differs greatly from the legal tradition in the United States.

### Legal Education

According to the standard legal dictionary used by most Mexican law students, an attorney is

a professional in law who practices advocacy. A requirement for the practice of this profession, *sine qua non*, is the degree of Licentiate (*Licenciatura*) in law and the license to practice issued by the General Directorate of Professions. It has been said of the attorney, emphasizing the importance of his mission, that he is the first judge of all causes.<sup>13</sup>

As in the United States, then, the degree is the first essential for practicing the profession. But what exactly does the licentiate degree entail? What in the way of pre-legal education does a Mexican law student receive? In most systems, whether they be legal, educational or otherwise, the present is either a product of, or a reaction to the past. And so it is in Mexico.

Before the arrival of the Spaniards, legal education among the various civilized Indian cultures consisted generally of memorizing principles which were passed on orally;<sup>14</sup> and since most laws were based generally on custom, they were of

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<sup>10</sup>Lecture by Dr. James Herget, Professor, the University of Houston School of Law, delivered at the Escuela Libre de Derecho, Mexico City, June 26, 1974.

<sup>11</sup>"Traditionally this term was used to designate the science of law. Today *Jurisprudencia* is understood as uniform discretion manifested repeatedly in the application of law by a superior or supreme tribunal and contained in its decisions." RAFAEL DE PINA, *DICCIONARIO DE DERECHO* 221 (3rd ed. 1973).

<sup>12</sup>GALINDO GARFIAS, *DERECHO CIVIL* 52 (1973).

<sup>13</sup>RAFAEL DE PINA, *DICCIONARIO DE DERECHO* 15 (3rd ed. 1973).

<sup>14</sup>L. MENDIETA Y NUNEZ, *HISTORIA DE LA FACULTAD DE DERECHO* (1956).

common knowledge.<sup>15</sup> The Spanish Conquest of 1521 changed all this. The National University of Mexico was founded in 1553, and legal education in the institution was fashioned after the peninsular Spanish tradition with a faculty of canons concentrating on ecclesiastical law and in a faculty of law,<sup>16</sup> expounding the doctrines of the Roman law.<sup>17</sup> The early professors all came from Spain and they utilized the Spanish legal textbooks.<sup>18</sup>

During the sixteenth and seventeenth centuries, the Canonic and Roman legal principles were memorized. A university degree was not a license to practice. One had to pass a special examination given by the *Real Audiencia*, the Colonial court, before one could practice law before the tribunals.<sup>19</sup> This same system prevailed until after independence from Spain. Thereafter, a period of political turmoil ensued, during which the university was closed several times. But with the defeat of Maximilian in 1867, political stability was established. In the same year, the new School of Jurisprudence was formed at the University. A six-year curriculum was adopted, Canon law was dropped from the curriculum, and the importance of Roman law waned. Legal philosophy and political economy became a part of the curriculum.<sup>20</sup> Early in the present century the curriculum was reduced to five years.

Because of political instability and government intervention during the years of the Mexican Revolution, students and professors went on strike in 1912, some forming the Independent School of Law (*Escuela Libre de Derecho*), which is today considered the best law school in the country. Nevertheless, the National University (now called the National Autonomous University of Mexico) is still the major source of attorneys and judges in Mexico.<sup>21</sup>

Today pre-legal education in Mexico absorbs much less time than it does in the United States. Entry into a Mexican law school or law faculty, as it is generally denominated, requires only primary and intermediate education, lasting eleven years. After graduating from the *Preparatoria*, often at the age of seventeen, and receiving the *bachillerato* or diploma, roughly equivalent to the Associates degree in the United States, the Mexican student is ready for law school.

The curriculum presently used at the National University, which is typical of most universities throughout Mexico, is as follows:<sup>22</sup>

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<sup>15</sup>GALINDO GARFIAS, *DERECHO CIVIL*, § 35 (1973).

<sup>16</sup>It should be pointed out that the term faculty or *Facultad* as it is used in Mexico refers not to a teaching staff, but rather to a unit of an educational institution, much as the term "college" is used in the United States, as the college of arts and sciences of a university.

<sup>17</sup>Maxwell and Goldman, *Mexican Legal Education*, 16 J. LEGAL ED. 155 (1963).

<sup>18</sup>Malagon, *Four Centuries of the Faculty of Law in Mexico*, 32 HISP. AM. HIST. REV. 442 (1952).

<sup>19</sup>Maxwell and Goldman, *supra* note 17.

<sup>20</sup>*Id.*

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*, at 159.

**First Year**

Civil Law I (Persons and Family)  
 Introduction to the Study of Law  
 Political Economy  
 Roman Law I  
 Sociology

**Third Year**

Administrative Law I  
 Civil Law III (Obligations)  
 Civil Procedure II  
 Constitutional Law  
 Criminal Law

**Second Year**

Civil Law II (Property and Succession)  
 Civil Procedure I  
 Criminal Law I  
 Political Economy  
 Roman Law II  
 Theory of the State

**Fourth Year**

Administrative Law II  
 Constitutional Guaranties  
 Contracts  
 Criminal Procedure  
 Labor Law I  
 Mercantile Law I  
 Public International Law

**Fifth Year**

Agrarian Law  
 Labor Law II  
 Mercantile Law II  
 Legal Writing/Legal Profession  
 Private International Law

All these courses are required, along with two electives to be chosen from an additional list.<sup>23</sup>

After five years of study, and completion of the courses, a written thesis must be submitted. As is commonly true in European universities, an oral examination is then conducted, dealing, in the main, with the material presented in the thesis.<sup>24</sup>

It is paradoxical that throughout Mexican law schools, very rarely are written examinations given. They are almost exclusively oral. The only written work throughout the five year curriculum, aside from the one course in legal writing/legal profession, is the thesis. This differs greatly from the situation found in the United States. Yet, in the Mexican civil law system, litigation is entirely written. There is no oral advocacy as we know it in the common law system. The reverse paradox is found in the United States. In a typical law school curriculum in the United States, virtually every course concludes with a written examination, or a paper. There is rarely more than one course wherein the student is required to stand up before a group or a panel and expound on legal theory or give a legal argument. Even in such courses, the student rarely does this more than once. And

<sup>23</sup>*Id.*

<sup>24</sup>Brown, *Legal Education in the Americas*, 9 J. LEGAL ED. 339 (1956).

yet the Common Law is considered a system of oral advocacy.

With these requirements completed, the Mexican student receives his degree of *Licenciado en Derecho* or Licentiate in Law. In the Federal District (Mexico City) and over one-half of the Mexican states, this degree must be acquired either to practice law or to be a notary.<sup>25</sup>

Over thirty colleges or universities in Mexico offer a complete law curriculum, usually of five years duration. The degrees from these schools are recognized throughout Mexico.<sup>26</sup> However, there are a small number of law schools outside Mexico City which offer the first two or three years of the required curriculum. Most students of such schools then journey to Mexico City to complete their degree.

Within any given university, a more substantial number of the students are law students, than is customary in the United States; the majority of these, however, do not complete their legal studies. Many of these who do not finish go into the civil service.<sup>27</sup>

Though today less importance is placed on the Roman Law than in the past, it is still the precursor, the basis of the civil law system, and is still a part of the Mexican law school curriculum. In speaking of legal education in another civil law country, Germany, Kohler says in defense of this requirement:

... [I]t does not seem anachronistic that the study of the Roman Law, the law of a people that have been called one of the most talented in the entire history of law, is still part of the curriculum. The special legal talents of the Romans were pointed out by Rudolf Von Jhering when he said that they possessed a "clear view for the requirements of life, a steady and sure hand for adopting adequate measures, an open ear for the demands of justice and fairness, the courage to resist legal consequences where they contradict a legalistic balance of interests, and an analytic mind combined with a great sense of practicality."<sup>28</sup>

The classes are generally conducted along the lines of a lecture on the particular legal theory to be covered for the day, which is in explanation of an area of the code. There is very little, if any, student participation. Nearly every course has its own code, so the code and the understanding of the theory behind it are of prime importance. The textbooks used are similar to the treatises normally used in the United States as collateral reading materials. They in no way resemble the case books used in the United States.

Very few law school professors are what we in the United States would consider "full-time." It is typical for the Mexican professor to teach approximately three hours per week. Most of his professional activity is devoted to private practice or the public service. In contrast to the position maintained by the Association of

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<sup>25</sup>Maxwell and Goldman, *supra* note 17.

<sup>26</sup>*Id.*

<sup>27</sup>Lecture by Dr. James Herget, Professor at the University of Houston School of Law, delivered at the Escuela Libre de Derecho, Mexico City, July 1, 1974.

<sup>28</sup>Kohler, *Study and Practice of Law in Germany*, 54 A.B.A.J. 992, 993 (1968).

American Law Schools, in Mexico the part-time teacher is the accepted norm and it is believed that one who is actually a practicing attorney has more to offer as a professor than one who does nothing but teach.<sup>29</sup> Even so, the study of law in Mexico is very theoretical, as in nearly all civil law jurisdictions. For this reason, the Mexican law graduate is much less equipped to face the real world of lawyering than even his North American counterpart, whose education is not nearly so theoretical. Most Mexican graduates do not find work as attorneys unless they have had a year or two of practical experience. So it is that the majority of students who wish to practice law upon graduation (many do not) spend the last one to three years of their law school career working as clerks in either a private firm or in the courts. Such positions are difficult to obtain, especially in the better private firms—which may have as many as thirty clerks or more. Quite often family influences or influential friends are needed to land a clerkship. As in many states in the United States, the equivalent of the legal intern exists in the Federal District and in many Mexican states. After three years of study, the student is permitted to institute and litigate much the same type of legal actions as his North American counterpart. Most receive fees for this, thereby subsidizing their education.<sup>30</sup>

Competition for positions after graduation is extremely keen. In Mexico, there is no bar examination which a law graduate must pass before he is permitted to practice before the courts. He needs only register his degree with the General Directorate of Professions (*Dirección General de Profesiones*), an administrative agency, which thereupon issues him his license (*cedula*) and he is ready to practice.

Professor Merryman, speaking of the possibilities open to a young law graduate in a typical civil law jurisdiction, has said:

. . . [T]he division of labor among professional lawyers in the civil law world displays characteristics unfamiliar to the common law world, and particularly to those in the United States. Americans usually think of *the* legal profession, of a single entity. To Americans a lawyer, no matter what kind of legal work he happens to be doing at the moment, is still a lawyer. Although many young graduates start out as private attorneys, government lawyers, or members of the legal staffs of corporations, and stay in those positions for life, it is common for them to change from one branch of the profession to another. During his lifetime a lawyer may do a variety of legal jobs. . . . If he has a successful career, he may ultimately secure an appointment as a state or federal judge. Americans think it normal for him to move easily from one position to another, and they do not think it necessary for him to have special training for any of these different kinds of work.

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<sup>29</sup>Maxwell and Goldman, *supra* note 17.

<sup>30</sup>Civil cases and misdemeanors can be litigated by the Mexican law student. The Mexican student can be and normally is remunerated for these services by the client, although his fees are substantially lower than those charged by an attorney.

Things are different in civil law jurisdictions. There, a choice among a variety of distinct professional careers faces the young law graduate. He can embark on a career as a judge, a public prosecutor, a government lawyer, an advocate or a notary. He must make his decision early and then live with it. Although it is theoretically possible to move from one of these professions to another, such moves are comparatively rare. The initial choice, once made, tends to be final in the majority of cases. The point of entry into any of these careers is almost always at the bottom, and advancement is frequently as much a function of seniority within the given career as it is of merit. Accumulated experience in another legal career does not give one a head start or any formal advantage in the process of advancement. Consequently, the average young lawyer soon finds himself locked into a career from which escape is likely to be too costly to contemplate.<sup>31</sup>

Likewise, in Mexico, one generally speaks of the legal *professions* rather than the legal *profession*. And, as Professor Merryman points out, there is very little mobility among these professions.

Generally, a Mexican advocate represents clients in the same types of cases that confront his North American counterpart; although as was earlier pointed out, everything is in writing. Normally, the only activity resembling oral advocacy in which a Mexican attorney indulges, is that of seeking an appointment with the judge or magistrate who is to hear or review his case either on primary jurisdiction or on appeal. These appointments are usually of short duration, rarely lasting over ten or fifteen minutes. During that time, the attorney attempts orally to encapsulate his side of the argument to convince the judge or magistrate that the advocate's interpretation of the law is correct, or that an equitable solution is required in spite of the written law. The judge's acquiescence to the latter does happen on occasion. A typical example is a case involving the laws of intestate succession. In one particular case,<sup>32</sup> an intestate had owned considerable real property. His only heirs at law were two septuagenarian sisters. The problems arose when the sisters were unable to produce their duly registered birth certificates, attesting to the fact that they were really born and were whole blood relatives of the deceased. They had only their baptismal certificates and the statute expressly requires a birth certificate which had been registered with the Civil Registry; otherwise, they could not legally prove who they were. The lower court's holding was that the realty should escheat to the state. During his ten minute interview with the magistrate who was to hear the case on appeal, the attorney explained that the poor old ladies in question had been born in a remote village out in the provinces, in the primitive conditions of pre-revolution days. In such villages, in such times, no one even knew what the Civil Registry Office was, and there certainly wasn't any nearby. These people were accustomed to recording births in the church registry with the baptismal certificate as the attesting document. Although when listening to the attorney's argument, the

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<sup>31</sup>MERRYMAN, THE CIVIL LAW TRADITION 109 (1969)

<sup>32</sup>The writer took part in this case in the capacity of law clerk or *pasante* as it is termed in Mexico.

magistrate gave no indication of what her decision would be, the decision was finally in favor of the heirs.

Nor does an attorney have the opportunity to examine orally witnesses before the court. The attorney submits to the court beforehand the questions he wants asked of the witnesses. During the hearing, the judge asks the questions of the witnesses if he sees fit.

Aside from procedural differences, Mexican attorneys practice law much as their North American counterparts. One finds the solo practitioner, the partnerships and the large law firms. The latter are very common in the more important cities such as Mexico City, Guadalajara and Monterey. The large firm in Mexico City doesn't have nearly so many members as its counterpart in the United States, there being rarely over thirty or thirty-five attorneys. Normally, in such a firm, the attorneys will specialize in a particular area of the law such as corporation law, foreign investment, immigration law, civil or criminal law. Usually there are two to three such experts in any given area in a law firm.

In order to obtain a position in one of the larger firms, it is not necessary to finish school with a high academic standing. Not nearly so much emphasis is placed on high grades as it is in the United States. As already suggested, personal contacts play the most important role in getting a good job.<sup>33</sup>

Another avenue for employment open to the Mexican attorney is that of notary. The Mexican notary differs considerably from his common law counterpart, although their historical origins are the same.<sup>34</sup> To become a notary in Mexico, nearly every state and the Federal District requires a law degree. Appointment is for life and it is a position of prestige and high income. It is a full-time occupation with legally fixed fees. As in the United States, a notary cannot exercise his activities outside his specific geographic area, and each area has a fixed number of notarial positions.<sup>35</sup> Since the number of positions does not vary, one only becomes available on the death or resignation of an existing notary. An aspirant must sit for a competitive examination and post a bond on being appointed.

A Mexican notary is an official vested with public authority on faith and he is essential in many procedures. Certain types of instruments must be executed before a notary. A notary's records called *Protocolo* must be kept in accordance with legal requirements. A notary can attest to certain facts, which then gives them evidentiary value in a court of law. Notaries are also responsible for ensuring that the taxes are paid on the various transactions in which they take part.<sup>36</sup>

The notary is essential in the proper drafting of certain legal documents such as

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<sup>33</sup>Maxwell and Goldman, *supra* note 17.

<sup>34</sup>MERRYMAN, *supra* note 31, at 114.

<sup>35</sup>Floris Margadant, *The Mexican Notariate*, 6 CAL. WEST. L. REV. 218 (1970).

<sup>36</sup>Brinsmade, *Mexican Law, an Outline and Bibliography of English Source Materials Relating to Certain Aspects Thereof*, 6 INT. LAW. 829, 842 (1972).

wills, some contracts, articles of incorporation and powers of attorney. In these acts, he must advise both parties of the legal consequences of what he is proposing. If, then, a controversy arises before the notary, the parties must seek their own counsel.<sup>37</sup>

Compared with the judge, it may be said that the notary acts where there is a meeting of the minds, while the judge acts only when the parties disagree. The notary acts preventively, the judge compensatingly. The notary intervenes where there are individual or interrelated interests to be secured, while the judge intervenes where interests clash. The notaries help the parties properly express and evidence their will, while the judge deals with the final consequences of previous acts. . . . [He]. . . can substitute his will for that of the parties.<sup>38</sup>

The judiciary in Mexico, yet another field open to a Mexican attorney, also differs from the judiciary in the United States. The judge in Mexico does not have as much power as the North American judge; he cannot "make" law.<sup>39</sup> This phenomenon is a product, basically, of the traditions of the Roman law and the French civil system after the French Revolution. The Roman judge (*Iudex*) was not an expert in law, but rather a layman, presiding over the settlement of disputes. For legal advice, he turned to the jurisconsult. Whereas in post-revolutionary France, it was insisted that only the legislature could make law. It could not be made either directly or indirectly by judges.<sup>40</sup> The doctrine of *stare decisis* was rejected. In speaking of Civil law judges in general, Professor Merryman said:

The picture of the judicial process that emerges in one of fairly routine activity. The judge becomes a kind of expert clerk. He is presented a fact situation to which a ready legislative response will be readily found in all except the extraordinary case. His function is merely to find the right legislative position, couple it with the fact situation and bless the solution that is more or less automatically produced from the union.<sup>41</sup>

Such is generally true of judges in Mexico, although as pointed out, in some instances equitable solutions are arrived at in derogation or avoidance of the written law.

Federal judicial power in Mexico is vested in the Supreme Court of Justice, circuit court of appeals, circuit courts, and the district courts. The Supreme Court of Justice, which sits in Mexico City, consists of twenty-one justices, one of whom is the court's president. The court may act in plenary session or in four divisions of five justices each. Each division or chamber has either original or appellate jurisdiction over the cases coming before it, and is responsible for its own area of the law. The first chamber handles criminal matters; the second chamber,

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<sup>37</sup>Floris Margadant, *supra* note 35.

<sup>38</sup>Carral y de Teresa, *The Public Authority of the Acts of Notaries and Registrars in Mexican Law*, 11 *MIAMI L. Q.* 449, 450 (1957).

<sup>39</sup>MERRYMAN, *supra* note 31, at 37.

<sup>40</sup>*Id.*

<sup>41</sup>*Id.*

administrative law cases; the third, civil cases; and the fourth handles labor cases.<sup>42</sup>

Most federal cases deal with the writ of *amparo* (translated, "protection"), which is regarded as Mexico's most important contribution to jurisprudence. This writ combines the North American writs of habeas corpus, mandamus and certiorari.<sup>43</sup> It is the means of enforcing the individual rights guaranteed by the constitution, a form of judicial review. It is also used in cases of conflict between state and federal laws.

Curiously, while the Mexican Constitution prohibits discrimination against foreigners, the federal law of professions prohibits an alien from practicing law. This provision has been declared unconstitutional on many occasions by the Supreme Court of the nation. Because, however, each such holding applies only to the particular case, if a foreigner wishes to practice law, he must initiate a suit in *Amparo*. Upon winning his *Amparo* suit, the alien attorney is permitted to practice, but the decision is not binding on the administrative agency involved except as to that individual. If a different alien applies for a license, his application will be rejected, for the discriminatory law is still on the books, and must be adhered to. He must initiate his own *Amparo* proceeding to protect his rights.

In many aspects, the practice of law in Mexico is somewhat similar to the practice of law in the United States. Yet, to understand a foreign culture and a foreign legal system in order to be able to work well with one from that foreign environment, a North American attorney must not make the assumption that the systems or the products of those systems, the attorneys, are similar. For in spite of the similarities, important differences do exist. In working with his Mexican counterpart, the North American attorney must recognize this. He must not tacitly take for granted that his system is the better of the two. Each has its advantages and disadvantages, and the differences are founded upon history and tradition.

Close economic cooperation between nations is no longer merely an inevitable trend; private business enterprises abroad are more numerous today than ever before in history. This phenomenon demands lawyers who can work with their foreign counterparts. Such lawyers must have an understanding of the trained professionals with whom they are dealing and of the legal system from which they come. Any agreement or contract arrived at will, of necessity, be a compromise between the parties. Effectiveness in these negotiations requires, or at least will be facilitated by, a solid understanding of the motivation of the Mexican attorney. Knowing how he was trained and understanding his environment will give the United States attorney a useful insight into how the Mexican goes about solving

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<sup>42</sup>Perez, *An Introduction to the Legal Structure of Mexico for the Foreign Investor*, 4 CAL. WEST. L. REV. 236 (1968).

<sup>43</sup>BALDWIN, *COMPARATIVE CONSTITUTIONAL LAW* 26 (1974).

certain problems or how he might interpret or react to a given proposal. And elements of both legal environments will be reflected in any common business venture or resultant litigation.

