THE MEXICAN EXPROPRIATION OF OIL PROPERTY 1917--1941

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By

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PREFACE

It is not the purpose of this thesis to give a solution of the expropriation issue or to decide whether it is right or wrong. It is a study of the conditions as they exist in the Republic of Mexico.

The economic domination of the Latin American States, by foreign capital, has been responsible for many improvements. The exploitation of the natural wealth has greatly impoverished them in many cases. The improvement of relations between Mexico and the United States, to the benefit of each, would result from a general knowledge of the problems with which they contend.

The subject matter of this treatise divides itself into three major divisions: first, the mining laws prior to 1917; second, the Constitution of 1917 and the laws and decrees down to 1927; third, the Expropriation Law of 1936 and the decree of 1938.

Material for the study was obtained from the Oklahoma Agricultural and Mechanical College Library at Stillwater, Oklahoma, the Mexican Office of Foreign Affairs, Mexico City, the Mexican Consulate Office at Oklahoma City, the United States Department of State, Washington, D. C., and a letter from the Consolidated Oil Corporation of New York.

An effort has been made to present in orderly review the series of laws and decrees by which Mexico returned one source of her natural wealth to the State. Attention is given to the efforts to make laws conform to the judicial decisions, and of the ones effected to evade the day of reckoning.

To Dr. T. H. Reynolds, Head of the Department of History at Oklahoma Agricultural and Mechanical College, Stillwater, Oklahoma, the writer is particularly indebted. He has cheerfully and kindly helped with many suggestions.

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INTRODUCTION

Chapter One

In studying the Expropriation Issue and the attitude of the Mexican Government toward foreigners who hold property in Mexico, it is well to briefly review similar policies of older states.

The early law of Rome was essentially personal not territorial. A man enjoyed the benefit of its institutions and of its protection, not because he happened to be within Roman territory, but because he was a citizen, one of those by whom and for whom its law was established. The theory of the early Romans was that a man sojourning within the bounds of a foreign country was at the mercy of the latter and its citizens. He might be dealt with as that of a slave, and all that belonged to him appropriated by the first comer for he was outside the pale of the law. Without some sort of alliance with Rome a stranger had no right to claim protection against maltreatment of his person or attempt to deprive him of his property. Even then, unless he belonged to a state entitled by treaty to the international judicial remedy of recuperation it was by an appeal to the good offices of the supreme magistrate or through the intervention of a citizen to whom he was allied by the bond of hospitium, and not by means of any action of the jus civile set in motion by himself.[1]

The Spanish colonial policy, in Mexico, prior to 1821, established

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1 "Roman Law", Encyclopedia Britanica, 11th Ed., 1911, XXIII, 539.

the principle that the granting of mining privileges did not alienate the ownership of the land.

The Royal mining orders of the year 1783, Title 5, states:

Article 1

> The mines are the property of my Royal Crown, not only because of their nature and origin, but by their inclusion in the Fourth Law, Title 13, Book 6 of the New Recompilation.

Article 2

> Without separating them from my Royal Patrimony, I grant them to my vassals in ownership and possession, in such manner that they can sell, exchange, rent, donate, or leave as a heritage under testament or mandate, or in any other manner dispose of their rights thereto, under the same conditions as they are possessed and to persons who are able to acquire same.

Article 22

> I also grant permission to discover, solicit, register, and denounce in the manner stated, not only gold and silver mines, but also....., bitumens, or earth juices, granting money and labor for their development, in the provinces where they exist.[2]

Porfirio Diaz as president of the Republic (1877-1880 and 1884-1911) made many financial and political reforms. He opened the nation's natural resources to the world, succeeded in attracting great quantities of foreign capital, and won for Mexico, the first time in her history, a position of respect among the nations.[3]

The Mining Law of 1884 promulgated by Diaz, reads in part:

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2 Fletcher to Lansing, Mexico City, March 20, 1918. Foreign Relations if the United States, 1918, 719-711. Enclosed also may be found the opinion of Mr. Rouaix, the Mexican Secretary of Agriculture, concerning the interpretation of Article 27 of the Constitution of Mexico of 1917.

3 "Diaz, Jose De La Porifirio", Ency. Brit., 14th Ed., VII, 325.

> Article 10. The following substances are the exclusive property of the owner of the land, who may therefore develop and enjoy them, without the formality of entry (denuncio) or special adjudication.... Subdivision 4... salts found on the surface, fresh and salt water, whether surface or subterranean; petroleum and gaseous springs... In order to develop these substances the owner of the land shall subject his operations to all rules and orders of a police nature.[4]

The Mining Law of 1892 reads in part:

> Article IV. The owner of the land may freely work without a special franchise (concesion) in case whatsoever the following mineral substances: mineral fuels, oils, and mineral waters.
>
> Article V. All mining property legally acquired and such as hereafter may be acquired in pursuance of this law shall be irrevocable and perpetual....[5]

The Mining Law of 1909 reads:

> Article 11. The following substances are the exclusive property (propiedad exclusiva) of the owner of the soil:
>
> 1. Ore bodies or deposits of mineral fuels, of whatever form or variety.
>
> 2. Ore bodies or deposits of bituminous substances.[6]

These laws, enacted under the guidance of Diaz, introduced the idea that the owner of the soil was also the owner of the subsoil. The laws had the desired effect of enticing millions of dollars of foreign capital to aid in the industrial development of Mexico, but they also furnished the oil companies with their chief argument against the constitution to be adopted at a later date.

On August 15, 1916 Carranza, First Chief of the Constitutionalist army, issued a decree requiring all foreigners who sought permission

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4 Sen. Doc., 69 Cong., 2 sess., II, 210, 2.

5 Ibid., 2.

6 Ibid.

for the exploration or exploitation of natural wealth such as forest products or petroleum, to file a written document declaring that they considered themselves as Mexicans, renouncing their rights as foreigners, and that of applying for protection or presenting complaints to their respective governments. The date set for the filing of this statement was December 15, 1916. The date was later moved to April 15, 1917. When notice of this decree reached Secretary of State Lansing, he immediately informed the Mexican authorities that the United States could not accept the decree as annulling the relations existing between it and its citizens who might acquire properties in Mexico, or as affecting its rights and obligations to protect them against denials of justice with respect to such properties.[7]

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7 Telegram of Lansing to Thurston, Washington, January 19, 1917, For. Rel. 1917, 1059.

THE CONSTITUTION AND DECREES 1917-1928

Chapter Two

The promulgation of the new constitution of May 1, 1917 introduced a new policy, on the part of the Mexican government, towards the petroleum industry.

Article 27 of the constitution set forth the attitude of the Mexican government. It reads in part:

> Article 27. The ownership of lands and waters comprised within the limits of the National territory is vested originally in the Nation, which has had, and has the right to transmit title thereof to private persons, thereby constituting private property. Private property shall not be expropriated except for reasons of public utility and by means of indemnification.
>
> In the Nation is vested the legal ownership of all minerals or substances....; petroleum and all hydrocarbons....solids, liquids or gaseous.
>
> Par. I. Only Mexicans by birth or naturalization and Mexican associations have the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines, water or mineral fuels in the Republic of Mexico. The Nation may grant the same right to foreigners, provided they agree before the Department of Foreign Affairs to be considered as Mexicans in respect to such property, and accordingly not to invoke the protection of their governments in respect to the same, under penalty, in case of breach, of forfeiture to the Nation of property so acquired. Within a zone of 100 kilometers from the frontiers, and of 50 kilometers from the sea coast, no foreigner shall under any conditions acquire direct ownership of lands and waters.[1]

At the time of the enactment of the Constitution there were forty-six American companies engaged in the oil industry in Mexico. Each of these companies had acquired its property, by purchase, or lease, from the private owner. None, therefore, enjoyed concessions from any

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1 Robert G. Cleland, Mexican Year Book 1922-1924, 127.

Mexican government.[2]

On June 24, 1917 the Mexican government issued a decree which prohibited foreign companies from drilling wells on leases entered into after February 5 and prior to May 1, 1917.[3] The protests of the oil companies to the Mexican government, and the appeals to the Department of State caused considerable alarm in Washington. Acting on instructions, Henry P. Fletcher, American Ambassador, protested to Carranza that the putting of this decree into effect would amount to confiscation of property legally acquired by American companies. The United States could not consent to this action.[4] In August Carranza assured the Ambassador that the Mexican government had no intention of confiscating any property that was being exploited at the time.[5]

Pani, Minister of Foreign Affairs, speaking for the Mexican government, pointed out that foreign companies had not been prohibited from drilling wells; that the interpretation of the Attorney General relative to Art. 27 of the Constitution did not prohibit foreign capital from being invested in the oil industry, but required foreign capital to submit to the new laws by renouncing its nationality, and organizing as Mexican capital. The government held that this did not imply intervention in the foreign companies nor the confiscation of their properties.[6]

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2 Ibid., 210.

3 Summerlin to Lansing, American Embassy, Mexico City, July 9, 1917, For. Rel., 1917, 1071.

4 Telegram of Lansing to Fletcher, Washington, June 6, 1917, For. Rel., 1917, 1067.

5 Telegram of Polk to Fletcher, Washington, August 6, 1917, For. Rel., 1917, 1072.

6 Telegram of Summerlin to Lansing, Mexico City, January 27, 1918, For. Rel., 1918, 687-688.

On February 19, 1918 President Carranza issued the following decree:

> Article 1. A tax is established on oil lands and on oil contracts executed prior to May 1, 1917, having for their object the leasing of lands for the exploitation of carbides of hydrogen or permission to do so under an onerous title.
>
> Article 2. The annual rentals stipulated in the contracts cited in Art. 1 shall be taxed in the following proportions:
>
> (a) Those of five pesos per annum per hectare or less, with ten percent of their value.
>
> (b) Those of more than five pesos and less than ten, per hectare and per annum, with ten percent the first five pesos and with twenty percent of the rest.
>
> (c) Rents greater than ten pesos per annum per hectare, with ten percent the first five pesos, with twenty percent the next five pesos, and with fifty percent anything exceeding the first ten pesos.
>
> Article 3. All royalties stipulated in oil contracts are charged with an annual rental of five pesos per hectare and besides with a royalty of five percent of the products in cash or in kind, as may in each case be decided by the Department of the Treasury.
>
> Article 13. For oil lands not actually paying rent five pesos per annum per hectare shall be paid, and for those at present not paying royalty, five percent of the products....
>
> Article 17. Taxes not payed in the terms fixed by this law shall be subject to a five of ten percent for each month of delayed payment.[7]

It was further provided, as a penalty and in order to make the law effective, that the owners of land wishing to exploit oil pools then existing in the subsoil, on their own account, and acting directly or through lessees, should file with the Department of Industry, Commerce

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7 Fletcher to Lansing, Mexico City, March 1, 1918, For. Rel., 1918, 702-703. Enclosed also may be found President Carranza's tax decree.

and Labor, a declaration within three months from the date the decree became effective, attaching thereto certified copies of the contracts. The said Governmental Department had authority to examine the declarations so filed and to reject those containing allegations which were not borne out by documentary evidence submitted. After the expiration of the three months period, any oil land which had not been registered was to be considered as vacant. Thereafter, the filing of claims and the exploitation was to be governed by regulations which the government would issue.[8]

The time limit for the denouncement of oil claims set for May 18, 1918 was extended to July 31, to August 15, to December 31, 1918 and finally until a new petroleum law should be enacted.[9]

As soon as the decree of February 19, 1918 was published, Ambassador Fletcher besought the Mexican Minister of Foreign Affairs to postpone the decree for a period of thirty days. The reply was evasive, indicating that even the Mexican government was uncertain as to when and how the decree would go into effect.[10]

On March 15 Secretary of State Lansing instructed Ambassador Fletcher to inform the Mexican government that the United States would be unwilling to conclude trade agreements for the mutual exchange of commodities, except that the property rights of American citizens within the territorial limits of Mexico be protected by the Mexican govern-

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8 Government of Mexico, The True Facts about the Expropriation of the Oil Companies Properties in Mexico, Government Press, Mexico City, 1940, 30-31. (Hereafter to be abbreviated as Govt. of Mexico, True Facts).

9 Fletcher to Polk, Mexico City, January 8, 1919, For. Rel., 1919, II, 591. Enclosed may also be found President Carranza's Decree of December 27, 1918.

10 Fletcher to Lansing, Mexico City, March 1, 1918, For. Rel., 1918, 699-700.

ment against injury and confiscation. Referring to the decree of February 19, 1918 he said.

> This Government cannot acquiesce in any action by the Mexican Government whereby legitimate vested American interests are appropriated by Mexico.[11]

Such a note had been presented to the Mexican Secretary of State for Foreign Affairs, on April 2 by Ambassador Fletcher, setting forth the objections of the United States to the decree. Also pointing out that the decree appeared to be an effort to sever the ownership of the petroleum deposits from ownership of the surface, that no provision had been made for the just compensation for such arbitrary divestment of rights.[12]

The attitude of the Secretary of State was that the decree of February 19, 1918 was based upon Article 27 of the Constitution with intention of putting into effect the claims that all mineral, solid mineral fuels, petroleum and all hydrocarbons had belonged to the King of Spain, personally, and became the property of the State at the time of the revolution. The United States did not request for its citizens exemption of ordinary taxes so long as the tax was uniform and did not amount to confiscation. Neither was the government inclined to interfere in the case of expropriation of private property for sound reasons of public welfare and upon just compensation and by legal proceedings before tribunals allowing fair and equal opportunity to be heard and giving due consideration to American rights.[13]

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11 Lansing to Fletcher, Washington, March 15, 1918, For. Rel., 1918, 704.

12 Fletcher to Lansing, Mexico City, April 3, 1918, For. Rel., 1918, 713.

13 Lansing to Fletcher, Washington, March 19, 1918, For. Rel., 1918, 705-707.

Rovaix, the Mexican Secretary of Agriculture, expressed the belief that the Constitutional Convention had employed the term "dominium directum" to express clearly the idea that the government had not only absolute and original ownership, but also private ownership of the subsoil. The Constitution annulled all mining laws in operation at that time. From the moment the Constitution was promulgated the legal ownership of petroleum and other hydrocarbons was returned to the Nation, consequently Article 27 was not retroactive.

> Retroaction would have existed had there been demanded an indemnity of those who, without right, were exploiting the natural subsoil products covering all they had enjoyed in usufruct prior to the promulgation of our Magna Charta. This was not done, but its provisions tend to reclaim for the Nation that which belonged to the Nation.[14]

Representatives, of the American Oil Companies in Mexico, presented a written protest against the February 19, 1918 decree to the Mexican Secretary of Industry, Commerce and Labor (Pani) on May 28. The protest stated that the companies had invested millions of dollars in the industry; that many of the wells were dry holes and not producers. Furthermore:

1. The taxes were more than the companies could pay.
2. The taxes were discriminatory in favor of other industries.
3. They amounted to confiscation.
4. The taxes discriminated against the land owner.
5. The requiring of the lessee to deduct the lessors tax would result in endless lawsuits.

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14 Fletcher to Lansing, Mexico City, March 13, 1918, For. Rel., 1918, 711. Enclosed also may be found the opinion of Mr. Rouaix, the Mexican Secretary of Agriculture concerning the interpretation of Article 27 of the Constitution of Mexico of 1917.

6. The tax was retroactive, reading something into the contracts that had not been intended.[15]

To these arguments Pani replied that the millions of dollars of industrial capital were not taxed; the money that was used for the purpose of monopolizing oil land did nothing more than obstruct the industry.[16]

Pani further expressed the view of the Government when he said:

> But even supposing that the new petroleum law should nullify all contracts, in accordance with the Constitution of 1917, thereby facilitating the assessment of a uniform tax of five pesos per hectare on all oil lands, this tax would be perfectly legal, since it is based on the principle of the Nation's direct dominium over all hydrocarbons.[17]

A decree dated July 8, 1918, provided that after August 1, 1918, subsoil petroleum claims could be filed on vacant lands; that lands covered by the titles issued by the Nation for oil exploitation would not be considered vacant in the following instances: Lands which had been declared by filing denouncements, as required by the decree of February 19; lands covered by lease and registered in the Department of Industry, Commerce and Labor; and lands covered by concessions granted by the Mexican government. Therefore, denouncements or claims could be made by any person on lands which were not included in the above mentioned.[18]

On July 31, 1918, the Mexican government enacted a new law taxing oil lands and leases. It was in substance a reproduction of the pro-

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15 Fletcher to Lansing, Mexico City, June 12, 1918, For. Rel., 1918, 724-725. Enclosed also maybe found a note addressed to Mr. Pani by Messrs. Garfield and Rhoades and Mr. Pani's reply.

16 Ibid.

17 Ibid., 726.

18 Govt. of Mexico, True Facts, 32.

vision contained in the decree of February 19. It required the owners of oil lands who had not made drilling contracts with third persons, and also the assignees of such drilling rights, to file a declaration within the first two weeks of August. The penalty imposed was to effect that after the expiration of the time fixed any land which had not been declared in the prescribed manner, would be declared vacant.[19]

On August 8, 1918, the Mexican government enacted an additional law directing that, from and after the expiration of a new date fixed for registration of oil contracts, oil claims could be filed on vacant lands which included those on which the owners or lessees had failed to file.[20]

A decree published on August 12, 1918 provided that the oil lands in which capital had been invested for drilling purposes and which had not been declared by the 15, as required by the decree of July 31, would not be subject to denouncement or claim. However, special contracts for the right to drill would have to be obtained from the Department of Industry, Commerce and Labor. Such contracts would be made until the organic law of Article 27 of the Constitution was enacted.[21]

On August 12, 1918 the Ambassador was instructed to request a delay in the putting into effect the decree of February 19, since the United States had not had time to study the decrees issued since that time. The request again referred to the necessity of the United States to protect American interests.[22]

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19 Ibid., 33.

20 Govt. of Mexico, "True Facts," 32.

21 Ibid., 34.

22 "Investigation of Mexican Affairs," Sen.Doc.,66 Cong.,2,sess., X, 3158.

To this protest Carranza replied that the decree was purely fiscal and that all questions arising should be settled by legal methods. The Mexican government could not admit interference from a foreign government in matters of purely fiscal legislation, but that if this meant war or intervention he was prepared to meet the situation.[23]

As the American Department of State was unwilling to risk a crisis, in the face of Carranza's challenge, it returned to its policy of talk.

Since the oil companies had not appealed to the Mexican Courts and the laws applied to Mexicans and foreigners alike the Mexican government could recognize no right of intervention by the United States. Until the courts held the laws unconstitutional and the Government refused to abide by its decisions, the cry of confiscation, and denial of justice could hardly be recognized.[24]

The Mexican government was not only meeting opposition from the foreigners, but also from the Mexican people and business concerns, who would be affected by a regulating act to give effect to Article 27.[25]

By April 15, 1919 the property of companies that had failed to comply with the decree of February 19, 1918 and subsequent decrees was being denounced by third persons, just as though the land was vacant.[26] By the early part of 1919, seven American petroleum companies had been denied permits to drill new wells because of failure to comply with the

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23 Ibid., 3160.

24 Ibid., 3162.

25 Fletcher to Lansing, Mexico City, March 20, 1918, For. Rel., 1918, 708.

26 Polk to Summerlin, Washington, April 16, 1919, II, For. Rel., 1919, 596.

decrees.[27] Some of the companies, in defiance of the refusal of permits, began the drilling of new wells and on May 16, 1919 the Constitutional Authorities ordered the army to take steps to see that all illegal drilling was stopped.[28]

On August 4, 1919 a decree was issued by which those who had been denied the right to drill, because of failure to file the statements required by the decree of July 31, 1918, might obtain permission to drill. The permits could be obtained provided the concessionaries would bind themselves to abide by the precepts of the Petroleum Organic Law, which might be issued by the National Congress.[29]

Early in January 1920, due to the fact that many of the wells were playing out, the 46 American Companies, operating in Mexico, petitioned Carranza for permits to drill new wells. They agreed that the permits should be valid only until a new organic law was passed, but that they should not imply acceptance of the decrees in force at that time; neither should they be retroactive, applying to investments made prior to 1917.[30] Shortly after this, January 20, Carranza issued a decree making such permits possible. The permits were to include, also, all wells that had been begun since the controversy began in 1917.[31] The decree of March

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27 Ibid., 595.

28 Polk to Summerlin, Washington, April 16, 1919, II, For. Rel., 1919,602.

29 The Mexican Embassy to the Department of State, Mexico City, August 4, 1919, For. Rel., 1919, II, 607.

30 Summerlin to Colby, Mexico City, January 21, 1920, For. Rel., 1920, III, 200-201.

31 Association of Mexican Producers to Colby, New York, January 23, 1920, For. Rel., 1920, III, 204. Enclosed also may be found President Carranza's telegram to the Producers.

12, 1920 opened the Federal Zones of Mexico to the granting of concessions to native Mexicans, naturalized Mexicans or to companies operating under Mexican Law. The concessions were to run for a period of not more than ten years.[32] This decree allowed individuals or companies to drill wells within twenty meters of the high water mark of creeks and rivers, regardless of whether or not the land was under lease to American companies. This practice enabled the third party to drain the oil producing lands of these companies.[33]

The export tax decree of May 24, 1921 increased the export duties on crude oil from to to 12 percent. The value upon which the tax was to be determined was to be the same as the value of the production in the United States. This did not allow for the cost in transportation and increased the tax in proportion.[34] Many of the companies could not meet the increased tax without loss and proceeded to shut down.[35] On August 30, 1921 the Supreme Court handed down a decision in proceedings instituted by the Texas Company of Mexico S. A. The Company had refused to make the denouncements as required by the Presidential decrees of August 8 and August 12, 1918. Mr. Rafael Cortina in accordance with the

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32 Hanna to Colby, Mexico City, April 20, 1920, For. Rel., 1920, III, 207. Enclosed also may be found President Carranza's Executive Decree of March 12, 1920.

33 The Association of Producers of Petroleum, New York, August 3, 1920 to Colby, For. Rel., 1920, III, 207.

34 The Association of Producers of Petroleum to Hughes, Washington, June 2, 1921, For. Rel., 1921, II, 447.

35 Standard Oil Company to Hughes, New York, August 18, 1921, For. Rel., 1921, II, 455.

decree made a denouncement against the Companies' possessions on which they had not drilled. The denouncement was accepted by the Department of Industry, Commerce and Labor, and Mr. Cortina was issued title to the said land. The lower courts sustained the title as issued to Mr. Cortina. The Supreme Court held that paragraph 4 of Article 27 of the Constitution and also the decrees of August 8 and August 12, 1918, had been applied retroactively. This granted the Amparo which the company sought.[36] In August 1922 the Supreme Court handed down similar decisions in four other cases. The five decisions implied that petroleum properties, in the process of development prior to the adoption of the Constitution, were protected from a retroactive application of the fourth paragraph of Article 27. These decisions did not effectively deal with the rights of American citizens in lands containing petroleum where the lands were owned prior to May 1, 1917, but had not been developed or had not been leased for development prior to that date.[37]

It is evident, however, that the Supreme Court of Mexico in construing the true meaning of the Mexican laws, under which the foreign companies claimed to have acquired their rights to the oil before the Constitution of 1917 came into effect, did not hold, as the said companies alleged that the latter had acquired complete vested rights in the pe-

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36 Summerlin to Hughes, Mexico City, September 27, 1921, For. Rel., 1921, II, 464-472. Enclosed also may be found the Mexican Supreme Court decision of August 30, 1921.

37 Phillips to Summerlin, Washington, August 15, 1922, For. Rel., 1922, II, 681. Enclosed also may be found a Press Release by the Department of State, August 10, 1922

troleum found in Mexico's subsoil. The true principles of law announced by the Supreme Court were the following:

(a) The mining and petroleum laws of Mexico enacted prior to the Constitution of 1917, and granted to the owner of the land the right to explore and exploit freely petroleum so as to utilize that which he might find.

(b) The landowner, while these laws were in effect, could search for oil and exploit it on his own land personally; he could also transfer the right to explore and exploit oil to any person or company for a valuable consideration or transfer it to any person without receiving any renumeration in return.

(c) In those cases where the owner of the land transmitted to a third person the right to search for oil and exploit it, the powers given to landowners by the Mexican laws prior to the Constitution of 1917, were converted into positive acts, and in such cases the third persons contracting with the owner of the land acquired rights to explore and exploit oil in the land in question.

(d) Once those powers to explore and exploit oil were acquired under those circumstances by the third persons or companies who had contracted with the land owner, the State could no longer grant those same powers to different persons or companies for such an act would amount to divesting the former of their rights of exploration and exploitation without legal justification.[38]

Much of the diplomatic correspondence, between the governments of the United States and Mexico during the year 1922, concerned the attempts

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38 Correspondence of the Embassy in Mexico City with the Secretary of State in Washington, For. Rel., 1922, II, et passim, 639-708.

of Mexico to gain recognition of the Obregon government.

Secretary Hughes insisted that the proposed Treaty of Amity and Commerce, which would grant official recognition to the government, should contain assurances that the Organic Petroleum Law, when passed, would not contain retroactive features. President Obregon insisted that it was not fitting that he should give such assurances in treaty form, since that would be infringing upon the right and dignity of the National Congress.[39]

President Obregon had previously expressed his policy. In a public speech on June 27, 1921 he outlined his policy toward the petroleum companies. In this speech is found:

> .....Today we profess the principle that the natural resources of the Nation belong to the Nation. ..... This does not imply, by any means, a policy of isolation. .....We shall invite foreign capital, and it will be treated justly, but we will not grant it excessive privileges at the expense of the rights of the people.
>
> Having established this point, I take the liberty to declare that in such a policy there is not the least indication or intent to confiscate. This falsehood had been invented by those who feel that our policy of nationalization will be in opposition to future campaigns of monopolistic exploitation. All rights or private property acquired prior to May 1, 1917....the date on which the present Constitution was promulgated...will be respected and protected. The famous Article 27, one of whose clauses declares the petroleum deposits of the subsoil to be the property of the Nation, will not have retroactive effect.....[40]

These were the assurances that Secretary Hughes insisted should be put in treaty form before recognition would be granted.

The attempt to gain recognition, through the regular diplomatic channels progressed very slowly, so in April, 1923, the two governments

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39 Govt. of Mexico, True Facts , 46.

40 Govt. of Mexico, True Facts , 664.

agreed to appoint a special commission for the adjustment of the fundamental questions at issue.[41]

At length in May, 1923 Charles Beecher Warren and John Barton Payne were sent as Commissioners to Mexico for the purpose of negotiating concerning the recognition of the Obregon government. Apparently the resolution to force Mexico to sign a treaty prior to and as a condition of recognition had been abandoned. The main purpose now appeared to be to obtain a definite and formal statement of the position and intentions of Mexico. So far as revealed by the published records, Mexico made very few concessions. Six topics were discussed but agreements, partial or complete, were reached on only three. Two Claims Conventions were signed, a special convention covering other claims of citizens of each country against the other since the settlements which had occurred in accordance with the claims convention of July 4, 1868. The American Commissioners agreed that Mexico might pay citizens of the United States in twenty-year five per cent bonds for such lands as were taken from them in the process of restoring the communal holdings of the Mexican villages. This, however, was not be considered as a precedent in respect to lands belonging to citizens which should be expropriated under other circumstances. Furthermore, Warren and Payne dissented from the Mexican convention that the valuation of the lands for revenue purposes, plus ten per cent, would be just compensation for expropriated lands. The Mexican Commissioners, Ramon Ross and Fernando Gonzales Roa, declared in regard to petroleum, that the Constitution of 1917

> is not retroactive in respect to all persons who have performed, prior to the promulgation of the said Constitution,

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41 Hughes to Summerlin, Washington, April 17, 1923, For. Rel., 1923, II, 533.

> some positive act which would manifest the intention of the owner of the surface or of the persons entitled to exercise his rights to the oil under the surface to make use of or obtain the oil under the surface: Such as drilling, leasing, entering into any contract with reference to the subsoil, making investments of capital in lands for the purpose of obtaining oil in the subsoil, carrying out works of exploration and exploitation of the subsoil and in cases where, from the contract relative to the subsoil, it appears that the grantors fixed and received a price higher than would have been paid for the surface of the land because it was purchased for the purpose of looking for oil and exploiting same if found; and, in general, performing or doing any other positive act, or manifesting an intention of a character similar to those hereto described.[42]

Moreover, persons who had not performed such positive acts prior to the date when the Constitution of 1917 went into effect would be given preferential rights to the fuel products beneath the surface which they owned and would be granted permission to avail themselves of these rights upon application to the National Government of Mexico.[42A]

As a result of the conferences the United States agreed to grant formal recognition of the Obregon government and diplomatic relations were resumed on August 31, 1923.[43] The resumption of relations was followed by the signing of a General Claims Commission and a Special Claims Commission by the two governments on September 18 for the settlement of all claims by the citizens of each country against the other arising since July 4, 1886.[44]

In November 1925 prior to the passage of the Petroleum Law of

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42 J. Fred Rippy, "Mexico's Laws Against Foreign Land Ownership", Current History, XXIV, 3, June 1926, 334.

42A Ibid., p. 334.

43 Phillips to D'Hermalle, Washington, August 28, 1923, For. Rel., 1923, II, 554.

44 Phillips to Summerlin, Washington, November 7, 1923, For. Rel., 1923, II, 565. Enclosed also may be found a Public Statement by Kellogg, September 8, 1923.

December 26, 1925 Secretary of State Kellogg directed a series of notes to the Mexican government, protesting the proposed legislation. The Secretary did not wish to interfere with the free course of legislation in Mexico, and did not wish to assume the role of an uninvited adviser, as certain aspects of the proposed legislation was causing considerable concern. Americans, with acquired rights in Mexico, were appealing to the government which was bound to do its utmost on their behalf. The proceedings of the United States--Mexican Commission of 1923 should be kept in mind by both governments.

He proposed that a Treaty of Amity and Commerce should be negotiated between the two governments.[45]

To this note President Calles, through the office of the Minister of Foreign Affairs, replied that, in his opinion, there was no occasion for perceiving clouds upon the horizon of the friendship between Mexico and the United States. He was agreeable to the negotiation of a new treaty of amity and commerce. The Mexican government took occasion to point out that the Commission of May 1923 had not resulted in any formal agreement other than the Claims Convention signed after the resumption of diplomatic relations, and that the policy of President Obregon, as set forth at that time, would in no wise be destroyed by the pending legislation.[46]

A few days later the Chamber of Deputies passed the proposed law and Kellogg again chose to interfere. The protest was directed particularly against the part of the pending law that required foreigners to waive their

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45 Sen. Doc., 69 Cong., 1 sess., 96, 3.

46 Sen. Doc., 69 Cong., 1 sess., 96, 4-5.

nationality. Under penalty of forfeiture, foreigners were also required to agree not to invoke the protection of their respective governments so far as their property rights were concerned. Kellogg, proclaiming a policy of non-interference, admitted that the government of the United States recognized the right of any other government by legislation to regulate the ownership of property as a purely domestic question unless such regulation operated to divest prior vested rights of American citizens legally acquired or held under the laws of such foreign government.[47]

In reply to this note the Mexican Foreign Minister pointed out that it was extraordinary that the American government should send protests to that of Mexico in regard to the pending legislation. It was a universally accepted principle that every nation is sovereign to legislate in the matter of real property within its own territory. The refusal of this right would be tantamount to denying to a sovereign nation the right of imposing upon all those who inhabit its territories the modifications and regulations necessary for the defense of its interests, and would make impossible its subsequent development. He furthermore pointed out that the right acquired prior to 1917 would not be abrogated.[48]

On December 26, 1925 the Mexican Congress passed the Administration's petroleum bill. By the first three articles all hydrocarbons were unconditionally nationalized the "inalienable and imprescriptible" national domination over such deposits was unconditionally vested in the Federal

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47 Ibid., 6-7.

48 Ibid., 7-12.

Executive, and the petroleum industry was declared to have preferential right "as to any utilization of the surface of the land," which might be expropriated at any time when the necessities of the industry so demanded. Article 4 required all foreigners to comply beforehand with what was provided in Article 27 of the constitution. Article 5 forbade the transfer of concessions to foreign governments. Article 6 provided for exclusive Federal Jurisdiction in everything relating to the petroleum industry.[49]

The law confirms all oil rights arising from lands on which work for the exploitation of petroleum was begun prior to May 1, 1917 by the surface owner or his successors in title for the express purpose of developing petroleum, but these rights were confirmed only for a period of fifty years. For the rest it declared that ownership of petroleum was vested in the nation and that foreigners obtaining concessions must forego the privilege of appeal to the home government.

The following are the main provisions of the law:

1. Aliens are forbidden to obtain direct ownership of land or water in a strip of one hundred kilometers along the frontier and fifty kilometers along the coast.

2. Aliens are not allowed to constitute a part of a Mexican company which may have or acquire ownership of land or waters, or of concessions for the exploitation of mines, waters or combustible minerals elsewhere in the republic. On penalty of forfeiture they may obtain permits which will be granted to them only after they have agreed not to invoke the protection of their home government in regard to the property in question.

In the case of Mexican companies owning rural property for agri-

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49 Charles W. Hackett, "United States Protests Mexican Land Bill," Current History, XXIII, 4, January 1926, 732.

cultural purposes, participation of aliens is not to be allowed after their acquisitions reach fifty percent of the total interest in the company.

3. Foreign invididuals, partnerships and corporations may retain their holdings in the maritime and frontier strip until death or dissolution, and the heirs and assignees are given five years to dispose of the property even after this.

4. The same conditions hold elsewhere in the republic in respect to the ownership of lands, waters and mining and other concessions, with the exception of aliens who possess fifty percent or more of the total interest of Mexican companies holding rural land for agricultural purposes. In such cases individuals were to have the same right, but corporations were to be granted a period of only ten years in which to dispose of their interest in excess of the stipulated maximum.[50]

After passage of the law, the United States Department of State saw fit to direct other notes to the Mexican government, pointing out that, in its view:

1. The law failed to give recognition to rights lawfully acquired prior to the adoption of the present Mexican Constitution when the Mexican law expressly provided that the owner of surface lands owned also the subsoil deposits of petroleum.

2. The law failed not only in the respect indicated, but it also failed to respect decisions of the Supreme Court of Mexico in the interpretation of the very constitutional provisions which the law was apparently designed to regulate, in that those decisions held in effect that

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50 Fred Rippy, "Mexico's Laws Against Foreign Land Ownership," Current History, XXIV, 3, June 1926, 336.

such constitutional provisions were not retroactive and inapplicable to those, whether corporations or individuals, who performed any one of a number of what were denominated as "positive acts," whereas:

(a) This law (Art. 4) seemed to provide that foreign corporations, regardless of the time when they lawfully acquired rights, and irrespective or whatever "positive acts" they performed, would not be able to obtain recognition of those rights; and

(b) That foreign individuals, without regard to the time when they lawfully acquired rights and irrespective of whatever "positive acts" they performed, would be deprived of such rights unless they renounced their citizenship with respect to such rights. (Art. 4)

(c) That the number of "positive acts" recognized would be much less than those enumerated in the decisions mentioned (Art. 14); and

(d) That even as to foreign individuals who performed "positive acts" recognized in the law and made the renunciation mentioned, confirmation of their rights must be applied for within a year or such rights would be forfeited. (Art. 15)

3. In apparent contradiction to the statements made by the Mexican Commissioners in the conference held in Mexico City in 1923 as to the past, present, and future policy of the Mexican government to grant preferential rights to the owners of the surface or persons entitled to exercise their preferential rights to the oil in the subsoil who had not performed a "positive act," the law in question seemed to give no preferential rights to such owners or persons.[51]

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51 Sen. Doc., 69 Cong., 1 sess., 96, 13-14.

To this protest Aaron Saenz, Mexican Foreign Minister, replied that, the laws in question did not violate either the principles of international law or those of equity. Far from doing so they favored aliens in various ways, since they dispelled all uncertainty with regard to the matters under discussion, and in regard to the petroleum law aliens who had acquired rights in the prohibited zones might hold them, which could not be the case except for the provisions of article 14, in accordance with the pertinent section of Article 27 of the Constitution, and since there was nothing in the said laws either retroactive or confiscatory there could be no reason for the declaration that it would not be possible to agree to the application of said laws to American properties. He furthermore pointed out that a diplomatic representation is not considered appropriate in connection with the enactment of a law, but that it is only justified when the enforcement of a law results in an injury, and in such cases the parties would have recourse to the Mexican Courts.[52]

Ambassador Sheffield in discussing the law with President Calles maintained that the right of Americans to property acquired before the adoption of the Constitution should be protected. He maintained that the law was inimical to Americans holding property in Mexico.

To the above assertions the Minister of Mexican Foreign Relations vigorously asserted the right of the Mexican people "to pass such legislation as they saw fit as an independent nation and to exercise full right of sovereignty." He declared that in case the petroleum laws "are applied to American interest, these interest have the right of

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52 Ibid., 15-21.

appeal to the Mexican courts," but added that "it would be necessary to wait until the laws were enforced and applied in order to provide concrete cases, as with other legislation".[53]

Nine foreign companies, who held their titles in the name of Mexican companies, and who in 1927 controlled about 90 per cent of the oil producing land and 70 per cent of the oil production in Mexico, had refused to accept the new petroleum law. Only four of the American companies had applied for conformitory concessions under the law. Two of these were not producing and the other two owned no fee property in Mexico.

No concessions had actually been granted to either of them. The interpretation of the attorney general of Mexico being that the granting of concessions to a foreigner was prohibited by the Constitution of 1917.[54]

Two of the features of the Calles Law were especially obnoxious to the oil companies. Article XIV gave the companies one year, from January 1926 to January 1927, in which to exchange their legal title to land for fifty-year concessions issued by the government. Article XV held that failure to do this was cause for the government to denounce such property in favor of itself.

On November 17, 1927 the Supreme Court of Mexico handed down a decision granting the Mexican Petroleum Company an injunction to restrain the government from putting these Articles into effect.

This decision dissipated much of the diplomatic friction between

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53 Charles W. Hackett, "United States Protests Mexican Land Bill", Current History, XXIII, 4, January 1926, 733.

54 Sen. Doc., 69 Cong., 1 sess., II, 210, 4.

the two countries.[55]

On March 28, 1928 the Mexican government promulgated new oil regulations. The new regulations were due to the combined efforts of American Ambassador Dwight Morrow and President Calles. This brought to a conclusion the long diplomatic struggle between the United States and Mexico. The agreement was brought about by both governments yielding on certain points.

A company which had acquired land prior to 1917 was recognized as owner of the subsoil, provided, it had performed "positive acts"[56] to reclaim the same. If they had not taken definite steps known as "positive acts" the oil did not belong to them. The ancient law of Spanish-Americans was recognized as the basis for this agreement.

The "positive acts" were to be the same as those contained in the Warren-Payne agreement of 1923.

Mexico removed the fifty year concessions which it had intended to substitute for the perpetual rights of these companies.

Concessions were not to be issued to said companies.

The companies were to apply for a confirmatory concession by January 1929, or their property would be considered as vacant.[57]

Other principles contained in the law were:

1. Direct ownership of all natural hydrocarbons existing in its deposits is vested in the Mexican Nation.

2. The direct ownership by the nation is inalienable and imprescriptible; petroleum operations may only be carried out by express authority of the Federal Executive, granted

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55 New York Herald Tribune, "Our Oil Victory in Mexico," Literary Digest, XCV, 11, December 10, 1926, 6.

56 Above, 19-20.

57 Walter Lippman, "New Oil Rules End Long Feud Between U. S. and Mexico," Congressional Record, 70 Cong., 1 sess., LXIX, Part 5, 5477-5478.

in accordance with the requirements of the law.

3. Exploration concessions entitle the concessionaire to perform any work the object of which is the discovery of petroleum.

4. Concessions for oil exploitation shall be granted upon application previously made and shall give to the concessionaire the right to reduce to possession and to utilize such oil as he may find.

5. The government shall grant concessions for the installation of pipelines.

6. The government shall grant concessions for the establishment of refineries and gas plants.[58]

On the day that the Regulations were promulgated, March 28, 1928, Ambassador Morrow made a statement pertaining to the situation. His opening paragraph reads:

> These Regulations when taken with the Supreme Court decision handed down November 17, 1927, the legislation passed by the Mexican Congress on December 26, 1927, and promulgated on January 10, 1928, and the letter of Minister Morones issued on January 9, 1928, evidence the determination by the judicial, the executive, the legislative, and the administrative departments of the Mexican government to recognize all rights held by foreigners in oil properties prior to the adoption of the 1917 Constitution.

On the same day, the Department of State of the United States issued a statement which said:

> The Petroleum Regulations just promulgated by President Calles constitute executive action which completes the process beginning with the decision made by the judicial branch of the Mexican government on November 17, 1927, and followed by the enactment of the new Petroleum Law by the legislative branch on December 26 last. Together, these steps voluntarily taken by the Mexican government, would appear to bring to a practical conclusion discussions which began ten years ago with reference to the effect of the Mexican Constitution and laws upon foreign oil companies. The Department feels, as does Ambassador Morrow, that such questions, if any, as may hereafter arise can

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58 Govt. of Mexico, True Facts , 64.

be settled through the due operation of the Mexican administrative department and the Mexican Courts.[59]

Mexico's desire to nationalize the natural resources of the country is not different from that of other nations of the world.

In France there appears to be no oil concessions granted. The French government exercises wide discretionary powers in the granting of concessions. This makes possible discriminatory action but there is no evidence of its operation against citizens of the United States. The decree of September 9, 1919 provides for the complete nationalization of all minerals. There is reason to believe that this would place a restriction on development by aliens unless they form a part of a French joint-stock company. This would probably apply to all French Colonies.[60]

The policy of the British Empire is to bring about the exclusion of aliens from the control of the petroleum supplies of the Empire, and to endeavor to secure some measure of control over oil production in other countries. The tendency of this policy seems to be developing directly or indirectly a restriction on citizens of the United States:

1. By debarring foreigners and foreign nations from owning or operating oil-producing properties in the British Isles, Colonies, and protectorates.

2. By direct participation in ownership and control of petroleum companies.

3. By arrangement to prevent British oil companies from selling their property to foreign owned or controlled companies.

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59 Ibid., 61-62.

60 Polk to President Wilson, Washington, May 14, 1920, For. Rel., 1920, I, 353, Enclosed also may be found a report to the Senate in response to Senate Resolution 331.

4. By orders in Council that prohibit the transfer of shares in British oil companies to other than British subjects or nationals.[61]

In the Dutch East Indies prospecting licences and concessions are granted only to Dutch subjects, inhabitants of the Netherlands or Netherlands East Indies and to companies incorporated under Dutch laws. Persons or companies not established in the Netherlands East Indies must be represented in the islands by a trustee.

Considerable part of the Netherlands East Indies archipelago is still entirely closed to private exploration. American companies have, for many years, without success endeavored to secure leases in this field.[62]

The vastly increased importance of petroleum in gradually supplanting coal as a sinew of trade and war is reflected in the wide spread restrictive legislation set forth above. A step in the same direction in the legislation of the United States is found in section 1 of the recently enacted "Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (Public No. 146, 66th Cong.):

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That deposits of coal, phosphate, sodium, oil, oilshale, or gas and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the act known as the Appalachian Forest Act, approved March 1, 1911. (Thirty-sixth Statutes, page 961), and those in National parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this act to citizens of the

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61 Ibid., 354.

62 Ibid., 361.

United States, or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, and in the case of coal, oil, oil shale, or gas, to municipalities: Provided, that the United States reserves the right .....: And provided further, That citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country shall not by stock ownership, stock holding, or stock control own any interest in any lease acquired under the provision of this act.[63]

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63 Ibid., 367.

EXPROPRIATION

Chapter III

In 1934, President Rodriquez was authorized by Congress to establish a government controlled company capable of regulating the internal market for petroleum and its byproducts, or supplying the needs of the country in general and of the Government and the National Railways of Mexico in particular, of training Mexicans in petroleum technology, and of promoting the investment of Mexican capital in the petroleum industry. Fifty percent of the stock was to be subscribed and paid for by the government in the form of concessions to the company, and the remainder was to be subscribed by private Mexican capital. Shares in the company could not be acquired by foreigners. The company was organized under the name Petroleos de Mexico, S. A. (Petromex). The assets of the Administrative Control of National Petroleum, valued at 2,000,000 pesos, were transferred to it. The plan was for the company, as rapidly as possible, to furnish all petroleum consumed by the Nation.[1]

During the year 1936, five million acres were incorporated into Mexican National petroleum preserves and a concession for a portion of these lands granted to the Petromex Corporation Petroleum production for the year September 1, 1935 to August 31, 1936 amounted to 40,000,000 barrels.[2]

During the latter half of 1936, President Cardenas sponsored the Mexican expropriation law which was speedily adopted by both branches

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1 Guillermo A. Suro, "Mexico's Six Year Plan," Pan American Union, Bulletin, LXVIII, 4, April, 1934, 295-303.

2 "Message of the President of Mexico", Mexico, September 1, 1936, Pan Amer. Union, Bulletin, LXX, 11, November 1936, 900.

of the National Congress and published on November 25, 1936.

The law provided, among other things, that the Executive may order expropriation; total or partial occupation, or limitation of the right of ownership, for the purpose of the State or in the interest of the community, in any of the following cases specifically cited as "causes of public utility":

1. The establishment, operation or maintenance of a public service; .....

5. The fulfillment of collective needs in the event of a war or of internal strife; the supplying of foodstuffs or other articles of prime necessity to cities or centers of population; and the means employed to combat the spreading of epidemics, fires, plagues, floods or other public menaces;

6. The means employed for national defense or for maintenance of public peace;

7. The protection, conservation, development or utilization of natural resources susceptible of being exploited;

8. The equitable distribution of wealth amassed or monopolized for the exclusive benefit of one or several persons and to the detriment of the community at large or of a particular class;

9. The establishment, promotion or maintenance of an enterprise for the benefit of the community;

10. The measures necessary to prevent destruction of natural resources and any damage which may be caused to property to the detriment of the community; .....

Under the procedure set forth in the law, the Federal executive is to handle each case through the appropriate Executive Department, administrative office or government of a territory; but a previous declaration relative to the action to be taken must be made known, both by publication of a notice in the Diario Oficial and by personal service on the interested parties.

If the domicile of the latter is not known, a second publication of

the notice shall be sufficient.

The property owners affected would then have a period of 15 days in which to institute administrative proceedings, seeking the revocation of the "declaration" thus published, before the Executive Department; and in default thereof or if an adverse decision was rendered, the proper authorities would immediately occupy the property which is sought to be expropriated or temporarily occupied.

It is provided, however, that in cases covered in items 5, 6, and 10 of the list above, and published, the Federal Executive might take immediate action and the request for revocation would not stay the occupation of the property. If the government did not use the property for the stated reasons of expropriation within a period of five years, the owner could claim revision thereof to himself.

The amount of indemnity to be paid in each case of expropriation must be based on the "fiscal value" of the property, whether declared by the owner or tacitly accepted by him through the payment of taxes thereon. In case of failure to agree upon the value of the property, experts should be chosen to decide. If the parties refuse to choose experts, the court shall appoint the experts and umpire who shall submit a report within sixty days. The report shall form the basis for the court's decision on the amount of indemnity. A limit of ten years is placed on the time to be set for full payment.[3]

Business turned downward in May 1937, when the outbreak of a number of strikes seriously interrupted production and transportation. The

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3 The Mexican Expropriation Law," Pan. Amer. Union, Bul., LXXI, 3, March 1937, 286-288.

decline became more precipitate by the end of July, following the issuance of a series of decrees providing for far reaching State control over production, distribution, and prices. A prolonged strike of petroleum workers in the Ponza Rica field resulted in a shortage of fuel and forced a number of manufacturing enterprises to close down. The tension increased, pending the announcement of the Federal Labor Board of Conciliation and Arbitration appointed to determine the ability of the companies to pay additional renumeration to their employees.[4]

These strikes resulted when the petroleum workers requested of the various companies that operated in Mexico, the revision of their labor contracts. This was a voluntary act on the part of the unions which merely exercised a right that is fully recognized in all civilized countries. As the unions and the companies were not able to reach an agreement regarding a new contract, the workers decided to call a strike. After the strike had continued without any agreement being reached the government recommended that the workers return to their work and that the case be submitted to the Federal Labor Board.[5]

After hearing the arguments between the oil companies and the labor group concerning the strike (between 1936-1938) the Board decreed that a Sub-Commission on Wage Scales and Seniority should be established, whose function should be the prevention of conflicts by means of conciliation and mutual consent. That the oil companies should be allowed to employ certain persons not belonging to the Labor Unions (foreigners) because the positions were such as to be confidential.[6]

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4 U. S. Dept. of Commerce, Economic Review of Foreign Countries 1937, Washington, 1938.

5 Govt. of Mexico, True Facts, 72.

6 Government of Mexico, Mexicos Oil, Compilation of Official Documents, 738, Mexico City, 1940.

In the case of vacancies, definite or temporary, and of newly created positions the companies were required to fill these with union workers. The companies were granted a thirty day period to test the efficiency and capacity of the worker, during which time the company might request his dismissla.[7]

Workers should not be dismissed by the company prior to investigation in which a representative of the Union should participate.[8]

In case of a reduction of personnel or closing down of departments the companies would be obliged to secure a previous agreement with the Union, and pay each worker dismissed three months wages plus twenty days wages for each year worked. In case of demotion the company should pay the worker the difference earned in the higher position and the lower position for a period of ninety days plus the said difference corresponding to twenty days for each year worked.[9]

In operations requiring continuous work the employer shall be required to hire sufficient shifts so that the worker shall have two days rest each week, with pay. Double wages shall be paid for overtime. When the workers perform their duties on rest days or holidays, they shall be paid triple wages.[10]

In case the worker is transferred from one place to another the company is required to pay transportation costs for the family and household goods.[11]

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7 Ibid., 744-745.

8 Ibid., 747.

9 Ibid., 746-747.

10 Ibid., 753.

11 Ibid., 756.

This decision was published on December 18, 1937.

Immediately the oil companies announced that they would not abide by the decisions of the board and early in 1938 presented a Plea of Amparo to the Supreme Court, setting forth that the provisions set up by the Labor Board were unfair and illegal due to violations of the Federal Labor Law.

In March the Supreme Court handed down the decision overruling the complaint of the companies in the plea of Amparo.[12]

Realizing that the attitude of the companies would bring about a total suspension of activities in the petroleum industry, President Cardenas, on March 18, 1938 decreed the expropriation of real and personal properties belonging to the companies who had refused to abide by the Federal Labor Board's award.[13]

In his speech on this occasion President Cardenas stated that

> "Production of fuel is essential for the many activities of the country, and especially for transportation. A stoppage or insufficiency of production or even production at prohibitive cost due to difficulties which would have to be surmounted, would soon cause a crisis which would threaten not only our program, but even the very peace of the country..... The existence of the Government itself would be seriously imperiled. If the State once lost its economic power, its political power would be lost and chaos would result.
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> It is self evident that the refusal of the oil companies to comply with the decision of the highest Judicial Court creates a problem for the Executive Power not of the mere enforcement of a judgment, but a decisive problem which calls for an urgent solution. Such a solution is imperative for the social interest of all of the laboring classes in all industries of the country..... It is the very sovereignty of the Nation which would be continually exposed to simple manipulations of foreign capital, which forgetful of the fact that it has been organized in the

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12 Ibid., 808-812.

13 Govt. of Mexico, 'True Facts', 75.

> form of Mexican corporations under Mexican law, nevertheless is attempting to evade mandates and obligations when compliance has been ordered by the Authorities of the country.
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> The case is clear and evident. The Government is compelled to apply the Law of Expropriation now in force, not only to exact obedience and respect from the oil companies, but by reason of the fact that the award of the labor authorities terminated the labor contracts between the companies and their workmen. Unless the Government took possession of the companies' plants, immediate paralysis of the petroleum industry would ensue, and all other industries and the general economy of the country would suffer incalculable damage."[14]

The Decree of Expropriation ordered that the Department of the Treasury shall pay the corresponding compensation for the expropriated properties, as provided by Article 27 of the Constitution and 10 and 12 of the Law of Expropriation; the payment to be made in cash and not to exceed ten years.[15]

As a result of the expropriation of the property of a number of petroleum companies the public spontaneously offered the government money to be used in payment thereof. This fund amounted on August 19, 1938 to 2,016,263 pesos, $25,290 and 33,800 gold pesos, to this was being added 20 percent of the profits on all petroleum sold abroad.

The refusal of the oil companies to accept the award pronounced by competent authorities in favor of their workers, meant the abandonment of their operations, considered by the law a public utility. The attitude assumed by the companies made impossible the protection and conservation of petroleum resources, as well as their utilization and proper development. Any one of these circumstances would have sufficed in itself, and naturally all of them together added more weight, to cause

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14 Ibid., 76-77.

15 Ibid., 84.

the government to feel that it was under the imperious necessity of decreeing prompt expropriation. After expropriation the State was naturally obliged to take over the operation of the petroleum industry, which it did at once.

The expropriation of the oil companies interests cannot give rise to claim for any indemnity for oil or any other hydrocarbon still in the subsoil, since they belong to the national domain, in accordance with Paragraph 4, Article 27, of the Constitution, and always have belonged to it according to Mexican legal tenets. Neither can there be any right to damages as claimed by the concessionaries on the ground of deprivation of the earnings that they might have obtained if they had continued in the enjoyment of their concessions. The only reason for granting such concessions in the first place was that the exploitation of petroleum, which has always been considered as of public utility, should be made possible. The concessions are granted for a long period, just so that the concessionaires may reimburse themselves for their investments, the value of which is the only sum the State feels obligated to guarantee. Therefore, since the rebellious attitude of the oil companies incapacitated them to continue making use of their concessions and to maintain exploitation in order to continue the recovery of their investments, the government recognizes that this general invalidation of the concessions damages the concessionaires only in the amount of that part of their justifiable investments which they have not yet recovered, and for this damages are to be paid.

In order that Mexico may not be faced in the future with such problems, Congress would be requested to consider the passage of a law refusing to give concessions for the exploitation of subsoil petroleum

and providing that the State should in the future have absolute control of oil exploitation.

As soon as expropriation had been decreed on March 18, 1938, steps were immediately taken to assure the country's supply of oil. Steps were being taken, the President said, to value the properties expropriated and fix the damage, the payment of which was to be met from the sale of oil exported not only from the expropriated wells but also from the fields which the government had been exploiting hitherto and from any new wells developed.[16]

In March 1939, the oil companies sent Mr. Donald R. Richberg to Mexico to negotiate a settlement with the government. As a basis for discussion President Cardenas set forth the main ideas of the government.

1. Immediate compensation after appraisal.
2. Long term contracts for cooperation between the companies and the Government in the exploitation of the petroleum industry.
3. Arrangements for new investments to promote the industry, exploration work, and the establishment of refineries.

The contribution by the companies would consist of the amount of the compensation for the properties that were expropriated, and of new investments to be made by the companies for the development of the industry. The government would contribute with the oil interests that are the property of the nation. The management and administration would be functions belonging to the government. The companies would be allowed representatives in the technical and financial divisions. Only one

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16 "Message of the President of Mexico, Sept. 1, 1938," Pan. Amer. Union Bul., LXXII, 11, November 1938, 668-669.

contract should be drawn between the government and the companies.[17]

Richberg then presented a memorandum for the consideration of the President.

By the terms of this memorandum the companies would unite in one new Mexican Corporation. A long time contract would be drawn between the companies and the government. At the expiration of the contract all property would be released to the government. The contract would provide a reciprocal guarantee of reasonable and workable labor conditions and the means for establishing and maintaining such conditions. A Board of Directors appointed by the companies and the Mexican government should control the operations of the company.[18]

President Cardenas agreed to consider the proposal as a basis of discussion between the companies and the government but refused to accept the responsibility for the memorandum since any acceptance might later be used to imply complete acceptance by the government.[19]

The proposal was unacceptable to the companies in that the government insisted that a majority of the Board of Directors should be appointed by the Mexican government.

A statement by Representative John Kee on April 6, 1939 printed in the Congressional Record questions the ability of Mexico to pay for the expropriated property.

> The confiscated oil properties have an estimated value of approximately $400,000,000. In informed groups this is considered as a moderate estimate. The external debt of Mexico, including all foreign claims not represented by Mexican government securities amount to approximately

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17 Govt. of Mexico, True Facts, 108-112.

18 Ibid., 118-120.

19 Ibid., 122.

> $243,000,000 of principal and $267,000,000 acrued interest, making a total of $510,000,000. Mexico's foreign debt on account of the expropriation of the national railways is approximately $240,000,000 principal and $226,000,000 accrued interest, making a total of $466,000,000. There are additional foreign claims, represented by outstanding evidences of indebtedness amounting to approximately $50,000,000 and internal debts of approximately $90,000,000. The indebtedness of the Mexican government arising out of the expropriation of agrarian lands has been estimated at $700,000,000. To the latter must be added the obligation of the government for the oil properties at the estimate of $400,000,000. The total debt of Mexico stands at $2,222,000,000. The question arises is Mexico able to pay for the wrongs which it has inflicted.[20]

A statement by acting Secretary Wells:

On March 18, 1938 the Mexican government by decree undertook to expropriate the properties in Mexico of certain foreign-owned, including American-owned, oil companies operating there.

This action was similar in nature, although involving investments of far greater magnitude, to the steps taken in recent years by the Mexican government to expropriate farm and other properties belonging to American citizens. With regard to the seizure of these agrarian properties, this government had consistently pointed out that in the exercise of the admitted rights of all sovereign nations to expropriate property, such expropriation must be accompanied, in accordance with the recognized principles of international law, by provision on the part of the Government of Mexico for adequate, effective, and prompt payment of the properties seized.

Immediately following the action taken to expropriate the petroleum properties belonging to American citizens, this government informed the Mexican government of its expectation that prompt compensation would be

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20 "The Mexican Problem-Expropriation by Mexico of Foreign-Owned Oil Properties," Congressional Record, 76 Cong., 1 sess., LXXXIV, Part 12, 1342.

made in the form of just and effective payment to the extent of the fair and equitable valuation of such properties. This government's position is firmly based not only on well-recognized rules of international law; the elemental considerations of justice and of fair dealing which should govern the relations between nations demand such payment for the properties taken. The attitude of applying the principles of established international law in the solution of the problem has been consistently maintained by every official of the United States government in its representation to both parties to the controversy throughout the period of discussion.

In the decree of expropriation itself, and on numerous occasions subsequently, the Mexican government recognized it liability to make compensation and stated its willingness to discuss terms with the petroleum companies concerned. This government has continuously and consistently sought to facilitate and further these negotiations by conferring with both sides. For a time the conversations between both parties proceeded satisfactorily, appearing to hold promise of an eventual solution. A set of bases of discussion, within the scope of which there might be found an agreement for the future operation of the industry, were believed to be determined, but recently a serious obstacle to final agreement was encountered. In this situation this government proposed a solution of this obstacle.

This solution was as follows: Each party had claimed it must control the management and operation of new companies which it had been agreed in principle, might be established to operate the properties seized. In an endeavor to overcome the deadlock, this government informally offered the suggestion that the Board of Directors, as a tem-

porary arrangement and pending a final agreement, composed of nine members, three appointed by the Mexican government, three appointed by the petroleum companies, and three selected by the two parties from a panel of nine drawn up in mutual agreement by the Governments of Mexico and the United States. In order to attain complete impartiality on this panel of nine, no persons were to be included who came from any country whose citizens had a direct and important interest in any of the petroleum companies involved. These persons were all to be of demonstrated integrity and standing, and of practical experience in commerce, finance, or in the petroleum industry itself.

This government naturally regrets that proposal should have been rejected by either party without the fullest exploration of its possibilities.

It is, of course, evident that a solution of this controversy must be found in accordance with the basic principles of international law, as this government has invariably insisted at every step of the negotiations. A continuance of the dispute will result in great economic loss to both countries, but, more important, it will constitute a material barrier to the maintenance of that close and friendly understanding between Mexico and the United States which both governments regard as in the best interests of the two peoples.

The discontinuance of the discussion can, of course, in no sense relieve the Mexican government of its obligation to make prompt, adequate, and effective compensation for the petroleum properties which have been taken if the expropriation is to be regarded as valid. At the same time, however, this government expects that its own citizens with direct interests in the controversy will give the most ample and attentive con-

sideration to all constructive proposals that are advanced to overcome the difficulties of a fair settlement.[21]

On September 1, 1939 President Cardenas of Mexico presented his fifth annual message to Congress. More than a third of this message was given to the discussion of the petroleum question.

Two organizations had been set up to control the industry; the Petroleos Mexicanos, to deal with the technical and administrative aspects of the industry, and Distribuidora de Petroleos Mexicanos to deal with the marketing of the products in Mexico and abroad.

Steps had been taken during the year to improve the conditions of the workers. Medical service, schools, communication, and sanitation had been improved.

He pointed out, that the prices obtained for Mexican petroleum since expropriation were lower than those received when the industry was in private hands, but in spite of the fact, 20 per cent of the sales receipts had gone into a fund established to pay for the properties.

Production in the oil fields was at first reduced 45 per cent, and exports 85 per cent, in view of the restricted markets available immediately after the government took over the industry in 1938, but the need for such limitation had passed, and contracts at the time were making it necessary to increase production. Production for the calendar year 1938 was 82.1 per cent of that of 1937, and exports 59 per cent, while domestic consumption was 6 per cent greater. Exports during the first five months of 1939 were 77 per cent of the exports for the cor-

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21 Summer Wells, "Expropriation of American-Owned Oil Properties in Mexico", The Dept. of State, Bulletin, I, No. 8, Pub. 1364, Aug. 19, 1939, 131-132.

responding period of 1937.

New wells had been sunk in the Isthmus of Thehauntepec and at Poza Rica, as a result of the brighter outlook for the industry.[22]

In the note of April 3, 1940 to the Mexican Ambassador, United States Secretary of State pointed out that many questions that had arisen between the two countries had not been solved.

In an effort to find a solution for these questions, Hull had two years prior to this time proposed that representatives of the two governments be appointed to consider a solution of all outstanding questions.

At that time Mexico preceded by decree to expropriate large holdings of oil properties, amounting in value to many millions of dollars and belonging to American nationals. Mexico at various times had expressed willingness and ability to pay. But no payment had been made.

The Government of the United States recognized the right of a sovereign nation to expropriate on the condition that prompt, adequate, and effective compensation be made. The Government of Mexico had professed support of the principle of international law, which requires such payment but has not carried it into practice.

Expropriation of property by the Mexican government has taken place on a large scale since 1916 under the so called agrarian program. While efforts have been made to settle these claims not a single dollar has been realized by any of the owners of the properties.

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22 "Message of the President of Mexico Sept. 1, 1939", Pan. Amer. Union, Bul., LXXIII, 12, December 1939, 733-734.

The effort of the United States to use its good offices in the promotion of discussions between the American companies and the Mexican government had failed.

The note proceeds:

> During the last twenty-five years, one American interest in Mexico after another has suffered at the hands of the Mexican government. It is recognized the Mexican government is making payments on the Special Claims which have to do solely with damages caused by revolutionary disturbances between 1910 and 1920, and has started payment for farm lands expropriated since August 30, 1927. But the Mexican government has made no compensation for the large number of general claims of long standing which include an extensive group of claims for the expropriation of farm lands prior to August 30, 1927. It has made no adjustment either of the foreign debt or of the railroad debt both long in default and in both of which American citizens hold important investments. Moreover, the question of the railroad debt was further complicated by the expropriation of the Mexican National Railways on June 23, 1937. Finally, on March 18, 1938 the Mexican government took over American owned petroleum property to the value of many millions of dollars, and although two years have elapsed, not one cent of compensation has been paid.
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> .....These long-standing matters must of necessity be adjusted if the relations between our two countries are to be conducted on a sound and mutually cooperative basis of respect and helpfulness. As an important step towards placing relations between the two countries on this basis, I suggest resorting to the appropriate, fair and honorable procedure of arbitration. Accordingly, I suggest that the two governments agree (1) to submit to impartial arbitration all the questions involved in the oil controversy and to clothe a tribunal with authority not only to determine the amount to be paid to American nationals who have heen deprived of their properties, but also the means by which its decision shall be executed to make certain that adequate and effective compensation shall promptly be paid, and (2) either to submit to an umpire, as contemplated by the General Claims Protocal of 1934, the unadjudicated claims falling under the convention of 1923, or proceed immediately to the negotiation of an en bloc settlement in accordance with that Protocol.[23]

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23 Cordell Hull, "Expropriation of American Oil Property by Mexico", The Dept. of State, Bul., II, No. 42, Pub. 1454, 380-383.

In reply to this note, the Minister for Foreign Affairs of Mexico addressed a note to the American Ambassador on May 1, 1940. In this note the Minister pointed out that Mexico was ready to enter into a study of the situation with the United States government. No payment had been made up to that time due to the fact that the efforts of the companies had been directed toward the delaying of a settlement.

Court action had been delayed awaiting the expiration of the time allowed, by law, for the companies to appeal to the courts of Mexico. The companies had in all cases refused to appeal to the courts but had continued to try to regain control of the property by other means.

The obligation of Mexico to pay was readily admitted by the Minister, however, it was pointed out that there was no provision in recognized international law that made immediate payment necessary. Neither was there any provision in international law demanding the arbitration of domestic disputes which came within the powers of the local courts. Most of the American republics had in the past refused to submit domestic disputes to arbitration event, though foreign companies were involved.

The government had authorized a settlement with the Sinclair Company which represented approximately forty per cent of the investments by American nationals in the oil industry. The Mexican government was desirous of reaching an agreement with the other companies to terminate the matter and had entrusted, in compliance with the law, the task of determining through experts the value of said properties.[24]

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24 Eduardo Hay, Minister for Foreign Affair of Mexico Note to American Ambassador, Dept. of State, Bul., II, No. 46, Pub. 1459, May 4, 1940, 465-470.

A short time later an agreement was reached with the Sinclair Company. The following terms were agreed upon as stated by the Consolidated Oil Corporation of New York:

> Following the expropriation of American-owned oil companies in Mexico in 1938, a settlement was sought by our Corporation directly with the Mexican government. In the face of widely-expressed doubts as to the possibility of an agreement, we succeeded in coming to an understanding with the Mexican government whereby that government purchased all of the Corporation's wholly-owned subsidiaries in Mexico for a cash consideration of $8,500,000. This sum is payable in installments over a period of two and one-half years. Four installments of $1,000,000 have been punctually paid on the dates when due. The Mexican government has scrupulously observed its obligations under this agreement. The agreement is in compliance with the dicta of both our own State Department and the courts of Mexico in that it recognizes the sovereign right of Mexico to expropriate provided prompt, adequate, and effective compensation is paid.[25]

From this it appears that Mexico is able and willing to pay for the expropriated property when as agreement is possible.

Since the companies have refused to appoint experts to aid in evaluating the property settlements will be slow and must be left to the Mexican Government.

The Government of the United States has recognized the right of the Sovereign State of Mexico to expropriate. There seems to be no chance of the Oil Companies recovering control of the property and since they have been unwilling to appoint experts to help determine the value of the property expropriated, the proceedings are in the hands of the Mexican government.

One source of great wealth has been returned to Mexico and in all

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25 Consolidated Oil Corporation, to the writer, Letter, New York, April 11, 1941.

probability she will not relinquish it.

The statement by President Woodrow Wilson appearing in the Ladies Home Journal of October 1916 is particularly fitting:

> What Mexico needs more than anything else is financial support which will not involve the sale of her liberties and the enslavement of her people.
>
> Property owned by foreigners, enterprises conducted by foreigners will never be safe in Mexico so long as their existence and the method of their use and conduct excite the suspicion and, upon occasion, the hatred of the people of the country itself.....
>
> I am speaking of a system and not uttering an indictment. The system by which Mexico has been financially assisted, has bound her hand and foot and left her in effect without a free government. It has in almost every instant deprived her people of the part they were entitled to play in the determination of their own destiny and development.[26]

Foreign capital can be profitably invested in Mexico, but not with the hope of dominating the State.

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26 Government of Mexico, True Facts, 16-17.

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