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THE ANTHROPOLOGY OF LAW: WITH SPECIAL REFERENCE TO
MIDDLE AMERICAN COMMUNITIES

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THE ANTHROPOLOGY OF LAW: WITH SPECIAL REFERENCE
TO MIDDLE AMERICAN COMMUNITIES

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BY
CHARLES AUSTIN ANDERSON
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1982

The Anthropology of Law: With Special Reference
to Middle American Communities.

Approved by

Joseph W. White
Stephen

C. A. Parker

James O. Hoffman
Richard D. Baker

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CHARLES AUSTIN ANDERSON

Supervisor:

DR. JOSEPH W. WHITECOTTON

ABSTRACT

Much of the anthropological work on Middle American communities has generally typified local (community) informal law as "customary". The emphasis on only one type of dispute resolution agency obfuscates definitive conclusions in clarifying the complex juridical characteristics of Middle America. This complexity can be illuminated and made more lucid through a comparative analysis of de facto and de jure methods of conflict resolution. Therefore, this research was undertaken as an analysis and critique of the ethnographic literature in depth. These sources were treated as an ethnohistorian explores any historical documentation.

Through the utilization of the 1917 Mexican Constitution and the basic statutory law derived therefrom as a model, the thrust of the research is to demonstrate that, despite many contentions about standardized group or class practices or behavior patterns entering into decisions pertaining to the resolution of disputes, enacted statutory law also plays a vital role (more than many anthropologists are ready to admit) in the areas surveyed.

No attempts have been made to evaluate the relationships between the dispositions of recurrent conflict situations existing at the village level to ascertain whether or not the de facto conflict resolution is more functional than

the official institutions (de jure) in a complex of cultures that are represented by the Nation-States of Middle America.

This exhaustive study has substantiated three basic points, namely:

(1) Enough data was presented to support the hypothesis that the indigenous conflict resolution systems of Middle America have in measurable degree been adopted from, rather than adapted to, the Hispano-Roman derived systems of social control employed at the Federal and State levels.

(2) The resolution of village conflicts through the utilization of formal judicial mechanisms is only one factor in influencing ethnic boundaries and the motivation and efforts to maintain a degree of ethnic autonomy are seen not merely as attempts to maintain separateness between local community and State; but, also, between local communities.

(3) As one progresses or advances from the local levels to more remote areas of State control, little difference can be perceived in the degrees of adoption of de jure control mechanisms.

Ancillary to these points, in the areas of Middle America where governmental integration has been rapid and pervasive, the adoption of formal conflict resolution methods has been practically complete.

ACKNOWLEDGEMENTS

This researcher is greatly indebted to the hundreds of scholars who prompted this dissertation. However, I must shoulder all of the responsibility and criticisms for the personal interpretations presented.

This work was done in connection with graduate study at the University of Oklahoma. Special thanks must be extended to many individuals for their valuable suggestions which have tremendously improved this study. The greatest thanks must be extended to Dr. Joseph W. Whitecotton whose knowledge of Middle America and interest in the subject of this study stimulated my continual interest in the project. His diligent reading of the manuscript and constructive comments are deeply appreciated.

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PREFACE

In the process of systematically surveying anthropological literature to ascertain the functional relationships of de facto and de jure agents of conflict resolution, it was obviously necessary to rely on many types of sources. In substantiation of the major thesis of this study, it is believed the major body of important works available were consulted. Such exhaustive research was important because it was also the purpose of this study to offer a constructive critique of the corpus of the subject literature.

One or two qualifying remarks should be made in this respect. There were some sources that were unavailable to this researcher through the inter-library loan system employed. The primary problem in this regard was that some of the libraries in which many studies were located did not loan them out to the institution utilized to request them. It is believed the omission of these studies will not, however, substantially alter the basic premises tested. In other words, enough documentation was provided adequately to support the hypotheses formulated for this study. These unobtainable sources are listed below and again in the bibliography for those readers that may possibly have access to them; namely: Jane Collier's (1968) paper entitled: The Selection of Legal Procedure in Zinacantan; Freeman's (1974) The Lawyers of Zinacantan; Greenhouse's 1971 study, Litigant's Choice: Non-Secular and Secular Sanctions in Zinacanteco Conflict

Resolution; Nash's (1972) Rhetoric of a Maya Indian Court; Prokosch's (1964) Court Procedure in the Settlement of Disputes in Chamula; and Rosenblatt's (1964) Law and Society in Chamula. Further studies not obtained were Metzger's (1960) Conflict in Chulsanto: A Village in Chiapas; Montoya Briones' (1964) Atla: Etnografía de un Pueblo Nahuatl; Pozas' (1959) Chamula: un pueblo Indio en Los Altos de Chiapas; Gilman's (1964) Municipio Organization; and Pitt-River's (1967) paper entitled: Wards and Deeds: The Ladinos of Chiapas.

Finally, those readers with a basic familiarity with studies on the anthropology of law in Middle America will notice one other work not cited: Collier's (1970) dissertation, Zinacanteco Law: A Study of Conflict in a Modern Maya Community. This study was not included because the information presented in her 1973 magnum opus is believed to represent, in varying degrees, earlier research. Hence, it was not deemed critical to survey both before finalizing this study.

THE ANTHROPOLOGY OF LAW: WITH SPECIAL
REFERENCE TO MIDDLE AMERICAN COMMUNITIES

CHAPTER I

INTRODUCTION

Anthropology, more than any other social science, can benefit from the teachings of legal thought. This is primarily because "law", as a subject, offers a practical synthesis of the data that anthropology, as a subject, theoretically addresses (Berman and Greiner 1966:12). Berman and Greiner (1966:14) further write:

The study of law can help to overcome excessive compartmentalization, first, because law as a social institution--that is, legal order--overlaps and coordinates virtually all aspects of social life, and second, because the principles which legal scholarship has developed to explain law--that is, legal science--interpenetrates all the various existing social disciplines.

The comparative analysis of the types of legal systems throughout the world provides an insight into the complexity of "law", specifically, and of legal phenomena, in general. As a result, such a comparative approach gives an indication as to how social scientists "have viewed the field as a whole" (Moore 1969:252). Since there are no societies extant (and probably never were) that are able to function without law, it becomes readily apparent that every

society is within the boundaries characterized by anthropological study. There is no question that every good ethnographic work contains a large amount of "legal material" that is not always "explicitly" defined as such (Moore 1969:252). Therefore, (and this has not always been the case), a researcher must develop a degree of expertise in analyzing the total "institutional" structure of any society to become adept at analyzing the conflict-management system(s) of the society (Moore 1969:253). As Moore (1969:253) further states, these would run:

...--from citizenship and political place to property and economic relations, from birth to death, and from dispute to peaceful transaction.

Over the years, primarily since the publication of Maine's Ancient Law (1861), many approaches have been formulated to describe legal systems. Some of these have been by anthropologists; but, political theorists, economists, legal philosophers, and influential jurists have contributed the major corpus to the expanding field of legal anthropology. Most of the earlier classifications were merely typologies often corresponding to evolutionary approaches to societies, begun in the 19th century (e.g. Morgan 1877; Tylor 1871). Many of these early attempts were clumsy and often ludicrous. However, they did not have the great wealth of materials now available to contemporary legal anthropologists for comparative analysis.

After this precursory period, two trends in legal analysis developed from the pioneer studies and characterize much of the work, even today. The first is related to

studies that concern themselves with the importance of specific classifications of dispute resolution and the types of societies in which they are present. This area of analysis has traditionally been the interest of the cultural anthropologist (Moore 1969:253). In this approach, law is not studied as existing apart from and above the other institutions of a society (Moore 1969; Hoebel 1954; Pospisil 1967). In other words, law is not seen as insular, but is analyzed relative to its procedures for resolving breaches of social conduct. As alluded to earlier, the anthropologist must not only familiarize himself with, but also become knowledgeable of, the social, political, and economic institutions of a society before any reliable work in this area can be attempted.

A second trend in the study of law that has emerged over the years has focused on "rules". This area of legal analysis has been most often associated with academically-inclined lawyers and/or legal philosophers (Moore 1969:253). The approach has been most adequately applied in the areas of comparative law (Moore 1969:253). Some of the prominent scholars that have utilized the notion of rules as entities worthy of analysis include Frank (1949); Holmes (1897); Dabin (1950); and Hart (1961). Unfortunately, many legal anthropologists have overlooked or misunderstood the ideas of these scholars. As a result, many of the ethnographies, especially those in republics where nation and village are coming politically and economically closer together, have

failed adequately to deal with their views on legal rules or concepts.

Of prime importance in the field of legal anthropology is the analysis of processes "and in particular the processes of dispute settlement" (Gulliver 1969:13). Unfortunately, many works on the anthropology of law have failed to point out that "legal processes are social processes" (Collier 1975:121), perceiving law as an institution isolated from the other institutions in society. This theme is present in most contemporary anthropological work dealing with law (Moore 1969; Nader 1969; Pospisil 1971; Gluckman 1965). In fact, Hoebel (1958:486) adequately points out:

Where there are subgroups that are discreet entities within the social entirety, there is political organization--a system of regulation of relations between groups or members of different groups within the society at large.

Quite obviously, Hoebel in the above passage perceives the presence of political organization as an ubiquitous phenomena. That is to say all societies possess clans, families or communities (Pospisil 1967:2). Given this close relationship of political organization with law, Hoebel would probably also agree with most present-day ethnographers in stating that law (no matter how defined) is the sine qua non for maintenance of the social order and to enable every society to function as a "discrete" social entity. Certainly, without it a state of dysfunction and even anomie would result.

It must be briefly mentioned, however, that law also functions at levels in every society apart from the over-all politico-legal structure (Pospisil 1967:3). At least the relationship of other legal levels is not as readily apparent as that of a general system operational for the entire society. In short, law can exist apart from the dominant political structure and function separately in each different "subgroup" of a society (Pospisil 1967:3). This, in essence, is what Pospisil implies in his concept of the "multiplicity of legal systems" (Pospisil 1967:3). This has recently also been called legal pluralism.

Quite obviously, there are semantic difficulties that emerge from the above discussion. For example, what is a political organization, what is law, what is a legal level etc?¹ That law is almost universally believed to be present in all societies in varying degrees is all that is pertinent, to the instant survey and conclusions here to be presented. In this sense, Pospisil (1967:2) adds clarity, as follows:

Moreover, this concept [political organization] is of paramount importance for a proper presentation and analysis of any political and, consequently, any legal system because it emphasizes the relationship that necessarily exists between such a system and the conglomeration of a society's subgroups. Since the regulation of the network of interrelations that gives this

¹However, these questions are not within the scope of this study and will not be addressed. There are many excellent works that deal with these definitional problems of legal analysis. Like so many questions in anthropology, these problems remain virtually unresolvable.

conglomeration its particular structure is the essence of the society's political organization, no significant analysis of the politics or law can be made without a proper and consistent reference to the particular system of subgroups to which it pertains.

A problem persists in the Middle American literature surveyed. Some anthropological monographs fail to account for the interrelationships of the several politico-legal structures that are present in Middle American cultures from the municipio libre to the nation-state organizations. While some studies concentrate on the legal systems prevalent in district capitals (or other urban settings), and others on the legal levels present in villages, few actually analyze these legal structures in terms of each other and on a national level. In other words, some of the studies do not adequately discuss conflict resolutions from a wider perspective of "legal pluralism", but concentrate on more limited geographical (legal) boundaries. As a result, the reader is presented with a somewhat nebulous view of a quasi-"monolithic" society composed of "interacting individuals", as opposed to a more complex society composed of a plethora of "subgroups," each with their own functioning legal structures (Pospisil 1967:2).

Pospisil's use of "monolithic" society only partially conveys what I mean here. While many of the studies see various legal groups at, for example, the village level of organization, they will tend to view the situation above the local levels as "monolithic". I would prefer to start at

the top with the perspective that the nation possesses several legal levels of which the village is only a part.

As a result of the narrower perspective, the tendency of some community studies in Middle America is to divide the society (societies) into many subgroups with an all "inclusive" membership and to end the analyses there (Pospisil 1967:2). Hence, there appears in some of the works on Middle America communities the idea that disputes are handled from the point of view of only local agents of conflict resolution (e.g., Nader's community court). There are few attempts at analyzing the other levels of dispute resolution beyond the village level to ascertain what effects one level has on the other. A common theme in the literature is that if a conflict is not adequately resolved at the village level by local authorities, then the situation is dropped, or escalates into further conflict. Fortunately, however, there are some good studies (to be dealt with) which do admirably illustrate that communities in Middle America have many options to rely on in the event resolution is not achieved at the local level. These include resorting to the dominant political-legal structure of the respective republics.

In summary, the belief in one type of dispute-resolution agency only exacerbates the present problems, doing little to clarify the judicial complexity characteristic of Middle America. This complexity can only be illuminated and made more lucid through comparative analyses of

de facto and de jure methods of conflict resolution. More diligent comparative research should be utilized to indicate the great difference in the scope of judicial activity employed by a hierarchy of authorities of the numerous "societal subgroups" found in Middle American republics.

This survey will be designed to offer such an expanded discussion of the works of anthropologists who deal with "law" in Middle American societies. The study will concern itself with both purely descriptive works (by far the greatest number) and those few which raise more analytical questions with respect to dispute resolution. It is my belief that, by examining the different approaches to the classification and/or description of Middle American legal systems, there will be provided a basic idea of the breadth of the law, as delineated above, as well as to provide an insight into how anthropologists viewed the "legal" field as a whole.

PROBLEM

No attempts have been made to study the relationships between the dispositions of recurrent conflict situations actually existing at the village level, without official governmental action or sanction (de facto), to ascertain whether or not the de facto conflict resolution is more functional than the de jure in a complex of cultures that are representative of the larger cultural units represented by the nation-states of Middle America.

In essence, the focus of this exhaustive research

has been an analysis of recurrent conflict situations below the national de jure system. The dispositions of these conflicts have been too often viewed as informal or de facto resolutions, ethnocentric in focus.

I propose to show that (despite many of the contentions about social relations entering into every decision made with respect to the resolution of disputes) statutory laws also play an important part in the areas surveyed. By social relations is meant those "standardized group or class practices or ways of behaving which have developed in a culture and to which a judgment of group welfare and necessity have been attached" (Lee 1945:485-494).

Exhaustive research was also undertaken to offer a constructive critique of the literature. Dissatisfaction arose from my preliminary survey and precursory reading of the literature. The fact that the Middle American work has generally classed all aspects of local (or community) informal law as "customary" is seen as an inaccurate picture of reality. A closer, comparative analysis with de jure levels will indicate that this inaccurate idea stems from the fact that the majority of studies are descriptive in nature. As a result, such research does not take into account the many substantive and procedural changes caused by rapid government integration. This belief is adhered to despite the realization that most of these studies are descriptive because anthropologists have, in reliance upon ethnographic method, chosen small entities like villages.

The various internal and external processes affecting an individual or group participating in the legal activity can be more adequately studied. This ethnographic method could become self-defeating in that the materials used to carry out the research (usually trouble cases in law) may lead to interpretations perceiving conflict resolution as isolated from other institutions and influences. Furthermore, even though the structures and processes analyzed in the literature have been superseded by external institutions, a description is even more important today for the comprehension of forces behind the maintenance of social order and the status quo ante in Middle America. Very few of the studies adequately assess the influence of "foreign" de jure institutions on local-level legal questions. However, enough data could be extracted from the literature to test an important hypothesis. Namely, it is posited here the indigenous systems of Middle America adopted from, rather than adapted to, the Hispano-Roman system of law employed by the Federal and State levels of social control.

Thus I contend the State, in reality, is only one of several agents responsible for the maintenance of the social equilibrium in the various levels of Middle American society. Helms (1971) for example, in her study of Asang of Nicaragua, found that there were basically three types of legal levels that function in the resolutions of disputes. Nash (1970) is extremely relevant here, because she adequately depicts the levels and complexity of conflict

resolution as extant at local levels. The majority of the literature surveyed possesses elements of this approach. Nevertheless, unlike Nash, these attempts of illustrating the role of Federal and State influences fall short of her research. At the village level, after close scrutiny of the sources, it becomes possible to say that Hispano-Roman influences, Church influences, and local influences all function in varying degrees and relationship in maintaining the social order at the community level in Middle America. Furthermore, it is hypothesized that as one approaches the centers of Federal and State control, de jure resolutions appear to become more viable forms of social control than de facto resolutions, and the specific de facto agents do not function isolated from higher authorities as some authors would suggest.

Finally, one further hypothesis will be tested. Namely, the resolution of village conflicts through the utilization of formal judicial levels is one method of maintaining ethnic boundaries (in a Barthian sense). The motivation to maintain a degree of ethnic identity is seen not merely as the attempt to maintain separateness between local community and nation; but also, between local communities. This idea becomes quite evident in the papers by Dennis (1976; 1978) and Dennis and Uzzell (1978) on inter-village feuding.

Implicit in this last hypothesis are two important levels of activity. First, it is clear from many of the works analyzed that most Middle American peasants seldom

admit to resorting to higher legal levels to resolve conflicts. This admission (or lack of it) represents an important and relevant level of activity. Inherent in this level of activity is a desire to reinforce strong sentiments of community identity and separateness. A second, and sometimes complementary level, is the admission of villagers to resorting to de jure resolutions. This level of activity could be viewed as operating to maintain degrees of ethnic autonomy, in the sense of illustrating to higher authorities conformity (or attempted conformity) to State operated legal levels is being made. In this level, it could be contended such conformity leads to less government intervention into community affairs thus assuring a degree of village autonomy.

These two levels of activity are not seen to be necessarily opposing. In fact both of these levels are seen to be operative and verification will be shown. Certainly, in terms of the first level it can be demonstrated that failure to admit to the use of higher authorities does not necessarily mean de facto controls are more viable dispute resolving agents. Much is determined by what types of informants are queried.²

²It should be briefly explained why Middle America is surveyed and not Mesoamerica. Mesoamerica usually is a term employed by anthropologists to indicate a Precolombian interaction sphere that was based upon noticeable cultural differences (Olien 1973:5). As a result of this, Mesoamerica covers, geographically, a smaller territory than Middle America. Kirchhoff (1952:17-18) writes:

Finally, brief remarks on the types of communities dealt with in this study should be offered. Some of the communities have been defined as being "Indian" while others "Mestizo". During and since the colonial period, the Mestizo population has increased at the expense of rapid decreases in the Indian population (Helms 1975:172). Previously, the Indian populations occupied a legal status that would best be described as "marginal". With this Indian decline, the Mestizo took over the Colonial legal status of the Indian, that has continued to date (Helms 1975:172). I believe because of this historical shift it is safe to assume the majority of contemporary Middle American communities can now be considered somewhere in between. Since a main thesis of most of the writers is both Indian and/or Mestizo communities are outside State governmental authority, occupying an inferior "legal" status, the varied use of the two terms really makes no difference to the comparative

In the first case, as a general rule, one accepts as the boundary between North and South America, the biogeographical dividing line which follows the course of the San Juan River, between Nicaragua and Costa Rica. In the second case, one includes in 'Mexico and Central America' all the territory between the northern frontier of the Mexican Republic and the eastern border of Panama; in 'Middle America' the same region, excluding at times the north of Mexico, including at times the Antilles.

Middle America, on the other hand, is a geographical region that covers Mexico, Guatemala and all of Central America. The Caribbean area is also included by many anthropologists in the term (Olien 1973:4). However, for the purposes of this research, the Caribbean will not be included.

analysis herein.

Methodology

As a model I intend to utilize the 1917 Constitution and statutory laws of Mexico. This model is designed only as a point of reference for comparative purposes pertinent to the topic herein, and does not purport to be an exhaustive jurisprudential digest. The model is framed with reference to the dominant Mexican cultural system for conflict resolution, which is fundamentally based upon Hispano-Roman legal traditions. Comparative studies involving "legal actions" in Mexico would also generally hold true for the other Middle American republics. Indeed, the Mexican Constitution of 1917 and statutory laws have served as a model for most of the Latin American area in the post World War I period. The analysis is concerned primarily with the cultural aspects evidenced by the Constitution and statutes officially enacted by the Mexican government; and, the political science aspects are not relevant (although, as mentioned earlier in a general way, they do reflect upon the cultures and anthropology of law under comparative analysis). By the same token, a political scientist, sociologist, or a professional lawyer no doubt would deplore the emphasis on cultures and the neglect of governmental structures which are, nevertheless, beyond the scope of this selected bibliographical survey.

The range of disputes concentrated upon are both "civil" and "criminal" as categorizd in western jurisprudential thought. These encompass crimes against the person

(i.e., homicide, assault, etc.), land disputes, property, inheritance conflicts, and family disputes (i.e., wife beatings, etc.). Most of the discussion deals with torts because the description of homicides and their resolution are not particularly well represented in the literature.

The Mexican Constitution of 1917 and statutes are jointly used as a model, to substantiate the primary thesis of this research, and the major contention of this observer, that de jure substantive and procedural law are adopted levels and most functional in Middle American communities where a "multiplicity of legal levels" are present. The 1917 Constitution and statutory laws, through controlled comparisons with ethnographical data, will support my conclusions over those contending de facto resolutions are more functional. In addition, I feel most of the anthropologists and their works surveyed possessed only a rudimentary knowledge of the Hispano-Roman tradition, often reaching suspect findings.

In short, there has been no systematic attempts selectively to survey the literature and analyze it in terms of a constitutional and statutory model. Therefore, the utilization of twentieth century documents like the 1917 Constitution and statutes when compared to the ethnographical data will present findings in support of my thesis. These combined sources, therefore, can justifiably be termed and utilized as models.

These sources (model and ethnographical data) have

been consulted and employed as corroborative evidence in the clarification of rapid cultural change; a change initiated by the national governments of the various Middle American republics (Pitt 1972). In this sense, the adoption of formal legal structures by once autonomous (semi-autonomous) local communities compared to data based upon anthropological fieldwork demonstrates that "changing cultural patterns" over time can be discerned (Pitt 1972:6).

It should be emphasized, however, the model employed in this research (as all models) cannot explain the empirical data presented by the ethnographical literature (Kaplan and Manners 1968:166). The Constitution and statutory provisions can only indicate formal legal levels have been adopted and adhered to (rather than merely being adaptations).

In essence, the 1917 Constitution and statutory laws combine to form a model because:

Models are intermediaries between abstract theory and empirical observation--serving as a form of low-level generalization (about a limited set of possible cases) which generates discovery of new empirical cases. These either confirm the theory or broaden known facts requiring modification of either the model or theory (Leeds 1976:272).

In rapidly changing (and "modernizing") areas like Middle America, a unified system of procedural and substantive law can be achieved only when all individuals and communities comply with State objectives. Comparative data, through the careful use of these "historical" documents, can be provided to illustrate this aspect of national growth and the adoption of formal legal aspects into community structures. It is suggested that Pitt's (1972:4) interpretation

of Lipset and Hofstadter (1968:20) is pertinent:

A thorough knowledge of the historical record may also prevent errors in the interpretation of the present.

As it will become readily apparent, the majority of ethnographies are representative primarily of Mexico and Guatemala. Furthermore, although there are several hundred ethnographic studies involving Middle American communities, actual discussions on law are meager, as mentioned. Despite this paucity of literature there still exists some excellent works.³

The studies of Middle American communities are treated as an ethnohistorian treats any historical document. In other words, these sources are to be analyzed by methods similar to those used in any documentary research.

Evans-Pritchard (1963:5) comments:

Anthropologists have tended to be uncritical in the use of documentary sources. It does not seem to have occurred to Frazier in citing source after source in the Golden Bough to have indicated on what grounds he accepts their authority. In his Elementary Forms of the Religious Life Durkheim subjects other theorists of religion to remorseless criticism, but not the writers about the Australian Aborigines on which he bases his own. So elementary a precaution applies also to our own field monographs, which we take far too much on trust.

By utilizing both the model and the ethnographical sources, it is possible to see the development of de jure

³Such appears to be the situation for other areas of the world in dealing with questions of social control. Africa was originally the area in the forefront on legal studies and could possibly still be so considered.

legal structures in Middle American communities in derogation of de facto (informal) levels. One of the important methods of historical (ethnohistorical) research is to compare several kinds of documents (sources). By doing this, a less skewed picture of "reality" is likely to result (Bloch 1953). In comparing de jure with de facto resolutions from the 1920's to the present, the socio-cultural flowering of Hispano-Roman influences as adoptions of the Middle American communities will become more lucid.

In addition, given the present state of the anthropology of law and its recent theoretical advances, it is of utmost importance for a contemporary anthropologist (using ethnohistorical methods) to interpret and reanalyze earlier ethnographical works by updating them in light of these advances. It is simply naive to argue, as do many scholars, that informal mechanisms of conflict resolution continue to function as once believed. In the case of Middle America, rapid changes in the entire social fabric have initiated changes in how informal legal levels function and are expected to function with respect to national goals.

The problem needing to be addressed, which few Middle American scholars have done, is admirably stated by Lurie (1961:89):

We must beware lest we develop an antiquarian bias and neglect using our skills on contemporary documents which do not happen to be labeled 'ethnology'.

One important method of historical research applied in this study is that of "historical inference" or "extended

interpretation" (Dark 1957:232; Pitt 1972:58). In lieu of fieldwork, hypotheses in this study were derived from the use of formal statutes in "arguing to" (as opposed to arguing from the data (Dark 1957:232). With a knowledge of Hispano-Roman law (e.g., Mexican statutory law), this method is conducive to a greater awareness of semantic difficulties inadequately addressed by the anthropologists.⁴

Another type of "extended interpretation" employed by ethnohistorians was also found relevant to this research. This is what Pitt (1972:59) and Berelson (1952) designate as "content analysis". Pitt (1972:59) cites Berelson (1952:135):

In this method it is postulated that the frequency of occurrence in a text of a word, theme, character, concept, or item can be correlated with a given social fact.

This method was found to be extremely useful to legal research because of its "quantifiable" aspects (Berelson 1952; Pitt 1972). The frequency of occurrence of disputes can be extrapolated from the ethnographical data and compared with a given social (legal) fact stipulated in the statutes and 1917 Mexican Constitution. By doing this, the arguments proposed in this study became more substantiated.

The authenticity of the sources surveyed in this research was not considered a major concern because they

⁴Language difficulties in describing Middle American legal activity will be dealt with at the end of this section.

were based upon fieldwork by anthropologists presumably trained in the ethnographical method. However, in another sense, "external criticism" of the ethnographical documents was seen as relevant. It became obvious from much of the data that many of the scholars lacked a necessary background in basic principles of Hispano-Roman law. Consequently, many Anglo-Saxon biases surface in their writings. A number of questions were asked of the data by me. For example, what is meant by acts of homicide or theft? Did the delict occur in terms of Anglo-Saxon law, Hispano-Roman law, or can these two traditions be used interchangeably in describing Middle American law at the community level?

It appears, because of Anglo-Saxon common law biases, the ethnographers tended to apply their own notions of an offense to their legal analyses (Washburn 1961:34). Hence, it becomes necessary to interpret and reanalyze these community studies in terms of the knowledge (or lack of it) the anthropologist possessed of the dominant legal system. There were, of course, those who did have legal training in the United State before becoming anthropological fieldworkers. One of the more notable of these was Redfield (1930; 1950), and Redfield and Villa Rojas (1934). Nevertheless, Redfield's interpretations still must be analyzed in terms of his common law background.⁵

Obviously, interpretational biases initiated by

⁵This is exasperated by language differences in the two traditions, further developed infra.

these conditions cannot be completely eliminated. However, by applying some of the methods characteristic of "external criticism", many of the problems can be more readily recognized thus enabling a researcher to present a more accurate view of a situation. The statutes and Constitution are seen here as allowing a "quantifiable" check on these Anglo-Saxon influenced reports.

In terms of "internal criticism", a number of questions are asked of the ethnographical data. All of these were concerned with the degree to which the anthropologist relied on actual participant-observation, court records, formal codes, and the use of informants. The problem is many anthropologists did not always clarify this for their own sake. Many of the researchers report utilizing all of the above methods, although the degrees to which they were employed were not always made explicit. Hence, verifying many of their findings was difficult. By employing the comparative model of this study, this observer was able to conclude many of their descriptions were probably not as "reliable" as they should have been or as accurate they would have the reader to believe (Pitt 1972:54).

Participant-observation was a major method of acquiring data in many of the studies. Unfortunately it was not always made clear as to the number of cases observed and how many times one particular dispute was observed in a judicial proceeding. If not clarified in the literature, it was assumed that a case was actually observed only once.

This is important because I feel such detailed data would allow a greater degree of reliability in arriving at conclusions on de facto or de jure influences. The model employed in this analysis is designed to alleviate many of these problems of incomplete data.

One final area in which "internal criticism" plays an important methodological role is related to the use of informants. Many of the questions on informant use are well documented and deserve only brief mention. Some of the questions posed regarding data based upon informants are: What informants? What is their relationship to the community? and, How many were queried?

In dealing with data based upon informants, there must always be a concern with what has been called "intentional data". According to Haekel (1970:154-155):

Vajda (1964:770) calls attention to another important aspect of ethnographic source criticism in pointing out the necessary distinction between 'functional' and 'intentional' data according to Mühlmann's formulation (1938: 108ff.) That is to say, one should try to determine to what extent the phenomena described in a field work report are regarded by the natives as norms or ideals ('intentional' data), and to what degree the practical life of the tribe conforms to them ('functional' data).

Seldom are the number of informants given by the ethnographers. As a result, given the comparative data supplied by the model in this study, it is possible to postulate that much of what the literature reports as norms are really something less. As Bloch (1953:107) states:

However, for the error of a single witness to become that of many men, for an inaccurate observation to be transformed into a false rumor, social conditions must be such as to favor its circulation.

Enough case analysis is rarely provided to refute this claim in the literature. It is concluded the possibility exists in which those informants queried merely reported to the anthropologist what was desired to be heard or was expected to be observed by the anthropologist. Since the data based on informants was even less corroborated by formal statutes, many of the descriptions on Middle American law were difficult to support.

The relationship of the informant to the community is another problem not often adequately addressed in the monographs. Of primary concern to me was the relationship of the informants to the various political-legal levels operative in Middle American communities. Was the informant a litigant? Was the informant a victim of an unjust judicial decision? Was the informant a former "traditional" authority or a contemporary judicial official nominated by the State? These are important questions to ask because the answers to questions regarding the use of higher courts in resolving disputes are dependent. Even where extended case analyses were provided, the answers to these questions were not always clarified.

In many communities, only village judicial officials will pass a case on to the District or State authorities. In only rare instances will individuals take this initiative.

Descriptions arguing individuals seldom seek redress to higher authorities may fail to take this into account. If an informant was one of these individual litigants, such is exactly the data that might be obtained. On the other hand, if the informants were community judicial officials, the opposite picture may be provided; namely, higher courts are utilized by village individuals to resolve conflicts. Such possibilities must be taken into account and cross checks with the model attempted wherever possible.

Related to the above question is the use of informants who may have been associated with the traditional political-legal hierarchy prior to rapid national integration. Today this traditional power holder sees his authority undermined as the result of these contemporary changes. Also seen is the rise to prominence of younger, better educated community leaders who are usually nominated by the State. Obviously, answers to questions as to whether resort to higher courts by local inhabitants occurs are going to be from different perspectives. A younger State appointed official, functioning within State controls, would likely be more apt to respond de jure resolutions are more viable. This problem, although seemingly minor, must be always kept in mind when interpreting the ethnographical data from the 1920's to the present.

An informant may also be involved in judicial proceedings who is not an authority figure or a satisfied litigant. Even going beyond the mere litigant level, an

informant may be a "victim" of an unfavorable village judicial decision. In such instances, informants of this class will probably present a different picture. It is safe to assume that such an informant is likely to respond that de jure levels of conflict resolution (higher courts) are most often resorted to. A typical answer might be that it is impossible to get justice at the local level, so appeal to higher judicial authorities must be made.

Therefore, all of these types of informants are likely to give different responses to the question of whether higher courts are more functional in resolving community conflicts. If these details are not made clear, any data presented is likely to be "confined" in similar ways as are "official documents" if correct methods of interpretation and criticism are not adhered to (Pitt 1972:54).

These are only some of the questions regarding the use of informants and the type of "internal criticism" needed in analyzing the data used in this study in terms of legal analysis. Nevertheless, enough data was presented and the problems kept in mind, so the comparative analysis of the model with the ethnographical data permitted fairly accurate conclusions.

The comparative analysis employed in this study is patterned after the approach of Eggan. Eggan (1957:747) wrote:

My own preference is for the utilization of the comparative method on a smaller scale and with as much control over the frame of comparison as it is possible to secure. It has seemed natural to

utilize regions of relatively homogeneous culture or to work within social or cultural types, and to further control the ecology and the historical factors so far as it is possible to do so.

While the method utilized in this work is not precisely what Eggan postulated, it nevertheless is analogous. This study is "homogeneous" in that it focuses upon the Middle American cultural area and is restricted in that the model employed (Mexican Constitution of 1917 and statutory laws) is similar to those throughout the region.

In passing, there is another pertinent problem facing an anthropologist dealing with questions of law in an "alien" culture, namely language. Language is something that has posed problems of interpretation in many legal anthropological analyses. Not only must those who do library work be aware of translation difficulties; but, also, the field worker relying on the translation of case material. Because of idiomatic expressions, attempts literally to translate or transcribe events, cases or other literature can lead to some really ludicrous results. Like translating, the recording of dispute resolution in the field among indigenous cultures of Middle America likewise is apt to be an unreliable modus vivendi between a word-for-word transcription in another language, and the actual intent of the original phrases as viewed by the translator. As a result, it becomes most important for the reader of these translations carefully and critically to scrutinize the documents, much as the ethnohistorian would when attempting, for example, a reconstruction based on Spanish documentation of the

Colhua-Mexica. The problem immediately inherent in any study on Middle American legal systems (whether the case method is involved or not), is that the majority of field workers were trained in the Anglo-Saxon tradition. As a result, a certain degree of inaccuracy is inevitable and must be kept in mind when surveying the data. The problem of incorporating Hispano-Roman terminologies at the village-level in Middle America is complicated and I would urge a greater degree of incorporation of various Federal programs and institutions by Middle American indigenous communities has not been completely successful because of language. For example, the inability to define "crimes" in one system with respect to the other may be linked (directly or indirectly) to the inabilities of the Federal government to establish their systems of conflict resolution on a greater scale. This is not a novel idea, but still deserves more attention.

The problem of language in anthropological studies (or any study) is not unique and the literature abounds in debates and discourses on the real (or imagined) consequences. For example, take the differences that exist between the concepts of "law" and "right" as delineated by civil law and common law, respectively. Schlesinger (1970: 620) reminds us that:

In many languages, such as Latin, French, Italian, Spanish and German there is only one word for 'law' and 'right' (ius, droit, diritto, derecho, Recht). To avoid ambiguity, legal writers sometimes use this one word solely in the sense of 'right' and employ the term denoting a code or statute (loi,

legge, Getz) as synonymous with 'law'. In a code jurisdiction this usage is on the whole satisfactory for the everyday work of the lawyer; but it may lead the uninitiated to the inaccurate conclusion that statutory law is the only kind of law known in those countries.

Beyond the dangers implicit in the translation or transcription of proceedings of a local court and for informant data, there is also present an even more pressing problem, related to differences in context (i.e., Anglo-Saxon as opposed to Hispano-Roman or even Dutch law) which allow for bad comparisons. Jerome Frank (1956:920) refers to this problem when he talks about the "undetected pun". Schlesinger (1970:621) calls it the "maxim of caveat lector". And Karst (1966:31) writes in relation to Holmes (cited infra):

Any term draws meaning from its context; definitions are made for purposes; when a civilian lawyer reads an article of a code, he reads it against the background of his schooling, his legal system, his culture.

In short, attempts at applying concepts from Anglo-American jurisprudential thought to those of Hispano-Roman in relation to the Middle American situation often have lead to inaccuracies in describing legal structures and processes from the local level to the national level. The often total lack of similar or comparable concepts between the different systems makes ethnographical analyses suspect in some of the conclusions drawn. Oliver Wendell Holmes best summarizes the situation when he wrote:

When we contemplate such a system from the outside it seems like a wall of stone, every part even with all of the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up

within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books (Diaz vs. Gonzalez, (1923), 261 U.S. 102, at 106).

Since this is an anthropological analysis, no mention of language difficulties in interpreting legal systems would be complete without one or two brief remarks on the Bohannon - Gluckman debate. Many authors have described various aspects of this dialogue, with one of the better more general ones presented by Sally Falk Moore (1969). In essence, Bohannon argues that the study and classifications of legal systems can only be accomplished by utilizing the "native's" terms for various concepts, what Bohannon has called the "folk system" (Moore 1969:265; Bohannon 1957). Not to do so in Bohannon's way of thinking is to distort reality and offer a misleading picture of dispute resolution in pre- and non-industrial societies (Bohannon 1957). Gluckman, on the other hand, would disagree with this line of reasoning. Gluckman appears to believe there is nothing out of place if notions of western jurisprudence are employed (Gluckman 1955; 1965). This is an oversimplification, of course, but does represent a basic disagreement in utilizing a writer's language in describing cases in different geographical and cultural areas.

It really is not critical which view is now taken from this often-mentioned debate. Certainly, it could be argued what language is employed as the unit for analysis depends to some extent on what types of questions the

researcher asks and what types of answers are expected. What is of critical importance is to acknowledge language does make a difference, and ethnographic works dealing with law must be read, interpreted, and evaluated with extreme care.

Finally, in methodology, Chapter II, like this chapter, will be very general and will discuss the more salient features of contemporary Hispano-Roman law and the civil law tradition (to provide a foundation for later chapters) Chapters III-VI will begin the actual analysis of the ethnographic data. Finally, Chapter VII will provide summary remarks and my conclusions.

CHAPTER II

ANALYSIS OF THE MODEL

Preliminary Remarks

No comparative analysis of de facto and de jure conflict resolution in Middle America can be considered complete without some preliminary remarks regarding the structure of the Mexican legal system and derivatives, the model of this analysis. Much of this discussion may appear to be somewhat legalistic and out of purview of the anthropologist. However, as later chapters unfold, the ramifications and importance of the succeeding remarks will prove to be exceedingly relevant. That the subject matter of this chapter is complex and often difficult to grasp makes obvious it deserves attention as a research subject in its own right.

A modern trend in legal thought throughout the world (especially in the Western Hemisphere) is that the prevention or deterrence of "criminal" activity is more important to societal well-being than consequent punishment. The various theories and practical proposals regarding this

belief have emanated primarily from the strong influence of legal scholars in the United States. However, legal scholars in Latin America in general (and Middle America more specifically) are becoming increasingly more aware of this subject, and as a result, are becoming more vociferous in their attempts to influence the Roman-derived civil tradition of their respective countries, often posing embarrassing questions for national leaders (especially in military led republics). This trend can best be seen in light of the amended penal codes of selected Latin American countries in the last half-century or so. For example:

Penal laws are an indispensable attribute of the State, but they should be just and wise and in no way uncertain, or arbitrary. The important consideration is that everyone should understand the laws and reflect on the consequences of their violation. (Cantu Leal 1968:228)

The civil law tradition is considered one of the two major jurisprudential systems in the western world. The other major system is, of course, the English common law system as exemplified by the United States.⁶ Whereas, the civil law system derives many of its influences from the Corpus juris civilis of Justinian times, the common law countries were most influenced by England. However, the later Code Napoleon of France influenced the Latin American Constitutions, as did the United States' Bill of Rights

⁶In the context of international jurisprudence, "western" and "oriental" as a terminology is becoming anachronistic.

Articles 14, 15, 16, 17 (to mention a few) of the Mexican Constitution show this latter impact.

Law, as it functions in the United States, has been referred to repeatedly in the literature as judge-made law (Berman and Greiner 1966). In essence, this merely means antecedent judicial opinions are a source of law and prior decisions are considered as binding precedents (stare decisis) on subsequent cases (Berman and Greiner 1966). In Middle America, on the other hand, the most important source of law has traditionally been legislation; and courts historically are bound by provisions of comprehensive codes of criminal and civil law rather than case precedents and stare decisis. These codes represent unified bodies of statutory law with the purported intention of being "systematically comprehensive and internally consistent" (Berman and Greiner 1966:477). In short, these civil codes are to provide a far reaching statutory base for decisions. Accordingly, they have less of a tendency toward generalities than do statutes litigated in the United States and other common law countries which rely on judicial interpretations (Berman and Greiner 1966:477).

The concept of judicial reasoning has often been attributed by legal scholars as evidence for further differences between the two systems. Judicial reasoning would represent more accurately a difference in a procedural aspect between the two traditions rather than a deviation in a substantive sense. As Clagett (1952:106) has pointed out,

a difference that many students of law and legal philosophy have attributed to common law and civil law systems (or to phrase it differently, law as practiced in Latin America as opposed to law as practiced in the United States), is related to stare decisis and legal precedent. She wrote:

In the civil law countries, where codification is a scientific construction of legal provisions, generally the work of eminent juris-consults, the members of the judiciary are required only to apply the law in accordance with the clear and precise terms in which it is set forth. In points needing interpretation, greater weight is given to doctrina, or what we may call 'learned opinion', than to previous decisions of the court, although these are not altogether neglected. (Clagett 1952:106)

Merryman (1969:37) proposes that the entire process of arriving at a judicial decision in a civil law system is based on the propositions characteristic of the syllogistic logic so well demonstrated by Thomas Aquinas (1949) and the scholastics. Merryman (1969:37-38) writes:

The major premise is in the statute, the facts of the case furnish the minor premise, and the conclusion inevitably follows. In the uncommon case in which some more sophisticated intellectual work is demanded of the judge, he is expected to follow carefully drawn directions about the limits of interpretation.

In summary, Merryman implies that judicial opinions are not (cannot) be applied as sources of law. In the process of resolving "criminal" or serious breaches of societal conduct, the judges are "theoretically" required to follow the procedures explicitly mandated in the codes (and other legislation). In most Middle American countries, one code is designated as the code of criminal procedure. From

reviewing the various codes of Mexico and Guatemala, it is safe to assume there is a great deal of procedural and substantive uniformity throughout the rest of Middle America based upon these criminal codes (Merryman 1969; Karst 1966; Claggett 1952). Penal codes are also applicable in situations designated as "civil" in Anglo-Saxon terminology. The role of judges in their interpretation of the law is extremely important in the present context. Merryman, (1969:88) as authority for an excellent overview of the function of judges in the civil law systems, summarizes:

Judges are restricted to interpretation and application of 'the law' in the interest of certainty, and prior judicial decisions are not 'law'. Judges are also denied the power to temper the rigor of a rule in a hard case. All nonlegal considerations must be excluded from the law in the interest of certainty.

Nevertheless, the above represents the theoretical applications and is not totally descriptive of the situation as it really exists. From a pragmatic standpoint, however, judges in Middle America are oftentimes influenced by past decisions of judges in other courts, albeit not as formalized as common law stare decisis. This becomes evident from the published reports of cases appearing in Mexico, Guatemala and other republics of the area. In short, the belief that Latin American judges do not rely on precedent is somewhat misleading and may offer a distorted view of the actual practices. In ending these preliminary remarks, mention of Richard Baker's (1971) analysis of judicial precedents as

related to Amparo suits in Mexico provides beneficial insights to the role of stare decisis in Mexico. Baker (1971: 270) indicates the Mexican Supreme Court in its exertion of this power relies to a degree on the establishment of obligatory precedent. He qualifies his conclusions, nevertheless, as follows:

The fact that the Supreme Court can establish obligatory precedents (jurisprudencia) by five consecutive repetitions for the same opinion modifies this situation only insofar as such precedents restrict the free discretion of the courts in reinterpreting the points of law thus settled (Baker 1971: 270).

Up to 1930, at least, the role of judges in the Middle America area was seen to be very restrictive in scope. The antiquated and somewhat anachronistic functions of judges before 1931 were removed with the adoption of the 1931 Penal Code of Mexico. The belief, under previous statutory provisions, that there could only be one viable decision constitutionally imposed in a suit was altered by an enlightened interpretation of the functions of the judicial authorities to mitigate the archaic law prior to 1931. Consideration of personal conditions of the accused, for example, not permissible in interpreting the law previously, was changed in 1931. By way of illustration, Article 51 of the Penal Code then provided:

Within the limits fixed by law, judges and courts will apply the sanctions established for each crime, taking into account the external circumstances of the offender (Cantu Leal 1968:229).

The above is self-explanatory, but Cantu Leal continues to discuss the enactment in terms that could be a quotation from a Gluckman description of a Barotse judge and the concept of the "reasonable man" (Gluckman 1955; 1965). Cantu Leal (1968:229) continues:

In reading this enactment, one concludes that the legislator, in adopting judicial discretion in 1931, was not motivated by an exaggerated subjectivism in which only the personal characteristics of the criminal would be taken as a guide, but rather that he blended the subjective and objective circumstances in a close and intimate correlation, and gave to the Mexican penal judge the tools needed for the prudent and reasonable use of discretion.

Barotse judges, although not dictated by statutory concerns, apply objective and subjective criteria in the idea of the "reasonable man" to resolve disputes much as the Mexican judge now is empowered to do. While not totally analogous, the comparison does offer some interesting similarities. The objective aspects applicable to the Mexican judge are the statutes and for the Barotse judge past customs of his people. The subjective aspects for both would include the personal and economic backgrounds of the individual accused of an offense against their respective societies.

The above remarks merely aim to provide an orientation to some of the most salient features of the civil law tradition as it functions in Middle America.

Basic Court Structure and Historical Development

Twenty-nine states, the Federal District and the former Federal territories of Quintana Roo and Baja Sur, California, now constituting 31 states, represent the Federal government structure of Mexico. Article 40 of the Mexican Constitution of 1917 provides the States with a constitutional basis for resolving "crimes" often believed to be only under the jurisdiction of the federal courts (Mexican Constitution, 1917). In short, each state in Mexico has enacted its own penal code (Kos-Rabcewicz-Zubkowski 1971:234). Furthermore, a penal code exists for the Federal District (Mexico City) and the territories. Court jurisdiction, in Mexico, therefore, is divided between federal and state courts (departments in Guatemala).⁷

The laws of Mexico, as other civil-law countries influenced by Hispano-Roman doctrines, consist of a number of highly complex codes and lengthy statutes. These laws are not usually tabulated in any specific order by governmental authorities, after their earlier publication in the Diario Oficial (Kos-Rabcewicz-Zubkowski 1971). In point of fact, the civil and criminal codes, as well as the major laws of the 31 states, are practically duplicative of those enacted by the Federal Government for the Federal Territories and the Federal District (except on the subject of

⁷Article 695 of Wheless illustrates this. For purposes of clarity the reader is referred for this and succeeding chapters to the appendix, where the various pertinent codes are reproduced.

divorce). Particularly, the Civil Code and the Penal Code are in practical operation in the several states and will serve as the point of reference herein.

From the detailed and often ethnocentric reports of missionaries and explorers of Middle America, a somewhat sketchy view of law and judicial authority of the various groups inhabiting the region at the time of conquest is obtained. As is so often the case, those people considered the most astonishing and "civilized" from the Spanish viewpoint received the most attention, especially the Colhua Mexica or Aztecs. From the accounts of Spaniards, the most notable in this regard being Zorita (1942), an intricate and balanced court system existed in Tenochtitlan, the capital city of Mexico. The earliest laws of the empire, as is usually the case with theocratic states, were enacted by the priests (Herget and Camil 1978:2). Later, as the empire became more militaristic, a different class of "professionals" became the government leaders. Instead of priests passing laws, this function became more and more entrenched in the hands of the nobles. Apparently, any legislation which was passed was recorded in the forms of elaborate pictures. Each picture depicted the crime and the punishment that could be meted out (Herget and Camil 1978:2). Many contemporary scholars, like Katz (1972), saw many of the penalties for offenses among the Aztecs as fairly harsh by contemporary standards, with a large share of offenses punishable by death. Netzahualcoyotl's Penal Code for Texcoco indicated

the Acolhuas of this area had their own distinctive judicial organization for a wide range of breaches of social conduct ranging from assaults, robbery and murder to crimes by public officials like bribery, negligence in a trial, and the inebriation of a judge (Cantu Leal 1968:228). He adds:

In the opinion of some jurists, the code was proof of a moral severity, a hard concept of life, and a notable political cohesion. The penal system was almost Draconian (Cantu Leal 1968:228).

The literature contends that real property in the Mexica empire was of two types. Conquered territories of neighboring groups represented the first type. As to all property in the empire, the emperor was the primary owner, who, in turn distributed or parceled out lots to nobles, military heroes and priests. Theoretically, these individuals were not to be the owners of the land, but were to enjoy rights of usufruct. Upon the death of one of those individuals of high status, members (descendants) of the immediate family were to be granted succession of the plots. The calpulli (which was a geographical centered clan or village headed by a council composed of the family heads) was the second type. These represented communal lands which were further subdivided into plots for each family to cultivate. What is important here on a comparative note is that the calpulli was a predecessor to the modern ejido in that any uncultivated land would revert back to community use (Herget and Camil 1978:2). This may be controversial, but will be taken as accurate in light of noticeable similarities between the past and present (Article 695 in appendix).

After the conquest, the experience with codified (or formal) judicial procedures continued among the indigenous populations of Middle America. From the sixteenth century into the eighteenth (late Colonial) century, the Indians became increasingly more cognizant of their legal stature with respect to the dominant system. The period characterized by the Penal Codes of Netzahualcoyotl to the legal practices exemplified by the Colonial institutions, were to have a tremendous impact on later Middle American communities in the application of formal procedural and substantive law. In fact, it will become evident in Dennis (1976) and Dennis and Uzzell (1978) that many of the same land-related disputes (and resolution) are similar to those recorded by the Colonial literature.

As it was mentioned above, land disputes were (and still are) a major source of conflict in the area. Taylor (1972:82) points out:

The most acceptable means of settling land disputes from the Spanish government's point of view was an appeal to the colonial courts, first to the local corregidor de indios, from whom appeals might be then made to the Audiencia and to Spain.

The above passage is not meant to be representative of any belief the Indians obtained desired results every time a case was litigated. What is really indicated is that recourse to formal legal levels was common (Taylor 1972).

That the Indian communities became quite proficient in utilizing de jure substantive and procedural Hispano-Roman law in areas like the Valley of Oaxaca is easily

verifiable by Spanish colonial records (Whitecotton 1977: 196).

Apparently, this reliance on the dominant judicial institutions is characteristic not only of the late Colonial years, when it could be argued the Indians had assimilated enough of Spanish institutional practices to be aware of their rights under the law. The literature fully supports the idea this practice extends back into the sixteenth century as well (Taylor 1972; Whitecotton 1977; Gibson 1964). Taylor (1972:83) quotes a sixteenth century viceroy, who stated:

The following is a well-known public abuse: Indians in growing numbers are travelling to the viceregal and provincial capitals, remaining there for many days on the pretext of engaging in lawsuits or entering petitions on behalf of their towns....

The fact local communities in Middle America have adopted rather than adapted to Hispano-Roman judicial ideologies can also be supported historically. This is evident in the classes of local officials nominated by Spanish authorities and their functions. For example, Gibson (1964: 180) writes:

Indian gobernadores and alcaldes (not, so far as we know, regidores) held court for minor local offenses, and the cabildos maintained local cabecera jails for the imprisonment of drunkards and other persons sentenced for crime. Criminal and civil cases involving Indians were heard and settled before native alcaldes in regular sessions. The cases decided by Indian judges, like those decided by corregidores, provide a revealing record of the petty squabbles of Indian life--over property, debts, horses, women, market goods, and other matters without end.... On

the other hand, records of Indian judicial procedure indicate at times a remarkable sense of legalism, in absolute imitation of Spanish procedures. A number of records of Nahuatl court minutes have survived, with accusations, charges, interrogations, depositions, sworn testimonies, sentences, and the full corpus of Hispanic legal form.

In short, Middle American communities have an involved history of utilizing de jure substantive and procedural legal practices. From Netzahualcoyotl through the Colonial age on into the contemporary period, the above can be supported by documentary evidence.

Another topic regarding the adoption of formal Hispanic legal traditions in Middle American communities is in the area of testate and intestate successions. Contemporary Middle American ethnographers often fail to grasp the historical link between the practices of the dominant judicial structures and those existing locally in Middle America, to be made evident in later chapters. The importance of testamento was recognized by the Indians from the sixteenth century through the eighteenth. This is substantiated by Taylor (1972:108):

The Indians' appreciation of the importance of formal wills left very little Indian property intestate despite great population losses. Oaxaca's Indians quickly learned the legal options open to them in seeking new lands and in preserving title to old ones. Their initiative and endurance in litigation is certainly impressive.

Although the Spanish legal system often left a great deal to be desired because of the prejudicial handling of Indian grievances, Taylor (1972); Whitecotton (1977); and

and Gibson (1964) are representative of those who see an increase in court cases promulgated about Indians in the Colonial period. In summary, from ancient times to the present, Indians in Middle America have an active history of operating within the formal judicial apparatus. Sadly, this fact is often overlooked or not adequately addressed by contemporary Middle American anthropologists. Taylor (1972:53) admirably summarizes the historical aspect of this legal involvement:

The Indians' frequent recourse to litigation, often at great expense, is one of the most striking aspects of their adjustment to colonial rule. The later importance of the Mexican president as the nation's greatest patrón can be explained in part by the paternalism of the colonial administration and the Indians' ready acceptance of this avenue of redress.

Another probable influence on the present-day Mexican tribunal system were the audiencias set up in the New World by the Spanish. They had authority vested in them by the crown of judicial inquiries. These judicial inquiries were undertaken by the authority of the Viceroy. Other non-Roman and/or hispanic influences of present-day Mexican judicial authority were the advent of 18th century enlightenment ideas that culminated in the construction of the 19th century constitutions of the area. The "liberal" ideas of the philosophies of Montesquieu (1748) and Rousseau (1762) made popular such ideas as the separation of powers so vital a part of the Mexican Constitution and the others of the Middle American republics modeled after it. Inherent in

these views was the belief courts of law should function apart and independently of the legislative bodies which were to enact the statutes to be employed by the courts (Herget and Camil 1978:71). This ultimately lead to the present dual system of Federal and State Courts, patterned after the United States Constitution.

Hence the Mexican people have a history of being under the control of rigid statutes and codes of one kind or another. Other similarities of the earlier "Mexicans" and the contemporary people exist. For example, the administration of justice was hierarchial in structure. At the lowest levels functioned the "local magistrates." These dignitaries were elected by popular vote, probably by members of the calpullis. Their jurisdiction extended to civil matters and minor criminal cases. It is apparent these aspects of local judicial authority are strikingly similar to the notion of municipio libre (free municipality) established by the Mexican Constitution. Appeal of the early "Mexican" judicial authorities' decisions was made to higher courts composed of three to four judges who also were delegated jurisdiction over specific types of offenses (Herget and Camil 1978:2). These judges were selected by the Supreme Magistrate. Final appeal existed in the body of the king. Today final appeal is to the president.

The above analysis provides a synthesis of the basic court structures, as stipulated by the model of the 1917 Mexican Constitution, from a limited historical perspective.

The Stages of a Formal Criminal Proceeding

In order to compare de facto and de jure resolution of conflicts as exemplified by the cases and other materials of the ethnographic literature, some mention must be made of de jure criminal proceedings as provided for in the various statutes, codes and Constitution of Mexico.⁸

From the standpoint of Mexican law, the handling of a convicted criminal is theoretically viewed as a case for rehabilitation, rather than as an instrument for punishing the individual for breaches of social conduct. This can best be illustrated by the length of sentences imposed for specific misconducts, which are often shorter in duration than those sentences meted out for similar offenses in the United States (Herget and Camil 1978:82). For example, the penalty for murder is 20-40 years, for rape 2-8 years, for battery 3 days to 1 year. The murder of a husband's or wife's spouse in the act of adultery ranges from 3 days to 3 years (Herget and Camil 1978:82).

In Mexico, as elsewhere in Middle America, the criminal proceeding is composed of a number of stages by which the local system mimics the federal system. These stages are the investigative stage, the instruction stage and the trial (Herget and Camil 1978:83). Despite what has been called by many scholars an "inquisitorial" system of law,

⁸Only some of the more important articles will be listed in this chapter. Again, the reader is referred to the appendix for the complete text of these articles.

every possible attempt in the Mexican example is made to protect individual rights (to the extent available) of an accused (Murray 1964:252).

Complaints leading to a criminal proceeding can be formulated in one of two ways. The first involves what is called a denuncia. This is a written document stipulating what the victim of an offense and/or various witnesses saw or know of the facts surrounding the misconduct (Herget and Camil 1978:83).

In situations that are deemed breaches of the public order, a procurador is responsible for the initiation of prosecution proceedings. As Herget and Camil (1978:83) point out, the procurador is one of the more important dignitaries of the ministerio público which they suggest is analagous to the United States office of Attorney General.

While most crimes are considered to be attacks against the public arena in Mexico (as in most areas), there also exists a class of violations that are described as private. These are private from the point of view that they require the victim to file an official complaint, called a querella. This must be filed before any trial proceeding can be initiated (Herget and Camil 1978:83). Interestingly offenses of kidnapping, adultery, rape, etc., are the crimes heading this category. The ministerio público is unable to act conformably to ex officio (prosecution) procedures until the querella has been filed by the victim. Once the querella has been offered, the victim then has the right

under law to "forgive" the accused (Herget and Camil 1978:83). This formal desire not to push the litigation further causes the trial to stop and any further ex officio acts on the part of the court are forbidden. The defendant is not held responsible for any of the charges and released (Herget and Camil 1978:83).

The two types of complaints listed above are also referred to as "intentional" and "non-intentional" in the Penal Codes. The non-intentional actions are further described:

It also calls the latter 'offenses by imprudence' (imprudencia) and explains that imprudence is a lack of foresight (imprevisión), negligence (negligencia), lack of skill (impericia), lack of consideration (irreflexión) or carelessness (descuido), when the ensuing damage is the same as that resulting from an intentional offense (Article 8 of the Penal Codes as translated by Kos-Rabcewicz-Zubkowski 1974:234).

Kos-Rabcewicz-Zubkowski (1974:234-235) indicates that also Article 62 of the Penal Code for the Federal Territories and the Federal District:

...provides for the prosecution of non-intentional offenders who cause minor damage to property, only upon complaint of an interested party. The amendment raises the limit of damages from 500.00 pesos (U.S. \$40.00) to 10,000 pesos (U.S. \$800.00) and the maximum fine from 1,000 pesos (\$80.00) to the amount corresponding to the damages caused by the offender plus indemnification to the victim.

Important to this survey of the literature are "crimes" which are the result of drunkenness. In Mexican statutory law, "non-intentional" acts of violence toward persons or property that are the result of a "state of drunkenness" are not prosecuted because under the 1931 Penal Code the individual in such a state is not considered responsible for his actions (Wheless 1938; Kos-Rabcewicz-

Zubkowski 1974: 235).⁹

In any event, operating from the assumption that the accused has been taken into custody and detained, the criminal trial proceeds. Article 16 of the 1917 Mexican Constitution puts added pressure on steps to be followed in the investigative stage. Article 16 demands essentially:

If one other than the judicial authority issues an order of apprehension or detention, it must be preceded by a denunciation, accusation or private complaint (querella) of a specific act which the law punishes with a corporal penalty,....(Murray 1964: 253; See also The 1917 Constitution of Mexico as amended through 1976).

The article further designates specific instances where the above stipulations need not apply. These are called flagrante delito. In offenses of flagrante delito, an individual may catch an offender and any companions in the process of aiding or abetting and give him to the nearest presiding authority (Murray 1964:253). Searches and seizures and the constitutional limits attached to their practice are also delineated in Article 16 of the 1917 Constitution as follows:

All search warrants (orden de cateo) must be written and may be issued only by the judicial authority. The warrant must express the place which is to be inspected, the person or persons who are to be apprehended and the object of the search; to which the search must be limited. In order to conclude the search, the searchers are required to draft a detailed report of the search. This report must be made in the presence of two witnesses proposed by the occupant of the place searched, or in his absence or refusal, by the authority which performs the step (diligencia) (Murray 1964:253; Mexican Constitution of 1917).

After it has been determined that the above steps have been carefully performed according to the Constitution

⁹See Chapters III, IV, V and VI infra specifically to homicides.

and codes and that the initial investigative steps have provided enough evidence to warrant prosecution, then the procurador presents himself before a judge and requests an act of consignación (Herget and Camil 1978:80). In this stage, police reports and the written statements of witnesses are offered as evidence to the judge and the warrant for arrest requested (Herget and Camil 1978:84). If the presiding magistrate is in agreement with the procurador that sufficient facts have been presented to warrant actions against an accused, the order de aprehensión will be issued. For those cases that are called private, the querella must also be presented (Herget and Camil 1978:84).

As alluded to earlier, there exists cases wherein an individual had already been caught and detained prior to the completion of the police investigation. Such events usually refer to cases of flagrante delito. In these situations the procurador is allowed 72 hours to investigate the charges and apply for consignación (Herget and Camil 1978:84).

The type and nature of the arrest notwithstanding, the accused must be presented to the judge within 48 hours of his initial detention. It is during this period that the accused is usually interrogated (with benefit of counsel, if requested) (Herget and Camil 1978:84). The presentation of the accused before the judge represents the first step in the next stage, the instruction stage (Herget and Camil 1978:84).

One of the most important procedures characteristic

of the investigative stage is the informing of the accused of the name of his or her accuser. This is required by law. Furthermore, those witnesses who are to testify against him are to be identified (Herget and Camil 1978:84). The precise nature of the act of which he is accused is also made clear to him. If he wishes to contest his innocence he may do so. If he desires defense counsel and is unable to provide for one, the court will see that one is appointed to handle the charges (Murray 1964:260; Herget and Camil 1978:84).

At this level of the proceedings there is the purpose to obtain a statement from the accused regarding the case (Herget and Camil 1978:84). This declaración preparatoria is to offer the defendant a chance for his or her defense before the proceedings go any further. The preparatory statement is done in conjunction with the accused's rights to meet face-to-face with his accusers, called careo (Herget and Camil 1978:85).

In the instruction stage many types of evidence may be offered as a record, and are in many respects, like those offered in common law countries as the United States. The types of evidence (de las pruebas) permissible include: confessions, public and private documents, expert opinions and statements of witnesses (Murray 1964:262).

The most important aspect of evidence allowed relevant to a comparative analysis is the testimony of witnesses (testigos). Witnesses are especially important at dispute

proceedings at the village level. In fact, the judge at all levels will rigorously question anyone if the facts exposed in the initial steps of the proceeding or the querella should require (Murray 1964:268). A secretary must be present during the questioning of witnesses by the judge. The function of the secretary is to transcribe into writing the oral testimony of the witnesses. After the testimony is put into writing, the witnesses must read and endorse it before it is put into the record.

Any confrontation the law allows between the witnesses and the accused must be performed in the instruction stage. As the proceeding progresses, and contradictory evidence comes to light, the judge may rule that a further confrontation may be needed to determine the truth (Murray 1964:272). It should be mentioned there can only be one careo at a time. Murray (1964:272) indicates:

The confrontation shall be performed by reading the alleged contradictory declarations and by calling the attention of the persons being confronted to the points of contradiction so that they can 'recriminate' among themselves, and so that by such recriminations the truth may be obtained.

Any statements that an accused may have uttered prior to the actual offense for one reason or another and which could have a bearing on the outcome of the proceedings will be considered as a part of the record. Murray (1964:274) quotes article 245 of the Code of Penal Procedure:

'The presumptions or indications are the circumstances and antecedents having relationships with the crime upon which one reasonably may base

an opinion about the existence of the considered facts.'

There is really nothing unique about the above condition. As stated earlier in the chapter, the judge is mandated by law to interpret all evidence of the case strictly according to the rules of a code. In all cases where any element of doubt still remains, the defendant is to be completely cleared of all charges and freed. Condemnation can only be made when the judge is certain that all of the evidence against the accused overwhelmingly indicates guilt (Murray 1964:275). In robbery, for example, the offense shall be proved by one of several ways. Article 115 of the Federal Codes as translated and interpreted by Murray (1964: 275) reads:

In all cases of robbery (robo) the corpus delicti shall be proved by any of the following means:

- 1) By the proof of the material elements of the crime;
- 2) By the confession of the accused, even when it is not known who is the owner of the material thing of the crime;
- 3) By proof that the accused has had in his possession anything which, by his personal circumstances, he may not have acquired legitimately, if he does not justify its derivation;
- 4) By the proof of the pre-existence dominion (ownership) and the subsequent absence of the material thing of the crime from the possession of the owner ; and
- 5) By the proof that the offended person was in the situation of possessing the material thing of the crime, that he enjoys a good opinion and he made some judicial or extra-judicial efforts in order to recover the stolen thing. These proofs shall be preferred in the numerical order in which they are arranged, the later ones being accepted only because of a lack of the prior ones.

Any presumptions of innocence are precisely that and

nothing more or less. There is no unusual onus of proof on the part of the procurador beyond that which falls to the proposition of fact in a judicial proceeding (Karst 1966: 236).

After all of the above steps of the investigative and instructive stage have been followed according to the Codes, and any evidence the accused wishes to provide on his/her behalf is entered into the record, the judge has to perform one of two tasks. If the evidence is overwhelmingly in favor of the accused, or if any doubts as to guilt exist, the judge is required to issue a libertad por falta de meritos (Herget and Camil 1978:85). This is an order for the release of the detained. It should be mentioned that if a prima facie case against the accused is not established at the trial, then he has to be released. If the evidence presented in various steps described is sufficient to warrant further proceedings then the auto de formal prisión is issued and the next trial stage follows (Herget and Camil 1978:86).

Latin American countries have generally been characterized by the lack of trial by jury. Certainly, historically speaking, what common law lawyers (particularly in the United States) would designate as trial by jury does not occur in Latin American cases.

Hence, juicio criminal in Middle America (Mexico specifically) is really a number of stages that overlap each other, from the investigative stage to the instructional

stage where a number of meetings, confrontations, written testimony, and statements of the accused are presented to establish "probable guilt" to the last stage, the trial. The crux of the matter is that, for all practical purposes, the three stages discussed are all part of the juicio criminal. One major difference from a procedural point of view is that the Latin American example typifies a trial as "secret" and "private" as opposed to the "public" and "oral" system in the United States (Merryman 1969:123), with a few variations to be mentioned.

With this in mind, the trial stage, the last step in a Mexican proceeding, can be briefly described. This level merely represents a final hearing before a magistrate where new evidence and witness testimony not available earlier is offered (Herget and Camil 1978:86). Lawyer arguments are heard and the defendant can offer final arguments on his/her own behalf if so desired. In this step, the plaintiffs (victims) can now enter into the proceedings (Herget and Camil 1978:86).

Recent changes (since 1931) now allow certain trials to be open to the public, at least for those who prove they are over fourteen years of age (Murray 1964:280). However, Murray (1964:280) offers one major exception (as translated from the codes):

However, in cases involving crimes against morals, or when morals are attacked in the proceedings, the trial shall take place behind closed doors in the presence of only those persons who have officially intervened in it.

Although the trial can be opened to the public, the proceedings are still largely private, private in the sense that the accused can only converse with defense counsel, and any attempt to address the public would prompt a severe reprimand. The nature of the reprimand could be a fine or fifteen days in jail for the defendant and any member of the public who talks with him (Murray 1964:281).

In every trial, the accused has the legal right to offer defense personally as well as through his appointed defense counsel. Before closing the proceedings, the magistrate in charge always provides a final opportunity for the defendant to provide last remarks on his behalf if so desired (Murray 1964:281).

Penal Code reform, especially that of 1971, has brought about some interesting changes in the attitudes toward punishments. Recent amendments to the code now provide greater discretionary duties to the judge in sentencing. For example:

b. due to a hardship to the dependents of the convicted person, the reform provides for a broader use of fines in lieu of prison terms (Kos-Rabcewicz-Zubkowski 1974:235).

Also, if the convicted individual is found guilty of a first offense, and if the judge perceives good arguments on his behalf, a fine is usually imposed instead of the usual sentencing of one year or less (Kos-Rabcewicz-Zubkowski 1974:235).

The 1971 reform to the Mexican penal code also includes some other interesting changes. All of these are extended to situations that can be considered for suspending

of an individual as opposed to the previous punishments of jail sentences. Summarizing Kos-Rabcewicz-Zubkowski (1974: 242), one of these changes (to Article 90) that allow for the payments of fines in the commutation of prison terms:

When, because of his personal circumstances, he cannot make reparation of damages immediately, he shall post bond (caución) or submit to measures which the judge or the court will consider sufficient to insure compliance within a specific period of time.

As in the United States, Mexico has adopted new amendments (as of 1971) which provide, at the judge's discretion, for suspended sentences. Punishment may be stopped, upon the following findings:

- a. That the sentence of imprisonment does not exceed two years;
- b. that the offender, who is incurring an intentional offense for the first time, has observed good conduct before and after commission of the offense;
- c. that his personal history or honest way of life, as well as the nature of the offense, including its characteristics and motives, warrant the presumption that he will not commit a second offense (Kos-Rabcewicz-Zubkowski 1974: 241).

Prior to 1971, the juicio criminal and sentencia of a case were formulated by a body composed of three judges (Herget and Camil 1978:86). These three magistrates relied on written arguments of the accused and counsel (Herget and Camil 1978:86). In 1971, this structure was abolished. In place of the three-judge tribunal, a one-judge system was substituted. Now, under the present system, the same judge who presided over the case from the outset will deliberate in the trial stage (Herget and Camil 1978:86). Kos-Rabcewicz-

Zubkowski feels this will ameliorate some of the problems presented by the older system. He writes:

. . . this innovation allows for integral development of the trial before the same judge, thus assuring procedural immediacy and a better individualization of punishment. It also aims to accelerate the administration of justice. To facilitate the latter, the jurisdiction of Minor Judges and Justices of the Peace has been extended to offenses punishable by a maximum fine of 200.00 pesos (U.S. \$16.00) and/or one year in prison (Kos-Rabcewicz-Zubkowski 1974:244-245).

Many anthropologists have provided examples of such cases and how they were resolved at the village level.¹⁰

By setting forth how the penal, de jure, system functions, a more viable comparison can be made with respect to the similarities and differences between the national formal and local procedures.

Contemporary Codes, Statutes and Laws to be Employed
for Comparative Analysis

Examples of some of the Codes and laws of Mexico as provided by Wheless (1938) are pertinent. Although many laws have been since amended to a minor degree, those pertaining to the conflicts, offenses and disputes mentioned herein have remained relatively unchanged as to affecting any conclusions to be derived from the comparative analysis of the literature.

¹⁰There are two other areas that often exist alongside or apart from juicio criminal. These are compromises (transacción) and arbitration cases (juicio arbitral). When comparing de jure and de facto resolutions of conflicts these two should be mentioned. See articles 582, 583, and 584 in appendix on transacción.

For descriptions on arbitration, consult the appendix and articles 767, and 768.

This fact and the current status of the law in Mexico and the other countries of the area have been verified in detail as to constitutional law, court structure, inheritance law, real and personal property law, prescriptive law, torts, and the law pertaining to marriage, family disputes and divorce,¹¹ by the 1982 Law Digests promulgated by Martindale-Hubbell Law Directory Volume VIII, as revised by Curtis, Mallet-Prevost, Colt and Mosle, of the New York Bar, experts in the field.

One of the most common sources of Middle American conflicts at the village level centers around real and personal property. Included in these are boundary disputes and conflicts related to rights of ownership.

The rights and limitations of ownership (propriedad) of personal and/or private property are extremely important at the village level in Mexico (Middle America, in general). The resolution of boundary disputes and animal trespassing often depend on statutory terms, although anthropologists unfortunately do not explore this avenue fully enough.

The trespassing of animals has been a common source of conflict which appears in the ethnographic literature since the studies of Redfield. However, many of these studies did not consider the "legal" aspects of the formal codes in describing and delineating "owner's" rights implicit in such situations.

¹¹The actual texts are reproduced in their entirety in the appendix, for reference.

Another recurring problem is water rights. The owner of lands on which there is a natural spring, or a well, or who decides that a dam needs to be constructed to retain rain water, has the legal constituted rights as to disposition of the waters if the lands below him are not precluded from equal use.

Inheritance squabbles over the partition of a deceased's property is a real concern among local inhabitants. There are basically two types of succession prevalent in Mexico. The first is testate (by will) succession. However, this type of succession is not deemed as important at the village level, so will not be discussed. Intestate succession, whereby title to property passes by force of law upon the death of an individual, is more prevalent. Herget and Camil (1978:59) write:

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

This discussion by Herget and Camil, is a very sketchy outline of the code provisions which could lead the reader to believe that no group surely follows this complicated set of divisions. Nevertheless, it will be seen that many of the ideas of inheritance of villagers are conformably to the codes. This is important in interpreting the role of de jure influence on village de facto practices. After the

elaborate division of property is accomplished, if the heirs do not wish to accept the provisions, then they may either renounce or institute legal actions.

As in most societies various marriage conflicts arise, especially pertaining to divorce. Failure to observe the rights and obligations that marriage entails often leads to separation and divorce, for which pertinent provisions in the appendix may be consulted for the de jure rules governing such actions.

Finally, civil responsibility for torts and crimes are fully described for Mexico. Important to the ethnographic survey are general principles of sanción pecuniaria as taken from Wheless (1938). Article 1000 explains the nature and extent of responsibility, while article 1001 describes persons liable for reparations.

These code specifics provide the necessary foundation upon which the comparative analyses will rely. Most later amendments to the Federal Penal Code have served primarily to expand the authority of judges, rather than to effect wholesale substantive changes in civil and criminal responsibility pertaining to individuals. Incidental legal provisions not alluded to above I will introduce in the survey as the need arises.

CHAPTER III

1920-1939

Introductory Comments

The structure of this and succeeding chapters will be to discuss and survey the literature on law by periods and types of offenses or conflict situations. The words "criminal" and "civil" offenses as categories are not employed in the technical connotation as common law scholars would employ the terms. They are utilized merely as explanatory devices for purposes of clarity to distinguish public and personal conflict situations.

This period in the development of Middle American ethnology was characterized by one or two major theoretical works which were to have lasting influence on later community studies in the region. It is generally acknowledged that the major figure representing this time was Robert Redfield. Redfield, along with Foster and Lewis, later were to form a trinity of scholars producing major topical and theoretical studies with methodologies utilized by hundreds of others. However, on the subject of law, their influence was not as complete as in other areas of anthropological inquiry. A primary leader of this latter field was later to become

Laura Nader and her students. Also, although scholars like Llewellyn and Hoebel (1941) and Gluckman (1955;1965) did not accomplish field work in Middle America, their influences were to be felt on studies of legal phenomena here, especially with respect to the utilization of trouble cases for analysis. Furthermore, studies pertaining to law were not to proceed at the same rapid rate as the areas and topics influenced by Redfield, Foster and Lewis. The paucity of such literature dealing specifically with law compared to those which only mention the subject in passing continued until a number of good studies appeared in the mid 1960's.

Beginning with this chapter, the existing literature pertaining to law will be surveyed and reanalyzed in terms of the data provided in Chapter II and the appendix. Any similarities and differences that exist will become evident as conclusions are drawn contrary to many scholars.

Criminal Offenses

Prior to the 1930's, little work of consequence was published that could be considered ethnographic in scope. Most of the earlier studies could be characterized as surveys of the cultural and material attributes of various peoples. For example, in 1907 Tozzer's The Comparative Study of the Mayas and the Lacadones was published; and in 1918, Gann's The Maya Indians of Southern Yucatan and Northern British Honduras appeared. These studies were of no theoretical importance. The same could be said for studies of the

1920's. However, beginning with the 1930's a change begins to appear. In 1930, Thompson issued the Ethnology of the Mayas of Southern and Central British Honduras. Also, in 1930 there appeared Redfield's Tepoztlán. In 1933, Taylor's ethnography of Arandas in Jalisco, Mexico, was added to the list. With a population of 27,624 in 1930, perhaps this study is out of the realm of this survey, but Taylor provides some summary remarks on the history of violent crimes in the area, especially in the 1850's and 1860's. However, for more recent situations, little was offered by way of analysis. In 1934, one of the first studies to deal specifically with one aspect of a town or village was published. That was McBryde's Sololá: A Guatemalan Town and Cakchiquel Market Center. Largely an economic analysis, McBryde provides some of the first descriptions of the politico-legal structure in a Middle-American community. That is where his analysis ends and nothing of importance on actual conflicts and their agents of resolution is provided. It was not until Redfield and Villa Rojas (1934) that some of the first "extended" discussions on conflicts can be found. Since extensive research has failed to reveal others, this will be viewed as the first ethnography in which actual cases of disputes were offered.

Chan Kom was described as a peasant village in the eastern part of Yucatan with a population of 251 (Redfield and Villa Rojas 1934:13). This monograph gives some interesting data on the existence of violent crimes. The authors' discussion was purely descriptive and offers little

on the social process. Apparently, "criminal" assaults by a man against his wife were common breaches of social control (Redfield and Villa Rojas 1934:62). Such offenses were reported eventually to the municipio officials. This was apparently done, however, after a formal complaint was filed with the comisario, an elected village official (Redfield and Villa Rojas 1934:62). The usual result short of any sentencia on the part of the authorities was for the offended spouse to leave the home. She removed all of her personal property and took with her any children that existed (Redfield and Villa Rojas (1934:62). Given the rights and obligations arising from marriage this departure by the wife with her property and children is allowable under the Civil Codes as translated by Wheless (1938). Upon leaving the place of domicile, without a divorce, the wife can manage or dispose of her own property as she deems appropriate.¹² (Redfield and Valla Rojas 1934:62) do make clear that in some cases of adultery (although by no means a common occurrence), the wife would be forced to forfeit all rights to personal property upon abandoning the patrimony. Such a forfeiture differs somewhat from statutory provisions, but is typical for standard Mexican Civil actions.

In Chan Kom, the government:

...represents an adjustment between traditional notions of political organization and leadership on the one hand and the provisions of recent

¹²See article 198 in appendix.

Mexican and Yucatecan statutory law on the other (Redfield and Villa Rojas 1934:102).

These scholars thus indicate the structure and function of local government in Chan Kom represent an adjustment between the de facto (informal and customary) and de jure (formal and constitutional) conflict resolution.

Likewise, for example, the comisario is an elected official of the community who possesses judicial powers in specific offenses. His functions are only specified through statutory provision, but what Redfield and Villa Rojas (1934:102) describe as the "folk tradition" enters into many of his decisions.

Such a use of discretion does not represent a sui generis situation. In most legal systems, judicial officials are able to function (and this is often assumed under the law) somewhat apart from the literal terms of a specific statute. In other words; while it was contrary to established Hispano-Roman legal doctrines for a judge in Middle America to arrive at a judgment through avenues other than those described in statutes, since 1931 this has been changing to allow traditional concerns to be considered.

The comisario functions:

Within the village he is a paternalistic judge. He lectures gossips, attempts to compose disputes, decrees the amount of and sees to the enforcement of punishment for adultery, for wife beating (without reasonable cause), or for disorderly conduct, and imposes damages to be paid by the owner of destructive animals. (Redfield and Villa Rojas 1934:103).

In essence, therefore, the actual function of the comisario is not so very much unlike a district judge in Mexico. Not

only do statutory concerns play a role, but personality factors also are important. This would include the personality of the Chan Kom official and those of the accused. This, in reality, is how a higher judicial official would function.

When death occurs as a result of a homicide, a different approach is taken by the inhabitants of Chan Kom and its elected officer of the law. A case involving a murder is always referred to higher authorities (Redfield and Villa Rojas 1934:105). Although the authors do not clearly state this, it could be assumed such a serious breach of social conduct is taken to the district because the "folk tradition" or customary rules have not historically been able to resolve murders, thus exacerbating an already tenuous social situation. Such could lead to a lack of confidence among villages toward their duly elected official, because in the past the incidence of murder was low or practically nonexistent. Hence, there would have developed few precedents in traditional legal practices to enable the people of Chan Kom presently to handle such breaks in the status quo. As a result of this lack of experience in resolving such disputes, higher authorities could be seen as the only viable way to restore the status quo ante.

Redfield and Villa Rojas are accurate in implying the comisario is really a "broker" or middleman between Chan Kom and the higher authorities. This would substantiate any claim that statutory provisions are functional at even the lowest recognized constitutional level in Mexico, in this

case the municipio libre. In fact, in the absence of the ayuntamiento, the comisario would be the only legally constituted authority between the village and the state because Article 115 of the Constitution does not allow for any other official intermediate between the two governmental entities (1917 Constitution of Mexico, Article 115).

In essence, in order for the comisario to function adequately in a capacity of "cultural broker" between the village and the State, his presence and function must be legally recognized. Some degree of de jure recognition is needed. As a result, this would tend to support any contention that the differences between procedural and substantive methods in dispute resolution are not as extreme as many later anthropologists would have the reader believe. Given the nature of the comisario's role with respect to State authority, it becomes obvious that many ideas and practices will be adopted at the village level.

This may be further illustrated. The comisario does not represent the only legal level available to the Chan Kom resident. Redfield and Villa Rojas (1934:104) explain:

The assertion of legal right may always be pushed beyond his authority into that of the municipal, state and national governments of which, as everyone is perfectly aware, Chan Kom is a part.

As mentioned above, cases involving extremely serious breaches of normal conduct that can not be adequately accommodated through traditional means are sent to the judicial authorities in the cabecera (or probably even to the district).

Parsons (1936) reports there are three basic offices which handle judicial affairs in Mitla. These are the presidente, regidores and alcaldes. In less serious offenses, the presidente and regidores are given the socially recognized privilege of imposing pecuniary sanctions or periods of physical confinement (Parsons 1936:157). The alcaldes, on the other hand, function in more serious disputes. Parsons (1936:157-158) writes:

The alcaldes have juridicial and religious functions. They are responsible for the arrest of criminals in cases of theft, assault, and murder, reporting to the court at Tlacolula. They register formal separations and are to register legal divorces.... They alcaldes survey inherited land that is to be divided among the heirs or disputed land when boundary stones have been tampered with.

In Mitla, like Chan Kom, cases involving deaths due to murder are given to District authorities to handle.

There is an interesting prevalence of certain disputes not mentioned to any degree for Chan Kom, the existence of crimes committed under the influence of liquor. Such offenses appear to be fairly common in Mitla (Parsons 1936). What is important here is that Mitleños are apt to excuse any offense (including homicide) that can be established as the result of inebriation. This pattern of excusing a crime caused by a state of (involuntary or accidental) drunkenness falls within the stated provisions of Article 996 of Mexican law as stated by Wheless (1938).

What is important from the short description provided by Parsons, like the situation in Chan Kom, offenses

which have been labelled as criminal are resolved by higher authorities in the District. Parsons is not nearly as clear as Redfield and Villa Rojas on specific offenses, rendering conclusions tentative. Implied in her brief statements, however, is the belief that de jure and not de facto resolutions are more functional in resolving serious delitos. And for disputes not as serious to the status quo, the alcaldes certainly are similar in function to the comisario of Chan Kom and higher officials which have statutory provisions at their disposal. Given the abbreviated nature of Parsons' discussion, it is difficult to conclude more.

In 1938, Bernard Bevan wrote on another region of Oaxaca. In the area of Oaxaca where this survey is reputed to cover, the major judicial officials are described as being the presidente and the alcalde with the presidente responsible for most civil cases (Bevan 1938:73). Not much of substance is offered in this work, but a somewhat idealistic picture is provided of the area. Bevan (1938:73), for example, reports that there is very little crime and "practically no robbery". One or two points of comparison can be deduced from what the author provides, despite such statements.

The popularly elected head of the villages of this region is the presidente municipal (Bevan 1938:71). This official is reputed to be responsible in reporting to the presidente of the cabecera who answers to the State officials. This would imply close contacts are maintained

between the lowest levels of organization and the highest. Given the meagre information provided by Bevan, it is nevertheless, possible to hypothesize the situation is analogous to that of Chan Kom and Mitla, and serious offenses are resolved through de jure (or statutory provisions) of the State. Bevan does not offer any information to the contrary and there is substantiation from the lack of knowledge exhibited by the author on the articles of the 1917 Mexican Constitution. Article 115 states:

Each Municipality shall be administered by a council (Ayuntamiento), elected by direct popular vote, and there shall be no intermediate authority between this body and the government of the State (1917 Constitution of Mexico).

Under this article it would be impossible for the village authority to report directly to the District authority who then reports to the State, as reported. Given the situation as stated by Bevan the District authority would represent an intermediate stage between the village and the State, which is unconstitutional. Correctly interpreting the Constitution, it is conceivable that the village elected officials report directly to the State on matters of importance. By thus removing this intermediate stage, it is even more logical to assume that various ideas associated with State control would be more likely to be present at the village level (i.e., procedural and substantive rules of conflict resolution). Hence the situation as illustrated by Mitla and Chan Kom is more likely to be existent.

Civil Offenses

Other conflicts that show heavy influences of higher authorities and statutory provisions are in the area of civil offenses. A common area of dispute in Chan Kom in this category are conflicts arising out of inheritance. Redfield and Villa Rojas provide a number of examples illustrating the types of conflicts that arise relating to rules of succession. Most examples of succession appear to be intestate; at least, the authors do not often make mention of testamentary problems. By comparing Articles 379, 380 and 382 of Wheless, it becomes apparent that both similarities and differences present themselves in relation to the practices in Chan Kom. Upon the death of a spouse there is no partition of property (Redfield and Villa Rojas 1934:62). The surviving spouse assumes control of the property and under the provisions of the Civil Codes regarding rights and obligations contracted at marriage (Article 196) is responsible for the care of the children (Redfield and Villa Rojas 1934:62). Apparently, the only situation which allows for the total division of property is when both husband and wife are deceased. When this situation occurs, a relative with the recognized right to intercede receives the property. The statutes defining intestate succession are not strictly adhered to. One aspect of the code which does occur is when succession by descendants takes place. In such a situation, inheritance is through equal partition (Redfield and Villa Rojas 1934:63). This certainly follows the provisions of

Article 380 for succession. Another area of Chan Kom life having a similar counterpart in the statutes is where a widower is not legally married to another woman. This could fall under the category of concubinage in the statutes. If the woman has children by the man and has resided with him for at least five years, there exists rights to inheritance (Article 384 of Wheless). In such cases if the second partner does not manage the property adequately, the children may bring a formal complaint in order to assure division of the land (Redfield and Villa Rojas 1934:63). The authorities of the municipio preside over the disagreement. A case Redfield and Villa Rojas (1934:63) gave in their monograph is partially presented, as follows:

Thus, when Anastacia Dzuz refused to hand over a part to her dead husband's son, on the ground that he was married and able to take care of himself, the son brought a complaint before the authorities of the municipio in order to force his stepmother to turn over to him three cows and a milpa from his father's estate. He showed that his mother's new husband was consuming the property...

The sentencia (judgment) is given as follows:

In the village of Chan Kom, municipio of Cuncunul, Valladolid, on the second of July 1925, at four o'clock in the afternoon there appeared before the comisaria in my charge, Santiago Yam, Tranquilino Yam and Maria Isadora Yam, all children of the deceased, Marcelino Yam, making known that they are the legitimate heirs of the deceased; likewise Maria Hilaria Pat, the widow, made known her right to a part of the goods in view of the fact that she had lived and served some years at his side; both parties entered into arrangements making known the part to fall to the share of each. Finally they reached a friendly agreement that: of the 150 mecates of cleared land 50 were to go to Sra. Pat and 25 to each one of the four children; the allotment of a horse remaining pending a second meeting was fixed for the

tenth so as to arrange this definitely. It was likewise agreed that of the 120 canastros of maize, more or less, 30 fall to Sra. Pat and the remainder to the four children; with this the meeting ended, and this document was caused to be signed by the authorities and the parties concerned.

This case illustrates interesting points. The first is the extreme formality indicated in the language of the case. It is undeniably clear that Mexican de jure influences affect village de facto procedures. Furthermore, the practice of transaccion (compromise) as formulated in the Mexican Codes is indirectly operative in the preceding case (Wheless 1938: Articles 582 and 583). It becomes obvious formal aspects of dispute resolution are easily adopted by local inhabitants to fit their legal needs. There are too many similarities in substance and procedure to argue that these elements are merely adapted to an existing "folk-tradition."

Land and the various conflicts associated with it are also a prevalent theme in Chan Kom (Redfield and Villa Rojas 1934: 164). Boundary disputes and trespassing of animals are important sources of conflict. According to the Agrarian Law of the period, an individual possesses patrimony only when he resides on the land (Redfield and Villa Rojas 1934:66). Upon death or emigration, the land is to revert to community use. This idea has its antecedents as far back (and probably further) as the Aztec, as discussed in Chapter II. Although the statutes are explicit on ownership and property, Redfield and Villa Rojas (1934:66) imply that inner-village land disputes are handled within the municipio by the adult males of the village. Not enough

examples were provided, however, to offer any definitive conclusions as to the relationship of the state and federal government to local customary legal practices in the area. If the disputes are not too disruptive it is probable the village does not bother the state authorities with them; but, if they are of a more serious nature they are probably handled like murder and are referred to the higher authorities.

Family disputes do not receive much attention in the Chan Kom study. The problem of wife beatings had been mentioned. Regarding divorce and dissolution of legal marriage, Redfield and Villa Rojas (1934:98) assert:

Divorce, in conformity with statutory law, is a novelty; so far as it is used, it is a man's remedy; no woman is likely to take the initiative.

If true, the woman, nevertheless, has recourse under the law to remedy the situation. As with wife-beatings, the spouse may leave the home with full pecuniary benefits. Although reported cases are apparently rare, divorce still is performed with regard to statutory requirements.

Parsons' study on Mitla is not nearly as illustrative on civil offenses as the Chan Kom study. Although property and family disputes were mentioned, enough information is not provided for even limited conclusions. She does imply that in most matters of civil concern, the presidente, alcalde and regidores function in their resolution. If Mitla is as analogous to Chan Kom on civil torts as on criminal matters, then it would be safe to presume that in matters

like divorce, statutory concerns will overcome any traditional or customary practices. Such probably would also be the case in boundary disputes between villages, in the interest of avoiding feuds.

In summary, there are few studies in this period that deal with law. The only major work of the period that discusses conflict resolution is Redfield's and Villa Rojas study. These authors also provide one or two examples of cases to indicate the nature of various disputes (i.e., inheritance). It does become evident from the Chan Kom study, and to a lesser degree, from Parsons' and Bevan's research (despite the so-called "folk-traditions" which permeate much of the social fabric at the village level), there was an increased reliance by the inhabitants (primarily of Chan Kom) to resort to more formal (de jure) methods of resolution. This is especially evident in the resolution of "violent" or serious breaches of social conduct.

CHAPTER IV

1940-1959

Introductory Comments

After the previous period characterized by the epic study and field work of Redfield, the years from 1940-1959 witnessed an increase in the number of volumes being published of theoretical and methodological importance. It was during these years that Lewis and Foster were to join with Redfield in producing works that were to set the pace for Middle American ethnographical analyses up through the present. Although Redfield could represent the genesis of Middle American community studies, he continued to be an influence in the fluorescent period with additional research. But, more important for this survey, is the increase in the number of studies dealing with law and the maintenance of the social order. These legal descriptions (and they were only descriptive) were enhanced by the addition of cases of specific conflict situations illustrating my contentions. The influence of Llewellyn and Hoebel (1941) becomes quite evident. However, as was alluded to, the emphasis upon description produced ethnographies devoid of any professional analyses. This fact merely represents the general trend

(for other areas of the world) of the anthropology of law research. Another problem to be dealt with later in this study becomes evident in this chapter, in that the discussions on questions of law in this period were slanted toward the application of western notions of jurisprudential thought.

Two important positive aspects of the period material can be noted. First, beginning with Wisdom's (1940) study of the Chorti, more ethnographies begin to appear dealing with peoples other than those of Mexico. Secondly (and this is still of major concern), very few works have been done by native Middle American anthropologists until altered to a degree with a publication by de la Fuentes (1949).

Legal Structure and Criminal Offenses

The first monograph to describe law in more than a few sentences was by Wisdom (1940). It certainly was not the only work which begins this era on Middle American studies. Also appearing in 1940 was Foster's Notes on the Popoluca of Veracruz, which is of no importance to this survey. The research of Wisdom's ethnography was undertaken off and on in the years of 1931, 1932 and 1933 and does not represent data based on continuous habitation as a participant-observer among the Chorti.

Wisdom (1940:229) states that the Indians do not possess an indigenous political system. This factor is present:

...although the government of the Republic, under the control of the Ladino population, has imposed one upon them for the last three centuries or more (Wisdom 1940:229).

Despite the close proximity of a dominant political hierarchy, Wisdom emphatically asserts the Ladino structure has no influence on Chorti political and social institutions. The problem with such a view (referred to in Chapter I), is one cannot separate political structure from legal structure. In essence, if no political organization was present at the Chorti village level then they had no law. Of course, such an idea is totally incongruous. This assertion of Wisdom is interesting because his research was undertaken during a period when new ideas of looking at law were beginning to appear in works such as those by Llewellyn and Hoebel (1941). So, the point in time of Wisdom's remark really cannot be attributed to the period in which he wrote, as is commonly done by historians of anthropology when criticizing an anthropological idea.

Wisdom (1940:235) does offer a qualification to what he wrote earlier, as follows:

The progressive Indians and Ladinos, however, turn to the juzgado in every difficulty and are constantly reporting trivial and imaginary complaints.

At any rate, the form of government of the area described for the Chortis is characteristic of the Middle American area in general. This is the so-called civil-religious hierarchy, written about in many studies and so notarized that further description is unnecessary. The reader is referred to Pedro Carrasco (1951), for an excellent historical

description of this factor. The primary judicial officers of the Chorti are the alcaldes in the pueblo. In the municipio are housed the juzgados who represent the official agents of the State (Wisdom 1940).

Crimes of physical violence (against the person) are reported as being fairly common. Included in this category are inter- and intra-familial feuds over questions of land (Wisdom 1940:257). Wisdom (1940:257-258) further remarks:

Feuds may be kept alive for many years before being finally settled, either by physical violence or by sorcery. In either case, the contending families act as units, the aggrieved family attempting to cause physical or magical harm to other in its most vulnerable spot. It makes no difference whether the final victims were the cause of the feud in the first place,...; if they are members of the offending family, any harm done to them by the offended family helps to settle the score.

Obviously, the above passage indicates formal judicial authorities are not relied on in such cases. Instead, supernatural sanctions are a primary agent of conflict resolution in situations such as family feuds. However, this fact becomes interesting when viewed from the perspective that if a situation like a feud is not adequately resolved within the mechanism present at the village level, then state authorities will be requested by the alcalde to force a settlement. Wisdom (1940:235) noted:

Often the alcalde does not hear of a dispute until the families involved have been fighting and casting black magic upon one another for some time, upon which he requests the comandante to send several soldiers to the aldea to bring in the family heads for consultation.

It becomes obvious, given the conflicting nature of Wisdom's

ideas, that the role of the Chorti political organization with respect to the state (Guatemala) was not clearly expounded. The ambiguity from the statements on the lack of a native political organization on the one hand, and the presence of a civil-religious hierarchy on the other, necessitates a careful interpretation of Wisdom's analysis. Certainly, the remarks regarding supernatural sanctions versus the forced resolution of disputes deserved more discussion.

It must be concluded from Wisdom's obvious lack of background on the nature of law that the discussion on the Chortis cannot be considered final. A follow-up study on these peoples would be most desirable to ascertain the role of informal resolutions vis-à-vis the constitutional provisions that came into being during the 1940's (specifically the 1945 Guatemalan Constitution).

It is suggested that Wisdom would probably find a totally different picture, more fully in tune with the situations reported by other authors for Guatemala. From Arévalo's regime onward, the rapid integration of the Guatemalan Indian communities into the mainstream of Guatemalan national life was very rapid. To assume that de facto conflict resolutions would continue indefinitely as viable methods apart from de jure methods, is unrealistic and difficult to believe. In other words, although sorcery as practiced by the Chortis may have historically been a primary way of handling minor conflicts, the campaign by Guatemalan officials to bring the Indian under national control would (even

if not wholly successful) lead to a gradual adoption of more "formal" methods of conflict resolution.

The fact that prison sentences are reported by Wisdom (1940:258) adds credence to this rationale, to contradict the main thesis of his analysis that traditional modes of handling conflicts are preferred. Data to support Wisdom's contention in this regard are, unfortunately, not provided, making acceptance of his propositions more difficult. Wisdom might well have provided more data via case analysis or a statistical breakdown of specific offenses and their method of resolution.

Wisdom's approach is somewhat characteristic of studies on law in other areas of the world during this period. He sees the resolution of disputes as insular in terms of pueblo life, despite the rapid encroachments of ladino institutions into village social boundaries. The problem of employing only informants, as Wisdom did, is self-evident and need not be further elaborated.¹³ Wisdom's obvious lack of knowledge of law as a process and his lack of supportive case material makes his analysis only tenuous at best. Customary mechanisms may seem more preferable from the perspectives of the Chorti themselves than de jure methods for dispute resolutions; but, I suggest that these traditional methods are not functional to the degree postulated by Wisdom.

¹³See Chapter I for problems relating to the utilization of this method.

By 1947, an increasing number of ethnographies begin to appear. Oliver La Farge's (1947) study is an example. In many respects, La Farge echoes some of the ideas reported by Wisdom. Regretably La Farge does not discuss legal questions in any detail. The point is made, however, that Indians in the Department of Huehuetemango, Guatemala, play a very superficial role in the operation of the government. La Farge (1947:14) adds:

To the average Indian, even when elected to office, the national government is extremely remote and has a nebulous, almost mythical, appearance. He has very little, if any, direct contact with the government, except as mediated through local officials.

La Farge's brief statements on government could be interpreted in the same vein as Wisdom's remarks on law, that traditional institutions are deemed more desirable. The fact that public officials act as middle men between the Indian and ladino segments, however, would again more likely indicate a reliance on de jure mechanisms.

Also in 1947 appears a publication by Fred McKim. This study follows in many respects Wisdom's approach, with one difference, McKim (1947:42-43) specifically states that only minor breaches of social conduct are handled by the local "chief". Interestingly, no mention (beyond self-help methods) is provided of the mechanisms of resolution in more serious cases. Hence logic dictates that the codes and statutes of Panama in this aspect play the dominant role.

Ralph Beals (1946) provides actual cases to support his discussion. The major structure of Cherán political

organization is the ayuntamiento whose members are elected by the adult males of each barrio. There is more than one judicial official who, like the ayuntamiento, are elected for a specified number of years. The mayor functions in the resolution of petty offenses, like theft (robo), intoxication and less serious assaults (Beals 1946:105). Sentences range in severity from incarcerations to pecuniary sanctions. Another important official functioning as a judicial officer is the síndico. This dignitary is required to "investigate" more heinous delitos. After any required investigations are completed, formal papers are prepared and presented to a judge who presides over minor disputes (Beals 1946:105). Beals (1946:105-106) writes:

He may order brief imprisonment or fines, which are paid to the treasurer, but all serious cases are referred to the district court at Uruapan after a preliminary hearing. This is particularly true of murder cases or serious crimes.

There is a major contradiction in the preceding remarks. Since the síndico functions as investigator in serious crimes and forwards a formal report to a judge who handles only minor offenses, it would appear the síndico functions nearly as a procurador in the investigative phase of a Mexican criminal trial.¹⁴ Therefore, there must be some degree of official recognition or serious cases (like homicide) referred to Uruapan would necessitate reinvestigation conforming to Mexican penal law. Such is unlikely since to do so would involve dealing with events which may have long since

¹⁴See discussions in Chapter II.

been covered over. It is more likely those serious offenses, as reported by Beals, are really minor offenses which are investigated before being heard before a Cherán judge. Serious cases are probably referred to the district officials without any lengthy intermediate investigative stages. The point is the implication in the Cherán study is that de jure institutions are relied on more often than is assumed by scholars of this period for other areas.

David Stout's 1947 study dealing with the Cuna of Panama is worthy of discussion. Among the villages of the San Blas, it was reported that a chief is the recognized authority (Stout 1947:301). This individual, elected by the minor village chiefs, has lifetime tenure.

The maintenance of the social order is described by Stout (1947:30):

Cooperation among the individuals of each community is maintained through the principles of reciprocity, ridicule and guilt; the man who does not contribute his share in community enterprises is not given help when he needs it, and may be made the subject of an allegory based on the myths and legends at a 'singing' meeting, and thereby be publicly shamed, and if a person's transgressions are violations of the mores, he is guilty of sin and likewise becomes the object of a sermon by the chief.

He further, adds:

Murder is rare and is cancelled out by the family of the murdered person killing the murderer. Injurious assault is likewise handled by the family of the injured person, who demand a payment... If boundary disputes cannot be settled by the arbitration of friends, they are brought up in a talking meeting and arbitrated by the 'interpreters' or the advisers. Older men, who know the histories of the properties involved, are consulted and, if the dispute still cannot be settled the arbitrators

themselves mark a new boundary and allot half of the land in question to each disputant (Stout 1947:30-31).

These passages represent traditional mechanisms of conflict resolution. Presently, an intendente in control of the San Blas intendencia is responsible for resolving the more dangerous offenses which disrupt the social order (Stout 1947:30). As a result, the codes and statutory provisions of Panamanian law become functional. In an analogous situation, Stout is more realistic than Wisdom (1940) and McKim (1947). The close proximity of Indians to the dominant ladino institutions would necessarily preclude any major differences between de facto and de jure mechanisms of resolution, thus allowing for the eventual adoption of the latter into village life.

Foster (1948) wrote a seminal monograph in Middle American community studies. Tzintzuntzan is described as a municipio under the control of the State (Foster 1948:176). It also has, unlike any of the other villages described thus far, a cabecera (governmental seat). The ayuntamiento is the ruling organization (Foster 1948:178). The presidente elects the judges, who reportedly preside over the juzgado menor municipal (Foster 1948). Foster (1948:179) describes judicial disposition of crimes against the state, as follows:

One judge theoretically is charged with law violations, or crimes against the Government, while the other handles crimes against individuals. In practice each judge functions in both capacities for 6 months, and then takes a vacation for the remainder of the year while the other sits in office.

As in Beals' account for another Tarascan area, Foster (1948:

186) states that the juzgado menor municipal handles delitos deemed minor in scope (i.e., fighting and public intoxication) with the more "serious" crimes being referred to Pátzcuaro. Both of Foster's and Beals' analyses center around disputes like inheritances.¹⁵

In 1949, de la Fuente published an interesting monograph. De la Fuente (1949:239) wrote:

Yalálag es comunidad cuyos habitantes recurren con frecuencia a sus propias autoridades en demanda de 'justicia' y cuyas autoridades tienen que intervenir (a veces mal de su agrado) para castigar hechos delictuosos.

Later statements make it fairly clear that he is referring to local authorities (de la Fuente 1949:247). This study is somewhat typical of others in that de la Fuente offers an idealistic picture of a dearth of certain offenses. Cases of robo or hechos de sangre are described as being rare, which, as will be seen in later chapters, deviates from reports by other authors for the area of Oaxaca, Mexico.

The major point to make regarding Yalálag is (despite the presence of local authorities) the people of this region still rely on the state and the federals on specific occasions. De la Fuente (1949:247) states:

Intervienen también las del Estado y aún las federales, éstas por medio de su ejército regular, que envía patrullas o destacamentos a Yalálag y la comarca, no con mucha frecuencia, cuando han ocurrido disturbios.

Aunque la ley formal delimita la jurisdicción de los presidentes y los jueces...

¹⁵Inheritance disputes are treated in detail infra in the next section.

Despite the informal nature of proceeding before the local authorities, state derived de jure procedures also play a vital role in the functions of such village officials. The fact that they may not be relied on with much frequency does not diminish the functional de jure authority (directly and indirectly) in the region of Yalálag.

The year of 1950 provides legal anthropology with only one of the few needed follow-up studies in Middle America. This was by Robert Redfield (1950). Redfield (1950: 25) tells us:

...Chan Kom has changed its physical aspect from that of an Indian bush settlement to that of a Spanish town.

With the advent of the regime of Lázaro Cárdenas and the constitutional recognition of the municipio libre, Chan Kom is seen as having undergone major alterations in its social and political fabric. For example:

It is not in the family, not in the organization of the people of Chan Kom as they carry on their immediate affairs, that a new formality or a new impersonality is to be recognized, but in the institutions that have come into being as a result of the fact that Chan Kom has become first a pueblo and then the seat of the entire regional municipality (Redfield 1950:84).

The justice of the peace and the presidente function now to resolve conflicts that includes all minor offenses (Redfield 1950:85). Now, in Chan Kom, Redfield (1950:88) implies serious conflicts are passed on to district officials. This is illustrated further by Redfield (1950:85-86) in the following passage:

The comisario of 1931 went about persuading,

adjuring, and exhorting; he looked into disputes within families and strove to compose them by counsel and warning, if afterward by punishment. Today one does not see any local officer so functioning.... A citizen's difficulties in getting along with two women in his household, a man's complaint against his wife for adultery--these were matters that concerned the old comisario and concerned him as an informal leader. Today there comes to the municipal president such matters as the law of the state and the nation declare should come before him. The judge is literate and consults a printed summary of the laws.

In short, Redfield makes it clear that de jure resolutions have now become more functional in Chan Kom than reported¹⁷ years earlier. Such a study would have profound implications on research pertaining to the anthropology of law for the region. Those anthropologists who could be said to have modeled their descriptions after those of Redfield and Villa Rojas of 1934 would probably alter their earlier ideas on conflict resolution if follow-up studies were done. Certainly, Wisdom, for example, would have made different statements about the Chortis. Those studies discussed previously were done prior to major constitutional changes in the respective countries. This is important when critically interpreting these monographs because what Redfield observes for Chan Kom is directly the result of specific constitutional (de jure) provisions. Similar changes would have had to occur in Guatemala with the overthrow of Ubico and the enactment of the 1945 Constitution of Guatemala.

Donald Brand (1951) continues the Michoacán accounts. Brand (1951:102), regarding the Quiroga municipal political organization, writes:

The municipality governs itself according to the regulations provided by the State Congress, in conformity with the modified National and State constitutions of 1917.

The administrative structure of Quiroga is similar to that proposed for Cherán and Tzintzuntzan discussed earlier and needs no further elaboration.

Brand, like Redfield, did not provide much in the way of case analyses. However, believing his observations were correct on de jure aspects of social control, cases were not necessarily needed for comparison of state procedures with those at the municipio level. In fact, by comparing Article 695 from Wheless, it becomes further obvious that the system described by Brand is the Mexican system. For example:

The lowest order or unit of justice in the state of Michoacán is the alcalde or judge in the tenencias and the two jueces menores (formerly alcaldes and jueces de paz) in the municipal capital.... Cases may be tried in this court which do not result in fines of more than \$300 or jail sentences of more than six months. Cases may be appealed to the court of first instance in Morelia (to which judicial district Quiroga belongs), but apparently many cases are carried to the juzgado de primera instancia in Pátzucaro (Brand 1951:117).

In short, Brand's account does not necessitate any comparison between informal and formal levels of dispute resolution because such distinctions are not relevant to Quiroga.

Gilllin (1951) offers an interesting account of political organization and the role with respect to Indian and Ladino interests after the Ubico dictatorship in Guatemala. San Carlos is a Guatemalan municipio (cabecera) of a department (Gilllin 1951:69). In essence, the political organization is the basic structure previously described for Mexico. Regarding the political structure Gillin (1951:69) asserts:

A discussion of social structure in San Carlos inevitably merges into an analysis of political structure. On the Ladino side of the caste line, political organization and social organization are theoretically independent and ideally phrased in the 'secular' mode of modern democracy. On the Indian side of the line the social, political, and religious systems are inextricably intertwined.

As to the rights and duties of the municipio the Guatemalan Constitution is remarkably similar to the Mexican. Gillin (1951:70) cites Article 201 of the 1945 Guatemalan Constitution:

The municipalities are governed by autonomous municipal corporations, presided over by one or various magistrates. The corporations as well as the magistrates are elected in a direct and popular form.

and Article 204:

The organization, functioning, and duties of the municipal bodies and of their members are subject to law (Gillin 1951:70).

Like Mexico the Guatemalan municipios and their officials function within and alongside procedural and substantive national law.

Gillin contends, however, that the Indians of San Carlos possess their own more informal judicial authority. These are said to be the Principales (Gillin 1951:73). These adult males, six in number, attempt to deal with community disputes before their referral to Ladino civil authorities (Gillin 1951). At the time of Gillin's study, the Principales may have been important, although the situation in Guatemala probably resembles the situation described by Redfield for Chan Kom in 1950. The rapid literacy programs proposed under Arbenz, and more importantly Arévalo, for

the complete integration of the Indian into national life no doubt rendered the positions of these informal San Carlos leaders over social control tenuous at best. As Gillin (1951:71) pointed out, having councils predominantly composed of Indians was not totally effective because they were viewed as not sufficiently knowledgeable in Guatemalan law to act as a major political force.

With rapid literacy (by no means complete), the Indians undoubtedly achieved a greater awareness of the national laws and the benefits that could accrue. Even by adopting these laws into their own system, the Indians of San Carlos could maintain a degree of ethnic identity by utilizing them to serve their immediate purposes. This would undoubtedly lead to a class of Indian "lawyers," "brokers," etc., thus making obsolete the function of the principales. Even Gillin (1951:73) states the principales are not now recognized legally to function as political, social and religious institutions and their influence is somewhat "shadowy".

Another study of Guatemalan community was done by Ruth Bunzel in 1952. In this account, the discussion of law is somewhat superficial, although there are one or two points deserving comment. The titles of the officials are somewhat different from those enumerated previously by Gillin. For example, there is a Ladino alcalde which, as Bunzel (1952:171) contends, was present since 1932. The function of this official is described as follows:

The Alcalde is both executive and magistrate. He is a lower court for adjudication of minor disputes between Ladinos, or in which Ladinos are involved. These concern largely collection of debts, property damage, minor theft, and the like, and public misdemeanors like intoxication, disorderly conduct, violation of market regulations (Bunzel 1952:172).

One interesting difference between Mexican law, as practiced in most Mexican villages, and the situation described above by Bunzel is related to intoxication. Under Mexican law drunkenness itself (or crimes involuntarily committed while under alcoholic influence) are not legally considered as offenses. This appears to be an unascertained cultural deviation.

The Indian judicial officials are described by Bunzel (1952:174) as the alcade primero and segundo and are depicted as representing a degree of Indian autonomy. It is important to note despite this degree of independence attributed to these officials, they still make use of de jure procedures, characteristics of the Ladino sectors, in investigating minor conflicts. One of these procedures is the filing of a formal report in behalf of a victim before any subsequent proceedings can be implemented (Bunzel 1952:175). This definitely is a practice from statutory law, modelled after the Mexican example.

Bunzel (1952:175-176) continues by describing further functions of the Indian alcaldes:

Young people are frequently punished by imprisonment on the complaint of their parents, for theft, sexual offenses, drunkenness, disobedience, and filial neglect. Complaints of adultery or desertion may be brought by the injured spouse or his or her

parents.... Cases of homicide, if they occurred, would be tried in the Ladino Courts, in Santa Cruz, Quiché. But most of the affairs with which the alcaldes have to deal are property settlements, arrangements in divorce, inheritance, boundary disputes, collection of debts, and the like.

In terms of procedure Bunzel (1957:176) adds:

The plaintiff appears with his witnesses. Messengers are sent for the defendant who comes with his witnesses. The testimony of all is heard by the assembled alcaldes, regidores and secretary. Although it is the First Alcalde who hands down the verdict all present, including the secretary, are given an opportunity to express their opinions. After all have been heard, the Alcalde announces the decision. These hearings are held in the Juzgado, and are public.

The regidores summon the defendants in all complaints, and their witnesses. They go to the cantones to find individuals whose presence is required. They also take evidence in the cantones from local inhabitants, visit disputed lands with the principal of that place or others who know the circumstances. Frequently the Regidor settles such disputes on the spot, or else reports his findings back to the alcalde....

There is much litigation over property; but there are remarkably few cases of violence or open theft.... The authority of the alcaldes is backed up by strong supernatural sanctions.

The above passages were quoted from Bunzel because they offer some notable examples for comparison. Despite the informal aspects of village social control (i.e., supernatural sanctions), many formal procedures are abundant in both procedural and substantive law.

Adverting to Mexico as exemplary of Guatemala and the rest of Middle America, Article 421 of Wheeler states that acts resulting in damages are the responsibility of parents or guardians. In cases involving children, where the authority vested in patria potestas would be considered

too limited, recourse to official mechanisms for resolution and control would be necessary. Even though there is no statute specifically stating that parents must issue formal complaints against their children, maintaining the social equilibrium of the community may dictate that parents (notably the father) vary a basic procedure to initiate such a complaint. Such custom not only indicates to other villagers that the cause for conflict is being addressed; but also, indicates with respect to the law that the parent recognizes he is indeed responsible for the actions of his children.

A second comparison pertains to cases like homicide. That these are reported to the Ladino officials indicates that Indian customary law is not sufficiently structured to effect viable resolutions.

In terms of procedure, there are a number of striking similarities too numerous in number to be representative of anything other than de jure influences. One, the regidores obviously function like the Mexican procurador and police, in collecting evidence at the investigative stage of the Mexican trial. Furthermore, as Murray (1964:256), interpreting the codes, states:

To initiate their proceedings, the Public Ministry or the judicial police shall go immediately to the place of the acts in order to attest (dar fé) as to the persons and things which have been affected by the criminal act. They are required to obtain data from those who were present by procuring their declarations at the place of the act, if it is possible, and if it is not possible, by citing them to appear within a period of twenty-four hours to render their declarations.

These similarities between Mexican procedure and those of the officials in Chichicastenango (regidores) is unmistakable. Bunzel's assertion of Indian autonomy cannot be considered too persuasive, given these analogies. This independence would have to be viewed in terms of the types of cases handled and the fact that they involve only Indian to Indian interaction. The fact that these authorities are aware of the formal law, and in fact practice it, is beyond doubt.

In addition, the functions of the Chichicastenango alcaldes, regidores and secretary bear strong resemblance to those exerted under the old three-judge tribunal (still very much in existence in 1952) of Mexico. As stated in Chapter II, this system did not change to a one-judge structure until the Penal Reform of 1971 (Kos-Rabcewicz-Zubkowski 1974: 244). The fact that "trials" are public, with only the three aforementioned officials pronouncing sentencia, lends even greater credence to de jure influences. In addition legal reforms prohibit the public from actively participating in the proceedings (other than as observers). This is illustrated by Murray (1964:281) and appears to be representative of the situation described by Bunzel. Furthermore, the way witnesses are summoned and their roles in the Chichicastennango proceedings are indicative of State derived procedures. In Mexico, the accused is allowed to present his/her witnesses on his/her behalf during the trial stage.

To reiterate, Bunzel's insistence on Indian autonomy in the resolution of disputes must be considered in light of

the many similarities between the Mexican model and the Guatemalan village of Chichicastenango. This independence is seen as limited and not particularly important to me in terms of the comparative examples provided. The only areas seen as representing total Indian autonomy are in the types of conflict involved and the fact that the Indians have their own officials to resolve them. Beyond that, Indian autonomy weakens and state influence supersedes.

Fisher (1953) provides one or two points worth considering in this survey. Fisher (1953:76) argues:

But the community, self-centered though it may be, is usually not unaffected by the outside world. One of the most important connections with it is that of law and political authority. However, unless these are redefined in terms of village life, they are preferably avoided, including their agents such as politicians, public health officials, and school teachers. They, as any stranger, must first be fully integrated into community life before suspicion is lifted.

Fisher's study differs from other studies of the period (e.g. Beals and Foster). It should be mentioned that the major judicial authority in the village is the president of the comisariado ejidal (Fisher 1953:100). This official is depicted as a political officer who gains his strength from the laws developed by the state. Fisher implies that he does not always command respect. In performance of his duty, "legal" decisions are often met with resistance and reprisals (Fisher 1953:100). The author provides an example of how the villagers perceive state law as an institution of distrust:

In one of the villages a son of an established family was accused of rape. The girl's family demanded that he either marry her or pay 3,000 pesos in settlement. As neither of these alternatives was accepted, the law was called in, and the son sent to jail. It was the feeling of the boy's family that a less expensive arrangement could be made with the law official once the son was in jail, than with the girl and her family. This was the case. According to the boy's father 1500 pesos were paid to an official in the state government, and release was secured. No stigma was attached to the son's exploits with the law; in fact, his father proudly introduced him to a newcomer, announcing that the son had just returned from jail (Fisher 1953:100).

A number of points bear comment. First it becomes obvious that some sort of transacción (compromise) was worked out.¹⁶ That a civil action arising from a crime can be compromised is provided for in Article 583. What is relevant is that some legal remedy must have been worked out or it would have been impossible to secure the boy's release from jail. Thus Fisher merely supports the claim that formal law was utilized; but, not in any sense a casual observer would recognize. A further contradiction is inherent from the case. Fisher (1953:100) argues that law is something to be avoided when feasible. However, when the initial criminal act was not resolved at the village level, it was referred to higher authorities and the son jailed. It was not until later that a compromise was reached leading to his release. Although state law is undesirable, the case indicates village

¹⁶Articles 582-583 in Wheless would indicate this could be a possibility. Certainly, the compromise mentioned above suffices to avoid or exacerbate a future controversy (as stipulated in Article 582).

authorities were unable to resolve the issue in its initial stages until resort thereto. It would appear that state law is most functional in that it brought about a settlement both the state and the villagers could support. This settlement definitely bears resemblance (at least as described by Fisher) to Articles 582 and 583 on transacción and would seem to indicate the method for resolving the conflict. Fisher's statements in essence are contradictory and need more careful interpretation.

Fisher (1953:100) writes:

This negative attitude toward formal law will not be surprising to one acquainted with the social structure of modern Spanish-American villages: typically featuring a group of informal village leaders who are heads of outstanding families of high reputation, old men, and trusted neighbors. Yet this pattern seems to be very poorly defined in the villages of the valley [Santiago Valley] compared with other parts of Mexico.

This remark cannot be taken as unique as to any place in the world; and certainly, offers a misleading picture of law as it really functions in this period. It is suggested that similar attitudes can certainly be attributed to "poorer" segments of United States society and does not demonstrate state institutions are less functional because of distrust or avoidance. In Middle America like the United States the existence of informal methods of conflict resolution today is subservient to formal mechanisms. By the 1950s this was already the case in Mexico, as reported by Beals and Foster. The relative inability of village authority to resolve specific types of offenses is evident in Fisher's own example.

In 1957, a number of papers were published in one volume by the Middle American Institute of Tulane, edited by R. N. Adams. The general work was entitled Political Changes in Guatemalan Indian Communities: A Symposium. Among the scholars providing papers are Robert Ewald, Gillin, Nash, Reina, Scheele, Siegle, Silvert and King, and Adams.

All of these studies followed a definite theme best exemplified by Adams(1957:49), who wrote:

...with the establishment of the decentralized government and the auxiliary political bodies, new lines of communication and influence were established between these higher entities and the local community.

This, however, was not without its problems, as Silvert and King (1957) imply for Coban. Adams (1957:51) adds:

In Coban the established Ladino-Indian socio-political system was evidently of such strength that the maneuvers of the national government and auxiliary bodies found it difficult to destroy.

The point these authors make (and it is a point extremely pertinent to my conclusions throughout) is that despite the traditional bonds that have existed between Ladinos and Indians in their relations to each other, changes in these areas are occurring at a rapid pace. More formal mechanisms of social control are being manifested. In areas like Chichicastenango (discussed earlier), the presence of informal institutions of social control may not have been completely destroyed, but their ability to operate beyond a token level has taken place. The fact that it is difficult completely to stamp out these traditional structures is not crucial. What is relevant is their functions have become so diminished

they can no longer function adequately in competition with formal procedures of legal control.

One final work deserves comment before a more extended discussion of civil cases. This is by Manning Nash (1958). This is a study of changing economic conditions, but there are a few pertinent remarks on law.

Nash maintains that the politico-legal structure of the village of Cantel follows the civil-religious hierarchy many writers see as typical of the area. He contends that, despite the industrialization that has occurred in the region, the frequency and range of disputes presented to the alcalde remain basically the same as those of the years before industrialization of the community (Nash 1958:137).

However:

The law and institution of justice was the adjustment of the 'tribal' community to the written law of the national entity [Guatemala] (Nash 1958:137-138).

A major problem with this description by Nash is that the data seems to come almost completely from informants. Discussing the actual practice of a legal system in past years poses obvious problems, if some sort of case analysis is not employed to substantiate claims from informants and/or actual participant-observation. For example, court procedure is explained in terms of a meeting of the parties involved in a dispute (Nash 1958:137). From the data Nash utilized to support this idea, it would be as logical to assume this activity probably entails what could be called

transacción or arbitration in Mexico.¹⁷ Such a hypothesis is based on the assertions made by Adams et al. of the changing political scene in Guatemala after the 1940's overthrow of Ubico. Nash (1958:137) adds:

Justice requires of the alcalde a great ability to sift the stories, to weigh the competing claims, to know the costumbre by which punishment will be meted out, and to convince his hearers that a wise and judicious calculation of the variables has been made in his decision. This is how justice and the notion of law operate in Cantel now and how they operated in the past,...

Although this could be a description of how this writer views Gluckman's notion of the "reasonable man," the basic idea behind the statement is a universal truth. This is how a "judge" in every society reaches a decision whether the laws are codified or not. So, the system of justice, as described by Nash, is by no means indigenous to Cantel and other so-called "traditional" societies. It is likely in light of the rapid industrialization of the region and the governmental policies on Guatemala in the 1940's, leading to a closer degree of interaction between village and state, that Nash's account is somewhat idealistic and does not completely (or accurately) depict the actual situation in 1958. This is an assumption based on the probable accuracy of statements by Adams and others in 1957, rather than those of Nash's informants.

¹⁷(Articles 582, 583, 767 and 768)

Civil Offenses

In terms of civil disputes (those not involving physical abuses to persons or property), only three of the aforementioned sources offer more than a sentence or two on the subject, namely Beals (1946), Foster (1948) and Redfield (1950). Most of the civil conflicts involve inheritances, which appear to be a real concern in Cherán and Tzintzuntzan (Beals 1946; Foster 1948).

Beals offers one or two examples of conflict related to inheritances. The presence of wills (testado) does occur in Cherán (Beals 1946:89). However, as in other areas of Middle America, succession is normally through intestado laws. Before death the owner usually makes property partitions by informing a friendly third party in the presence of "witnesses" or testigos (Beals 1946:89). Successions performed in this manner are usually expected to be upheld by the officials of the municipio (Beals 1946).

All of the examples of cases provided by Beals need not be reiterated. One or two will suffice in supporting my arguments of the relationship between de facto and de jure resolutions. Article 381 of the Mexican code states essentially that parents are to inherit equally if no children are survivors. Strangely the basic construction of this article deviates from the "usual practice" as reported by Beals. In Cherán, upon the death of a spouse (if no descendants survive), the wife or the husband of the deceased spouse receives no property (Beals 1946:89). In other words, this

person is not considered an heir in Cherán. So, although the people of the village follow the statutes with respect to procedures in intestate successions, the method of partitioning property differs. No reference could be found in the State Codes of Michoacán which would support a claim this is within the boundaries of state law or represents a situation unique to Cherán.

Other cases are more lucid, in any event, as to state influence on inheritance conflicts.

Beals (1946:89) reports cases wherein the man possesses less property than the wife and has no rights in this property except that of usufruct. In such situations, the man may obtain rights beyond usufruct if such rights are formally bound over to him (Beals 1946:89). The key word here is "formal." The same principles are codified and well within the parameters of state law as described in Article 198 by Wheless. The husband and wife have the right to manage or dispose of their personal property as they deem appropriate without the expressed consent of the other.

Other situations which may lead to inheritance squabbles include the following:

Cases were recorded where children had broken away from parental authority and had become established through their own efforts. Sometimes the elderly persons were cared for by a niece or nephew, or even by some person not related at all, who received all the property. Resentment is generally felt by the children, even though they have well deserved such treatment (Beals 1946:90).

Beals does not clearly state what becomes of this resentment. Probably, the children attempt to make a formal complaint to

the municipio authorities in an attempt to force a different partition of the deceased's property. As Article 388 states, any rejection of a decision must be made in writing to a recognized authority. However, the judge (or alcalde) is likely to rule in favor of the original partition because Article 340 by Wheless designates specifically those individuals incapable of inheriting, as:

9. the relatives of the deceased who was unable to work and was without means, who did not take him in with them, or have him taken into a charitable institution (Article 340, part 9).

If the parent was unable to work and support himself, the children have no legal recourse for a remedy in attempts to change the inheritance. Clearly the formal procedures as set forth in the statutes are adhered to by the officials in Cherán. Any deviation in the pattern can be construed as an exception and not the rule.

Another case was provided as an example by Beals (1946:90) on problems relating to inheritance, as follows:

...Augustín Ranguel's father bought a house from his own father. The grandfather died while the Ranguels were living in the United States, and a brother moved the house onto his land. The Ranguels returned some 27 years later and claimed the house, producing papers to show that it had been purchased. This was the first the brother had known of the transaction, and he was not only angry but refused to surrender the house until forced to do so by the municipio. This did not smooth family relations.

This case again illustrates conformity to statutory provisions. In essence, all of the cases and examples (with the possible exception of the first one) illustrate fairly well informal sanctions or resolutions are not relied on to the

degree of de jure resolutions. This can further be seen from Beals' (1946:90) assertion that all situations where inheritance is involved are required to be filed in the municipio offices, thus in strict conformity to the law.

Not all of the cases provided by Beals represent conflicts in succession. Other cases where no official "legal" sanctions resulted are mentioned. Before citing one or two of these, I feel constrained to mention that Beals himself admits to only discussing those cases which represent flagrant violations of the social order. Others said to incur supernatural sanctions evidently were not often relayed to him by his informants (Beals 1946:114).

An example of a minor violation of Cherán public order is as follows:

A woman was brought before the acting mayor (the mayor's alternate), charged with stealing a blanket from a man while he was drunk. The woman was accused vigorously by the acting mayor but denied the charge with equal vigor. Finally, the acting mayor ordered that she be locked up, and despite voluble protests against injustice, the woman was conveyed forcibly to the jail. The whole procedure seemed very high-handed, but when the woman was out of earshot, the acting mayor turned to me mildly and remarked that he would not have acted that way on the man's word alone but there had been two witnesses and there was no doubt of the woman's guilt. He was trying to frighten the woman into a confession and restitution of the blanket, with which he would be content to dismiss the case (Beals 1946:114-115).

Although Beals offers this case as illustrative of one in which no official sanction is imposed, such a result still is left up in the air. Although the procedures leading up

to the woman's arrest do not follow prescribed procedures, (as illuminated in Chapter II), there are certain elements indicating de jure influences. The most notable is the reparation to a victim. Article 1000 of the code specifically provides the rules regarding reparations, namely:

The reparation of the injury includes: 1. The restitution of the thing obtained by the crime, and if this is not possible, the payment of its price; and, 2. indemnization of the material and moral damage caused to the victim or to his family.

Hence the code is adhered to, or at least the content apparently known, by the Cherán officials. That Beals asserts there was no official sentencia is unimportant because individual variations in procedures and outcomes could deviate from locality to locality, within the statutory framework.

Family conflicts are also present in Cherán. One example of a typical case will suffice to illustrate this:

A boy stopped to talk with a girl of dubious morals. When he left, she followed him, saying she was going with him. The boy ran away and hid. Later in the day the girl's parents came to the mayor and claimed the boy had kidnapped the girl. The boy was ordered to marry the girl by a certain date. He failed to do so, as he wished to marry another girl and knew also that the girl laying the charges visited a house of assignation. He was thrown in jail. Later, his mother went his bond and he was released. The boy fled town and had not returned several months later. His mother was put in jail overnight but was released the next day (Beals 1946: 116).

Beals misses something in this case. Bad feelings would obviously result if the boy returns. Events could be exacerbated to the point some sort of retaliation on his part would be likely.

Despite the fact that Beals (1946) maintains Cherán law often involves cases where no official act results, elements of formalized Mexican law is evident in most of the cases. Beals unfortunately does not fully report the final results of those cases where no "legal" actions occur. Such information is important to ascertain the conditions in which resort is made to higher authorities. The importance of formal judicial authorities is seen in this final passage from Beals (1946:211-212):

Cherán is probably more influenced by Gary (Indiana, U.S.A.), Mexico City, and Morelia (possibly in diminishing order) than it is by Urupan and Pátzcuaro. Indeed, it is quite probable that fundamentally Cherán is more progressive, more in touch with the modern world, than is Mestizo Pátzcuaro with its conscious idealization of a Colonial past.

It is apparent that higher influences are a major consideration in 1946 Cherán when discussing conflict resolution even though Beals is not discussing the law, as such. It makes no difference legally whether Mexico City, Morelia, Urupan or Pátzcuaro is the area of greatest influence. All of these larger areas are influenced by the state which, in turn, derives its structure from the Federal Government. The total result from all factors provides a primary impetus in the village for the handling of disputes.

As with Cherán, Foster's description on Tzintzuntan is preoccupied with disputes regarding inheritance; but, Foster (1948:175-176) is more lucid as to the impact of the state on the resolution of inheritance squabbles. He writes:

In Tzintzuntzan itself, inheritance rules reveal

almost nothing of the earlier custom. A man dies either testado or intestado--with or without a will. In the former case, property is disposed of as the dead man has dictated. More commonly a man dies without a will, and the division of property may depend upon a number of factors. Often the deceased has told his family, preferably in the presence of a disinterested third party, who may be a compadre, how the property is to be disposed of. A common practice is to leave half the property to the widow and to divide the other half equally between the children, boys and girls alike. (Foster 1948:175-176).

Even considering the geographic boundaries of the state of Michoacán, and the distance between Cherán and Tzintzuntzan, it is difficult to believe too many differences exist between the two villages with respect to dispute resolution. They are similar in size and in the village politico-legal structure. I suggest Foster had a better awareness of Mexican law and was thus better able to see its presence at the lower levels depicted by Tzintzuntzan than Beals was able to do for Cherán.

The following aspects of a case are partially reproduced from Foster's (1948:186) account and illustrates the impact of the state legal procedures at the local level:

A local girl, now about 28, is known as 'The Volcano'.... Her uncle returned from the United States after many years, and brought a large sum of money with him. While looking for a house he lodged with her and her mother. She and another girl, according to the story, took a knife and cut the leather satchel in which the uncle had his money, taking \$2,000. They were taken to Pátzcuaro and put in jail, since the reported amount stolen was so great that the local court could not act. There they obtained a lawyer who 'fixed' things so that they were set free.

Implicit is the assumption that if the crime is too severe for a local court to act, then it is referred to the

district. This could mean one of two things. Either, the village body relying on more customary procedures is unable to act because it lacks the necessary experience for this purpose; or, the local judicial authorities are unable to act because the state imposes limits as to the seriousness of an offense for which any authority other than the district can preside. While the latter is more likely the case, it also is possible that a combination of the two could exist, as I have alluded to throughout.

In Chan Kom, property disputes are more damaging to the social order than those described by the preceding authors (Redfield 1950:60). For example, from Redfield (1950:60-61):

When the cattle of the other settlement, perhaps a settlement hated for its power and success, break into a milpa and eat a man's corn, what is a man likely to do?

In 1948, four men of such a backward settlement were arrested and brought to Chan Kom and there convicted, on their confessions, of killing for meat the cow of a well-to-do resident of another settlement. The conviction of these miscreants and their removal to the penitentiary in Merida were received with immense satisfaction. When a representative of city authority told the people that Mexican law permitted the owner of a cow or a sack of corn to shoot, and to kill, a thief caught in the act, this information passed rapidly from one to another--and was received with expressions of high approval. 'Now property is respected'.

The articles in Mexican law that support the above are Articles 421 and 996. Owners are responsible for the damages done by their animals and the protection of property excludes an individual from criminal responsibility. That both these ideas are followed is evident in the above case.

To conclude, this chapter has clearly demonstrated from a number of typical cases the impact of state law, although scanty data has necessitated certain obvious assumptions. Interestingly, in these studies where definite de jure influences exist, it is clear that there are more such cases proportionately than reported for the 1960's and 1970's. This seems incongruous because the reverse should be the case, given the national attempt at integration of local levels into the dominant political culture of the representative republics. One explanation for this, as will be seen, is due to more in-depth processual analyses of a variety of legal levels (i.e., supernational sanctions, public opinions, etc.) not detracting from my basic premise.

CHAPTER V

1960-1969

Preliminary Comments

The 1960's is a period of increased interest in topical studies of Middle American communities. These range from political interests to social, economic, religious and ethnicity, and to studies on national cultures. However, like the years already surveyed, the studies specifically concerned with the anthropology of law did not substantially increase. Nevertheless, the works that did occur in these years are largely of high quality. Most notably were the papers by Nader and Hunt and Hunt. Nader (1964; 1965) was and is a very influential figure on Middle American dispute resolution and her utilization of the case method definitely shows the impact of Llewellyn and Hoebel (1941) and Gluckman (1955;1965). Hunt and Hunt (1969) also are noteworthy in that they analyzed dispute resolution from the words of dispositions from a higher court in relation to a municipal court. These scholars represent one major influence on the positions presented in the present survey. Nader's descriptions were largely of community "courts," with

little comparison to higher tribunals except in a superficial way. Actual processual accounts were still few in number, but tended to increase by the mid-to-late 1960's. Another important facet of the studies of the 1960's is the "multiplicity of legal systems" theme characteristic of the writings of Pospisil (1967). Even though "legal pluralism" is not unique to this period, the monographs and other papers of the era discuss it in more detail and attempt to delineate more fully the viable functions of de facto resolutions. Furthermore, the legal pluralistic approach which combines descriptions of de facto as well as de jure methods of dispute resolution often obscures and distracts from my primary conclusions; namely, de jure dispositions of disputes are more functional in a modernizing Middle America.

This chapter will cover the studies from 1960 through 1969. Although the Nader work represents multiple papers over several years, they will be treated together to facilitate coherent treatment. Most of the works surveyed in this chapter cannot be treated as those previously. The division into criminal and civil offenses is not appropriate because the case analysis, if present, does not allow such. So, this chapter will describe the publications as one category.

Court Structure, General Remarks
and Specific Offenses

The survey of the 1960's will begin with Charles Leslie (1960). Although this cannot be described as a follow-up

study in the sense of Redfield's work of 1950, Leslie's account does restate and summarize many of Parsons' ideas presented for Mitla in 1936. Like Parsons', Leslie's summaries of the earlier work and his own remarks are too broad to permit effective comparative analysis. Leslie (1960:26) describes conflict in the following terms:

... in Mitla all conflicts were particular, the personal affairs of individuals. To be sure, there were always some disputatious people who caused trouble--that was human nature, they reasoned--but, unlike people in other towns where there were social divisions, Mitleños were not characteristically this way.

Although Leslie (1960:55) does not provide the reader with an extensive description of Mitla political structure and social control, a major conclusion drawn from the study is that there are no truly functional institutions for handling serious breaches of societal conduct. Furthermore, the book centers around conflicts concerning violence, apparently seen as a preoccupation of the inhabitants of Mitla. As reported by Leslie, the attitude town people possess toward violent offenses reflects upon their ideas regarding villagers and outsiders. For example:

... a man was murdered while working in the fields of his Mitleño employer. Although he was living and working in Mitla, townspeople said that he was not a member of their community....

The murdered man was said to have been himself a murderer who had only recently returned from taking refuge in the mountains. When his enemies heard that he was working in Mitla they ambushed him. To our acquaintances all of this simply proved how bad people in other communities were (Leslie 1960:29).

The above passage is representative of how Leslie illustrates

Mittleño's perceptions of criminal offenses as "particular." Parsons, according to Leslie (1960:31), saw the above in terms of a reliance on traditional Indian beliefs and the supernatural controls an "enemy" can utilize against a person.

Such is a common subject in anthropological analyses of Middle American communities, but, the idea does little to fully explain general social phenomena, let alone conflict resolution. Leslie (and Parsons) conclude if a dispute could not be resolved through arbitration at the village level with a concomitant fine or period of incarceration, the dispute would be considered too serious to be resolved by village authorities. In essence, both of these scholars are proposing that if a dispute is considered too serious to be resolved through compromise, the village authorities will not ask outside officials to settle it (Leslie 1960:33; Parsons 1936).

It is evident this type of analysis is totally inadequate in its implication, presupposing the situation would not exacerbate to a point where retaliatory actions would likely occur. To maintain the status quo ante, some means of resolving major disputes (i.e., homicide) must exist. I would suggest given the many studies on communities in Oaxaca up to the present, the probable course of action is through the higher authorities in the district (and not, as Leslie implies, that the matter is merely dropped). Furthermore, the implication is evident in both Leslie (1960) and

Parsons (1936) that local authorities do not have the socially recognized privilege of acting in serious conflicts.

If this interpretation is not correct and this privilege is present, then the only other possible conclusion is that experience has not been sufficiently developed through the years to resolve serious delicts to the social order. As a result, they are not functional and de jure dispositions must be sought, an entirely plausible hypothesis when considered in the light of Leslie's analysis.

Both Leslie and Parsons evidence a lack of complete understanding of the Mexican legal system in the 1930's and late 1950's. The following quote further substantiates their reports are totally unlike the Mexican legal system as it is really practiced after the 1931 reforms to the Penal Code (Cantu Leal 1968). Leslie (1960:34) states that:

Townspeople were careful to avoid involvement in violent disputes because they recognized that there were no effective ways for controlling violence in their community. Individuals were not protected by the institutional machinery of criminal law. They believed that what little criminal law there was in the region was capriciously enforced by city people who possessed almost no understanding of or sympathy for their way of life. Secure only within his circle of kinsmen and friends, a townspeople looked out upon a dangerous world.

While this view is that of the Mitleños, Leslie still implies this is why there are no institutions to resolve crimes in the area. In point of fact the view Leslie gives, provided by Mitla informants, does not explain anything except attitudes of distrust and desire not to use higher authorities. This does not preclude the use of these de jure

authorities.

The idea that Mitleños are reputed to harbor is similar to those attributed to poor Blacks and Hispanics in this country. An even more relevant example would be the beliefs based upon years of experience with dominant authority evident among American Indians in the United States. Despite pessimistic attitudes, recourse to the courts is becoming greater each year. And, if the accounts of others in Oaxaca are any testimony of current affairs there, Mitleños did and are doing the same thing.

It is important to realize, as Cantu Leal (1968) asserts, the new 1931 reforms to Mexican Penal procedure attempted to remove much of the "impersonal" aspects of criminal procedure and have been successful. Instead of relying solely on statutory provisions, as indicated in Chapter II, more personal (subjective) criteria were afforded to judges in arriving at sentencia. In essence, more of the traditional Indian notions of justice were adopted to meet the Indian needs, to a degree. In addition, Leslie's (1960:34) appraisal of Mitleño attitudes that there is no way to keep violent actions under control, could be correct. What is not likely, however, is that this is sufficient cause for not relying on the courts. Such would represent a certain lack of understanding of the theoretical basis behind criminal procedure in Mexico. The system attempts to "rehabilitate" and not "punish," and Mitleño attitudes must be appraised in this light. Keeping a lid on violent actions is not the primary

role of the courts, but of the police authorities (specifically, Federal troops).

In summary, Leslie's (and Parsons') postulation of Mittleño behavior, indicating no existing viable mechanisms for the resolution of serious offenses to the social order, represents a situation contended to exist nowhere in the world. Especially is this not true for areas of rapid integration of a subordinate culture into a society run by a dominant group. Leslie's discussion (as patterned after Parsons), is archaic in scope and unacceptable in content. In fact, I must contend that, although the Mittleños attitudes are interpreted correctly, the belief proposed of no viable institutions of justice to resolve conflicts is a non sequitur, because Mitla is still a functional community.

Another 1960 monograph was by William Madsen. This study represents an analysis of a village in the valley of Mexico named San Francisco Tecospa (Madsen 1960). The officials of the village are elected and generally are characteristic of those described throughout this survey. The "Mayor" is the primary judicial authority and presides over conflicts not considered as serious, perhaps "civil" in nature. More dangerous situations to the social equilibrium of the village are referred to the district for resolution (Madsen 1960). The range of cases handled by the "Mayor's" office include animal trespassing, troublesome drunks, fighting lovers, etc. (Madsen 1960:105-107). One or two examples of how cases are resolved will suffice in explaining his approach.

For example:

Many cases brought before him Mayor involve trespassing animals. When the doctor's goats raid a neighbor's garden, the neighbor appeals to the Mayor, who renders a judgment. If the owner of the marauders refuses to pay for the damage, Campos can send him to jail in Milpa Alta (Madsen 1960:105).

Clearly, the "Mayor" in this example follows the procedure defined in Article 421 of Wheless. Furthermore, the jail sentence imposed for failure to pay damages is found in Article 1000 for a violation defined in nature and extent of responsibility.

Another example was provided by Madsen (1960:105-107):

Crop thieves from out of town must be caught red-handed before they can be sent to jail. The Witch told me thieves from Tecomitl had robbed his cornfields but there was no use going to Campos because the villains got away. 'If I ever catch them in the act, I'll kill them,' he said. 'If you kill them, you kill them, that's all'.

The above illustration is similar to one provided by Redfield (1950). It is important to note de jure principles are strictly adhered to. To kill a thief caught in the act of robo is deemed as legal under Article 996 when such an action excludes an owner from criminal responsibility.

Even though Madsen's monograph provides only a superficial discussion of law, it evidences formal procedural and substantive aspects most important in the resolution of disputes, despite the presence of informal legal levels (i.e., supernatural sanctions).

Rubin E. Reina's (1960) study on Chinautla does not

offer much on specific discussions of law; however, one or two comments are noted to substantiate the argument for the importance of national legal structures at local levels.

Reina (1960:65) reports:

In the Constitution of 1945 several articles dealing with the relationship of Indian to Ladino aimed to break down the rigid social stratification based upon 'race', and unwritten privileges of the 'superior' group.

Reina (1960:81) further elaborates when he states the Indians of the area now commute to the city (Guatemala City) regularly to utilize political, economic and social advantages not available in the village, undoubtedly consulting with lawyers to work out problems of conflict.

Reina (1960:90) describes the procedure after the apprehension of offenders:

They [police] take offenders to the municipal judge (the alcalde in this case), and later to court in Guatemala City.

It is readily apparent from these brief passages Reina recognizes the dominant role of formal judicial practices at the local level. The general political pattern described certainly concurs with those of other scholars for Guatemala, specifically Adams (1957).

Reina's 1966 study should also be surveyed at this point. This work deals with Chinautla, a village which mimics the traditional Spanish settlement pattern (Reina 1960). The author offers a number of examples of how conflicts are handled, especially as to inheritances. In Chinautla, as with Bunzel's (1952) Chichicastenango, supernatural sanctions

function as an important legal level. I conclude from Reina (1966:268) that this level is not directly relevant as an agent of sanctioning; but rather, supernational sanctions can be imposed to "force" compliance on the part of the villages to the sanctions imposed by the other legal levels.

Reina (1966:45-46) provides a number of cases which can be representative of successful conflict resolutions. A representative case from one of his informants partially reads, as follows:

...When his father died, all property was inherited by his mother because the children were small. The informant, who was the oldest son, reached the age of twenty, at which time he was entitled to act as the head of the household; at that point his mother decided to make up a legal title in his name. The mother's legal arrangement had two purpose: (1) following the primogeniture pattern, it would make him feel responsible for the economic welfare of the family, ...; (2) it would provide greater security for her as she did not plan to remarry and expected that her son, once he owned land, would marry according to her selection and bring a good potter as a wife to live with her.

The informant was acting in the role of father to his younger brother, ... Within this family, inheritance has not been a problem because of the mother's strong desire to exert complete control over the family (Reina 1966:45-46).

Since the Guatemalan codes and Constitution of 1945 are patterned after the Mexican model, it is obvious formal procedures are most functional at the village level.

Reina's book provides further examples of specific conditions whereby higher authorities or their agents are utilized by the Indians in achieving desired legal ends. A further example involves the cutting of trees on public

lands (Reina 1966:69-70). The various laws pertaining to Forestry Departments makes the cutting of timber on public lands or reserves forbidden. In Chinautla, this poses a special problem because trees are needed to maintain a declining charcoal industry (Reina 1966:69). The problem, which he correctly recognized, is that the felling of government owned timber is likely to be surreptitious event. As a result, it is difficult to cite specific cases (Reina 1966: 71). In order to meet the demands that charcoal production requires, Reina argues that the Indians have developed methods of utilizing the law for the purposes of achieving a number of desired ends. With the aid of a literate lawyer, the Indians of the area present their claims to higher judicial authorities, probably serving the purpose of maintaining a degree of ethnic identity (Reina 1966:71). In other words, they manipulate various legal symbols (i.e., de jure judicial procedures) as a mechanism to maintain ethnic boundaries (in a Barthian sense) and also to achieve economic ends. The utilization of legal symbols for ethnic identity would be very important in areas where rapid integration by a dominant culture over a numerically inferior one is occurring.

The actual role of external judicial authorities can be seen in another passage from Reina (1966:263):

The individual course of intimate human relations in Chinautla is characteristically uneven, but to keep it within some sort of bounds, there is the law. Chinautlecos will seldom settle their disagreements at home. Hoping that there may be a legal way to control another's 'bad' behavior, they usually prefer first to take their personal grievances before the mayor, who by virtue of his role as justice of the peace is in charge of the control of behavior through the legal system.

Another case of de jure resolutions reads:

An Indian couple, the history of whose poor relationship was well known in the pueblo, was observed in conversation with the mayor in the town hall. The wife, who was very upset, was accusing her husband of beating her severely. The husband was fully aware of his wrong-doing, but stated that the wife had punished their son that very day without his consent and that he had therefore become angry. Because the law stated that a wife should not be beaten, the husband was sentenced to a fine of \$5.00 or ten days in jail. After the mayor passed judgment, the husband stated that he would beat his wife again, regardless of the law, were she ever to beat their son. The mayor said to his secretary:

I don't blame him. I would do just the same, because children should not be punished, pobrecitos. But if a woman takes care of her husband, ... the husband has no right to punish her. If owing to a bad temper, he beats his wife, she has the right to come to me. Because I know the good reputation of this woman, the husband will be severely punished.

I will always give advice to the parties and I will let them know that the law punishes such behavior....

If a husband is a passive drunkard and his wife complains about it, I cannot apply the law unless the husband becomes mean with the family. Then the wife can come and tell me about it, and the law will protect her.... (Reina 1966:265).

The above case and remarks of the judicial authority deserve comment. First, the mayor is obviously acting in compliance with national law. In fact, Article 215 of the Mexican model would indicate that the husband's actions could ultimately lead to a divorce if the wife desires to pursue it. Most assuredly, a similar decree exists in Guatemalan law. Even more important is the behavior of the mayor in resolving the conflict. As stated in Chapter II, Middle American judges are now allowed to employ both objective and subjective

criteria in their decisions. Prior to the 1930's, this right was not legally recognized by the national codes and statutes. After 1931, Mexican influence in this practice is common throughout the area. That the practice permeates all levels of de jure authority is illustrated from the preceding case.

Finally, one more passage deserves mention regarding the differences between Indian "mayors" and Ladino "mayors" in Chinautla. This pattern of duality is common throughout the region. Reina (1966:267) contends the severity of sentencia on the part of these authorities is different. In support of this he postulates that:

Indian mayors are not impersonal, and their severity is sufficiently different to indicate that Indian mayors understand and practice justice in terms of the Chinautlecan concept of the term. For the Indians, justice is related to the concept of costumbre. A person who does not understand Chinautleco costumbre will apply the law according to the legal code, but it may not conform to the local concept of justice (Reina 1966:267-268).

Traditionally, the above may have represented an accurate picture. As I have urged the incorporation of many traditional Indian practices into the state judicial procedures has occurred and such an account merely typifies Indian attitudes and not actual functions. Although Reina observed ambivalent ideas regarding ladinos I feel this is not relevant today. In the resolution of disputes for the purpose of maintaining a status quo ante, (with the incorporation of many concepts from traditional legal levels) the predominant legal level in operation in Guatemala is a de jure conflict resolution. Informal mechanisms, like supernatural sanctions, habladurías back biting, etc. (as reported by Reina) are not

of primary importance in the rapidly changing political system of Guatemala.

Oscar Lewis was a prolific writer of the 1950's and 1960's. While Lewis' theoretical and methodological contributions are legion, and have seen volumes published on them, they are not particularly helpful to the subject matter of this survey. Only the 1951 and 1960 books will be briefly considered. Tepoztlán is a village in Morelos, less than ten miles from Mexico City. The village is both a municipio and cabecera (Lewis 1951; 1960). Although Lewis, like so many of the scholars surveyed to date, does not provide any extended analyses of Tepoztlán legal levels, there are a few ideas that deserve mention. Lewis (1960:43) writes:

Other Federal Agencies which directly or indirectly influence the daily lives of Tepoztecos include the Department of Health, the Department of Agriculture, the Department of Indian Affairs, the Department of National Economy, Gobernación, and the Federal Supreme Court.

The village political hierarchy is characteristic of all those described thus far; namely, an ayuntamiento composed of a presidente, síndico, regidor, police official and juez (Lewis 1963:222; 1960:48). The roles of these officials are described by Lewis (1960:48) in the succeeding passage:

The duties of the major officials are determined by state law. The president is the executive officer and the official representative of the village in its contacts with the outside. His signature is necessary for most correspondence and official acts, and he fixes the fines imposed for infractions of the law. Some of the villagers also bring their private difficulties to him--quarrels between neighbors and between husbands and wives, and litigations over property, and so forth.

The examples provided above recognize Lewis' awareness of state derived influences in the area of Tepoztlán.

A further example of Lewis' cognizance of the importance of state derived legal levels can be provided from his discussions on inter-village land disputes. In the 1951 Tepoztlán research, Lewis was able to illustrate this as a source of major concern to community inhabitants. Lewis (1963:117) writes:

The people of San Juan disregarded the prohibitions of the local authorities and appealed their case directly to the national government. The dispute was bitter and lead to some violence. It was finally settled by the intervention of federal authorities, who ruled in favor of the municipio.

Some may argue given Morelos' close geographical proximity to the Federal District, such influences would be unavoidable. As one moves farther away from the Federal District's centralized control, differences will begin to appear in varying degrees until at some farthest point from the capital the traditional mechanisms of social control are the primary agents of conflict resolution and authority. Such was my tentative hypothesis. The data, however, does not conclusively support this proposition.

The centralized governments of Middle America now see their influence radiating outward, resembling the spokes of a wheel, to the most remote areas under their dominion. In essence, Tepoztlán is typical of any other village of the region in the presence of formal controls.¹⁸

¹⁸There are many areas in Mexico that could be viewed

Paul Friedrich's (1962) work on Tarascan homicides is significant. Homicide, as discussed by the author, is described:

The word 'homicide' has been used throughout... to avoid both the technical legal meaning and the pejorative connotations of the term 'murder' (Friedrich 1962:327, footnote 15).

The nature of the paper does not provide much for comparative analysis, and merits only a brief comment. The nature of Friedrich's analysis is somewhat psychological and does not discuss homicide in terms of an offense judicially. Instead, his context is the increase in revolutionary activity and the resulting political factionalism that results (Friedrich 1962). Nash (1967:469) states that:

The cases analyzed by Friedrich are a strategy of political power stemming from a revolutionary background, and the cultural assumptions to which he points contrast with those underlying witch-killings.

I must again note political homicide as described by Friedrich was committed primarily by agrarian leaders within the framework of political factionalism. The attitude of the Tarascans themselves are indicative of why these "killings"

as not receiving many influences from the federally derived structures. Those regions in the north which could be considered "frontier" areas would probably be minimally affected in terms of their legal systems. Groups like the Seris, Huichols, Tarahumara and Cora could conceivably fall in this category. However, these groups are out of the realm of this survey. Furthermore, the fact that a large percentage of people inhabiting the regions under discussion now would consider themselves as Mexicans, Guatemalans, etc., as well as Tepoztlans, Chinautlecos, etc. adds credence to arguments supporting the claims for de jure superiority in the resolution of disputes at the local levels in Middle America (Lewis 1960).

are allowed to continue. Very simply, the Tarascans' attitudes regarding death are a "contributing cause for the acceptance of homicide" as a socially recognized mechanism for retaliation (Friedrich 1962:316, n. 5). The only aspect of Friedrich's account which can be compared to the national legal codes pertains to the killing of a thief who is caught.

Tarascan homicides seldom are reported, and therefore, do not become the concern of high authorities. I feel the only possible reason is because these political "killings" are relatively few in number. To assume otherwise would prompt the conclusion that state or federal intervention in the form of troops would occur, as known to happen in Mexican local affairs.

In addition, Friedrich (1970) indicates in his book that the Tarascan area has a history of land disputes stemming from the various Agrarian land laws passed from Juárez' period on into more modern periods. Although in the 1880's Friedrich (1970:26) contends most social control was exercised by informal agents (e.g., kinship heads), by the 1920's formal mechanisms of dispute resolution were most functional. This importance of de jure levels can be seen from the following partial passage from Friedrich (1970:95):

Together with financial support and human organization, Primo and his Indians depended on due process of law for their success. As has been shown, Naranja, an indigenous pueblo, had been deceived and deprived of its lands by a patent misuse of the Juárez laws. The enlightened efforts of Joaquín de la Cruz and of Juan Cruz in Tarejero had proved futile because of a legal technicality--the original titles to the land could not be found and, without them, it was impossible to start legal proceedings.

Another point is, that he talks in the collective sense of Tarascan. In reality, Friedrich is talking about a village called Acan and surrounding areas and to assume that the characteristics described are typically Tarascan, as implied, is unwarranted. Certainly, the studies by Foster, Beals, Brand and others mention little support for the activities proposed by Friedrich.

Hermitte's (1964) research on a Tzeltal Maya community in Chiapas offers some important data. Although Hermitte's account is concerned with informal mechanisms of social control (i.e., "supernatural" sanctions), her study is indirectly important to this research. Hermitte (1964: 11) recognizes that de facto agents of maintaining social equilibrium and Mexican de jure levels are both operative in the community observed. Nevertheless, it must be emphasized that little data (extended case analysis) are provided to support any arguments that these informal social control agents are functional in other than the most "minor" of conflicts. In other words, Hermitte does not give much information to discount the thesis of this survey; namely, de jure levels of social control are more functional in Middle American communities.

Hermitte (1964:233) argues that an official statutory legal body is not particularly necessary in resolving disputes. It is not my contention that this is not the case in less serious breaches of societal norms. However, in more

heinous offenses, such de facto agents are not so functional. I suggest that an extended case analysis of "criminal" activity would support this proposition.

Hermitte (1964:231) further asserts any condition where law and order is lacking is non-existent because "supernatural controls" are so functional. However, the types of conflicts discussed by Hermitte are not likely to exert an overly disruptive strain on community social order. It is offenses of a more "physical" nature (i.e., homicide, assaults, wife beatings and robo) that are more likely to be most socially disruptive, and formal judicial levels are most apt to provide the necessary social control in such breaches, as has been adequately documented in my study.

I do not discredit Hermitte's contentions of the presence of informal "supernatural" mechanisms of resolving conflicts, only that these de facto agents cannot adequately deal with offenses described in Anglo-Saxon terminology as felonious. The central importance of de jure mechanisms for dispute resolution can best be supported by Hermitte's (1964: 12) belief that the community observed has never really been an insular entity. Contacts with "foreign" influences has always been present.

Another point in Hermitte's work deserves brief comment. She maintains that one function of relying on "supernatural" agents of social control (i.e., witches) is to assert a degree of "Indianness" (Hermitte 1964:237). This is probably true, although it is as conceivable that utilization

of formal judicial controls serve the same function. I propose that the use of the Mexican de jure structures would indicate to Ladino authorities that statutory provisions are adhered to, resulting in less governmental interference in Indian affairs, and allowing degrees of "Indianness" to be manifested. Certainly, the argument proposed by Hermitte (1964:238) that Ladino officials are unaware of an abstract Indian "supernatural government" would be of little consequence. As Hermitte (1964) implies, the Indians in a low-status position are likely to be discriminated against in a formal court of law. Attempting to maintain ethnic boundaries, nevertheless, would not stifle resort to de jure agents in compliance with statutory provisions.

Probably one of the dominant forces in Middle American studies on the anthropology of law is Laura Nader. Nader (1964; 1965) has written a number of papers on law in the area but only one or two will be surveyed as representative of her points of view. Her works include a study done in conjunction with Duane Metzger (1963). Nader's accounts, based upon extended case analyses, attempt to show that legal pluralism is the basis of legal behavior in the areas studied. She endeavors to show that the people of Oaxaca (Zapotec) and Chiapas have recourse to many levels of dispute resolution.

The characteristic officials indicative of local-level Middle America are present; namely, presidente, alcalde and síndico (Nader and Metzger 1963; Nader 1964; 1965).

In their comments on Oaxaca and Chiapas, Nader and Metzger (1963:586) state two primary agents of dispute resolution are the village and family courts. The differences between the two regions are not relevant here. With respect to the three officials of authority in the areas studied, Nader (1964:406) mentions that:

All three officials have the right to prosecute, judge, and enforce the verdict with the aid of the policia.... With the aid of these police officials the court may readily seek redress in a situation where a party has not complained.... Neither party to an argument need have complained.

The above passage would, at first glance, seem to indicate a deviation from accepted Mexican legal procedure. For example, a formal complaint usually has to be filed before a case can proceed through the trial phase. However, in cases of flagrante delito, complaints are not necessary (Murray 1964:256). Under Mexican law, cases involving abduction and rape (rapto v. estupro), insults, defamation, slander and simple "blows" only can be processed upon a petition on the part of the victim. So, the offenses Nader uses (i.e., pushing and shoving in a market place) definitely fall within the limits stipulated by Mexican law.

Nader (1964:407) reports that Ralu'a possesses three primary agents that can offer resolution in a dispute. The mechanism chosen depends upon factors as age, sex, status, class of dispute, etc. (Nader 1964). The legal agents are the village court, family and supernatural sanctions (Nader 1964:407). However, in the 1964 paper her examination of the village court is most relevant. For example:

June 1, at nine o'clock in the morning, José Hernandez and María Chávez appeared before the president. Both are citizens of this town by birth. A complaint is brought against José by María because of the irregularities with which José administers his home: (a) economically José has his wife restricted; (b) he frequently arrives home late and in a drunken state, pesters his wife, and frightens his young children; (c) he has illicit relations with other women. The Municipal Authority is asked to intervene energetically in order to correct his arbitrary behavior.

The defendant, in answer to the first complaint, said that the money that he gives to his family is exactly what he makes as a day laborer and that for him to give his wife more than he makes is not possible. As for the second complaint, he confessed that it is true that upon certain occasions when he meets a companion he has felt obliged to take a few alcoholic drinks but that he never arrives home in a dishonorable condition. Finally, he asserted that he does not have illicit relations with anyone except his own wife, unless this may be called illicit.

After investigating the case, and after long discussion, it was proved that in actuality he does spend a certain amount of money on vices, that when he is drunk he has been known to threaten his wife according to information given by the neighbors, and thirdly that he does have illicit relations with various women. The defendant was ordered to pay a 50-peso fine to the court. He promised in the future he would support his home in better fashion, and it was stated by the president that should he ever be caught with some other women he would be punished, as would his lover or lovers (Nader 1964: 407).

Despite admission into evidence of gossip, hearsay, etc., the de jure aspects of testimony at a village court are visible. Despite the fact Nader (in the above example) is not talking about divorce per se, the offense for which the wife accused the man is not condoned. For instance, drunkenness can exclude an individual from responsibility in certain types of offenses (see Article 996). However, in family

cases in which such behavior continually leads to conjugal disagreements, drunkenness cannot be used as an exclusion. It ultimately could lead to divorce in addition to pecuniary sanctions (See Article 215).

The use of hearsay evidence as an example of informal procedures in the Nader village court is not necessarily a clear-cut de facto mechanism. Rules of evidence in Mexican criminal procedure allow a number of presumptions to be entered into the record. Many de las presunciones would appear to include testimonies that approach hearsay (as used by Nader). Furthermore, virtually all types of evidence are acceptable in a Mexican trial. Herget and Camil (1978:85) wrote:

While evidence is normally not excluded from the record (unless it is present previously or for bad reasons), the weight given to different kinds of evidence is accorded formal values by the code of criminal procedure.

In essence, an informal aspect could be more formal in purpose and meaning than is assumed by Nader's case alone, representing another in a long chain previously mentioned as exemplary of de jure substantive and procedural law.

Nader (1964:408) writes:

The process by which judicial decisions are formed in a court is a complex one involving biases of one sort or another in any culture. Judicial decisions may be based on strictly legal data, ... Or they may be based on adventitious factors, such as the inebriated state of the judge, or on personal factors, such as mutual dislike between judge and one or both of the litigants.... Finally, decisions may be based on a concept of justice. Among the Zapotec, this implies a decision calculated to 'make the balance'--i.e., to insure the termination of a grievance--between the involved litigants.

Clearly, Nader is discussing informal procedures. While decisions may be based on legal criteria, the "adventitious" factors referred to above would suffice to get judges declared unfit from all de jure penal matters (See Article 811). So, de facto practices are important in this instance. Nevertheless, the informal concepts taken into consideration with formal concerns do not necessarily represent those of the village court alone. Since the 1931 Penal System Codes of Mexico, this intermixing of levels is characteristically more in tune with higher judicial practices today. Furthermore, pecuniary sanctions in the higher courts are often based upon adventitious subjective factors like the economic background of litigants.

Nader (1964:410) adds:

The most serious cases occur between men or between men and women. If a case is serious enough to merit a fine of more than 100 pesos or long-term imprisonment, it is sent to the alcalde (judge) in the town and is then frequently passed on to the district court.

This chain of command given by Nader is probably somewhat inaccurate. Article 115 of the Mexican Constitution of 1917 stipulates that there be no intermediate authority between the ayuntamiento and the state. Instead, a case should follow the path from the village alcalde to the district authority. This minor point becomes major for Middle America, when attempting critically to evaluate a discussion on legal systems.

Nader's (1964:418) conclusion are by no means unique to the Zapotec situation:

Further, the analysis has revealed patterned outcomes for specific classes of complaints. For example, slander is punished more severely than citizen insubordination and, in some cases, more severely than assault and battery.

Certainly, in the formal legal system, slander may be punished more severely than assault and battery in a number of respects. The most notable instance where this would likely occur is if the assault and battery committed (involuntarily) was the result of drunkenness (See Article 996). In such a case the accused would be excluded from prosecution. Certainly, cases involving slander, depending upon the relative economic and social status of individuals, could be more harshly dealt with in many societies (including the United States). The "patterned outcomes" described by Nader become possible "patterned outcomes" in a number of legal systems and certainly are not indicative of legal procedures only at the local level. Nader is correct, however, in recognizing the presence of such influence to decide a case.

Despite the presence of many "legal levels" in the areas of Nader's descriptions (i.e., supernatural family, etc.) ideas of distrust, fear and impersonal aspects do not appear to me as crucial in determining whether or not higher legal authorities will be employed. Major factors, like the outcome of a case at a local level, appear more important. For instance:

Case analysis suggests that if a defendant who has lost his case in the presidente's office appeals his case to the office of the alcalde, his chances

of winning are enhanced by this appeal (Nader 1964:409).

In essence the situation on conflict resolution in Ralu'a is representative of the de jure structures of which it is a part. Nader (1964:408) mentions that factors other than legal factors (i.e., personal and economic background of accused) play an important role in the village court. Perhaps these are different from those considered relevant in a more sophisticated United States proceeding. However, in light of the various reforms discussed in Chapter II supra, the situation endemic at the village court level are not substantially different from those in Mexican Superior courts. Both utilize objective and subjective criteria. In point of fact, the informal procedures characteristic of some of the legal levels in Nader's village are also present in varying degrees at the higher judicial levels of Mexico.

In terms of conflicts like family disputes, Nader and Metzger (1963:586) observe that conflict between spouses is common (in a Chiapas community). This is especially true when a husband assaults his wife, and the wife returns to her parents' home. These responses usually rely on an adjudicative response whereby the families of the conflicting spouses attempt to reach a viable compromise (Nader 1963:586). This is not substantially unlike the legal processes adopted in cases of compromise (transacción) and arbitration (juicio arbitral) (See Articles 582 and 767 for comparisons). The Oaxacan situation is described as similar in some respects, but the results of arbitration depend upon the sex of the spouse (Nader and Metzger 1973:537).

Nader and Metzger (1963:591) further remark that, in these two communities:

There are formal similarities in the adjudication process, but within this formally defined structure there are important structural differences. Investigation of these differences and the factors which mold them helps us to understand not only the variable functioning of similar formal structures but may also shed light on the corollary problem of the development of family law courts.

Assuming Nader and Metzger's arguments are considered valid (as I believe), the development of such family courts throughout Middle America will remain in the planning stage for a while. The family courts that these scholars describe appear, at the time of their research, to be fully adequate and functional in their assigned social roles. Full recourse to higher legal levels is not needed. One area in which Nader's contention could apply in the future would be in a more urban context. As more and more people leave the village to go to the city, the dyadic relationships so important at the village level, vis-à-vis the families, will presumably lose their functional importance. It is reasonable to assume the voids from lack of reliable family resolutions must be filled by family courts constructed to resolve conflicts that family heads in the village formerly arbitrated.

Frank Cancian (1965) provides one or two illuminating ideas that should be discussed. Cancian (1965:12) contends that:

For matters of internal justice they [Zinacantecos] have adapted the Mexican system of civil government to their own purposes. Most disputes between Zinacantecos are settled in the Hteklum town hall in a distinctively Indian fashion, but serious crimes, such as murder, must be referred to high Ladino officials in San Cristóbal.

Cancian does not make clear, due to the superficial nature of his discussion of law, what he means by Indian. If the procedures of a "trial" are carried out in Maya and the officials are dressed in characteristically Indian fashion, it could be said that Zinacantecos rely on distinctly Indian methods. However, example after example in this survey has indicated the situation is far more complex. While a degree of autonomy exists for Indian judicial officials, this condition is somewhat nebulous at best. Formal judicial procedure and Mexican substantive law permeate every level of Mexican life beyond the realms of mere adaptation.

Certainly, informal elements are present, but these do not represent autonomy in the sense of maintaining a local flavor to judicial proceedings as contended by Nader. Instead, they represent conditions that de jure statutory provisions have made to facilitate more rapid integration of these lower levels of Mexican life into the dominant scheme of things.

Cancian (1965:18) further attempts to substantiate his claims when he writes:

In the case of the judges (Alcaldes Jueces), another kind of adjustment of the law to the traditional system has been made. Officially, one man can handle any case, but the custom of officials in Zinacantan is to talk out the difficulties and disputes among many people; all civil officials present at the town hall, and especially the Presidente, contribute their opinions to the settlement of disputes. Apparently, because of this custom, the civil authorities in Zinacantan include four judges instead of the legally prescribed two...., so that one judge who is officially recognized by outside authority is present should there be a case requiring referral to San Cristobal.

This situation is undoubtedly an alteration of traditional

practices, but not necessarily proof for adaptation as opposed to adoption. In point of fact it has to be more than this in order for the local judges to achieve legal recognition by higher judicial authorities. Otherwise, cases of appeal will not be taken seriously.

As mentioned in Chapter II supra, several changes occurred in the 1971 penal reforms including a shift from the three-judge tribunal to the one-judge body (Kos-Rabcewicz-Zubkowski 1974). Alluding to the remarks of Cancian, the fact that one judge is required to be present at all times does not represent an adaptation but a legally necessary adoption, otherwise formal legal recognition of local tribunals would not have resulted.

Another point deserving comparison concerns those who have the right to offer opinions in a Zinacantan legal proceeding. The intention described by Cancian is not distinctly Zinacanteco in scope. Under Mexican law, all trials have to be "open to the public", and several officials besides the judge can contribute opinions; but, only the presiding judge can pronounce sentencia (Murray 1964:278-280). Clearly the formal aspects are evident. The conditions discussed by Cancian are not seen by me as a traditional system adapting specific de jure elements to suit local needs; but rather, aspects of the formal structures with vestiges of de facto (traditional) practices still operative. The formal structure has adapted traditional concepts, while the traditional structure has adopted formal procedures.

Indirect comments as to the function of higher courts

in specific local offenses can be seen in Hayner (1966). This book focuses on comparing "social changes" in three different sized communities. These are Oaxaca City (and several surrounding villages), Mexico city and the village of Atlapuco (Hayner 1966:20). The only discussion of law are comments pertaining to juvenile delinquencies. Hayner (1966:170) writes:

Among peoples who are chiefly agricultural, juvenile delinquency seldom occurs outside the larger cities. Where family and community controls are effective, formal agencies such as the courts are not needed.

This comparison of "provincial" and "metropolis" merely reiterates some ideas previously elucidated. Since it did mention a legal situation, it was included in this survey, although not seriously considered.

A much more pertinent discussion was offered by the Romneys in 1966. Some ideas in this study are worth mentioning. The focus of the work is on one barrio Santo Domingo, in a Oaxacan Mixtec town (Juxtlahuaca).

The Romneys' (1966:63) definition of social control mechanisms is not original, as:

Social control mechanisms may be defined as the various devices used by a society to ensure conformity to the rules of the society and to control the aggressive impulses of its members.

As in most of the communities mentioned to this stage in the survey, heinous breaches of conduct are resolved within de jure levels. There are situations when lesser offenses have been reported to the higher authorities, but preferably these are resolved within the geographical

boundaries of the barrio. But:

On the other hand, if a person from the center of town were to attack a barrio girl, it is reported that her family may well take the case to court; otherwise there would be no possible way of punishing the offender or receiving justice (Romney and Romney 1966:63-64).

Because the authors did not provide enough specific examples of cases it is difficult to accept their contentions completely. Certainly, every neighborhood in every town throughout the world could be representative of the above situation, and informal levels are no doubt operating in Santo Domingo. However, specific examples are needed before an extensive comparative analysis can be undertaken.

Evidently land disputes between Santo Domingo and the townspeople have occurred and are presently occurring (Romney and Romney 1966). No clear examples are provided as to how these are resolved. The social control mechanisms of the higher courts must be utilized in cases like this. Difficult situations, as boundary disputes between two contiguous areas, are not likely to be handled without some external help (Romney and Romney 1966). Even if this outside help is only a third party mediator, such intervention from higher authorities needs to occur to ameliorate such potentially explosive conditions. This would be especially true for a distinctively urban setting. In terms of inter-barrio social control, Romney and Romney (1966:67) argue:

Many societies have a mechanism for imposing fines, jail sentences, or physical punishment for crimes against the society or its members. There are no such mechanisms within the barrio, and the barrio members seldom resort to the formal courts which do use such punishments.

Supernatural sanctions and those like invidious gossip (common informal legal levels in the literature) are also argued not to be particularly important, although present. On the other hand, Romney and Romney (1966:68) feel:

... that ostracism from the social life of the barrio is one of the realistic threats for compelling conformity and one of the important mechanisms of social control....Emphasis on collateral ties is greatly elaborated in the family and social organization of the barrio, and the threat of ostracism would constitute an important deterrent on an individual's behavior.

The fact that supernatural sanctions (gossip or ostracism) are functional de facto legal levels is not doubted. But Romney and Romney's interpretations of these levels are problematical. To reiterate, the major concern is the lack of concrete data. Needed are the case analyses like those utilized by Nader (1964) indicating the frequency of offenses and their resolutions, and the conditions important to a decision.

It is difficult to understand how, with the close proximity of the barrio to the town, that formal court procedures are not utilized, given the stated lack of such mechanisms in the barrio. Life in the barrio cannot be so idealistic that heinous offenses do not occur with some frequency and only barrio legal structures are able adequately to resolve such situations when they arise. Social ostracism could conceivably have an added impact. Such ostracism could lead to an individual leaving the barrio and moving into the town proper. It would be too much to assume ill-feelings leading to a dispute (and resulting sanction of ostracism)

will not upon occasion exacerbate and add fuel to further hostilities. The town will ultimately become involved and de jure means of resolution required.

I am constrained to doubt the viewpoint of the Romneys that informal legal mechanisms are the most functional legal levels in the barrio. This proposition could be accepted only if demonstrated family disputes predominate and more serious branches of social conduct are not present.

This simplistic picture by the Romneys continues, with the authors trying to offer reasons why aggressive behavior is not well developed in Santo Domingo. The lack of aggression can be attributed to the socialization of children (Romney and Romney 1966:71). Also operative is:

The well-internalized belief that anger or aggression can lead to illness and possibly death is a strong deterrent to placing oneself in a situation that may lead to anger or aggression. When the validity of such a belief is reinforced or demonstrated by actual deaths, ...it becomes a very potent deterrent to aggressive behavior and thoughts (Romney and Romney 1966:71).

The above passage probably does represent another legal level, or at least a "quasi-legal" level, difficult to use for comparative analysis.

At any rate, informal legal levels, as discussed by the Romneys, are not really descriptive of barrio reality in my opinion. While not denying their presence (they undoubtedly are real), the situation in the Santo Domingo barrio is bound to be more complex than the Romneys' simplistic analyses. To accept fully these authors' contentions one condition must exist; namely, the lack of de jure mechanisms

indicates there are no serious (i.e., "criminal") offenses in Santo Domingo.

Gabriel De Cicco published a paper in 1966 entitled: Systems of Civil Authority in the Mixteca Baja: Patterns and Conflicts. Although this is a superficial study, De Cicco does pose one or two ideas worth considering. First, the Mixteca Baja is described as being composed of two districts, Jamiltepec and Juquila (De Cicco 1966). De Cicco (1966:372) elaborates:

Operating within the district are two political systems; the formal judicial organization which will be referred to as the 'Mestizo Government', and the indigenous system of political authority which will be called the 'Mixtec Government'.

The Mestizo government is, nevertheless, seen as existing in the Indian villages and also functions in its capacity as a formal legal level in "dealing with" the District, State and Federal levels characteristic of Mexico (De Cicco 1966:373). The actual village leadership is vested in a body of men called the mandones. The mandones possess a position of great prestige and power (De Cicco 1966:373). De Cicco (1966:373) accounts for this duality by asserting:

In practice then, despite the predominance of one ethnic group over another, the existence of the two systems in 'mixed' towns acts as a check, one against the other, which tends to eliminate abuses and excesses by either system.

The above is believable to a degree, but, in order for this check and balance system to function adequately, the higher authorities must recognize the authority of the mandones to function at the community level. This recognition must necessarily be a legal one countenanced by the statutory

provision of the Mexican codes. It is not enough that they possess a socially recognized privilege of so acting, this recognition must of necessity have a legal basis as well. A semi-autonomous institution like the mandones would most certainly be important as a "check and balance" against legal decisions involving Indio-Mestizo conflicts with such a qualification.

No comparative research on Middle American communities would not be complete without some mention of Foster's 1967 study on the Mestizo community of Tzintzuntzan. In terms of local government, Foster (1967:168) asserts:

In Mexico local government is based on the municipio, a concept roughly corresponding to the American township. But the implications for the local government are quite different, in that few small communities are discrete units. Rather, for tax collecting, for voting, and other activities, all communities within a single municipio are bound together, and bear some organic relationship to all the other units.

As described for many of the other communities, the types of governing officials are similar. These include the presidente, regidores and síndico. The fact that all of the region's communities select and vote for the officials makes it conceivable to elect authorities not residing in Tzintzuntzan (Foster 1967).

Foster (1967:170) reports the inhabitants of Tzintzuntzan do not perceive the style of government as being autonomous but:

It is a system set up from outside, whose officials, in time of emergency, have the responsibility of appealing to State officials in Morelia for special help.

This passage provides substantiation to the thesis of dé jure dispute resolving agents being most functional. At least, this is the implication in serious breaches to the Tzintzuntzan social order.

Outside of the Mestizo dominated municipal government, Foster describes a system not within this control. This is the government of the "indigenous community" (Foster 1967:172). Despite the historical importance of this traditional authority, Foster (1967:172) reported few judicial functions for this institution, for further analysis.

The types of disputes described by Foster for the area are similar in range to those mentioned elsewhere in this research. Foster (1967:177) believes most of the disputes are minor with very little violent crimes like homicide.

On the philosophical notion of justice, Foster (1967:178) postulates:

The concept of justice, as an abstract quality, can hardly be said to exist, nor is the idea of punishing or rehabilitating the offender a part of the view of crime.

Important to much of what the author hypothesizes for Tzintzuntzan is "Limited Good". The idea of "Limited Good" becomes evident in Foster's (1967:178) discussion on dispute resolution:

If a complainant obtained damages, he would have something the village would see as belonging to the defendant, however serious the latter's original aggressive act. Should the defendant, as a consequence, attack the complainant, the latter would receive little sympathy. When a settlement is reached, it is important that neither side feel it

has gained or lost; however bitter the feeling, both parties live in a tiny community, they pass each other a dozen times a day, and they must be able at least superficially to live together amicably.

The problem is that Foster fails adequately to explain what happens if a situation remains unresolved. It is here I would see the influence of formal judicial levels becoming operative. Certainly, it would be too "romantic" to assume all conflicts in the community are always resolved by compromise between litigants. Obviously, certain disputes will remain unresolved. If this turns out to be the case, then the desired balance Foster discusses will not occur. As a result, it is likely a further escalation of bad feelings would develop. When this happens (and it probably happens more than Foster seems to have the reader believe), outside authorities would need to be called into the conflict.

Another area that deserves comment is the idea of "dyadic relationships". Foster (1967:179) writes:

Conflict is seen as conforming to the dyadic pattern: it tends to be phrased according to pairs of contenders, rather than of families or other large blocks....Responsibility for actions is individual, not group, and guilt is not seen as extending to other members of a criminal's family.

Although these remarks by Foster are not really conducive to adequate comparison (for the purpose of the legal analysis herein), what Foster contends is really not in opposition to Mexican legal procedures. As mentioned, Mexican courts require disputes to be phrased in terms of the individual and

not aggregates like families. In other words, groups (i.e., families) are not likely to have cases resolved by Mexican law; only individual litigants. So, what Foster hypothesizes is really not procedurally different in Tzintzuntzan from Mexican statutory law.

Finally, Foster (1967:180-181) writes:

Most people feel that a fundamental responsibility of local legal officers is to try to prevent cases from reaching Pátzcuaro, where matters are then out of village hands, and where final judgments--which will always be costly--will not be designed to heal village wounds. 'The law is for those who don't know how to defend themselves'; says Bernardo Zaldívar, by which he means there is a double standard.

These remarks by Foster deserve comment. I believe Foster's observations may be accurate in terms of what villagers see as being desired; nevertheless, the data presented would indicate that what is desired and is actual practice are usually not the same. The legal status of Tzintzuntzan as a municipio libre, stipulated by Article 115 of the 1917 Constitution, would make Foster's arguments difficult to support. Certainly as Dennis (1973; 1976; 1979) and Dennis and Uzzel (1978) imply for Oaxaca, it is conceivable that failing to comply with the duties prescribed by law could lead Tzintzuntzan to forfeit some needed State aid.

Also, the statements offered by Foster indicate that it is possible for municipio officers to not be from Tzintzuntzan. The problem is that Foster is implying that people from other areas of Michoacán have the same ideas on conflict as those in Tzintzuntzan. Beals' (1946) monograph

certainly did not support this. The major question which must be asked is: Do inhabitants of villages other than Tzintzuntzan believe it desirable to avoid outside authorities? The data provided by others for the Tarascan area, like Beals (1946), would contend such is not necessarily so. Foster's report is conflicting. On the one hand, he reports inhabitants of Tzintzuntzan prefer to resolve disputes within local boundaries and avoid outside authorities. On the other hand, Foster contends that many of the local officials of Tzintzuntzan could possibly have come from areas outside of Tzintzuntzan, whose attitudes about consulting higher authorities have been reported by other scholars to be different. It is difficult to support Foster's arguments in light of the data presented throughout this study.

Finally, Foster's case analyses were so general and unclear on actual procedural and substantive aspects of local Tzintzuntzan law, I could not draw de jure/de facto comparisons.

June Nash (1967) is the next paper to be analyzed. The approach offered by Nash is different from one taken by Friedrich (1962) on Tarascan homicides. Maya homicide is seen by Nash as an act resulting from conditions characteristic of rapid integration of the Indians into the dominant Mexican system. As a result, the village principales see a concomitant undermining of traditional authority (Nash 1967: 455). Furthermore, another group, the curanderos also become so affected (Nash 1967:455). Nash (1967:456) contends

further that:

Homicide--an act viewed as a delict in national Mexican law--has in the past two decades become an accepted strategy in social interaction. It is part of the expectations of the society upon which members predicate their own code of behavior and in terms of which they react to others. Gossip not only fails to suppress homicide, but serves to create a consensual basis for condoning it.... Homicide is considered a reaction to crime, not a crime in itself.

In addition, Nash (1967:463) asserts homicides (of which more than half are due to cases of witchcraft suspicion) are seldom resolved by courts. In fact, witnesses to the act are seldom found.

The use of the case method is viewed by Nash as not being particularly beneficial for analyzing Maya homicide. She insists the best way to describe the act is to discuss it in terms of reorganizing the lines of social change from 1935-1965 (Nash 1967:465). Politico-economic changes of this period are deemed responsible for the greater increase in the frequency of the delict. Nash (1967:465) contends the need to kill, as a sanction, can only be seen with respect to other classes of sanctions employed as social control mechanisms.

Following is another passage from Nash (1967:466) which further explains her point:

More recently, the breakdown of certain structural features and competition between new and old leaders have undermined non-violent methods for the maintenance of social control. These changes will be discussed in terms of (1) the organization of the curing profession, (2) conflict between the curers and the civil authority, and (3) how both the curing profession and the civil authority are affected by the breakdown of the old dual division of the town.

This breakdown of the old dual division of the town (or village) has been alluded to often in the literature. The major reason for this, as has been maintained throughout this study, is that de facto levels can no longer function in a rapidly changing national context. What were, at one time, functional mechanisms on a wide range of disputes, are now found to be totally inadequate to handle these different classes of conflicts (as defined in the various codes and statutes of Middle America). As a result, local levels of society, and their related traditional social controls and customary law, have been forced to adopt the de jure mechanisms of the state resulting in the breakup of the old dual system. Now, the traditional mechanisms of social control are found to be able to resolve only the minor conflicts (e.g., family conflicts) in a village. Nash sees the breakdown of this duality system, as have many scholars. The view presented by Nash, however, is considered more adequate to explain this complicated historical phenomenon.

Nash (1967:468) further concludes in her paper:

The authority of the president, however, depends on the use of legal sanctions of prison sentences and fines imposed by extracommunity enforcement agencies in the departmental capital. The weakness of these sanctions--the fine for homicide is 1,000 to 3,000 pesos or three to five years' imprisonment--means that these threats do not have a controlling effect on people's decisions to act. Homicide, carried out by individuals who feel themselves to be threatened, is a supplementary mechanism for social control.

The above contention by Nash could be considered plausible by me only as a supplementary mechanism of social

control. Homicide, as an act, could only occur at levels of low frequency. The offense could not be relied on to the degrees that pecuniary sanctions could occur. To assume otherwise would be to presuppose a situation in which community tensions were always high because of the fear of offending someone to the point of committing an act of homicide. If the situation described by Nash did not have some social controls, in the use and frequency of homicide, its use as a legal level would logically lead to feud conditions. Conflict would be exacerbated to the point of forced state intervention. In short, I can agree with Nash and see homicide as one means of social control only with serious reservations.

Nash (1967:469) summarizes the paper by stating homicide is related to various alterations in economic and political conditions characteristic of many areas in Middle America. The curers lost power and the principales became subordinate to the presidente ("leading to a breakdown in the check and balance system exerted by principales over curers"). The result is a "confrontation between curers and community officials" (Nash 1967:469).

It would appear that something is missing from Nash's analysis. Considering the increased authority state law bestowed upon the presidente, and the overall increase in homicide frequencies, some sort of de jure intervention must follow, since under Mexican law not all offenses need be reported. The fact witnesses to an act may not be found

in no way should deter the presidente from acting in his legally recognized capacity. Under national law, such activities could not be allowed to continue, despite Nash's contentions about homicide as a level of social control. Since officials like the presidente often have to account for activities in their areas, the situation as reported by Nash would likely be reported as instances of isolated events. With even a modicum knowledge about Mexican state law one must assume that any increase in homicide frequency (as a mechanism of social control) would have to be so minimal that failures to report them would go unnoticed by community officials directly responsible for such actions to higher authorities. This situation could well have occurred in the 1960's. But with the rapid integration of the community level into the national level by the 1970's I cannot accept Nash's conclusions today. Certainly, a follow-up study would be beneficial.

Pi-Sunyer (1967) did another study economic in orientation. Pi-Sunyer does provide one or two general comments with respect to authority seen as relevant to this comparative analysis. Of utmost importance is that the 1960 census gave Zamora's population as 53,968 (Pi-Sunyer 1967:97). So, this cabecera is substantially larger than the majority of municipios surveyed. The population is probably more indicative of a distrito. Also, field work for this monograph was done in 1957-1958, nine years before its publication, which is important in considering any critical review. Because of

the presence of a well-defined class hierarchy, Zamora represents a typical Middle American urban area. Political officials are now often elected from the poorer or "subordinate groups", thus allowing these classes to acquire new found power and authority (Pi-Sunyer 1967:127).

Pi-Sunyer (1967:129) continues by contending:

Each community in Mexico has felt the impact of government and party; there is not a pueblo in the country that is not somehow tied to the lines of political control radiating from the capital....

The whole politico-administrative setup is a power structure, the ultimate sources of power being outside the municipio, but the local representatives enjoying amounts of power commensurate with their positions within the system.

The above passage is self-explanatory and merely lends credence to my observations made from the beginning of this survey. Despite the legal pluralistic aspects of all levels of Middle American community development, those authorities which have duties defined in de jure terms are more functional in periods of time characteristic of large-scale changes. That the views of Pi-Sunyer were formulated in the 1950's is even more interesting, in light of the fact many more recent accounts are not fully cognizant of the conditions (most specifically in terms of conflict resolution) these changes have fostered.

Another municipio was studied by Hugo G. Nutini (1968). The ayuntamiento is the predominant authority, with a presidente municipal, functioning in the resolution of petty offenses (Nutini 1968:53). This official is also responsible for relaying more dangerous disputes to the agente del ministerio público (Nutini 1968:54).

Since Nutini states very little crime is reported in the village the study serves little worth in comparing methods of conflict resolution. The two important legal levels of Contla are the barrio and the lineage. Cases considered too serious for these two institutions to handle are still sent to the courts. When two families are unable to reach a settlement, cases are presented to a judge for arbitration, probably following many of the procedures laid out in the arbitration articles of the codes.

Summarizing his report, serious crimes like homicide, theft and assaults are referred to the district. Disputes arising out of minor thefts, family arguments or fights are preferentially handled locally (or privately) by family heads or barrio leaders (Nutini 1968:59).

A potentially important paper appears in 1969. This study by Hunt and Hunt lays important groundwork for more studies that should be attempted on the roles of formal judicial procedures vis-à-vis those of informal legal levels. This research is another in a long line of studies which deals with an area in Oaxaca, Mexico. The area concentrated upon is the district of San Juan (as they called it). The authors concentrate their discussion on the court level of dispute resolution because:

...it offers several strategic advantages from the point of view of our interests. First, the court is a formalized institution, and, in a country like Mexico, one with extensive written records on 'double institutionalized norms' (Bohannon 1965:33-42). The national law can be compared and contrasted with local customary law, as well as with norms

of other kinds at the community level. (Hunt and Hunt 1969:110).

Hunt and Hunt (1969) discuss and describe two types of judicial bodies in their paper. The first is the Juzgado de Primera Instancia (most often referred to as the Court of First Instance). It usually functions under Mexican law as a district court (Hunt and Hunt 1969:112). One characteristic typical of Mexican courts today, the one-judge tribunal, was observed by them in the district court. This judicial characteristic was not made universal for all of Mexico until the amendments of 1971 (Kos-Rabcewicz-Zubkowski 1974). As mentioned in Chapter II, the district judge is appointed. Judges in the municipal courts, however, are elected from the village inhabitants. Such is the same for the region discussed by the Hunts (1969:113). The local tribunals of San Juan function in relation to the ayuntamiento. This pattern is virtually universal in those areas of Middle America where the influences of the civil-religious hierarchy are still intact.

There is one small difference from the norm pertaining to the functioning of municipio offices worth repeating. Hunt and Hunt (1969:114) state:

In the municipio of San Andres, however, the Presidente is in charge of most decisions assisted by the whole of the municipal body, including all officers. The other roles, however, do not function as expected by formal definition. In cases of doubt, expert witnesses among the elders of the community are brought in as participants in the process of decision making, primarily to mitigate individual responsibility for the final outcome, and to avoid personal vendettas. In some cases involving an individual defendant versus the municipio (as plaintiff), the court is superseded by a town meeting in which all the household heads participate.

Expert witnesses are a common source of evidence under Mexican law, but the functions attributed to them above are unique (Murray, 1964).

A few comments regarding the authors' methodology should be discussed. The information gathered by the Hunts (1969) primarily consisted of extensive interviews with legal officials and citizens possessing experience with the courts and their procedures. Cases (as actually observed) were, unfortunately, not provided. This must be kept in mind when interpreting their data. References to cases are primarily based on notes from archives, actual judicial observations, and informants (Hunt and Hunt 1969:118). They later add:

After extensive ethnographic probing, cases have been grouped in the charts by what we have considered to be significant cultural categories for both Indians and Mestizos. These comprise groupings which are not identical with legal definitions according to the Mexican codes. It is necessary, therefore, to indicate the contents of the groupings for those interested in comparisons. Murder or homicide includes the same cases as the Mexican legal code:

Injuries include a variety of physical attacks on persons... It excludes, however, simple beatings, slaps, and other minor forms of physical aggression. This category is also identical with the Mexican legal code (Hunt and Hunt 1969:118).

Indians in the San Juan region use the municipal court only when the informal mechanisms of dispute resolution are unable to effect a settlement (Hunt and Hunt 1969). Unlike many of the examples provided by other anthropologists, the Hunts (1969:127) imply that if traditional procedures prove inadequate, appearance before high judicial officials is likely. Unfortunately, this view is not held by other

scholars to the degree the Hunts have indicated in their research. I contend, nevertheless, it is most accurate of the situation really existing throughout Middle America. Some of the anthropologists previously surveyed herein discuss a case to a point where informal legal levels could not adequately resolve a dispute and end their analyses, prompting the reader to assume the case ends there. Higher levels of resolution are often merely implied.

Hunt and Hunt (1969) later qualify somewhat their statements. Cases involving family conflict are not ordinarily offered to higher judicial authorities for resolution (Hunt and Hunt 1967:130). These courts are believed to be unable to deal with them in terms of the customary legal methods preferred.

An idea prevalent in the literature surveyed is also touched upon in this 1969 study. Fear, distrust, a belief that non-Indian authorities do not understand Indian behavior, and an apprehension of prejudicial treatment are all given as reasons why Indians do not like to resort to the courts in certain classes of dispute (Hunt and Hunt 1969:130). Also cases not defined under Mexican law are reportedly not taken to the courts (e.g., suspicion of witchcraft).

A number of ideas why homicides are taken to Mestizo courts are proposed by the Hunts in this paper. Such topics have not often been discussed by other anthropologists in the precise terms of the Hunts. The reasons why homicides

are always sent to higher courts is the removal of dangerous elements from society that could be disruptive influences in the future (Hunt and Hunt 1969:132). This is the best explanation thus far and an entirely believable one. In fact, I contend this would be a likely reason why people in other cultures of the Middle American area would send all serious offenses to outside judicial officials, in evidencing the absence of informal legal levels able to resolve them.

The Hunts (1969:133) continue and assert that judges possess different opinions on why cases are brought to court:

The judge and the officers of the court, however, have a different interpretation: the Indians bring homicide cases because the law requires it; Municipal authorities cannot keep long-term prisoners in the municipal jails; Indians do not know how to handle homicide cases, and fear revenge. On the other hand Indians do not bring family cases because they are discouraged by the absolute refusal of the court to accept families rather than individuals as defendants.

This represents another accurate appraisal of the real situation in Mexico and Middle America in general. I contend that the informal systems lack the required experience or precedents to meet the challenge. Both the Indian view and official view as exemplified by the judicial authorities have much to warrant support. That the Indians see reliance on outside authorities as a means of filtering out future disruptive forces, and the judges see such reliance on formal institutions as the lack of functional, customary legal mechanisms (at the community level) to adequately deal with serious offenses are both supportive of my contentions of

the importance of de jure institutions in contemporary Middle America. It is one of the best examples of adoption (and not adaptation) of formal judicial institutions in the literature to this juncture.

I again suggest if minor offenses not really covered by Mexican Penal Law (i.e., family disputes) are handled by traditional means another purpose is served. Informal mechanisms of dispute resolution do offer a degree of self-autonomy important in maintaining ethnic boundaries, but this autonomy is viable only if the conflicts resolved locally do not conflict with provisions of statutory law as recognized by higher authorities.

In 1969, Evon Z. Vogt wrote about Zinacantan. In the resolution of disputes, the presidente, síndico and jueces again are important (Vogt 1969:279). Vogt (1969:280) summarily states a Zinacanteco case is reputed to have one of the following outcomes:

First, it may be settled in this Zinacanteco court, ... In this case the culprit will be required to return the stolen property and be fined or jailed (...) or both. Or the case may prove too serious for the Indian court to handle (murder, for example) and will be passed along to the Ministerio Público in San Cristóbal. Finally, it may be impossible to reach a clear-cut decision, even after all the witnesses and testimony are heard, in which case the Presidente's main efforts are devoted to soothing the two parties so they will not bear grudges against each other.

This study follows the pattern prevalent in numerous works, dealing only superficially with legal (social) controls. Because of the lack of more extensive data, Vogt's monograph

need not be further quoted.

Roland H. Ebel (1969) offers a good synthesis of the rapid changes which three Guatemalan communities have undergone from periods when more traditional means of social control were functional through the rapid constitutional changes in the 1940's and into part of the 1960's. Much of what Ebel describes has also been admirably discussed by others, notably those in the Adams (1957) symposium.

Ebel (1969:145-151) describes the earlier periods of these three villages, especially San Juan Ostuncalco, as representing the old "dual municipality (Indian and Ladino) system". The Indian system of alcaldes indígenas in the cabecera and the alcaldes auxiliares in the cantones attempted to resolve many disputes within their jurisdiction. This was to refrain from having to utilize the Ladino judiciary. The Ladinos were pictured in the Indian's minds as applying national laws in a prejudicial manner and beyond what was legally required.

An interesting facet new to this discussion is made by the author, regarding the year 1927. In this year, the traditional Indian political organization (i.e., judicial structures) were eliminated by legislation (Ebel 1969:156). Obviously, such enactments had wide-ranging effects. One was increased bellicosity by the Indians. This could be considered an expected phenomena because for centuries these people relied on legal procedures which allowed them to cope with a rapidly encroaching dominant population (Ebel 1969).

The end result, as alluded to before, was the revolutionary activity in the 1940's leading to the overthrow of the Ubico regime and the drafting of the 1945 constitution.

Ebel did refer to the presence of an institution that has seen increased importance in the Indian attempts at making demands on a superior (in numbers) legal system. This is the quisache or non-certified lawyer. Due to his literacy and background in working within the de jure structures, and the concomitant lack of qualified legal experience at the community level, the quisache is often called upon by the Indians to act on their behalf (Ebel 1969). Besides "representing the Indians in legal matters", he is often required to function as their "political spokesman" (Ebel 1969:169). In this sense, he could be said to function similarly to the cultural broker or mediator which Wolf discusses (Wolf 1956).

Concepcion Chiquirichapa is the second village described by Ebel. Although the changes this village went through are similar to San Juan, changes toward modernity have not been as rapid. The principales were mentioned as the leaders in the past and were associated with the often discussed civil-religious hierarchy (Ebel 1969:176). Ebel (1969:176) also added the political institutions of this second village have historically supported national political ideology.

Ebel concludes his discussion by stating that the evolution in 1945 of the Guatemalan party structure (already

present in Mexico) allied the structure and the selection of authorities to the civil-religious hierarchy. As a result many of the steps, traditionally required on the way to the top, could be bypassed. Furthermore, an individual could attain a position of higher prestige at a much younger age than previously possible (Ebel 1969:177). In addition, Ebel (1969:184) concludes:

...Concepcion's traditional political institutions were sufficiently strong and flexible to absorb and legitimize the changes imposed on it by the process of political and social modernization.

In essence, then, Ebel states in substantially similar terms what I have urged throughout, namely de jure procedures of social control are now the more functional and utilized structures in Guatemala (and Middle America generally). Many de facto mechanisms of social control are still maintained, but these now have a somewhat vacuous function.

June Nash's (1969) paper provides a short description of the traditional civil-religious hierarchy and its role in the resolution of disputes in Chiapas, Mexico.

The resolution of inter-familial conflicts is offered in a somewhat different light than was presented by other scholars (e.g. Hunt and Hunt 1969). Nash (1969:10) asserts informal (de facto) resolutions are not generally successful and that formal (de jure) resolutions must be relied upon through their presentation at the cabildo. However, Nash (1969:10) reports that:

Families which appear frequently in court lose respect in the community because of their inability

to handle internal disputes, and people who refer cases to court frequently are known as trouble makers.

Nash provides a number of cases which are not reproduced here apparently because they are not-too-literal transcriptions, making comparative analysis difficult. Her descriptions clearly indicate an informal slant to the proceedings. Nevertheless, Nash (1969:14) concludes:

Therefore, Amatenangueros seek settlement of their claims at the district or state courts if they feel that the case will be prejudiced in a local court.

I see one problem with Nash's discussion, touched upon in earlier works, which seems especially true for the resolution of family cases in higher courts. Mexican law does not ordinarily allow groups like families to appear as plaintiffs or defendants in a civil or criminal suit, but only as individuals. So, these conflicting families must restructure their claims to make the dispute individual in nature or it is not likely to be heard by formal courts.

One final source should be cited. This is by Colby and van den Berghe (1969). This book is concerned with the North-West highlands of Guatemala. The authors write:

Since the late nineteenth century, the development of cash crops, the consolidation of the power of the central government, the opening of better means of communication, and other processes of 'modernization' have increasingly reduced the economic and political autonomy of Ixil zone, and drawn it into the life of the national society. (Colby and van den Berghe 1969:ix)

Colby and van den Berghe (1969:85) see the "distrust" which Indians convey toward Ladino authorities as

representative of a ladino-Indian "cleavage". De jure procedural and substantive aspects of Guatemalan law are most applicable, especially in land disputes. It was reported that (as in other areas of a substantial but declining Indian population), the alcalde (and lesser degree the regidor) is the official in charge of minor disputes and is authorized by Guatemalan law to impose pecuniary sanctions and brief periods of incarceration (Colby and van den Berghe 1969:122). This further supports arguments for the more functional aspects of de jure levels of conflict resolution.

These two scholars further write:

The powers of the alcalde are rigidly circumscribed, given the highly centralized nature of the Guatemalan government, but locally, the alcalde is by far the most powerful official. (Colby and van den Berghe 1969:122).

CHAPTER VI

1970 TO PRESENT

Preliminary Comments

The last ten years or so has not seen a substantial increase in the number of sources dealing specifically with discussions on law. The majority of anthropological community studies on Middle America continue to deal with every aspect of village or town life, but with only a few general remarks on legal behavior. In addition, the literature again indicates a "preference" for Mexican or Guatemalan research with only token studies on the other republics. This certainly is conducive to a greater utilization of the model.

Collier (1973), Nash (1970), Dennis (1973; 1976; 1979), and Parnell (1978) are the dominant figures of this contemporary period, and they offer a range of legal topics for analysis. Parnell's account is of special interest because he offers a description having a tremendous influence on my interest and present beliefs. Collier's book shows a definite Nader influence, but goes much further in analysis than do the previously discussed papers by Nader.

The format of this chapter will deviate somewhat from that of preceding ones. Because very few of the most

recent studies offer little in the way of extended case analysis, specific articles of the Mexican Codes will not be employed as extensively as previously for comparative purposes. Furthermore, the actual divisions of this chapter into sections on criminal and civil offenses, respectively, is not necessary because of the scant case record.

Survey of the Studies

May Diaz (1970) will open this section. Tonalá is described as a peasant town situated ten miles from Guadalajara, Jalisco, Mexico (Diaz 1970). Tonalá is shown to be under the control of both state and federal authority structures, including the judge of the court of First Instance.

This judge is appointed to office; and, because of his Mexican education as a lawyer, is seen as an "outsider" by Tonaltecans (Diaz 1970:31). According to Diaz (1970:31) the people of Tonalá can be seen in the following light:

They, in turn, understand little of the legal technicalities he is concerned with and consider the state government, which he represents, a body of self-serving politicians. Consequently, they have less recourse to the court system than villagers in communities with elected municipal judges, preferring rather to go to the priest for help in settling disputes and collecting debts.

The above passage does not really offer much for purposes of comparative review, except Diaz repeats a situation which has been reported throughout this research.

Actual remarks concerning conflict resolution are really limited in this book. It is possible to infer that in many instances, however, informal legal mechanisms (i.e.,

priests) seem to be preferred. In cases which involve family disputes, Diaz contends the Court of First Instance is avoided in favor of de facto resolutions. For example:

A father's maltreatment of a son may result in the personal action of a relative or other individual plus informal social sanctions, but it is unlikely to result in court action (Diaz 1970:91-92).

The above passage represents an often reported condition in Middle America. It would be accurate to argue, on the basis of preceeding discussions, that de jure (formal judicial) authorities would not handle family cases unless such family conflicts could be reduced to the complaint of a single individual. As has been frequently shown in this study, most family disputes are usually handled within the framework of informal controls, whereas the more serious breaches of conduct must be referred to higher authorities.

In passing, it is of interest to note that Diaz presents another means by which degrees of conformity to Tonaltecán norms can be made. These are the invidious attacks via the use of nicknames. This level of informal social control is somewhat different from the several already alluded to. Diaz (1970:136-137) asserts:

Nicknames are clearly one of the mechanisms of informal social sanctioning. Certain kinds of nicknames may shame people into conforming to customary behavior patterns or punish people for failing to do so. In this way, they also support existing values and customary role behavior by defining acts or modes of acting that are considered deviant....

Thus in a society which demands a high level of conformity in behavior there is surprising tolerance of deviant individuals and deviant personalities.

One reason there appears to be a high level of tolerance for

deviant activities is because the informal sanctions proposed by Diaz do not function adequately in keeping such behavior at a minimum. When informal levels of control appear inadequate, formal levels take over. At any rate, without cases to support her arguments there is very little to compare and contrast. I concur with Diaz' discussions of informal sanctioning devices for minor offenses in Tonalá. The previous literature, nevertheless, would preclude any belief such de facto resolutions are functional in more serious disputes. Certainly, de jure levels become more active in maintaining the social order in Tonalá for more "dangerous" situations. The data for the rest of Middle America would certainly dictate such a conclusion. In fact, the close proximity of Tonalá to Mexico City would make reliance on formal mechanisms of dispute resolution a logical necessity.

Roberta Montagu (1970) did another study which is really too general to be of real comparative importance. Nevertheless, there are some ideas of interest presented. Montagu (1970:345) writes:

Naturalmente, ningún núcleo de población puede existir sin algún tipo de gobierno, sin controles--temporal, religioso, sobrenatural, económico--, y sin un concepto, básico y aceptado en forma general, de lo que está bien y de lo que está mal.

This idea (with a few exceptions) is one adopted by many authors of Middle American community studies.

Montagu's (1970) data was obtained by researching three haciendas and the villages surrounding them. The information provided on the family is interesting. Each child

can be punished by either the mother or the father, which is not particularly revealing in itself. What is unusual (on the basis of earlier surveys herein) is that the mother maintains actual control of the family with final decisions presented to the father (Montagu 1970:349). One wonders what this does to the Mexican notion of patria potestad and the rules and obligations related to it in terms of Mexican law. Without further data, this cannot be resolved.

In terms of the villages themselves, the principales again exert the major authority. However, the fact these principales are somewhat limited in soundly recognized authority is evident from the following passage:

Las autoridades no poseen una fuerza gubernamental real: no pueden enviar a nadie la prisión, forzarlo a pagar multas o a mantenerse en el ostracismo (Montagu 1970:367).

As in other areas of the survey, the villagers in Montagu's account see the principales functioning primarily in helping to adjudicate several classes of conflicts (e.g., robo). Because their abilities to impose certain types of decisions are limited, much of the social control is backed by supernatural sanctions and other informal mechanisms (Montagu 1970:367). Furthermore, this study is another in a long line of those portraying higher outside officials as not desirable; the villagers desiring to resolve their own affairs (Montagu 1970). On the reparation of damages resulting from a delito, Montagu (1970:368) mentions that:

Un delito es un acto que hiere a otra persona; la retribución consiste en el pago y en la petición de perdón. El temor a la envidia o a la ira, manifestaciones de la brujería en potencia, no

permiten la estratificación social: cada familia debe mantener el nivel del poblado en lo que se refiere a alojamiento, posesiones, gastos, etc.

It is possible to see the influence of Foster (1967) in the preceding passage. A variation of the "Image of Limited Good" is apparently in force here in attempting to maintain village order. A situation whereby such a case of social equilibrium is not maintained could lead to offenses like murder (Montagu 1970). This could also be attributed to a contention of Montagu indicating inheritance disputes as rare.

To reiterate, cases involving "robo brujería" and husband-wife disputes are resolved by the principales, in accord with the opinion of the other inhabitants of the village. These officials are seen in the capacity of mediators and do not possess socially recognized rights to apply pecuniary sanctions or to incarcerate (Montagu 1970). In addition, outside authorities are viewed as having a minor role, a belief that cannot be supported on the basis of the existing literature. Montagu's discussion on legal behavior is too broad and scanty for any reliable comparisons.

June Nash's (1970) book, is relevant to this survey. Like an earlier paper of Nash (1969), this study again focuses upon Amatenango del Valle in Chiapas, Mexico. Nash (1970:236) contends that:

The increasing scope and frequency of relationships between the nation and the locality since the revolution has emphasized the roles of president and síndico at the expense of the authority and control exercised by the principales.

The cabildo is the place where village conflicts are

heard and adjudicated. In terms of evidence and procedures employed, there are very few rules strictly adhered to. However, as the only way to compare and contrast such practices with Mexican rules, Nash (1970:298-299) needs to be quoted extensively as follows:

The dialogue is primarily between the judge and claimant and secondarily between judge and defendant. The rural judges join with the regidores, who act as court clerks when a case is heard, in a kind of Greek chorus when consensus is reached regarding statements made by defendant or claimant. The judges indicate clearly their approval or disapproval of the statements being made, and throughout the case, consensual verdicts are made in an apparently spontaneous manner. No one pretends to be impartial. Personal knowledge of the defendant or claimant is introduced into the case.

Courtroom behavior falls into three major acts: (1) the declaration by the claimant, (2) the questioning of the defendant (literally the 'taking of the heart'), and (3) the paying of the fine....

.....
In this society, there are neither veniremen nor specialized advocates. Civil officials other than the first judge act as jurors, announcing their sentences in unison. The judge, rather than handing down a decision, sums up the consensus of the group. Kinsmen of the claimant and defendant act as lawyers. The defendant is sometimes accompanied by supporters who feel that he has a case.

It becomes obvious that Nash's description of "informal" procedures also contains elements which could be said to be Mexican derived. While the investigative stages of a Mexican trial are clearly evident, some further similarities can be seen in the cabildo hearing to the trial stage in Mexican procedure. One aspect apparently is that all Mexican trials are required to be open to the public (Murray 1964:280). The fact that no professional lawyer is usually present in

Chiapas, is alone not conclusive of informal practices. The Mexican hearing allows the defendant to be defended by anyone he so desires (including himself) and the presence of a lawyer (either hired by the accused or appointed), is not necessary (Murray 1964). Also, that the quasi-jurors are not considered a part of the Chiapas situation has further similarities to the condition which is present in de jure proceedings. Even more alike are the steps in which the judge, in obtaining declarations, separately questions both the accused and plaintiff. The Chiapas procedure is also evident in the instruction stage of a Mexican trial (Murray 1964: 259-279). As described by Nash (1970) there are no real appreciable differences between the de facto and the de jure. Hence the informal Chiapas court case does indicate degrees of de jure procedures.

Without going into detail on the beliefs centering around concepts of justice in Nash, the sentencias involving fines are not representative of major theoretical differences between informal and formal levels. The principales in Chiapas order fines according to the amount an object is worth. Nash (1970:287) reports in cases of robo, a thief is fined according to the "value of the item stolen". The articles of pecuniary sanctions, as compiled by Wheless (1938), indicate analagous practices. For example, Article 1000 in the Compendium of Mexican Law, states the restitution of the object received in a criminal act must be accomplished; or the payment to the victim of a sum according to the object's

worth (Wheless 1938). As a result, it is not possible to assume, as Nash does, that the villagers in Chiapas function solely by way of informal (traditional) practices. The same procedures for extracting fines are evident in Mexican law and are most likely the basis for village legal practices.

As in other regions of Middle America, the Ladino authorities are not seen as particularly beneficial in resolving village disputes. Nevertheless, Nash (1970:299) does report an increase in cases being referred to judicial officials in the district, despite the rather low rate of resolution. A fairly good example of why this increased reliance on formal judicial levels has occurred is given by Nash (1970:299):

The trend shows an increasing number of cases of crimes against persons in comparison to crimes against property, an index to the breakdown in social control processes.

This statement is important because I would claim the above situation would be a normal result of the rapid encroachment of higher institutions into the traditional levels of a numerically subordinate one. Certainly, this process can be seen in varying degrees in all of the regions of this survey. It could be said Nash recognizes this fact (at least in a different way). For example, note an argument advanced which attempts to illustrate that the increasing homicide level is a:

...behavioral index to the breakdown in procedures for adjusting conflict. The elders and cures still officiate in rituals to settle conflict, but their judgments are no longer as effective in overcoming fear and suspicion. The principle of age-based

authority on which their authority rests has been undermined by ejido lands giving married sons earlier independence from their fathers and by young leaders assuming positions of power in the civil authority (Nash 1970:329).

In addition, the decrease in power the principales are now able to exert stems from the diminishing prestige of the so-called curanderos (Nash 1970:265). According to Nash (1970:266) the functions principales now apply in conflict resolutions have become greatly undermined.

One interesting method that was provided in the Eyes of the Ancestors, was the utilization of tables which illustrate the procedures for officials in the 1825 Constitution of Chiapas, and compare these to how the author and her informants perceive of these procedures in recent years in relation to village judicial obligations. Nash (1970) implies that the villages employ various articles according to their own exigencies. Nash sees little similarity between the two levels of data, due to three factors. I perceive two of these as most important. One, "ceremonial" activities practiced by local leaders are intermeshed with the functions stipulated in the 1825 document (Nash 1970:180). Nash (1970:180) adds:

Second, it is the presence of the officials, not their specific obligations, which is of significance in the local context.

It would appear upon first glance that Nash's comparisons would disprove my contentions. This does not necessarily follow. The Constitution of 1825 is no longer seen as relevant to the obligations and functions of local officials.

What must really be compared (in terms of dispute resolutions) are the recent criminal and civil codes of Chiapas, much as the Federal codes have been utilized in this study. On the basis of what has been indicated thus far, I conclude Nash's description would be different if the recent statutory provisions were more utilized. The present criminal and civil codes would be more reliable, and hence, more relevant.

Phillip Young (1971) wrote a study on the Guaymí of Panama. Studies like this are definitely needed--not so much because the descriptions on law are beneficial; but, because the works published on this Middle American republic are scarce. There are one or two relevant ideas that can be summarized.

Adams (1957:99) points out in his survey of the region that:

The political structure of all Latin American countries is established by law. The fact that the lower levels of administration are directly concerned and in contact with the governed, however, frequently bring about variations from the official national pattern.

Panama does not appear to be an exception to this rule. Young (1971) describes the system among the Guaymí as being composed of a corregidor (required to be literate) who functions as a judicial officer, along with administrative duties. Because of economic considerations (i.e., prohibitive costs), the Indian seldom appeals the decisions of a corregidore to

the latino alcalde in the district, although they are cognizant they could ultimately appeal a case all the way to the provincial governor (Young 1971: 203). Young (1971:203) notes a familiar theme:

It was also said that the right of appeal was seldom exercised because latino officials are not interested in cases involving only Indians, except for the money they may extract for handling the case. In cases involving a latino and a Guaymí, it seemed to be a foregone conclusion (by the Guaymí) that any decision by latino official would favor the latino.

Like so many of the peoples mentioned throughout this study, the Guaymí prefer to resolve their disputes within the framework of customary law. However, as Adams (1957:101) notes for Panama, the dominant institutions often adapt many traditional informal procedures and rules. I believe this is but one way Panamanian authorities attempt to gain a better reputation of being fair with the Indians. Mexico and Guatemala have adopted this stance as rapid integration occurred. A good example was seen in Article 384 of Wheelless wherein concubines are able to inherit property.

The Guaymí are described as resolving conflicts in a cabildo (meeting). The majority of conflicts which arise are attributed to boundary problems, crop destruction, matrimonial squabbles, successions and usufruct (Young 1971). Traditionally, these cabildos were under the tutelage of a single community leader. Presently, however, dispute resolution has largely been transferred to the corregidores. The procedure of the "courts" is described as follows:

Numerous relatives of both parties attend, and many spectators as well. After the parties have presented their cases, opinions from relatives and spectators alike are entertained in an informal fashion before the presiding official renders his decision (Young 1971:210).

In the incorporation of traditional ideas into the national structures, certainly the mere presence of the corregidor would by necessity dictate formal Panamanian procedural and substantive law. This is the implication from Adams (1957).

Young's brief description of law does not afford substantial comparisons with the model. Although there are a few remarks on inheritance, the specific rules are mentioned in so general a way that the types of disputes and their possible resolutions are difficult to deduce. This lack of data on Panama is disappointing. Of course, like most of the sources surveyed, law and/or dispute resolutions were not his major concern.

Mary Helms (1971) wrote a study on the Miskito in which legal concerns are discussed more fully. The Miskito inhabit the coasts of Nicaragua and Honduras. Helms (1971: 158) writes:

The political system operative among the people of Asang, for example, involves various types of laws, several levels of social and territorial units, and numerous implementors ['maintenance agents'],

To begin, three separate law codes may be distinguished: traditional Miskito custom, church regulations, and statutes of the Republic of Nicaragua. These codes operate within and between four levels of society: within Asang; between Asang and other Miskito villages; between the village and foreign mission organizations; between the village and the state. It is important to note that at the present time there is no interaction between the Miskito as a whole and the state. Rather, each

village interacts as an autonomous unit with the agents of the state.

In short, Pospisil's (1967) "multiplicity of legal levels" is fully elaborated upon by Helms, although only some of these will be the concern of my review. Omitted, for example, are any discussions on the role of the Church as described by Helms.

One informal legal level Helms discusses is gossip. As often observed throughout this study, gossip functions as an informal legal mechanism in many areas (e.g., see Collier, 1973). Gossip, as an informal (de facto) method of maintaining the social order, apparently only functions in minor offenses to the Miskito social order. Situations Helms describes as less severe include assaults, succession squabbles and property theft. Helms (1971:162) contends that these are not resolved particularly well by other interpersonal methods of dispute resolution (i.e., compromise). As indicative of other Middle American republics, national Nicaraguan law is not, in theory, punitive. The final result of any conflict is to return to the status quo ante by "making the peace." Therefore, the restitution and reparation of damages are relegated according to the extent of the damage or the intrinsic worth of an item stolen, as the rationale of Mexican codes so frequently cited. This is not a distinctively local procedure or traditional standard of practice.

In theory, Miskito inheritance rules follow Middle American norms. The actual practice, nevertheless, sometimes deviates from theory, often providing a chaotic picture. The

way the Miskito believe succession rules operate are stated below by Helms (1971:164):

When a man dies, his wife acquires his goods and land for the support of herself and his children. If the woman remarries, her children by her first marriage receive the property because her new husband should provide new goods for her. When the deceased is a woman, her husband acquires the property, and on his death their children acquire it. If the husband remarries, the children acquire the property and he must earn new goods for his new wife.

As Helms mentions the preceding account is how successions are to occur theoretically. In practice, the situation is somewhat different and the survivors attempt to finagle as much as they can from the estate (Helms 1971:164).

The resolution of all difficult conflicts is attempted within the Miskito village. Here, the contending parties confront each other to negotiate a settlement (Helms 1971:165). If this is unsuccessful, then a process of arbitration is attempted with the village head man acting as the mediator. The process Helms describes for this headman in arriving at a settlement could be considered similar to how Barotse judges, as described by Gluckman (1955;1965), arrive at a decision. The notion of "reasonable man" could be applied to the Miskito headman's procedures in declaring a judgment. This decision is based upon traditional dictates of normal behavior. However, Helms' contentions can only be verified through an extended case analysis which, unfortunately, was not provided. Also, the role of the headman as described would necessitate that some sort of precedents be developed for these offenses to provide a reasoning

process in arriving at resolutions. This, as has been indicated in other chapters, is not always the case and traditional methods of customary law often are viewed as inadequate by local inhabitants to resolve certain classes of disputes.

In cases of serious breaches of Miskito custom, the village headman, presently in his capacity as a government official, takes these to the police chief in the nearest village (Helms 1971:166). That the headman is now a government official of Nicaragua has been of some concern to the Miskito people, despite attempts to ameliorate it by allowing the Miskito to handle their own affairs. Helms (like so many other scholars) fails to recognize that the village headman in his role as a government official has probably acquired new functions. In terms of conflict resolution, the traditional roles have become circumscribed by Nicaraguan law to the point that informal (dé-facto) behaviors now reported are not likely to represent actuality. Despite Helms' reports of the autonomy allowed to the Miskito to resolve their own disputes, the presence of a government official in office where the headman traditionally presided has caused customary functions to diminish.

Because of the negative attitudes which the Miskito show toward higher Nicaraguan authorities, the headman functions as a mediator between the two levels and thus becomes very important (Helms 1971). This is probably true and no argument can be made against it. What is debatable is the view expounded by Helms (1971:179) which in essence

contends that because the Miskito are not "peasants," they are not under the same de jure authority as "peasants." They are not peasants because they are not economically under the control of the state apparatus (Helms 1971:179), and the condition contributes little to analysis of de jure or de-facto functions in dispute resolution. The Miskito, via the headman and through face-to-face meetings, are going to be influenced by de jure controls that traditional informal legal levels will necessarily diminish in importance, a condition already present throughout Middle America at the time of Helms' study. These observations are based upon the literature surveyed in this review and the supporting evidence cited. The degree of autonomy which Helms shows for the Miskito (at the time of her field work) is really nothing more than semi-autonomy, soon to decrease even further. As of 1981, with the revolutionary state of affairs which has developed in Nicaragua since the Sandinista takeover, it is plausible that Helms' view of government conditions is more accurate now than in 1971. The new government is likely to be concerned primarily with the functions of economic programs. The situation for the Miskito in Honduras is so conjectural I feel constrained to comment no further on conflict resolution.

Turner (1972) provides one or two statements on the "legal system" of the Chontals. As has been shown in other works, local authorities are the primary judicial officials for the Chontal (Turner 1972:22). Also, in conflicts that

bring the community into contact with "foreign" forces, the cabildo (town meeting) is reported as functional (Turner 1972: 22-23).

The range of disputes reported by Turner is similar in scope to those discussed for other studies. Assaults, robo and other minor offenses are those Turner (1972:23-24) reports to be most frequent. In many of these, local officials do not always function. Instead, the parties to the dispute will attempt resolution through compromise (Turner 1972:25).

One common theme in the literature surveyed to this point is also prevalent in this monograph. Turner (1972:24) states:

Social relations enter into every legal decision that is made and the desired result is to reach a verdict that is acceptable to all who are involved. If not, the matter will have to be dealt with again because the community is too small for people to be at odds with each other.

Such "social relations" can be said to be operative in any society and at any level, so there is little to compare to the de jure details of dispute resolution.

Turner's discussion on the Chontal "legal system" really offers little in the way of data to enable a reader to ascertain the impact of higher judicial authority on community legal structures. The stress in the study is obviously on informal resolving mechanisms. However, Turner (1972:23) attended a cabildo involving a dispute concerning the village and two non-villagers. His observations prompted the following conclusion:

I found out later that he and his partner were wanted by the government for successfully impersonating tax officials and collecting funds from one village after another for their own personal use. They were able to do this because of the reluctance of Mexican Indians to question authorities and legal matters imposed upon them from the larger Mexican society (Turner 1972:23).

In summary, despite Turner's insistence on the role of informal dispute resolution agents, it is safe to conclude the Chontal are aware of de jure influences. The mere fact as reported that they do not question these influences would cause me to conclude formal judicial levels are probably more functional than Turner would allow the reader to believe.

Turner's analysis is also highly "idealistic" in scope. Such is especially true from his discussions on why deviant behavior is not abundant. For example, Turner (1972:25) contends:

Their legal system works effectively because it is reinforced by the entire social system. Children are taught the values of their parents and are impressed with the importance of conforming to the expectations of others. If they do not conform, they are ridiculed by their peers and it is believed that the embarrassment suffered by the individual being laughed at can cause him to become sick.

This passage comprises somewhat idealistic information provided by any society to an "outsider" seeking data on dispute resolution and indicates a common theme in explaining conformity to societal norms. As a result, no comparison is needed (or can be attempted) of de jure and de facto resolutions. Despite Turner's emphasis on informal mechanisms as more viable conflict resolving agents, his own

observations demonstrate the Chontal are aware of the legal boundaries imposed by the State and that formal law is more function than reported.

Abraham Iszaevich (1973) provides another broad sketch of political organization and law in a municipio, called Las Margaritas. The presidente, síndico, el regidor de policía and alcalde are the major civil authorities in Las Margaritas.

Regarding the municipio and the nation of Mexico, Iszaevich (1973:128) indicates:

Así como diversos factores externos han afectado la vida económica y social de Las Margaritas, la vida política ha sido profundamente influida por los eventos nacionales. Antes de la Revolución la jerarquía política estaba ligada a la religiosa. Las autoridades municipales intervenían en la mayordomía del 'Niño' y la designación de las autoridades municipales se hacía por consenso y no por elección.

These historical remarks illustrate a common representation of events at the local level throughout the Middle American literature.

The role of the various levels of authority is discussed briefly by Iszaevich. The range of disputes described is small and includes drinking-related offenses, pilferings of alfalfa and "aproximadamente, un homicidio per ano" (Iszaevich 1973:140). Thefts involving livestock are seen as rare occurrences. The reason for this can be shown in the passage below:

En contraposición a este hecho persisten los pequeños robos de alfalfa. Esto representa una actitud racional frente al delito: un animal robado puede ser reconocido, no así un tanto de alfalfa (Iszaevich 1973:140).

In cases of animal thievery, the state police are called in. However, in cases of minor thefts (i.e., alfalfa), Iszaevich (1973:140) indicates the municipal officials resolve it by assessing a small fine. Although the discussion provided in Iszaevich's work is brief, it is probably safe to assume (on the scanty evidence), de jure (formal) legal mechanisms are the most functional in all but a few minor situations. In short, Mexican derived substantive and procedural laws are probably dominant.

Conflict, Violence and Morality in a Mexican Village by Lola Romanucci-Ross (1973) deals with a very complex subject. Although the entire book is relevant to this study, it is necessary to limit my remarks to those considered most pertinent to the subject at hand. Actual discussion of the forms of conflict would not be productive.¹⁹

Classification of conflict is attempted through the use of two ideal polar types similar to those of the folk-urban continuum which Redfield (1950) adopts. There are various degrees of conflict that fall between these two basic types which are termed "micradic-macradic" conflicts (Romanucci-Ross 1973:31). It would appear that the majority of conflicts and disputes in most of the works surveyed discuss the "micradic" or two-person conflict. Romanucci-Ross (1973:32) writes on micradic conflicts:

Conflicts between individuals tend to grow in scale and to involve increasingly more individuals--family members, friends, or associates--in still other conflicts. There is a kind of outward radiation of micradic conflicts that is at least partly

¹⁹For a good overview reference is made to Romanucci-Ross (1973:28-35).

predictable from a knowledge of the network of relations in which an individual is involved at the time of the conflict. Although the spiral from the micradic to the macradic level is neither inevitable nor even especially characteristic, it can happen--in the conflict between the neighborhood and the village, for example. To the neighborhood people, the antagonist becomes an indefinite 'they' referring to the larger group, although the latter is not formalized.

She contends one of the greatest deterrents to individual violence is that a murderer is aware of the consequences. These consequences include the forced removal from the village (Romanucci-Ross 1973:138), causing the exiled offender to take up residence in another village.

Family disputes are of major concern in the area studied by Romanucci-Ross. The data obtained for discussions on family disputes were from court records, village gossip, and fieldwork (Romanucci-Ross 1973:53). Apparently a large number of conflicts reach the village court. Adultery is a common complaint for which legal court separations are apparently the usual end result.

Crimes of a more violent type were reported to be on the decline (Romanucci-Ross 1973:134). Not all of these get to court. Rather, informal means are often resorted to in their resolution. These de facto resolutions usually take the form of "negotiations," "estrangement" and "private grudges" (Romanucci-Ross 1973:141). Romanucci-Ross indicates a compromise may be agreed upon by the contending parties but a fine may still be imposed. For example:

It frequently happens in court that two men who have hacked one another with machetes in a drunken fight will say that it was all a mistake, profess

their friendship, and refuse to press charges. They may both be fined, however, and even the poorest will pay fines, even if it means borrowing, in lieu of accepting a jail sentence (Romanucci-Ross 1973: 141).

By comparing this passage to Article 582 and 583 of Wheless on transacción, it becomes obvious the procedure of fining for an offense compromised is provided for in the Codes.

In reality, the conditions existing in this Morelos village is exemplary of situations throughout Middle America. Village authorities have now assumed new roles more in tune with those prescribed by law. This includes reporting all serious crimes (i.e., violent offenses) to the higher authorities, because various national laws so require. Furthermore, a local-level civil official who does not report all serious disputes is likely to be severely chastised.

Romanucci-Ross (1973:167-185) provides a single case which indicates how these Morelos villagers use the national law for specific purposes. Because the author did not profess a knowledge of the legal principles involved, the case is not wholly relevant to this survey other than as another example which supports my conclusions. It demonstrates that important dispute resolutions are through de jure procedural and substantive law dispositions.

One of the classic studies of this period (of any period of Middle American "law" studies) was published in 1973. This magnum opus was written by Jane Collier. Given the breadth and scope of the subject matter analyzed in Collier's account, it was difficult to single out aspects that

could be especially relevant to my conclusions. A few topics were chosen as representative of some of her major ideas. 20

Collier (1973:42) asserts that Mexicans and Zinacantecos profess different legal behaviors, manifested in several ways:

For the Mexicans, criminal procedures are directed toward ascertaining whether the accused is guilty and, if so, applying the penalty laid down in the criminal code. For the Zinacantecos, legal procedures are designed to produce a compromise. The plaintiff makes an exaggerated accusation but expects to settle for less, while the accused declares his innocence but expects to confess to some form of the crime and then to beg pardon.

Collier's concept of law with respect to the above two general systems has to be taken in light of an apparent misconception of Mexican procedural law. Cantu Leal (1968) discusses the roles of Mexican judges in arriving at decisions. In the old, more archaic system which existed prior to the 1931 Penal Code, the judge was only permitted to pass judgment according to statutory provisions. In 1931, this changed radically. Cantu Leal (1968:229) states Article 51 of the Penal Code provides:

Within the limits fixed by law, judges and courts will apply the sanctions established for each crime, taking into account the external circumstances and the personal circumstances of the offender.

Since now both objective and subjective criteria could be considered by a Mexican judge, the above passage from Collier must be read accordingly.

20To really do the author justice, the entire book should be read.

Nader's influence becomes apparent from the outset when Collier attempts to make clear that she is interested in the various legal levels (de facto and de jure) to which a litigant has recourse. Furthermore, the circumstances that would prompt a litigant to choose one level in lieu of another was analyzed.

In some respects, Collier's work extends beyond the typical descriptive analysis and attempts a more processual approach. The processes by which contestants seek redress in a dispute is important (Collier, 1973). Collier's (1973) approach (methodology) consisted of employing 287 trouble cases acquired via informant interviews, Tzotzil texts and participant-observation. After examining these data it became clear that there were typical classes of offenses which predominated. The list was apparently headed by homicides, robos, assaults, succession disputes, sexual abuses, witchcraft, husband-wife problems, slander and misbehavior in a public office (Collier 1973:11). My major criticism of Collier's methodology is the paucity of a more personal actual extended case analysis. Such an analysis could have provided checks and balances on the data obtained through other sources. Collier, however, does recognize the problems inherent in her approach.

One of the major strong points of Collier's (1973: 91) approach in my opinion, is the utilization of actual Tzotzil categories believed to "imply" specific legal ideas. I reiterate from the initial chapter of this survey that my

criticism of many of the studies on the anthropology of law stems from the language used. It has been proven (even more so by legal scholars rather than by anthropologists) that key words in the legal system of a society often cannot be accurately translated into another language. Certain words of Hispano-Roman derivation quite simply have no reliable Anglo-Saxon counterpart, and vice versa. Gluckman's beliefs notwithstanding, language makes a difference. However, the problem is not so acute if these differences are kept in mind when critically evaluating a source. At any rate, this is one of the many strong points of Collier's approach. Again, the meanings which are attributed to these Tzotzil categories are "implied" rather than actually stated (Collier 1973:92).

Court procedures as employed by Zinacantecos are considered somewhat unique. By way of example:

The aim of a hearing conducted by an elder or the Presidente is to reach a compromise solution satisfactory to both sides. Each litigant comes to the hearing with his own version of the dispute and tries to present the 'facts' of the case in such a way that the logical outcome is the one he desires. Litigants know which outcomes are likely to follow from which facts, and they begin by presenting the most favorable version of the event. A litigant cannot be entirely free with the facts, however, for his version must have some relation to that presented by his opponent. But Zinacantecos do not limit themselves to the immediate issue at hand and may draw on ancient wrongs to justify recent behavior.

Zinacantecos do not have elaborate procedures for verifying the facts of a case, because the facts are not of crucial importance. Zinacanteco outcomes are compromises, and an important part of the procedure of a hearing is the compromising of the facts (Collier 1973:96).

It becomes obvious from the above quote that the author is at times loose with some of the terms, most evident in the way the idea of "facts" is utilized. Collier is really playing with words here, and words which are really not that important to her overall discussion. For example, if facts are not important, what in "fact" is compromised? The process of Zinacantecos promoting a case at the expense of their antagonists is not unique to Zinacantecos or any local level proceeding. In criminal proceedings at all levels and in every culture, where the outcomes are likely to be known, each individual is likely to gear his or her declarations within these guidelines. In the United States, for example, an individual may be guilty of an offense and knows that a prison sentence is likely. So, this offender may turn "state's evidence" in an attempt to receive a lesser sentence or have other charges dropped. A defendant may have a lawyer who plea bargains with a prosecutor in order to plead guilty to lesser charges. This is, in essence, a compromise effected by the lawyers in cases to expedite "justice." Similar procedures exist in Middle America.

Collier's discussion can by no means be implied as distinctly informal or Zinacanteco in outlook. Furthermore, what Collier proposes is a variation of the zero-sum game discussed by many scholars, including Davenport (1960). The players in this game are the two opponents in a conflict and the village (which could be said to represent the litigant's environment). How Collier described the Zinacanteco court

can be compared with a passage from Davenport (1960:6):

It is assumed that each player or team will take full cognizance of every alternative open to his opponent when making his own choice of strategy, and that, over time, the opponents will pursue the only possible pattern of choices which seeks the maximum gain with a minimum of risk.

The role of the presidente in the village court is depicted in terms which make his functions analogous to a Mexican judge. The various characteristics that a judge elicits behaviorally would appear to be like those which other Middle American anthropologists have indicated for Mexican judges. In fact, the way Mexican judges behave is often used as an argument as to why villagers do not use higher courts. As an illustration:

The Presidente and the elders who conduct hearings are not impartial mediators. 'They do not have to be fair.' This is a crucial point, and a key to understanding the Zinacanteco legal system. Zinacanteco legal procedures are based on the premise that the litigants make their own decisions. The mediator's job is to produce a compromise, either by being impartial or by taking one side or even by shifting back and forth (Collier 1973:99).

Collier (1973:101) contends specific instances can arise from Zinacanteco hearings if no settlement is reached. If no decision is reached whereby one or both parties to a dispute admit to being wrong, then supernatural (or curing) "pressures" may be employed to force the contestants to reach an agreement for reducing bitter sentiments (Collier 1973:102). I feel Collier may attribute too much of a positive function to such de facto mechanisms. I deem more likely the referring of the case to higher judicial authorities. In a close-knit community such as this, settlements

are not always going to be successful in forcing conformity. Hard feelings would continue and some other legal level would have to resolve the problems for the continued functioning of the group. This level is likely to be a higher court.

Another informal mechanism of conflict resolution is elaborated upon by Collier. This de facto level of conflict resolution is called by Collier (1973:101) "begging pardon" or "begging formal pardon". This is essentially a process in which an individual admits to being guilty of a crime and then "asks pardon" of the victim by placing a quantity of liquor at his feet, asking him to "end the anger in his heart".

Collier (1973:231) also discusses a class of disputes which she characterizes as individual-community disputes. Under this heading falls failure to pay taxes, "witchcraft", failure to act properly in public office, insulting civil authority, and destruction of communal property (Collier 1973:231). Most important are the remarks made concerning criminal cases in which the Mexican courts become involved. Collier (1973:238-239) writes:

Political battles are also waged by making criminal accusations against prominent, but unofficial, leaders before the Mexican authorities. These accusations, however, are usually phrased in terms of wrongs against specific individuals rather than as offenses against an entire group. For example, a political leader as an individual may hire a Ladino lawyer to accuse an enemy of breaking into his house or murdering a kinsman. The 'witnesses' to the crime are, of course, faction allies, but they act as private individuals and make no claim to be representing a group. All the Zinacantecos involved,

and often the Mexican officials as well, recognize that political power is the real issue at stake, but they all follow the Mexican procedures for handling criminal accusations. Both Zinacanteco factions hire lawyers, and the resulting web of accusations and counteraccusations often becomes hopelessly tangled.

The important point in the above quote is that Collier correctly noted that accusations were phrased so that the charge was made by an individual and not by a group. It is important to remember the Mexican courts will seldom accept declarations that involve group complaints. As mentioned before this is one reason why Mexican courts do not like to resolve local family disputes. This is a major reason, I suggest, why village families do not resort to higher legal levels; they simply are unable to rephrase their dispute in individual terms.

Collier (1973:262) concludes her book by asserting:

...Zinacantan has not changed much. Even an optimistic Mexican observer would have to admit that Zinacantan remains an ethnic enclave, that Zinacanteco customary law still 'governs' most areas of life. Although the tenets of Mexican law are increasingly cited by Zinacanteco mediators and litigants while arguing cases, outcomes reflect bargains between the litigants rather than judge-imposed solutions based on an abstract legal code. As long as Zinacanteco outcomes are reached by bargaining, they may resemble, but never mirror, Mexican outcomes based on the application of rules to a set of facts.

Who is this optimistic Mexican observer? I am constrained to disagree with the contention that the area represents an ethnic enclave, or that Indian customary law is a functional legal level. To assume the traditional law "governs" most areas of life is difficult to accept if one reflects upon data dealing with insular ethnic pockets within a dominant,

all encompassing national political structure. I concur that the language and procedures of both de facto and de jure levels would be used for specific desired ends by litigants. Nevertheless, only in situations which would not be considered deviations from established Mexican legal dogma would these customary legal levels be most functional. Certainly, cases which involve witchcraft, family disputes or minor fist fights are likely to be handled informally. In such situations, the Mexican authorities would be justifiably correct in letting Zinacantecos resolve them, if for no other reason than to help keep the Mexican court dockets less crowded.

It is with regard to more serious offenses that Collier's discussion cannot be wholly supported. Mexican officials would make certain Zinacanteco legal authorities comply with Mexican law. The Mexican legal structures could not tolerate a situation in which serious offenses against person or property could be resolved other than by de jure procedures. Otherwise this would be contrary to the government's attempts at procedural and substantive uniformity throughout the republic. Such was one underlying feature behind the codes initially. It is more likely the Zinacantecos, like most other ethnic areas in Mexico, have adopted Hispano-Roman doctrines to their customary system. Thus Mexican procedural and substantive aspects have become dominant, with traditional elements of language, style and range of disputes present in a subordinate position.

Phillip A. Dennis (1973; 1976; 1979) has published a

a number of papers relevant to this discussion. A paper co-authored with Douglas Uzell (1978) will also be considered.

In the role of political middleman, the Oaxacan presidente is seen by the higher eschelons of Mexican authority as a legal representative of his people (Dennis 1973:422). This view persists despite the fact the villagers are likely to see the presidente as an individual lacking in any real political influence. Dennis (1973:423) contends:

The district and state governments have quite different expectations of the village president. In general, they hold him responsible for the actions of people in his community. In the case of land disputes, he is expected to prevent conflict while higher authorities settle the dispute, and to notify them of any situation which gets out of his control.

Quite obviously the presidente's position is a most unenviable one. The presidente lacks any socially recognized privilege to force any decisions upon his people; and, if conflicts continue to appear while he is mediating between village and state, de jure recognition is not likely to follow. The presidente to be successful must be an artist, masterful in playing both sides of the political fence. In situations where disputes between villages have arisen, the position has been historically a tenuous one and is admirably illustrated by Dennis. Skills such as oratorical abilities well serve this Oaxacan presidente (Dennis 1973).

Dennis (1976) provides another informative paper. In this study the various causes for inter-village unrest over land are examined. Dennis (1976:175) states:

In Oaxaca, the corporate village communities are usually classified as autonomous municipios, each with its own elaborate internal political organization. The village president, commissariat, and síndico play the most important role in disputes, ...

Furthermore, in the case of violent village disagreements (tumultos), another office, the Departamento de Asuntos Agrarios y de Colonización plays the lead role in attempting to adjudicate a settlement (Dennis 1976:176).

Another passage from Dennis (1976:178) illustrates how the village government intervenes in these inter-village disputes as a mechanism of resolution:

At ayuntamiento meetings in which minor offenses are being adjudicated--fights between husband and wife, altercations at fiestas, and so on--a standard joke is to remark, after the individuals have been fined and dismissed, 'Well, let them fight. It means more revenue for the village treasury.'

So, Dennis postulates deviant behavior can have a beneficial effect in the village. Apparently such behavior helps to defray the costs of any debts which the village hierarchy may incur in its administrative duties. Dennis (1976:178) continues:

There is no reason to suppose that this practice was invented at the village level; in fact, it is most reasonable to suppose that higher officials have always acted in a similar manner, and that the practice has diffused from them to the village level.

One of the most important conclusions Dennis was able to draw from the presence of "inter-village feuding" is most relevant to my conclusions. Dennis believes these feuds allow for the maintenance of competing insular social entities which must by necessity rely on the central Mexican political-legal hierarchy to resolve their disputes. Any

desire on the part of different parties to see the perpetuation of feuding was not condoned by Spanish Colonial practices, which sought a rapid halt to such activities (Dennis 1976:183). I suggest it would be logical to assume inter-village feuding would not be the only class of disputes in this category. All serious conflicts would necessitate the intervention of formal legal levels in their resolution. I do not obviate those contentions of de facto controls as well. These informal levels, however, are not seen as reliable in offenses to the village social order from the commission of major "criminal" and "civil" transgressions.

Dennis and Uzzell (1978) collaborated on an excellent paper, but little new was offered except to confirm the remarks described in the previous articles. However, a 1979 publication by Dennis includes one or two points which should be mentioned. As alluded to in other papers by Dennis, the relatively small area of arable land available for agriculture is a cause for increased inter-village hostilities (Dennis 1979:44). The importance of this is adequately explained, as follows:

The essence of conflict, however, is not in the isolated violence that occurs, but in the litigation and political maneuvering by which villages gain legal title to land. The arena within which villages operate is one in which, for many centuries, the central government has dominated (Dennis 1979:45).

This passage clearly indicates that in serious disputes the de jure legal levels are most often relied upon. Other disputes would most certainly fall into this category. Dennis (1979:46) also states that tumultos and other classes of

violence often have a debilatory effect on the village (i.e., government money is cut off) which adds further credence to my contentions concerning governmental reactions for failure to comply with Mexican law, and is typical of other geographical areas. Serious disruptions of village order, which go against established Mexican legal or statutory practice, would likely be resolved within the confines of formal legal resolutions. If not, government money and important economic, educational and social programs are decreased. In addition, the attempts by Oaxacan villages to secure legal title to land could have another desired effect. In cases between villages, the reliance on formal legal levels is an example of how legal symbols are utilized to maintain ethnic boundaries as well as land boundaries. This has been alluded to before.

Felix Jorge-Baez (1973) wrote about the Zoques and Popolucas. The ayuntamiento, as usual, is the major ruling body functioning as an intermediary between the village and state and national political structures (Jorge-Baez 1973: 199).

Jorge-Baez (1973:199) writes:

Se integra el ayuntamiento con el presidente municipal, el secretario, un síndico, un regidor, el juez municipal, tres 'cabos de citas' (uno por cada barrio) y un comandante de policía con tres o cinco subordinados.

In serious breaches of social conduct, the municipal authorities usually refer the case to higher legal officers. The municipal leaders are responsible for the resolution of minor disputes according to Jorge-Baez. In other words:

El gobierno municipal se encarga de sancionar los delitos menores; ante la presencia de hechos de sangre, (lesiones u homicidio), las autoridades del Ayuntamiento transfieren la investigación, el juicio y la sanción al agente del ministerio público y al juez del distrito judicial correspondiente, con sede en Acayucan (Jorge-Baez 1973:204).

As reported by Jorge-Baez (1973:204), there is really not a high frequency of serious crimes which are resolved, and the author contends that the ayuntamiento is not particularly functional and lacks the ability to impose judicial sanctions. This follows closely to my view of the actual situation in all of local-level Middle America.

Henry Selby (1974) wrote an interesting account on Zapotec deviance. Despite the title, Selby's book does not contribute materially to my present thesis. Without discussing the various approaches to deviance which are included in Selby's account, one or two remarks should suffice.

Selby (1974:17) writes:

And, finally, we see sociological thinking in the way that members of the community are rehabilitated in cases where judicial authorities outside the community have labelled a villager deviant. The labelled deviants (two convicted murderers) infiltrate the inner group and activate a normal social network, thereby killing the deviant label...; they had merely restored their social networks so that they could no longer be defined as murderers.

Selby recognizes "legal processes" at work beyond the informal ones existing within the village. The dé facto mechanisms are implied to be operative for less serious offenses. De jure mechanisms are operative in more dangerous delitos. Selby (1974:64) indicates this by writing:

But there is a public process for the most serious crimes, which are dealt with by the regional authorities and which involve modern judicial procedures. Murder is such an offense.

Selby's remarks are indicative of my ultimate contentions.

Incarcerations are common for "criminal" offenses. However, argues Selby (1974:63-64), the process of rehabilitation a Zapotec offender goes through is the key to his discussion. As to the offenders, upon release from prison, in his words:

They reestablished social relations with more and more people and began to restore the network of relationships that had been disrupted by the murder and by their removal from the community (Selby 1974:65).

The offender works after his release to obtain enough money to pay off debts that were incurred by kinsmen on his behalf.

In a study of the Chiapas Maya, Gary H. Gossen (1974) recognizes a situation of which more writers on Middle American communities should have been more fully aware; namely, Chamula legal behavior (as is legal behavior throughout the region) is an extremely complicated subject. In fact, Gossen notes that it is beyond the scope of his own work.

As usual, the importance of community officials with respect to the resolution of minor versus major offenses is discussed. In his words, Gossen (1974:68-69) notes:

Therefore, major political officials have as one of their major functions the interpretation of local common law and sometimes of state and national law.

Much in Gossen's work corresponds to what Collier observes for Zinacantan. For example, most hearings involve a face to face meeting of the contestants (accused and victim) in which the outcome can be predicted by anticipating what the contestants will say (Gossen 1974:69). This clearly is an aspect of formal Mexican procedure. The careos (confrontation of witnesses and parties with each other) in a Mexican trial must occur in the instruction phase, as was discussed in Chapter II (Murray 1964:272). In short, as to Collier, to Gossen language is of primary concern to the litigants. He elaborates by indicating that:

Court speech, in other words, is improvised as the situation demands. The only constants are style of speech and the court setting. As with all of the marginal genres, semantic and syntactic repetition is an essential stylistic component (Gossen 1974:69).

"Shame", as a conforming mechanism, becomes important in Chamula. It is applied in attempts to force a deviant individual to adhere to societal expectations (Gossen 1974). The way "shame" is accomplished as a de facto legal level is through the public hearing where court language is geared to this end (Gossen 1974:73). "Shame" is applied in conjunction with other sanctions, both pecuniary and physical.

Arden R. King's (1974) study on Coban and the Vera-paz is pertinent only in a general way. The area is somewhat unique to those discussed thus far. Besides a large Indio population and the usual powerful Ladino minority, there are several regions of German inhabitation.

King (1974:5) writes:

The legal status of an individual is determined not only by national laws but by systems of male prerogatives relating to ethnic and sex status systems.

This "legal recognition" of children entails:

Whatever the reason, legal recognition of a child involved, and still involves, a deliberate legal act by the father to change the social and economic status of the child (King 1974:85).

From this reported German influence can be seen how an ethnic minority (far less in number than the Ladinos) can manipulate de jure symbols for desired ends, namely the legal recognition of children. This is viewed as one way Germans are able to maintain a degree of ethnic identity in a region where their numbers are minimal just as the Indian minority similarly utilizes formal legal mechanisms to promote their own "Indianness." In other words, de jure legal concepts do provide a framework through which ethnic boundary maintenance may be asserted.

There are several sources which appeared in 1975 having only superficial relevance to this survey. The first is by Irwin Press (1975). The remark to be made concerning this study is in relation to what Redfield reported for Chan Kom (1950). In 1950, as mentioned, Redfield reported the office of comisario was no longer a functional one. Prior to this, Redfield noted that this official functioned as a judicial authority. Press (1975:154) on the other hand, states that the comisario still is present in the villages and serves as "judge" in petty disputes; and as an intermediary between the higher Mexican political levels. It is important to observe, however, (in lieu of these the reported differences) that the

Press comisario appears to be a legal representative of the Mexican government, making certain formal judicial structures of Mexico more functional than informal village resolutions.

Francesca M. Cancian's (1975) study offers little of substance on law. This is another work on Zinacantan, not containing much that Collier (1973) did not discuss. For example, Cancian (1975:32) reports that most cases are handled within the boundaries of Zinacantan except those (i.e., homicide) which are required by Mexican law to be referred to the authorities in San Cristóbal. Cancian (1975:33) adds:

These political-legal organizations are in the hand of Zinacantecos, to handle in their own way, as long as they do not conflict with Mexican law and come to the attention of outsiders.

Cancian's semantics are important, because the majority of offenses which occur in Zinacantan are probably not in conflict with Mexican statutory provisions. The only types of conflict which do not reach San Cristóbal, no doubt, are disputes involving such cases as withcraft, family squabbles, drinking, fighting, and possibly intestado succession. As mentioned by me repeatedly there is little reliable data supporting any opposing views.

George A. Collier (1975) published another work dealing with Zinacantan. Important here is a description of an official who is not mentioned to any appreciable degree in other studies on Zinacantan, the so-called "native lawyer." This individual specializes in handling cases for Indians before the higher Ladino authorities (Collier 1975:138).

Collier (1975:138) reports that this "lawyer" speaks Spanish and is able to present cases within the realms of both Indian customary law and Mexican law. He is, in other words, able to adopt a stance requiring a compromise between two cultural backgrounds. It is likely that this official is one of the legal symbols employed by the Indians, as an ethnic group, for manipulating certain situations to their benefit (i.e., to make legal demands on the higher authorities enabling them to acquire advantageous results of maintaining ethnic boundaries.)

Taggart (1975) argues that serious offenses are usually handled by higher authorities. In fact, the entire structure described in his study closely parallels those stipulated in the Mexican codes. Taggart (1975:45) contends:

La rama judicial del gobierno está encabezada por el Agente del Ministerio Público, no bramiento vitalicio hecho por el Procurador General del Estado de Puebla. El Agente se encarga de hacer cumplir la ley.

Eva Hunt (1976) represents further work on Oaxaca. Much of what Hunt describes can be seen in somewhat different form in Dennis' (1973; 1976) studies on inter-village feuding. Hunt's (1976:121) major thesis can be stated on the basis of a passage from her study:

...the process of fission of kinship groups initiated over rivalries for control of land is completed by the official external acknowledgement of the existence of new neighborhoods within a village, or of new hamlets which are defined as semiautonomous political dependencies of a municipio by the state government (for example, agencias municipales), or by the official formation of a new municipio within the district. The recognition of new political entities is obtained by insistent petition through the state and federal courts, or to other government agencies which appear relevant to the Indians.

The role of the federal authorities is again seen in the work by Fidencio S. Montes (1976). Once more, the presidente municipal is described as having the administrative functions. His judicial duties largely are dictated by state laws and he is required to hand most disputes over to the state or federal authorities in control of the region. Montes (1976:91) writes:

Tenía jurisdicción sobre todo tipo de orden delictivo, lo cual le permitía manejar a su capricho las decisiones judiciales; como es de suponerse, ganaba los litigios y conflictos quien ofreciera más dinero dándose preferencia a los ladinos.

A work by Waldemar R. Smith (1977) offers a few ideas worth mentioning. This study is an analysis of fiestas, representing a syncretism of traditional and Catholic elements in highland Guatemala. The importance of this paper (again) is not on specific aspects of law (for there are none). Rather, the comments on Indian interrelationships with higher political levels offer further support to one of my contentions in this analysis. The towns which the author describes are viewed as representative of villages in general in Guatemala. They are seen as becoming rapidly integrated into national Guatemalan affairs largely due to the increased adoption of Ladino structures. This has led to the decrease in degrees of Indian identity. Indians have become more literate, and as a result are more in tune with national affairs. This increased awareness has undoubtedly given the Indians a new cognizance of the national legal system and the benefits that can be accrued from it through

selective manipulation of legal symbols. For example, Smith (1977:173) summarizes this by writing on San Miguel Ixtahuacan:

...it is now somewhat less isolated (there are radios and buses, people understand more Spanish, and there are more institutional connections with modern society), somewhat more differentiated (political and religious organizations are more complex and open),...

On the other hand, the cargo system is seen as representing a means by which ethnic boundaries are maintained, allowing some degree of autonomy from the national structures short of interference with the functioning of formal viable legal concepts at all levels of Middle American life (Smith 1977).

A different view is proposed by Miguel Angel Asturias (1977).²¹ Asturias (1977:79-80) writes:

The Indian does not know that Guatemala is a Republic and he does not know his rights and his obligations as a citizen. He is ignorant of his rights because they have never been explained to him; he is ignorant of his obligations because he knows them only in the form of military service, taxes and forced labor in the county seats.

...A nation where the law is universally unknown is exposed to such terrible social diseases as political chicanery, militarism, and revolution.

This view indicates that there is not universal agreement on the subject. However, it would appear Asturias' own political views become evident in this extreme statement. Given the data presented in this bibliographical survey I am constrained to discount his overly vehement indictment.

²¹ Asturias' original study was offered in 1923 as his doctoral dissertation at the Universidad Nacional de Guatemala. The 1977 study claims the Indian plight has remained largely unchanged up to 1971 (Asturias 1977:xii). The source cited in the text of this research was Ahern's English translation, immediately following the Spanish presentation (see bibliography).

John Beard Haviland (1977) wrote about Zinacantan and rehashes ideas already presented by others like Gossen (1974) on Chamula, and Collier (1973). Haviland (1977:25) states regarding the Zinacantan lawyer:

There is a small group of men who are reputed to be clever representatives before ladino courts, a class of Zinacanteco lawyers. These men are fluent in Spanish, and they have experience in confronting ladino authorities. Such men are in increasing demand as Zinacantecos become aware of the discrepancies between traditional rules of dispute settlement and Mexican law--and try to exploit these discrepancies to their own advantage.

Even though merely repetitive, Haviland is able indirectly to show that by the presence of this specialist there is more reliance on formal legal procedures and less reliance on informal levels, as indicated before for Zinacantan.

The function of gossip as an informal mechanism of dispute resolution is also discussed by Haviland. Collier (1973) and others have shown the importance of this de facto agent as expediting compromise in a Zinacanteco court. Haviland (1977:230) contends:

Gossip rationalizes the past behavior of others in the sense that it tends to produce agreement between parties to the gossip about the applicable norms and standards and the appropriate judgments involved.

Here again, Haviland does not radically deviate from Collier (1973) and further comment is not required.

In 1978, a very important paper appeared. This was by Phillip Parnell, the work centers around Loani villages in Oaxaca. A major thesis of the paper is that these villages and the formal state-derived judicial structures are in "competition" with one another (Parnell 1978:316). As demonstrated by much of this bibliographical survey on legal anthropology, a legally plural condition is seen existing with

a variety of de facto and de jure options open to litigants. He views village courts as not being formal agents of the national structure (Parnell 1978:316). Parnell (1978:316) contends:

Village courts, like gossip networks, respond to village organization and values; state courts respond to state laws and state codes of judicial procedure.

Those cases which manage to work their way out of the village into higher arenas are a concern of Parnell. He contends Loani inhabitants prefer to keep the former cases in the village for purposes of self autonomy. However, the situation resulting when both levels vie for influence is a call for concern. Once the condition develops, the "corporateness" of these autonomous social entities are adversely affected in the face of any attempts at maintaining self-identity (Parnell 1978:317). Parnell (1978:318) delineates this process:

Thus, once a dispute enters the state system, a new, totally distinct unofficial process of appeals (an 'operational' as opposed to an 'official' appeals structure) is generated--a new appeals process that is less effective in controlling the dispute than were the local institutions in which the dispute arose.

The range of disputes Parnell (1978:327) describes as being serious enough to be passed on to the district is wide. Included in these delitos are murder, serious assaults, repeat offenders, and cases in which no compromise is achieved and the dispute continues.

The fact that informal procedures are often employed by higher officials is evident in Parnell's account. The

example used to illustrate this is one of political homicide.²² It is important to note informal mechanisms (i.e., gossip) are utilized when de jure methods of investigation are not successful in serious crimes. Parnell (1978:338) concludes:

When the formal legal structure is not productive in a case investigation, the district court may initiate a passive strategy of waiting for information to enter into its gossip channels. The court may also apply an active strategy through stepping up its formal investigation and forcing villagers to surrender factual information on the dispute, formally or informally, in order to defend community boundaries.

The preceding remarks clearly indicate that higher level officials are acutely aware of the problem facing them with respect to village desires to handle their own disputes. This awareness is such that informal judicial procedures have been adapted into the formal procedural elements to assure (or foster) village compliance and trust. This idea is one which scholars have not adequately addresssed, probably due to an unawareness of Mexican procedural and substantive law.

Parnell concludes (1978:349) his discussion by stating:

Law in Loani, however, signifies that when the developing state attempts to integrate local community and state legal systems, the overlapping of jurisdictions leads to competition rather than cooperation between them, and thus to a breakdown in the abilities of both the state and community to exert social control. As long as the local community retains its cohesive nature, its ability to prevent the escalation of disputes and maintain the peace lies in the elaboration of its own modes of social control in opposition to state institutions.

Although Parnell's paper is an excellent one, I must

²²The account is too lengthy to be provided. For reference to the case see Parnell (1978:329-336), "Murder of a Political Boss".

take exception to such extreme views. This competition is seen not as a lack of cooperation but as a beneficial system of checks and balances. Such checks and balances promotes cohesiveness rather than a "breaking down." Such competition produces a system whereby abuses in one can be controlled within specific boundaries and more equitable arrangements can be achieved and maintained. The result would not be an enhancement of village mechanisms of social control in opposition to the state. Instead, an elaboration in congruence with state procedures would occur to assure that villagers' concepts of justice, morality and law are more closely adhered to. Often the level of adjudication which a litigant chooses is indicative of this jurisdictional competition.

Brintnall's (1979) study involves research on a Guatemalan village (Aguacatan) in the Northwest Highlands, mentioned because it offers some support to my central thesis.

Traditionally, the Indians of the region were governed by the often-discussed civil-religious hierarchy (Brintnall 1979:94). In time the Ladinos were to exert greater and greater control over these traditional levels of authority. As seen in Chapter II, this history in Middle America was one of great "legal" involvement by the Indians in the dominant structure. (Brintnall 1979:174) writes of the contemporary scene:

It is not just that local government is organized in a more democratic fashion, but that a single unitary political system has replaced the dual government--one for the Indians and another for the Ladinos--of

the recent past. Indians have set the hierarchies aside, affiliated themselves with political parties and peasant leagues, run their own candidates for local office, and won. This local political revolution has converted the Indians of Aguacatan into a political reality at the bottom of the national political system.

The above passage encapsulates admirably the conclusion of this study; namely, to show that de jure legal levels have been adopted by local communities and not adapted to informal legal structures. The vast amount of comparative data provided by my exhaustive research, a part of which has been cited, is believed adequate to illustrate this conclusion.

Middle America either as a separate entity study, are primarily Panama, Honduras and Costa Rica was not directly or indirectly mentioned for Stone's Costa Rica (1949) and (1962), initial anthropological be almost entirely lacking that the indigenous population making the country previously mentioned in the introduction of this survey a solution.

As is obvious that the conditions in Middle America is poor. Despite the relative descriptions

CHAPTER VII

SUMMARY AND CONCLUSIONS

Summary

Middle American studies dealing with law, either as a separate topic or as part of an entire community study, are primarily representative of Mexico and Guatemala. Panama, Honduras and Nicaragua are only summarily dealt with. Costa Rica was not represented by any study which dealt directly or indirectly with legal behavior. In fact, if it were not for Stone's ethnographic accounts, The Boruca of Costa Rica (1949) and The Talamancan Tribes of Costa Rica (1962), initial anthropological data for this republic would be almost entirely lacking. One reason for this could be that the indigenous population was largely exterminated, making the country predominantly European in composition. As mentioned in the introductory chapter, in order to be included in this survey a study must at least mention dispute resolution.

As shown in Chapter I, it becomes obvious that the condition of the anthropology of law studies in Middle America is indicative of the subfield as a whole. Despite the relatively few studies, a number of good descriptions

are nevertheless available. Certainly the studies by Nader (1964; 1965); Nader and Metzger (1963); Collier (1973); Nash (1970); Parnell (1978); and the Hunts (1969) would testify to this fact. All of these scholars are able, admirably, to illustrate legal pluralism or, as Pospisil (1967) referred to it, "the multiplicity of legal levels." In other words, de facto and de jure methods of conflict resolution are, in essence, described and reasons offered why litigants chose one level in lieu of another.

One of the ideas which presents itself in terms of informal dispute resolution mechanisms is the pragmatic approach attributed to local-level officials in dealing with breaches of community norms. In many ways, I see the local approach (decisions of village leaders) to conflict resolution analogous to the ideas proposed by Gluckman (1955;1965) for the Barotse, best seen in his notion of the "reasonable man." Barotse judges in their roles as agents of social control can be seen in the following passage from Allott's (1956:145) critical comments on Gluckman:

The court, by setting custom as its standard, makes what is otherwise normal, normative; that which is done, ought to be done. But custom alone will not always yield a rule of decision, and in such cases another standard is required. This standard is that of the reasonable man: what would an ordinary, prudent, or reasonable man have done in the circumstances of the case? The conduct of the reasonable man, since he steps into the shoes of the defendant, must vary according to the circumstances posited.

The above is seen as having an even more striking similarity to Middle American cases when viewed in light of the fact that Gluckman primarily uses the term only in cases where

serious offenses (i.e., homicide) are not committed.

The survey describes the literature in terms of specific publication periods. These divisions are not intended to represent specific theoretical and methodological orientations to Middle American community studies. For example, it has often been traditional to treat studies of the area in reference to the approaches of Redfield, Foster and Lewis. Although recognizing their importance to Middle American research, these scholars' impact upon the studies of social control are not treated as representing major influences. The stages which I use are merely adopted to facilitate easier reading and more lucid comparisons.

The method of comparison is fashioned after Eggan's (1954) approach of controlled comparisons. Any such method is beset with obvious shortcomings. The most notable one, of which the reader will immediately become aware, is that the conclusions of this survey are not based upon (or supported by) actual personally observed data of legal behavior. The objectivity of the reported accounts of these anthropologists is likely to indicate a certain degree of bias toward Anglo-Saxon legal terminology. Indirectly, a form of "upstreaming," a term employed by ethnohistorians, is adapted for this study. In other words, there is a conscious attempt to assess the comparability of the anthropological information extracted from the sources. In this way it is felt that the ignorance in the civil law tradition which some of the scholars exhibit would become noticeable, conducive to a

better critical analysis. One way to overcome these difficulties is to recognize from the beginning that language differences which are evident in comparing legal systems would taint many of the anthropological observations. It is important to realize that the translation of western jurisprudential concepts into Hispano-Roman terminology is a tenuous exercise, a fact to be kept in mind when reading this survey. However, once any researcher understands these shortcomings, comparisons of de facto and de jure systems can be better accomplished.

The model is conceived to provide checks and balances to these multiple usages. The model is the Mexican Constitution of 1917 and the various criminal and civil statutes as summarized by Wheless and other reputable sources. For those unfamiliar with the political and legal climate of Middle America, this approach might appear mysterious. In reality, the opposite is the case. The Mexican Revolution of 1910 served as the seminal stage for such later activity throughout Middle America. Although other Middle American "Revolutions" were more "radical" in structure, the Mexican experience still germinated the zeal for revolutionary activity throughout the region in the 20th century. The substantive and procedural legal aspects to evolve from this activity were the Mexican 1917 Constitution and subsequent criminal and civil statutes. Those documents which followed in other republics were adaptations of the Mexican model. However, only notable differences existing are mentioned in the text of this survey.

Conclusions

The major conclusion which I believe the literature supports is contrary to what many scholars have espoused. Enough data was presented to support the hypothesis that the indigenous conflict resolution systems of Middle America have to measurable degree been adopted from, rather than adapted to, the Hispano-Roman derived systems of social control employed at the Federal and State levels. However, this is not meant to diminish the importance (by this observer) of informal mechanisms of resolution, because they function in specific instances as well. Nevertheless, the literature would appear to indicate that the more serious breaches of societal conduct are resolved through de jure or formally derived substantive and procedural law. I have shown that traditional or customary legal practices are more viable in minor delicts, such as family disputes, drunkenness, and non-dangerous assaults (for instance, fighting in market places or at village ceremonies). Time after time the literature (indirectly or directly) implied that the villagers saw informal village social control wholly inadequate in dealing with more serious disruptions of the status quo. As a result litigants will more likely seek redress at higher levels, despite ambivalent attitudes toward such authorities.

I suggest that the rapid integration which most Middle American communities (especially in Mexico and Guatemala) have been forced to endure has led to ascertainable results. One notable occurrence is that the range of disputes which

have evolved has left the traditional methods for dispute resolution totally unprepared to adequately deal with them. In other words, the local areas now lack the necessary "legal" experience or precedents to resolve conflicts that have arisen as the result of rapidly changing cultural systems. In practice, such cases (often required by national laws) are referred to higher judicial officials who have the necessary skills to deal with them.²³ Middle American villagers are aware (even if they see it as undesirable) that major offenses to village social order are likely to be resolved more proficiently by higher legal officials. This is interesting in light of the literature which argues Mestizo officials are ignorant of local legal behavior and possess attitudes prejudicial against the Indian. Such a proposition is not supported by the model, which includes a number of statutes reflecting an awareness of Indian customary law.²⁴

Collier in 1976 discusses the other side of the picture and examines why Mestizos are not particularly in a hurry to criticize village legal practices. In a paper on Zinacantan legal change, Collier (1976:138) asserts:

Although Mestizo officials view many Indian customs as obstacles to desired social and economic progress, they have been reluctant to attack the the legal system that supports these customs

²³A similar situation (though the cultural environment is different) exists for American Indian Tribal courts of the Southwestern United States. This has been admirably alluded to by Samuel Brakel (1976).

²⁴See articles on compromise and concubinage succession.

because the officials who staff the town hall court hold offices duly recognized in the state legal code. Mestizo planners have no desire to undermine the legitimacy of Indian township civil offices. They merely want to change the behavior of incumbent officeholders. They want them to learn and apply written laws so that Indian customs regarded by Mestizos as undesirable--such as witchcraft beliefs, bridewealth, compulsory religious service, and unequal inheritance between sons and daughters --will fall from use.

I feel that this misses the point somewhat. The real reason why written laws are implemented is that all Middle American republics wish to promote uniform legal systems which rely on national substantive and procedural practices. Only when such a uniform system is implemented and utilized will social and economic changes progress. The Mestizo are aware of the problems and are thus likely to allow the Indians a degree of autonomy in handling specific "Indian" offenses within village boundaries. Such offenses (e.g., witchcraft) are not likely to be covered in the statutes. These minor customary conflicts, because they are not covered statutorily, are not going to affect in any way the incorporation of a uniform de jure legal system in Middle American republics. So, Mestizo officials have no purpose in circumscribing traditional judicial authority.

Collier (1976:147) in the same paper, also comments that Mestizo courts do not make much in the way of positive contributions to Zinacantecos because de jure officials have no control over the vital economic concerns which is the basis of Zinacantan social stratification. I must disagree with this assessment on the basis of the other data provided for

the area. Mestizo courts have a great deal to offer to Zinacantecos in a dispute. As has been reported so often, customary law lacks the necessary case experience in all of Mexico in many classes of serious disputes. As a result, higher courts must be relied upon to keep bitter feelings from exacerbating into potentially disruptive events in a community. In short, Mestizo courts have more to offer than Zinacantan courts from this perspective, namely the resolution of conflicts not amenable to local resolution.

Another reason national legal structures are becoming more functional in village disputes at the expense of customary practices is due to the rapidly changing social, economic and political fabric of Middle American republics. Adams (1957) discusses this for Guatemala and the list is endless for Mexico. Rapid attempts at integration have lead to the evolution of new classes of disputes and probably a greater frequency of occurrence, a situation not unique in international jurisprudence, including the United States.

Such has occurred also in Middle America as national structures have come into closer contact with local structures. One likely example would be in contract law. No longer are the customary, informal, non-written "dyadic" social contracts as viable as they were prior to national integration. With the advent of economic contractual agreements between spanish-speaking Mestizos and Indian villages, the formality of these transactions has lead to a new class of "power brokers". These middlemen have the legally recognized

right to act as mediators between village and external institutions which rely on de jure procedures. The Zinacantan lawyer would be an example of such a "cultural broker". In short, these individuals now function in bridging the chasm between de facto and de jure levels, making higher authorities more understandable and likely to be relied upon. The end result is the circumscribing and the phasing out of village traditional authorities with respect to their functions in dispute.

Brian Betley (1971) addresses this in a different context. He asserts:

Although the middleman is frequently defined on the basis of his differential knowledge of both systems, his ability 'properly' to enact roles in both systems, and his capacity to alternate fluidly between the systems, most of the conceptions of the two systems themselves are 'homogeneity' constructs rather than conceptions of information systems or systems of knowledge. Such constructs implicitly assume that the members of both the indigenous and national cultures are informationally and behaviorally uniform, and that the yawning abyss which separates these two uniform socio-cultural entities is somehow straddled by the middleman (Betley 1971:62).

The idea of stare decisis (in the sense of precedent) has been mentioned frequently throughout this study. Such a concept from Anglo-American law is difficult to translate into Middle American Hispano-Roman usage. Nevertheless, the notion is important here. Law and the resolution of disputes at the local level is often treated in terms of negotiated settlements in the form of compromises between litigants. Certainly, the various discussions on Middle American communities do not deviate from this pattern. For excellent

discussions of the role of negotiations in conflict resolution, the reader is referred to Gulliver (1973) and Aubert (1969). Gulliver (1973:667), for example, argues that negotiations are ubiquitous for all societies and their common patterns must be cross-culturally examined. Aubert (1969: 283-284) contends that in negotiations:

Strictly speaking, the parties need not reach agreement on anything beyond settlement of a point where the demands of both sides meet--that is, where they would rather accept the solution offered them than face a broken relationship and no agreement at all. The advantage of negotiated solutions is that they need not leave any marks on the normative order of society. Since the solution does not become a precedent for later solutions to similar conflicts, the adversaries need not fear the general consequences of the settlement. However, from another point of view this is a weakness of such a settlement because of a kind of predictability is often needed that would result if the solution could be interpreted as the application of a norm generalizable to other similar cases.

The latter part of the above quote is extremely pertinent because I completely subscribe to this point of view, as the reason why traditional legal levels are unable to function in serious offenses. By negotiating settlements traditionally, no "legal" experience via precedent was ever attained to allow for the functional resolution of serious disputes that are now, by necessity, usually referred to higher judicial authorities. Added to this fact is Collier's (1976:154) report that Zinacanteco negotiations often closely follow statutory provisions in which litigants can now formulate their complaints. This is just another example of where adoption (as opposed to adaption) of de jure procedural law is evident. Gonzalo Aguirre Beltran (1979) provides some interesting ideas which are pertinent. He argues that local

levels are organized in Mestizo America as "refuge regions," totally isolated (physically and socially) from the national culture (Aguirre Beltran 1979:1). These communities are described in Wolfian (1957) terms as being "closed corporate communities" of Indian peasants, "having special relations with the exterior and whose internal characteristics differ markedly from those of other segments of the nation" (Aguirre Beltran 1979:1). It becomes obvious what Aguirre Beltran proposes is not totally descriptive of areas like Mexico and Guatemala of today, where rapid integration of the subordinate groups into the national way of life has been more complete.

He contends the "inferior" Indian communities are not likely to get involved in the political activities of their respective republics (Aguirre Beltran 1979). I disagree and the literature provides sufficient examples to substantiate this disagreement. Nicholas and Mukhopadhyay (1962) have observed for village India a condition which this author sees as similar to the Middle American areas surveyed (specifically Mexico and Guatemala). These researchers write:

As villagers have become to participate in national politics, however, a new kind of social institution has become connected with factions--the political party. Parties have changed the relations between factions and given them new arenas of action, national significance, and, occasionally, new bases for conflict (Nicholas and Mukhopadhyay 1962:15).

In Mexico, the PRI has come to epitomize what the preceding passage indicates. Similar conditions exist for other

republics of Middle America, specifically, Guatemala. The political party in this region has functioned in two ways. One, the institution has been used by local communities to assert ethnic identities. Second, the Mexican PRI and others have been the forces behind new examples of conflict, as seen in the sources which dealt with topics like political homicide (Friedrich 1962). Certainly, in areas where peasant upheavals are historically well documented (i.e., Oaxaca and Morelos, Mexico and Highland Guatemala), political parties serve as important middlemen in dealing with specific economic, social and political problems. These parties can and do serve as local representatives of peasant unhappiness which are then voiced to higher levels. Aguirre Beltran (1979:113) to his credit, does recognize:

Of course, this process has not been entirely comprehensive nor has the rate of its development been similar in all countries.

Eric Wolf's arguments (1957) proposing Middle American communities as characterically being "closed" in nature also is not borne out by much of the area literature. Wolf (1957:234) indicates these local entities, through their endogamous aspects, represent autonomous or somewhat insular cultural complexes. These, by necessity, rely on "brokers" in their relationships with foreign authorities (Wolf 1956: 65). The record in Mexico and Guatemala especially would indicate that national integrative forces have lead to a vast undermining of community insularity to a point where the existence of Wolf's "closed corporate community" would logically be seen as an aberrant situation rather than a normal one.

Aguirre Beltran (1979) also substantiates my beliefs on the functions of de jure controls in dispute resolution, although that is not his main thesis and purpose. In connection with the usual discussions of informal community controls, Aguirre Beltran (1979:127) adds:

Next to the municipal building is a jail which is usually empty because the subordinate status of the community prevents it from formally hearing offenses or important crimes. If these take place, the local government must transfer the matter to the national authorities and it is they who apply sanctions involving loss of liberty or of life.

There is a second conclusion which I draw from the present survey, one which needs attention in the future. The resolution of village conflicts through the utilization of formal judicial mechanisms is only one factor in influencing ethnic boundaries. This motivation and effort in maintaining degrees of ethnic autonomy are seen not merely as attempts to maintain separateness between local communities and the State; but, also between local communities.

Villagers in Middle America can (and do) manipulate legal symbols to maintain ethnic boundaries. Cohen (1969) talks about two concepts which have a degree of relevance here. These are "detrribalization" and "retribalization", seen as characteristic of several newly independent African nation-states. Detribalization is perceived as a process whereby subordinate ethnic groups, lose much of their traditional cultural uniqueness (Cohen 1969:2). This process includes the acceptance and concomitant adoption of institutions and cultural patterns of the superior group.

On the other hand, in "retribalization" the group is more apt to "manipulate" cultural symbols to maintain or strengthen their ethnic boundaries (Cohen 1969:2). Although both processes indicate a degree of applicability to the Middle American region, the latter process I believe to be more exemplary of the actual situation. This can be seen in the surveyed works of Dennis (1976; 1979); and Dennis and Uzzell (1978). In Oaxacan villages, Dennis (1979:45) contends that inter-village feuding leads to litigation over legal land title. Even beyond attempts to avoid future controversies, these legal proceedings are a means by which villagers can maintain ethnic boundaries between other villages.

In addition, the perpetuation of these conflicts is viewed as a means of extracting added revenue to be applied toward village economic activities (Dennis 1976; 1979; Dennis and Uzzell 1978). This would allow the village a degree of "ethnic" autonomy from the national politico-economic structures. Economically speaking, the obtaining of funds in this manner would enable predominantly Indian communities to fund their own traditional cargo systems without consistent recourse to federal or state monies. The ongoing practice of maintaining the cargo system through the manipulation of legal symbols for economic ends would promote a greater degree of ethnic boundary maintenance. Local religious functions, typically Indian in nature, could continue to exist even if civil authorities decrease in importance.

I believe the utilization of de jure legal practices

serves another purpose relating to ethnicity. Because many offenses (i.e., serious delicts) are proscribed by law to be handled within formal statutory provisions, the referral of such disputes by village leaders to outside authorities serves a useful function. I conclude this would be a way for village officials to assure outside authorities that the law is indeed being complied with. In this manner, villagers are less likely to see de jure "intervention", thus permitting the continual operation of customary de facto institutions of conflict resolution in cases which are more traditional in nature. In contemporary Middle America, these would be offenses that do not conflict or compete with statutory law (i.e., witchcraft and family disputes). The resulting autonomy would be tenuous at best; but, in societies rapidly undergoing integration, any method which can be employed in insuring some degree of ethnic insularity would seem beneficial to villagers. In other words, through the manipulation of legal symbols by complying with statutory provisions, de facto resolving mechanisms can still be employed in cases of a distinctly "Indian" (or local) nature thus assuring that ethnic boundaries can be maintained in the face of the threat of total assimilation.

Another conclusion I draw from this survey is related to the geographical proximity of local communities to centralized control. Some scholars seem to believe that as one moves further from state and national legal structures, the occurrence (and influence) of de jure controls would probably

decrease. However, from my systematic analysis in preceding chapters, it becomes obvious that this is not the case. Distance from centers of higher control plays a minor role in the degree of adoption of formal procedural and substantive practices, at least this is true for those regions of Middle America where national government integration is more advanced. In other words, whether one examines an ethnographical work dealing with a village in Morelos, Mexico (less than ten miles from Mexico City), or a village in Quintana Roo, on the Yucatan peninsula, the degree of formal legal influence is remarkably similar. As Adams (1957) and others have shown for Guatemala, the situation there does not deviate from the pattern set in Mexico. Such conclusions (like the conclusions relating to the manipulation of legal symbols to maintain ethnic boundaries in the disposition of disputes) are undoubtedly the result of a lack of awareness of revolutionary impacts and the Hispano-Roman legal tradition which is characteristic of the Middle American republics.

Historically, the above conclusions should not be considered as superficial. After all, many of the pre-Hispanic indigenous cultures (e.g., the Colhua Mexica in the Valley of Mexico), have had a long history of statutory law. As was mentioned in Chapter II, the code of Netzhualcoyotl was such a system. Aztec control and influence was felt throughout the region. Even with those peoples not totally under their domination (i.e., Zapotecs, Mixtecs and Tarascans), the impact of Aztec statutory law was certainly evident. The same holds

true for the various Maya groups who also had great influence in the Mesoamerican cultural sphere. Hence, the adoption of Hispano-Roman jural concepts in the sense and context which I have propounded should not be considered anomalous in the historical experience of Middle American indigenous cultures.

Ancillary to these important conclusions, is that in the areas of Middle America where governmental integration has been rapid and pervasive, the adoption of formal conflict resolution methods has been practically complete.

APPENDIX

ARTICLES OF MEXICAN STATUTES

RIGHTS AND OBLIGATIONS ARISING FROM MARRIAGE

Art. 196. Reciprocal Rights and Duties. --Husband and wife are bound to contribute each one his part to the objects of marriage and to mutually succor each other. The wife must live beside her husband; the Tribunals, for ascertained cause, shall relieve the wife from this obligation when the husband removes his domicile to a foreign country, unless he does so in the service of his country, or when he removes to an unhealthy or improper (indecoroso) place. The husband must support (dar alimentos) his wife and make all the expenses necessary to maintain the home; but if the wife has property of her own or is engaged in a business or profession, she must also contribute to the family expenses in amount not exceeding one-half, unless the husband is disabled from working and has no means of his own, in which case the wife is liable for all the expenses, which shall be paid out of her property. The wife shall always have a preferred claim upon the income of her husband's property, upon such property itself, and upon his wages, salary or emoluments for the amounts necessary for the support of herself and her minor children, and may demand security for the same; the husband has the same right in cases where the wife is obligated to contribute in whole or in part to the family expenses.

Art. 198. Administration of Property--Contracts.
--The husband and wife, of lawful age, have capacity to manage, contract about or dispose of their own property, and bring or defend all actions relating thereto, without necessity of the consent of the other spouse, unless the marriage capitulations provide for the administration of the property. If they are minors, they shall have the like rights of management, but must have judicial authorization to sell, encumber or mortgage their property and a guardian (tutor) for their judicial affairs. The wife must have judicial authorization to contract with her husband, except as to mandates; also to become surety for her husband, except on bonds to obtain his liberty, or to obligate herself jointly with him in matters pertaining exclusively to him, but such authorization shall not be granted when her own interests may be notoriously prejudiced....

Art. 207. Rights and Duties of Spouses. --Each spouse retains the ownership and administration of his or her own property, and all the fruits and accessions thereof belong exclusively to the respective owner, as also the salaries, wages, emoluments and profits obtained by his personal services, and in any profession or business. Each of the spouses must contribute to the education and support of the children and to the other marital charges, as provided in Art. 196. The property acquired by the spouses in common by donation, inheritance, legacy, or other gratuitous title shall, until division, be administered by them both or by one with consent of the other, the administering spouse being regarded as a mandatary. Neither husband nor wife may recover from the other any compensation or fee for any personal services, advice or assistance rendered, but if one spouse, by reason of the absence or disability of the other, not due to sickness, takes temporary charge of the management of his property, he has the right to recompense for such service in proportion to its importance and the results obtained. The husband and wife who exercise the patria potestad may divide between themselves equally one-half of the usufruct which the law allows to them. Husband and wife are responsible each to the other for the losses and damages (danôs y perjuicios) caused to the other by his fraud, fault or negligence.

OF DIVORCE

Art 215. Legal Causes--Effects. --Divorce dissolves the bonds of matrimony, and leaves the parties free to contract another. Legal causes of divorce are: 1. Adultery, legally proved, of the husband or the wife; 2. That the wife gives birth during the marriage to a child conceived before marriage, and which is judicially declared illegitimate; 3. Where the husband proposes to prostitute the wife, either directly, or he accepts money or other remuneration with the express purpose of permitting another to have carnal relations with her; 4. Instigation or violence done by one spouse to the other to commit some crime, although not of carnal incontinence; 5. Immoral acts of either spouse with intent to corrupt the children, or tolerating their corruption; 6. Syphilis, tuberculosis, or other chronic or incurable disease which is also contagious or hereditary, and incurable impotency occurring after the marriage; 7. Incurable mental alienation; 8. Abandonment of the conjugal home for more than six months without justified cause; 9. Such abandonment due to a cause sufficient for divorce, if prolonged for more than one year without suit for divorce by the abandoning spouse; 10. Declaration of absence legally made,

made, or of the presumption of death in cases where a previous declaration of absence is not necessarily; 11. Extreme cruelty (servicia), threats or grave abuse of either spouse by the other; 12. The refusal of the spouses to provide support (alimentos), in accordance with Art. 196, supra, provided that the rights therein granted cannot be enforced; 13. Calumnious accusations made by one spouse against the other, of a crime punishable by more than two years' imprisonment; 14. A non-political but infamous crime committed by one spouse against the other, punishable by major imprisonment (prisión mayor) of two years; 15. Habits of gambling or drunkenness or the undue and persistent use of enervating drugs, which threaten the ruin of the family or constitute a continual cause of conjugal disagreement; 16. The commission by one spouse against the person or property of the other, of an act which would be punishable if committed by a stranger, if such act is punishable by law with imprisonment (prisión) or more than one year; 17. Mutual consent.

When one spouse sues the other for divorce or nullity of the marriage for an unjustified or insufficient cause, the spouse so sued has the right to ask divorce, but cannot do so until three months after notification of the final judgment; during these three months the spouses are not obliged to live together. Either spouse may sue for divorce for the adultery of the other, but only within six months after having knowledge of the adultery. Immoral acts by either husband or wife with intent to corrupt the children of both or of either one of them, are causes of divorce; the toleration of the corruption which gives the right to the divorce must consist of positive acts, and not of simple omissions. To sue for divorce for the cause of mental alienation considered incurable, two years must have elapsed since the commencement of the illness.

OF THE PARENTAL POWER (Patria potestad)

Art. 232. Who May Exercise--Incidents. --Children of whatever age, status and condition must honor and respect their parents and other ascendants. Unemancipated minors are under the parental (patria potestad) so long as any ascendant remains who is entitled by law to exercise it; its exercise over the person and property of the children is subject, as regards the care and education of the minors, to the regulations adopted under the Law of Social Prevision Juvenile Delinquency in the Federal District.

The parental power over the children of a marriage is exercised; 1. By the father and the mother; 2. by the paternal grandparents; 3. by the maternal grandparents. When both parents, living together, have acknowledged a child born out of marriage, both shall exercise the power; if they separate, the judge, in the absence of agreement, will designate one of them, having in view the interests of the child; if living apart, the provisions of Arts. 228, supra, apply; in such latter case, if one of the parents fails to exercise the power, the other will do so. If there are no parents, the power over the acknowledged child will be exercised by the other ascendants mentioned in clauses II-III above. The parental power over adopted children shall be exercised only by the persons who adopt them. Only in case of the default or impediment of the person having the prior right can it be exercised by those next in order; if only one such person is wanting, the other will exercise it.

While a child is under the parental power he cannot leave the home of the persons exercising it without their permission or the decree of the competent authority. Those exercising the power over a child are obliged to educate him properly; failure to do so coming to the notice of the Local Councils of Tutorship, they shall advise the Ministerio Público for its proper action. Those exercising the parental power may moderately correct and punish the child, being assisted if necessary by the authorities. Those subject to the parental power cannot appear in court or make any contract without the express consent of the persons exercising that right; in case of unreasonable objection, the judge will decide.

Art. 233. Effects on Property Rights. --The persons exercising the parental power are the lawful representatives of those subject to it and have the legal administration of their property, as provided in this Code. When the power is exercised at the same time by both of the parents, grandparents, or adoptants, the man shall be the administrator of the property, but he shall consult in all matters with his consort, and requires her express consent for the more important acts of administration. The person so empowered also represents the child in litigation, but cannot make any agreement to terminate it without express consent of his consort, and with judicial authorization when the law expressly requires it.

OF PERSONAL PROPERTY

Art. 259. Personal Property--What Constitutes.

--Property is personalty (muebles) either by its nature or by determination of law. Personalty by nature are those things which can be removed from place to place, whether they move by themselves or by means of exterior force; personalty by determination of law are obligations and rights or actions which have for their object personal things, or amounts recoverable by means of a "personal action." For like reason shares held by share holders in commercial or industrial companies, are personalty, even when the company owns real property. Also vessels (embarkations) of all kinds are personalty. Materials coming from the demolition of a building, or collected for its repair or for the construction of new ones, are personalty while not employed in the building; also fertilizers for lands while not applied to that use; the rights of authorship are also personalty. In general, all other things not regarded in law as realty, are personal property.

Art. 260. Use of Terms--What Included.

--When in a legal provision or in acts and contracts, the words bienes muebles (movable properties, personalty) are used, those things enumerated in the preceding articles shall be embraced in the term. When the words mueble(s) or bienes muebles de una casa (movables of a house) are used, they will embrace the furnishings (ajuar) and utensils thereof which serve exclusively and properly for the ordinary use of the family, according to the circumstances of the persons; accordingly, they shall not embrace: money, documents and papers, scientific and artistic collections, books and their shelves, medals, arms, instruments of arts and crafts, jewels, any kind of clothing for personal use, grains, foods, (caldos), merchandise and other similar things. When in the drafting of a will or agreement, a meaning different from the above has been given to those words such meaning shall be given effect. Personal property is fungible or not fungible: fungibles are those which can be replaced by others of the same kind, quality and quantity; non-fungibles are those which cannot be so replaced.

PROPERTY CONSIDERED WITH RESPECT TO ITS OWNER

Art. 261. Public and Private Property.

--Property is either public or private. Public property (bienes de dominio del poder público) is that belonging to the Federation, to

the states or to the Municipios; it is governed by the provisions of this Code so far as not provided by special laws. Public property is divided into property of common use, property destined to a public service, and civil property (bienes propios). Property of common use is inalienable and imprescriptible; it may be used by all the inhabitants, with the lawful restrictions; for any special uses, a concession granted with the legal requisites is necessary. Those who obstruct the use of public property are subject to the prescribed penalties, and to pay the losses and damages caused, and shall lose any works which they have executed.

Property destined to a public service and civil property belong in full right to the Federation, States or Municipios, but the former is inalienable and imprescriptible so long as not withdrawn from the public service to which it is destined.

When a public road is legally vacated and sold, the abutting landowners have the preferential right (derecho del tanto) to purchase the portion on which they abut, and for that purpose shall be notified of the sale; this right must be exercised within eight days after the notification; if notice is not given, they may demand the rescission of the sale within six months from its date.

Private property (bienes de propiedad de los particulares) includes all things which legally belong to private persons, and of which no one can make use without the consent of the owner or authorization of law. Foreigners and moral persons must observe the provisions of Art 27 of the Mexican Constitution and its reglamentary laws in order to acquire the ownership of real property.

OF OWNERSHIP (Propriedad)

Art. 270. Rights and Incidents--Expropriation.

--The owner of a thing may enjoy and dispose of it with the limitations and modalities prescribed by law. Property cannot be occupied against the will of the owner except for public use and with previous indemnity. The acquisition by the Government of lands expropriated to be sold for the family patrimony or for building houses to be rented to poor families for a small rental, is declared of public utility. The Federal Government may expropriate under the special law on the subject, objects belonging to private persons, which

are regarded as characteristic of the national culture; the present owners of such objects cannot sell or encumber them, nor so alter them that they lose their characteristics, without the authorization of the President of the Republic, granted through the Secretariat of Public Education and Fine Arts, under penalty of law. If necessary to prevent or relieve a public calamity, to save a town from danger, or to create works of collective benefit, the authorities, upon making indemnity, may occupy, damage or destroy private property.

Art. 272. Rights and Incidents of Ownership. --The owner or tenant of an estate may bring appropriate legal actions to prevent injury to the safety, quietude and health of those living upon it, through the misuse of the neighboring property. It is unlawful to exercise the right of ownership in such way as to result only in causing damage to another without benefit to the owner. Excavating and constructions cannot be made on one estate which deprive the adjoining soil of its necessary support, unless retaining walls or other necessary works to protect it are made. Every owner has the right to survey and bound his property and to set up or require the erection of landmarks; he has also the right, and in proper case the obligation, to enclose or fence his property, in whole or in part, as he thinks best or as required by the regulations, without prejudice to the easements to which it may be subject.

Art. 274. Planting--Trees. --No one may plant large trees within two meters, or small trees or bushes within one meter, of the boundary of adjoining property; the adjoining owner may require trees planted at a less distance to be removed, and even those at a greater distance, where they cause him evident damage. If the branches of trees extend over an adjoining property, garden or yard, the owner of the latter may require such part of the limbs extending over to be cut off, and if the roots extend into his soil, he may himself cut them off within his property, first giving notice to his neighbor.

APPROPRIATION OF ANIMALS

Art. 276. Unbranded Animals. --Unbranded animals are presumed, in absence of contrary proof, to belong to the owner of the lands where found, unless he has no animals of that kind; if several persons use the lands in common, the

animals will be presumed to belong to the one owning others of the same kind and breed; if they cannot be proved to belong to any one of them, they shall be reputed to be owned in common.

OF POSITIVE PRESCRIPTION

Art. 323. Possession--Requirements. --The possession necessary for prescription must be: 1. Founded on a concept of ownership; 2. peaceable; 3. continuous; 4 public.

Art. 324. Real Property. --All real property is prescribed: 1. In five years, if possessed under the four requisites of Art. 323, supra; 2. In five years, when the title has been recorded; 3. in ten years, when possessed in bad faith under said four requisites; 4. the said periods of possession stated in classes 1 and 3, will be increased by one-third of the time, if it is shown, by one having a juridical interest in it, that the possessor of a rural estate has not cultivated it during the greater part of the time he has possessed it, or that, by reason of the failure of the possessor of an urban property to make the necessary repairs, it has remained unoccupied for the greater part of the time he has possessed it.

Art. 325. Personal Property. --Personal property prescribes in three years if the possession was continuous, peaceable, and in good faith; and in five years if without good faith.

OF SUCCESSIONS

Art. 336. Definitions--General Rules. --Inheritance is the succession to all property (bienes) of the deceased and to all his rights and obligations which are not extinguished by his death; the inheritance is conferred by will or by law, the former being called testamentary, the latter legitimate (legítima or intestate) succession. The testator may dispose of all or part of his property; the part not disposed of is governed by the rules of legitimate or intestate succession.

The heir takes by universal title and responds for the charges of the inheritance to the extent of the amount

of the property which he inherits; the legatee takes by particular title, with only such charges as the testator may expressly impose upon him, without prejudice to his subsidiary responsibility with the heirs. When all the property is distributed in legacies, the legatees will be considered as heirs. If the deceased (autor de la herencia) and his heirs or legatees all perish in the same disaster or on the same day, without proof certain as to who died first, all will be held to have died at the same time, and there will be no transmission of inheritance or legacy between them. At the death of the author of the succession, the heirs acquire the right to the estate (masa hereditaria) as a common patrimony until division is made; each heir may dispose of his right in the estate, but cannot dispose of the things which compose it.

The legatee acquires right to the legacy pure and simple as of a day certain (así como al de día cierto), from the moment of the testator's death. The heir of legatee cannot dispose of his share in the inheritance until after the death of its author. The heir of part of the property who wishes to sell to a stranger his hereditary right, must notify his co-heirs, through a notary, judicially, or through two witnesses, of the terms and conditions of the proposed sale so that they, within eight days, may exercise the right of preemption (derecho del tanto); if the heirs exercise this right, the seller is obliged to make the sale to them upon the terms agreed upon; a sale made without the notification above required, is void. If two or more heirs wish to exercise the right, the one representing the greater portion of the inheritance will be preferred; if their portions are equal, the choice shall be made by lot. The right of preemption is lost if not exercised within the eight days; and ceases if the sale is made to a co-heir.

OF THE CAPACITY TO INHERIT

Art. 340. Capacity to Inherit—General Rules.

--All inhabitants of the Federal District and Territories, of whatever age, have capacity to inherit by will or intestacy, and cannot be deprived of it absolutely; but with respect to certain persons and certain property, they may lose it for any of the following causes: 1. Want of personality; 2. crime (delito); 3. presumption of influence contrary to the liberty of the testator or the truth or integrity of the will; 4. want of international reciprocity; 5. public utility;

6. refusal of or removal from any charge conferred by the will.

For want of personality, those are incapable who were not conceived at the time of the death of the author of the inheritance, or were not capable of life (viabiles) in the terms of Art. 224, ante; but a disposition in favor of children born of certain and determined persons during the testator's life, is valid.

Incapable of inheriting by reason or crime are: 1. One condemned for having killed, ordered or attempted to kill the person whose succession is concerned, or his parents, children, spouse, or brother or sister; 2. one who being a descendant, ascendant, spouse, brother or sister, of the deceased, has, although truly, accused the deceased, or his relatives as above enumerated, of a crime punishable by death or imprisonment, unless such accusation were necessary to save the life or honor of the accuser or of his relatives as above mentioned; although not so related, this rule applies if the accusation is adjudged calumnious; 3. the spouse who has been adjudged adulterous, in respect of succession to the innocent spouse; 4. the paramour of the adulterous spouse, in respect of succession to the latter or to the innocent spouse; 5. one convicted of a crime punishable by imprisonment, committed against the deceased or his relatives above specified; 6. the father and mother, with respect to the child abandoned (expuesto) by them; 7. the parents who abandon their children, prostitute their daughters or violate their modesty (atentaren a su pudor), with respect to the offended ones; 8. other relatives of the deceased, who being obligated to provide his support, have failed to do so; 9. the relatives of the deceased who was unable to work and was without means, who did not take him in with them, or have him taken into a charitable institution; 10. one who used violence, deceit or fraud towards a person to induce him to make, to desist from making, or to revoke his will; 11. one who is guilty under the Penal Code, of the suppression, substitution or pretension (suposición) of a child, where the inheritance of such child, or of any one prejudiced or attempted to be prejudiced by such acts is concerned. If the party injured by any of the foregoing acts pardons the offender, by authentic declaration or indubitable acts, he recovers his right to inherit from the offended party, by intestacy; but the right to inherit by will is recovered only where the testator made or revalidated his will after he knew of the offense. In cases of intestacy, the descendants of a person incompetent to inherit shall inherit

from the deceased, as they should not be excluded for the fault of their father; but the latter cannot in any event have the usufruct of the property of the estate, nor the administration accorded by law to parents over the property of their children.

INTESTATE SUCCESSION

Art. 378. When Necessary. --Intestate succession (la herencia legitima) is opened: Where there is no will or the will made is void or becomes ineffective; as to the remaining assets where the testator did not dispose of all his property; where the heir dies before the testator, or is incapable of inheriting, or fails to perform conditions imposed or refuses the inheritance and no substitute is appointed; in such cases where the will is valid, only the lapsed interests are subject to intestacy.

Art. 379. Order of Succession. --The right of intestate succession is granted to: 1. Descendants, the surviving spouse, ascendants, collateral relatives within the fourth degree, and in certain cases to the concubine; 2. failing all such, to the Republic Beneficence. Relatives by affinity cannot inherit. Nearer relatives exclude the more remote, except as provided in Art.s 380 and 383, infra. Relatives in the same degree inherit by equal parts. The lines and degrees of relationship are governed by the provisions of Art. 219, supra.

Art. 380. Succession of Descendants. --If upon the death of the parents there remain only children, the inheritance is divided among them in equal shares; where there are descendants and surviving spouse, the latter will take a child's share in accordance with Art. 382, infra. If there are children and descendants of remoter degree, the children inherit per capita and the latter per stirpes; this rule applies in case of descendants of pre-deceased children, those incapable of inheriting or who have refused the inheritance. If there are only descendants of more remote degree they inherit per stirpes, and if any stirpes there are several heirs they take equal shares. Where there are children and ascendants, the latter are only entitled to a child's portion of ailments. An adopted child inherits like a child; but there is no right of inheritance between the

adopted child and relatives of the adoptant; where there are adoptive parents and descendants of the adopted child, the former are entitled only to ailments. If the intestacy is not absolute, the part legally disposed of by the testator will be deducted from the total inheritance, and the remainder will be divided according to the preceding rules.

Art. 381. Succession of Ascendants. --If there are no descendants and surviving spouse, the parents inherit equally or the surviving one takes the child's entire estate; if only ascendants of remote degree by one line, they share equally; if by both lines, the estate will be divided in two equal parts, one part to the ascendants of the paternal line and one to those of the maternal line, who will divide their share equally among their respective members. If there are adopting parents and ascendants of the adopted child, the child's estate will be divided equally between each class; between the spouse of the adopted child and the adopting parents, the spouse receives two-thirds, the other one-third to the adoptants. Ascendants, although illegitimate, inherit from their acknowledged descendants; if the acknowledgement was made after the descendant acquired property the amount of which, considering the personal circumstances of the adoptant leads to the founded supposition that the acknowledgement was for that motive, neither the person making the acknowledgement nor his descendants can inherit from the person acknowledged; but he is entitled to ailments, if the acknowledgement was made when the one acknowledged also had the right to receive ailments.

Art. 382. Surviving Husband or Wife. --The surviving spouse, where there are descendants, takes a child's share, if without means of his or her own or if at the intestate's death, they did not equal a child's share; the same applies where the surviving spouse shares with adoptive children of the intestate; in the former case the spouse will receive such share entire, in the latter, only sufficient to make up such share. If there are surviving spouse and ascendants, the estate will be divided into two equal parts, one for the spouse the other for the ascendants; in case of surviving spouse and one or more brothers or sisters of the intestate, the spouse receives two-thirds, the balance to the brother or sister or divided equally between the several; in the last two cases the spouse will receive the share designated although having property of his or her own; and shall receive the entire estate in default of descendants,

ascendants and brothers or sisters.

Art. 384. Concubines--Rights of Inheritance.

--The woman with whom the author of the inheritance lived as if her husband for five years next before his death, or by whom he had children, and provided both have remained unmarried during the concubinage, is entitled to inherit in accord with the following rules: 1. If besides the concubine there are children of the deceased, she is entitled to a child's share as in case of a surviving spouse; 2. if there are decendants of the deceased who are also her decendants, she takes one-half of a child's share; 3. if children of her own and children of the deceased by another woman, the concubine takes two-thirds of a child's share; 4. if ascendants of the deceased she takes one-fourth of the assets of the estate; 5. if collateral relations of the deceased within the fourth degree, she takes one-third of the estate; 6. if the deceased left none of the relations mentioned, she takes one-half of the estate, the other half to the Beneficencia Pública. In the cases of clauses 2, 3 and 4 above, the provisions Art. 382, supra, relating to succession of spouses apply, if the concubine had property of her own.

OF THE ACCEPTANCE AND REFUSAL OF THE INHERITANCE

Art. 388. Acceptance or Refusal--Effects.

--Persons of legal age and capable of disposing freely of their property may accept or reject inheritances; but that of minors and other incompetents will be accepted by their guardians, who may reject it with judicial authorization, after hearing the Ministerio Público. A married woman does not need her husband's authorization to accept or reject; a common inheritance will be accepted by both spouses, and if they disagree the judge will decide. Acceptance may be express or implied; it is express if the heirs accepts by positive words, and tacit where he does acts necessarily implying acceptance or which he could not do without having the character of an heir. The inheritance cannot be accepted or rejected in part, after a time, or conditionally. If the heirs do not agree upon acceptance or rejection, some may accept and other reject it. If an heir dies before acting, the right to do so passes to his successors.

The effects of acceptance or rejection are retroactive as of the date of the death of the ancestor. Rejection must be express and in writing before the judge, or by

notarial act if the heir is in another place. Refusal of an inheritance does not prevent an heir who is not executor from claiming any legacy left to him; one entitled to inherit both by will and by intestacy loses both if he refuses the former, unless he did not know of the will. No one can renounce the right to inherit from a living person, nor assign rights which he may acquire in his inheritance, nor accept or refuse without being certain of his death; after knowledge of the death, he may renounce a conditional inheritance although the condition is unfulfilled. The legal representatives of moral persons capable of acquiring, may accept or refuse; but official corporations or private charitable institutions cannot reject without judicial approval, or subject to the Law of Private Beneficence, respectively. Public establishments can neither accept nor repudiate without the approval of the superior administrative authority.

Anyone having an interest in the action of the heir may partition the judge, after nine days, to require the heir to make his declaration within at most thirty days, notifying him that if he does not do so, he will be taken to have accepted the inheritance. The acceptance or repudiation once made is irrevocable and can only be impeached for duress or fraud, except where a will unknown at the time is discovered which changes the inheritance; in this event if an acceptance is revoked the heir must return whatever he has received of the inheritance, and observing the usual rules as to good or bad faith in respect to its products. If the heir refuses an inheritance to the prejudice of his previously existing creditors only, they may petition the judge for leave to accept it in his name, to the extent of their claims, any balance being payable to the person next entitled to the inheritance, who may also prevent the creditors from interfering by paying their claims

One declared to be an heir at the instance of a legatee or creator is to be recognized as such by the others, without necessity of a new suit. Acceptance does not produce confusion of property between ancestor and heirs, as it is always subject to inventory.

OF OBLIGATIONS ARISING FROM ILLICIT ACTS

Art. 421. Master and Servant--Representative Responsibility. --Moral persons are responsible for the damages caused by their legal representatives in the exercise of

their functions. Those exercising the patria potestad are responsible for the damages caused by the acts of minors under their power and who live with them, such responsibility ceases when the minors committing the acts are under the vigilance and authority of other persons, such as directors of colleges, shops, etc., as such persons shall then assume this responsibility; the foregoing provisions apply to tutors and the incompetents under their care....

The owner of an animal must pay the damages caused by it, unless he proves: either that he kept and watched over it with necessary care; or that the animal was provoked; or that the injured person was imprudent; or that the fact was the result of an accident or vis major; but if the animal causing the damage was excited by a third person, the latter and not the owner is responsible.

The owner of a building is responsible for damages resulting from the ruin of all or part of it, if such condition resulted from the want of necessary repairs or from defects (vicios) of construction; such owners are also responsible for the damages caused by: 1. The explosion of machines, or by the inflammation of explosive substances; 1. smoke or gases injurious (nocivos) to persons or property; 3. the fall of their trees, when not caused by (vis major); 4. the emanations of sewers (cloacas), or of deposits of infectant materials; 5. deposits of water which dampen the neighbor's wall or spread upon his property; 6. the weight or movement of machines, the accumulation of materials or animals injurious to the health, or any other cause which without right causes any damage. The heads of a family which inhabits a house or part of it, are responsible for the damages caused by things which are thrown or which fall from the same.

Actions for reparation of damages caused under the provisions of this Chapter, prescribe in two years from the day the damage was caused.

OF COMPROMISES (Transacción)

Art 582. By Whom and How Made. --A compromise (transacción) is a contract by which the parties, by reciprocal concessions, settle a present or avoid a future controversy; where it concerns future controversies, it must be in writing if the amount involved exceeds two hundred pesos. Ascendants and tutors cannot compromise in the name of their

wards unless the compromise is necessary or useful for the interests of the incompetents and without previous judicial authorization.

Art. 583. What May or May Not be Compromised. --The civil action arising from a crime may be compromised, but the public action for the penalty is not thereby extinguished, nor is the crime thereby proved. The civil status of persons or the validity of marriage cannot be subject of compromise; but compromise of the pecuniary rights arising in favor of a person by the declaration of civil statutes is valid; but in such case the acquisition of the status is not implied.

Art. 584. When Void. --Compromises are void which concern: 1. Future crime, fraud and negligence; 2. the civil action arising therefrom; 3. future succession; 4. an inheritance, before the will, if any, is seen; 5. the right to receive aliments; but compromise may be made of the amounts already due for aliments. Where the parties are advised of the nullity of the title, or the dispute concerns such nullity, the matter may be compromised, provided the rights involved therein are renunciabile; but a compromise made in reliance on documents afterwards judicially declared to be false, is void; the discovery of new titles or documents is not cause for annulling or rescinding a compromise, in the absence of bad faith; but it is void where made on a matter which has been determined by final judgment unknown to the parties.

OF COURTS AND THE SEVERAL KINDS OF SUITS

Art. 695. The Court System--Explanatory. --In Mexico the system or hierarchy of Courts and Tribunals is much more simple and uniform than the intricate and often baffling categories encountered in the systems of the several American States; the Mexican Courts are of uniform hierarchy in all the States and the practice in each is uniform within Courts and tribunals of equal rank, except as modified in particular kinds or classes of actions. The material provisions applicable to each are herein stated so far as believed to be important for a general understanding of the Mexican Courts and practice by laymen or by lawyers who are not, of course, as foreigners, qualified to engage in legal practice in those courts; and hence need not inquire more closely into details of such practice than is here possible to outline comprehensively.

The system of Federal Courts comprises: 1. The Supreme Court of Justice of the Nation, composed of Ministros; 2. the Tribunales de Circuito, with their Magistrados, and 3. the Tribunales de Distrito, with their Jueces, the jurisdiction and functions of which are defined in Arts. 94, seq., of the Federal Constitution, and in the Organic Law. These Federal courts are complemented and assisted by the Procurador General de Justicia de la Federación, or Attorney General of the Federation, upon whom is dependent the Ministerio Público de la Federación, or Federal Attorney's Office.

In the Federal District, comprising the City of Mexico (analogous to the District of Columbia including the City of Washington), and in the Federal Territories, to which the Code of Civil Procedure particularly applies, and in the several states, under their own Codes, the Court system embraces: 1. The local Courts or (Juzgados) of First Instance, for trial of all local cases; and 2. the Tribunals, or Courts of Second Instance, to which appeals and several other recursos lie from First Instance. In the Federal District and Territories is established a system of minor courts, or Juzgados de Paz, with jurisdiction in civil and commercial cases involving not to exceed two hundred pesos. Local offices of Ministerio Público likewise intervene in and assist these "common" Courts, which are not Federal Courts even in the Federal District and Territories...

OF EVIDENCE (Pruebas)

Art. 739. **Proofs--General Rules.** --To ascertain the truth of controverted points, the trier of fact (juzgador) may avail himself of any person, either party or third person, and of any thing or document whether belonging to a party or a third person, without other limitation than that the proofs are not prohibited by law nor contrary to morals; the tribunals may at all times and at any stage of suit, order the taking of proofs or the extension of the time for taking them, whenever conducive to the knowledge of the truth regarding the points at issue; in the taking of proofs, the judge will proceed as he deems most likely to produce the best results from them without injury to the rights of the parties, hearing them and seeking to maintain their equality. Losses and damages occasioned to a third party by appearing or exhibiting things, shall be indemnified by the party who offers the proof or by both where the judge acts ex officio, without prejudice to the regulation of costs in due course.

He who affirms must prove; hence the plaintiff must prove the constitutive facts of his action and the defendant his defenses; he who denies is not bound to prove except: 1. When the denial involves the express affirmation of a fact; 2. where it disaffirms (deconozca) a legal presumption in favor of his co-litigant; 3. when it disaffirms capacity; 4. when the negative is a constitutive element of the action. Neither proofs in general nor the means of proof established by law can be waived. Only facts are subject to proof; law (derecho) has only to be proven when founded on foreign laws (leyes), usages, customs or jurisprudence; the party who invokes them must prove their existence and that they are applicable to the case.

The judge must receive the proofs offered by the parties provided they are permitted by law and pertinent to the points at issue; an order admitting any proof is without recourse; if rejected, a preventive appeal lies. Notorious facts do not need to be proved, and the judge may invoke them although not alleged by the parties. If one party opposes an inspection or examination ordered by the court to determine his physical or mental condition, or does not answer questions put by the court, or does not exhibit for inspection by the court documents or things in his possession, the court must accept as true the affirmations of the opposite party, saving proof to the contrary. Third persons are obliged at all times to assist the courts in the investigation of the truth, and must without delay when required exhibit documents and things in their possession; the courts have the power and duty, by the most effective means (apremios), to compel third persons to perform this obligation, and in case of opposition, shall hear their reasons and decide without further recourse; exempt from such obligation are the ascendants, descendants, spouse, and persons bound to keep professional secret, in cases where proof is sought against the party with whom they are related.

The law recognizes as means of proof: 1. Confession; 2. public documents; 3. private documents; 4. opinions of experts (dictámenes periciales); 5. judicial examination or inspection; 6. witnesses; 7. photographs, photostatic copies, dactyloscopic registers or fingerprints, and, in general, all means developed by scientific discoveries; 8. public fame; 9. presumptions; 10. all other means which are convincing to the trier of fact (juzgador). The Code of Commerce and the Federal Code omit numbers 7 and 10, supra, with other slight differences of practice.

ARBITRATION CASES (Juicio Arbitral)

Art. 767. Arbitration--General Rules. --The parties have the right to submit their differences to arbitral suit (juicio arbitral); the submission (compromiso) may be made before suit, during it, and after judgment at whatever stage of the cause; submission after irrevocable judgment can only take place if the interested parties know of it. Submission may be made by escritura pública, by private writing or by record (acta) before the judge, whatever be the amount involved: everyone in the full exercise of his civil rights may submit his matters to arbitration (comprometer en árbitros); tutors cannot submit matters of the incapacitated nor appoint arbitrators (árbitros) except with judicial approval, unless the incapacitated persons are heirs of the person who agreed to submission or provided for arbitration by a clause in his will; if there is no designation of arbitrators, they will be designated always with judicial intervention as provided in the measures preparatory to the arbitration suit. Executors and administrators (albaceas) must have unanimous consent of the heirs to submit matters of the estate to arbitration and to appoint arbitrators, except when done in compliance with the agreement or clause made by the author of the inheritance; in such case, if no arbitrator has been named, it will be done with judicial approval; assignees or trustees (síndicos) in insolvency proceedings (concueros) can submit to arbitration only with unanimous consent of the creditors.

The following matters cannot be submitted to arbitration: 1. The right to receive support (alimentos); 2. divorce, except with respect to the separation of property and other purely pecuniary differences; 3. actions of nullity of marriage; 4. matters concerning the civil status of persons, except such as relate to pecuniary rights arising from filiation, with the limitations imposed by the Civil Code (Art. 223, ante); 5. other matters as to which it is expressly prohibited by law.

Art. 768 Arbitral Procedure. --The submission must designate the matter or matters to be submitted to arbitration and the names of the arbitrators; failure to designate the matters to be submitted renders the submission void without necessity for judicial declaration; if the arbitrators are not designated, it is understood that their appointment is reserved to be made upon judicial approval as provided in the preparatory proceedings. The submission is valid although no

term for the arbitral proceeding is fixed; in such case, their mission will continue for 100 days in case of an ordinary suit and for 60 days in case of a summary action, these terms running from the time of acceptance of the appointment.

During the term of the arbitration (arbitraje) the arbitrators cannot be revoked except by unanimous consent of the parties.

The parties and the arbitrators will follow in the proceedings the terms and forms prescribed for the courts, unless the parties otherwise agree; regardless of any agreement to the contrary, the arbitrators are always obliged to receive proofs and to hear whatever the parties request. The exceptions of want of jurisdiction (incompetencia) and of other suit pending (litispendencia) are available in arbitration, if during its pendency the matter is conducted (se promueve) in ordinary tribunal.

Where there is a single arbitrator the parties may appoint a secretary for him, and if within three days from the time when he should begin to serve the parties are not agreed upon one, the arbitrator will appoint one who will serve at the cost of the parties; where there are several arbitrators, they will select one of themselves to act as secretary without any increase of compensation.

The submission terminates: 1. Upon the death of the arbitrator appointed in the compromise agreement or clause, if there is no substitute; if the arbitrator was designated by the parties with judicial approval, the submission is not extinguished, and a substitute will be appointed in the same manner as the first one; 2. by the excuse of the arbitrator or arbitrators, which can be made only on account of proved sickness which prevents performance of the duties; 3. by challenge (recusación) for cause, and only when the appointment was made by the judge; those appointed by common accord cannot be challenged; 4. where the arbitrator appointed is a magistrate, proprietary judge or judge ad interim for more than three months or any other person employed in the administration of justice which in fact and in law impedes service as arbitrator; 5. by expiration of the agreed or legal term of 100 or 60 days above provided. Arbitrators are subject to challenge only for the same causes as other judges; if it becomes necessary to replace an arbitrator, the terms will be suspended until the new appointment is made. If the arbitrators are authorized to appoint a third in case of their disagreement

(un tercero en discordia), and cannot agree upon him, they will consult the judge of First Instance; if the third arbitrator is appointed within less than 15 days before the extinction of the term for arbitration, and the parties do not extend it, 10 days additional time will be allowed for him to render his decision. The ordinary judge has cognizance of challenges and excuses of arbitrators according to law and without further recourse. The arbitrators may decide incidentes without decision of which it is impossible to decide the principal matter at issue; they may also pass upon peremptory exceptions, but not upon that of set-off or counterclaim (reconvención), except where set-off (compensación) is pleaded up to the amount of the demanda or when expressly so agreed.

THE FEDERAL COURTS

Art. 811. Judges--Disqualifications. --The ministers of the Supreme Court, Circuit magistrates and District judges are disqualified (impedidos) from cognizance of penal, administrative and civil matters for any of the following causes: 1. By relationship in right line without limitation of degree, collateral by consanguinity to the fourth degree and by affinity to the second degree, with any of the interested parties, their representatives, patrons or defensors; 2. by intimate friendship or enmity with any of the above persons; 3. by having personal interest in the matter, himself or his wife or relatives within the above degrees; 4. by having presented a complaint or denouncement, himself or his above relatives, against any of the parties; 5. by having, himself or any of, his above relatives, a pending suit against any of the parties or having had one within one year before he took cognizance of the matter; 6. where he or any of his said relatives has been proceeded against by complaint or denouncement before the authorities, by any of the parties, their representatives, patrons or defensors; 7. by having pending, himself or any of his said relatives, a matter similar to that before him; 8. by being interested in any matter in which any of the parties is judge, arbiter or arbitrator; 9. by attending, during the pendency of the matter, an entertainment (convite) given to him or paid for by any of the parties, or to have much familiarity or live in family with any of them; 10. by accepting presents or services from any of the parties; 11. by making promises which imply partiality for or against any of the parties, their representatives, patrons or defensors, or threatening any of them in any manner; 12. by being creditor, debtor, partner, lessor or lessee, dependent or principal of any of the

parties; 13. by being or to having been tutor or curator for any of the parties or administrator in any way of their property; 14. by being heir, legatee, donee or surety of any of the parties, if he has accepted the inheritance or legacy or intimated such acceptance; 15. where his wife or any of his children is creditor, debtor or surety of any of the parties; 16. by having been judge or magistrate in the same matter, in another instance; 17. by having been an agent of the Ministerio Público, juror, expert, witness, attorney in fact, patron or defensor in the matter in hand, or having previously acted in or recommended the matter in favor of or against any of the parties. In suits of amparo the provisions of the Organic Law will be observed. In penal matters, for effects of disqualification as above, the interested party is the accused or the person entitled to reparation of damage or to civil responsibility. The above causes of disqualification are applicable to jurors, supra.

GENERAL PRINCIPLES OF PENAL LAW

Art. 993. Penal Code--General Application. --The Penal Code is applicable in the Federal District and Territories for crimes within the jurisdiction of the common tribunals, and throughout the Republic for crimes within the jurisdiction of the Federal tribunals; it shall also be applied: 1. For crimes initiated, prepared or committed in a foreign country, when they produce or are intended to produce effects within Mexico; and, 2. for crimes committed in Mexican consulates or against their personnel, when the same are not prosecuted in the country where committed. Continuing crimes committed in a foreign country and which continue to be committed in Mexico, shall be prosecuted according to Mexican law, whether the delinquents are Mexican or foreigners. Crimes committed in a foreign country by a Mexican against Mexicans or against foreigners, or by a foreigner against Mexicans, shall be punished in Mexico, under the Federal laws: 1. If the accused is found in Mexico; and, 2. if he has not been finally adjudged in the country where the crime was committed; and, 3. if the infraction of which he is accused constitutes a crime in such foreign country and in Mexico.

Regarded as committed within the Republic are: 1. Crimes committed by Mexicans or foreigners aboard Mexican vessels on the high seas; 2. those committed aboard a Mexican warship in the ports or territorial waters of another nation, or on a merchant vessel if the accused has not been tried in

such nation; 3. those committed aboard a foreign vessel in a Mexican port or territorial waters, if the public peace is disturbed or if the offender or the injured party does not belong to the crew; otherwise, the rules of reciprocity apply; 4. those committed on board of national or foreign aeroplanes found in the national or foreign territory, air or waters in cases analogous to the foregoing; 5. those committed in Mexican embassies or legations. When a crime not specified in this Code, but in some special law is committed, the special law will be applied, observing the pertinent provisions of this Code.

Art. 994. Penal Responsibility--General Rules. --

Crime (delito) is an act or omission punished by penal laws; crimes are: 1. Intentional; and, 2. unintentional and of imprudence, which includes all want of foresight (imprevisión), negligence, want of skill (impercicia), want of reflection or of care which causes damage equal to an intentional crime. The delictuous intention is presumed, unless proof to the contrary; such presumption is not overcome, although the accused proves: 1. That he did not intend to injure a certain person, if he had a general intention to cause damage; 2. that he did not intend to cause the damage which was caused, if the same was the necessary and notorious consequence of the act or omission which caused the crime, or if he foresaw or could foresee such consequence because of its being the ordinary effect of the act or omission and within the reach of the common run of men, or if he resolved to violate the law whatever be the result; 3. that he believed that the law was unjust or that it was morally legitimate to violate it; 4. that he believed the end sought was legitimate; 5. that he was mistaken as to the person or thing as to which he sought to commit the crime; 6. that he acted with the consent of the injured party, except as otherwise provided herein. Penal responsibility does not pass, from the person or property of the delinquents, except as specified by law.

Whenever any member or representative of a juridicial person, of a society, corporation or concern (empresa) of any kind, except State institutions, commits a crime with means furnished to him by them for that purpose, so that it was committed in the name or under the protection or for the benefit of the social organization, the judge may, in cases exclusively specified by law, decree in the sentence the suspension or dissolution of the organization, if he deems it necessary for the public safety.

Attempts to commit crime are punishable when acts are done which tend directly and immediately to the commission of a crime, if the crime is not consummated through causes alien to the will of the agent; in imposing penalty for attempt, the judges will take into account the fears (temibilidad) of the accused and the stage he had reached in the execution of the crime.

Art. 995. Persons Responsible for Crimes--

Conspiracy. --All who take part in the conception, preparation or execution of crime, or who lend aid or cooperation of any kind, by concert before or after the act, or who directly induce anyone to commit it, are responsible; the judges may increase or decrease the penalty (sanción), within the limits fixed by law, according to the participation of each delinquent. If various delinquents take part in the commission of a determined crime, and any of them commits a distinct crime, without previous accord with the others, all shall be responsible for the commission of the new crime, unless the following requisites concur: 1. That the new crime does not serve as an adequate means for committing the principal crime; 2. that the latter crime is not a necessary or natural consequence of the former, nor of the means concerted; 3. that they did not previously know that the new crime was going to be committed; and, 4. that they were not present at the commission of the new crime, or if present, did everything they could to prevent it.

Art. 996. Circumstances Excluding Responsibility.

--Circumstances excluding penal responsibility are: 1. That the accused was impelled to act by an exterior irresistible physical force; 2. that at the time of the act he was in a state of unconsciousness of his acts, brought about by the accidental and involuntary use of toxic, intoxicating or enervating substances, or by an acute toxoinfectious state or by an involuntary mental disturbance (trastorno) of pathological and transitory character; 3. that the accused acted in defense of his person, honor or property, or that of another person, repelling an actual, violent and unlawful (sin derecho) aggression threatening an imminent danger, unless it is proved that one of the following circumstances intervened: 1. That the person attacked provoked the aggression, giving immediate and sufficient cause for it; 2. that he foresaw the aggression and could easily have averted it by other legal means; 3. that there was no rational necessity for the means of defense em-

ployed; and, 4. that the damage about to be caused by the aggressor was easily reparable afterwards by legal means or was notoriously of small importance compared with that caused by the defense.

The concurrence of the requisites of legitimate defense shall be presumed, in favor of one who, during the night and at the moment of threatened commission, repels the scaling or breaking of the fences, walls or entrances of his inhabited house or apartment or of its dependencies, whatever be the injury caused to the aggressor; a like presumption exists in favor of one who causes whatever injury to a stranger whom he finds: in his home (hogar), or in the house where his family is, although not his habitual home; in the home of another which the accused has a legal obligation to defend; in the place (local) where his property or that of another which he is legally bound to defend, is found; provided that it happens in the night and the intruder offers violence to the persons or things found in such place.

4. Grave fear (miedo) or founded and irresistible fear (temor) of an imminent and grave evil to his person or of the necessity to save his own person or property or that of another from a real, grave and imminent danger, provided there is no practicable and less prejudicial means; such state of necessity is not regarded as existing where the person concerned, by reason of his employment or duty (cargo), is under the legal duty to suffer the danger; 5. where he acts in fulfillment of a duty or in the exercise of a right imposed or conferred by law; 6. where he performs an act which is not delictuous except by reason of circumstances of the injured party, of which the accused was without his fault ignorant at the time of acting; 7. where he obeys a legitimate hierarchial superior, although his order (mandato) constitutes a crime if such circumstance is not notorious or it is not proved that the accused knew it; 8. where he violates the provisions of a penal law by failure to obey it by reason of a legitimate impediment; 9. where he conceals the person responsible for a crime, or the effects, objects or instruments of the same or hinders its investigation, when not due to an unworthy (bastardo) interest or does not employ any delictuous means, provided it is in the cases of: a). Ascendants or descendants by consanguinity or affinity; b). the spouse or collateral relatives by consanguinity to the fourth degree or by affinity to the second degree; and, c). those who are bound to the delinquent by love, respect, gratitude or close friendship; and, 10. where he causes an injury by mere accident, without any

intention or imprudence, in executing a lawful act with all due precautions.

One who acts to excess (se exceda) in his legitimate defense, in the third or fourth circumstances stated in the second part of clause III above, shall be punished as a delinquent by imprudence. The foregoing circumstances excluding responsibility, shall be given effect ex officio.

Art. 999. Penalties and Security Measures. --Penalties and measures of security are: 1. Imprisonment (prisión); 2. relegation; 3. reclusion of insane (locos), deafmutes, degenerates or drunkards (toxicómanos); 4. confinement; 5. prohibition of going to a certain place; 6. pecuniary penalty (sanción); 7. loss of the instruments of the crime; 8. confiscation or destruction of dangerous or noxious things; 9. admonition (amonestación); 10. warning or summons (apercibimiento); 11. bond to keep the peace (de no ofender); 12. suspension or privation of rights; 13. destitution or suspension of functions or employments; 14. special publication of the sentence; 15. vigilance of the police; 16. suspension or dissolution of societies; 17. tutelary measures for minors; and others prescribed by the laws.

GENERAL PRINCIPLES OF SANCIÓN PECUNIARIA

Art. 1000. Nature and Extent of Responsibility. Pecuniary responsibility (sanción pecuniaria) includes the fine (multa) and the reparation of the damage (daño); the reparation of the damage which must be made by the delinquent has the character of a public penalty (pena), but when such reparation must be exacted from third persons, it has the character of civil responsibility and shall be enforced (tramitarse) in the form of an incidente in the terms prescribed by the Code of Penal Procedure. When the condemned cannot pay the fine imposed on him as a sanction, or can pay only a part of it, the judge shall fix, as a substitute for it, the corresponding days of imprisonment (prisión), according to the economic conditions of the convicted person, not exceeding four months.

The reparation of the injury includes: 1. The restitution of the thing obtained by the crime, and if this is not possible, the payment of its price; and, 2. indemnization of the material and moral damage caused to the victim or to his

family. The reparation shall be fixed by the judges, according to the damage to be repaired, in accordance with the proofs obtained in the penal cause (proceso), and having regard also to the economic capacity of the person obliged to pay it; in cases of reparation of damage caused by reason of crimes by imprudence, the Federal Executive will reglament the form in which it should be guaranteed, administratively, by means of special insurance.

Art. 1001. Persons Liable for Reparation.

--Obligated to make reparation of damage as above provided, are; 1. Ascendants, for crimes of their descendants who are under their patria potestad; 2. tutors and guardians, for crimes of the incompetents under their authority; 3. the directors of institutions (internados or talleres) which receive pupils or apprentices under 16 years of age, for crimes by them while under their care; 4. the owners or managers of mercantile businesses or establishments of any kind, for crimes committed by their workmen, wage-earners, employees, domestics and artesans, by reason of and in performance of their service; 5. societies or aggrupations, for the crimes of their members or managing directors, in the same terms as, according to law, they are responsible for other obligations contracted by the latter, except the conjugal society, in which each spouse shall be responsible, with his own property, for the reparation of the damage caused respectively by either; and 6. the State, subsidiarily, for its officials and employees. The obligation to pay the amount of the pecuniary sanction is preferred and shall be discharged before any other personal obligations incurred subsequently to the crime. Reparation of the damage arising from crime shall be enforced ex officio by the Ministerio Público, in cases within its competence.

Art. 1002. Incidents of Pecuniary Sanction. --The

amount of the pecuniary sanction shall be distributed: between the State and the injured party; the former shall receive the amount of the fine, and the latter the amount of the reparation; if the entire amount of the sanction cannot be enforced, the reparation will be paid preferentially, and pro rata amongst the injured parties, as the case may be; if the injured party waives reparation, the amount of it will be paid to the State. Deposits to secure liberty under bond shall be applied to the payment of the pecuniary sanction when the accused becomes fugitive from justice.

When various persons commit a crime, the judge shall fix the fine for each one according to his participation in the delictuous act and to his economic conditions, and with respect to the reparation, the debt shall be regarded as joint and several (mancomunada y solidaria). Payment of the reparation will be enforced in the same form as the fine; if the pecuniary responsibility cannot be covered by the property of the party responsible or by the product of his work in prison, he remains subject to the obligation to pay the remainder after he is freed.

The authority charged with the collection of the pecuniary sanction, may fix periods for its payment, as follows: 1. If not exceeding 100 pesos, a term up to 120 days for paying it in thirds, if the debtor proves it is impossible to pay it sooner and gives security sufficient in the opinion of the executory authority; 2. for payment exceeding 100 pesos, a period up to six months, with payment in thirds, may be granted in the case and conditions just specified.

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