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Empresa in Latin American Law: Recent Developments

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Modern needs for goods and services require an infinite number of enterprises engaged in meeting demands on the part of consumers. In a free economy these are established and managed by private individuals or associations, or by the State or its various agencies with the profit or social service as the driving motive. In other economic systems they may be exclusively owned and operated by the State and administered by public officials. In either system, the enterprise remains the operational unit.[1]

Enterprises[2] are characterized by two elements: the human element represented by management and the employed personnel; and, the economic assets, material and immaterial. All, properly coordinated, work toward achieving the goals of the enterprise. This basic analysis must be supplemented by a significant distinction, namely that between the enterprise (*empresa; hacienda; enterprise, Unternehmen*) and the establishment (shop; plant; *establecimiento; établissement; Betrieb*).[3] An enterprise functions as an economic unit and aims at economic results, be these profits, or social services, while an establishment is a technical unit which provides products or services, to be offered through the enterprise to the consumers. It is, therefore, possible that a shop is at the same time an enterprise whenever technical and economic functions coincide; and by the same token, an enterprise may consist of more than one establishment.

(I) *EMPRESA:* AN ECONOMIC UNIT

In either sense, an enterprise[4] is, in terms of law,[5] an *universitas rerum*, an estate, comprising material and immaterial assets, operated as a going concern by people, the management and the subordinate personnel, and set up for a specific purpose. This unit was recognized by its ma-

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terial aspects as *fonds de commerce*.[6] In Latin America, the transfer[7] of such *fondos de comercio* was regulated by a series of early enactments, starting with Costa Rica (1901), and followed by Uruguay (1904), Peru (1916), and by Argentine Law No. 11.867 (1934).[8] In the meantime, France contributed its law of 1909;[9] later Liechtenstein (Civil Code, 1926) went all the way and enacted the *Einzelunternehmung mit beschränkter Haftung* (art. 834 to 896 a).[10] Extensive and penetrating studies increasingly called attention to the legal aspects of the enterprise, both in economic and social terms,[11] and supplied initiatives which fitted well into the ideas of the corporativist state in Italy where they left their lasting imprint in the Codice Civile (1942, art. 2555 to 2562). Italian doctrinal suggestions [12] and legislative patterns provided new ideas [13] for the overdue reform of the antiquated Latin American commercial codes, a movement which started to bear fruit with the Commercial Code of Honduras (1950),[14] and was followed by the codes enacted in Costa Rica (1964), Guatemale (1970),[15] El Salvador (1970),[16] and Colombia (1971).[17] Particularly strong are Italian influences on the successive drafts for a commercial code of Mexico.[18]

(1) *Concept.* These new enactments supply a modern definition of the enterprise as a coordinated unit[19] of human efforts and of material as well as immaterial assets, offering in a systematic way goods and services for profit (Honduras, art. 644; Guatemala, art. 655; El Salvador, art. 553; Colombia, art. 25). Some jurisdictions adapted this definition to particular areas as, for example, Mexico to maritime and labor law, and Honduras to aviation. An earlier statutory definition may be noted. According to art. 2 of Decree No. 2.474 (1948), dealing with profit sharing in Colombia, an enterprise is "any organization which, assuming risks of an economic activity in pursuing an agricultural, livestock, industrial or commercial process, accepts employees and undertakes to pay for their services, regardless of the ownership of the enterprise, whether a natural person or a legal entity." A more recent Chilean statutory definition is offered in Law No. 16.250 (1965) i.e., an *empresa* is "any business, establishment or organization owned by one or more natural or legal persons, regardless of their line of business (commercial, industrial, agricultural, mining, maritime or others," but excluding leasing of immovables, income from movables, interests on credits and similar income.

The definition is supplemented by an enumeration of the assets which make up the enterprise. The commercial codes of Honduras (art. 648), Guatemala (art. 657), and El Salvador (art. 557) list essentially the same items: the establishment, if any; good will (*clientela y la fama*

comercial); the firm (*nombre comercial*) and similar distinctive marks; furnishings (*mobiliario*) and machinery; leases; employment contracts; merchandise; credits and other assets. Patents, trade secrets, exclusive dealerships and concessions are included only if expressly agreed upon. Colombia includes patents used in the enterprise; products are included only in a mortgage on an enterprise (art. 516, sec. 2). The Commercial Code of Costa Rica adds electrical installations, including telephones; patents and trademarks; accounting books, including archives (art. 269); designs and models; also, honors and other "rights originating in commercial, industrial or artistic property" (art. 478).

One jurisdiction, Colombia, has set forth the distinction between enterprise and establishment.[20] While an enterprise is engaged in economic activity "organized for the production, transformation, circulation, administration or safekeeping of goods, or for offering services" (art. 25), an establishment is (art. 575), following closely the Italian model (art. 2555), a unit "organized by the entrepreneur (*empresario*) to effectuate the aims of the enterprise." The law adds that the same enterprise may have various commercial establishments while the same commercial establishment "may belong to various persons and aim at engaging in different commercial activities" (art. 515). However, the difference is of little consequence. It is mentioned only in connection with commercial acts (art. 20); but when the Code refers to the enterprise as a mercantile thing (art. 515 to 533), it uses the term establishment consistently. The distinction also appears in the Mexican Federal Labor Law (1969), which defines the enterprise as an "economic unit for the production and distribution of goods and services," and the establishment as a "technical unit which as a subsidiary, agency or other similar form, is an integral part and contributes to the achievement of the enterprise's goals" (art. 16). Here too, the distinction remains without consequence as is the case with the commercial codes of Honduras (art. 655) and El Salvador (art. 565).

The enterprise is declared to be a movable asset (Honduras, art. 646; Guatemala, art. 655; El Salvador, art. 555), except that transactions involving its immovable assets are subject to the respective provisions of the civil codes. The minimum requirements to support the existence of an enterprise are not established, except in El Salvador where an enterprise does not "lose its character because of a change in its elements, nor by the lack of an establishment or permanent location" (art. 554). Some jurisdictions provide for its termination if the operations cease during a set period (Honduras, art. 652; Guatemala, art. 662; El Salvador, art. 562).

(2) *Classification.* A brief survey will show the various criteria by which enterprises are classified generally in civil and commercial law, and in particular areas, e.g., in labor, administrative[21] or tax law. A basic criterion is the nature of the activity, e.g., commercial, industrial, mining, transportation, banking and — generally outside of commercial law — agricultural enterprises. Enterprises are also classified by their size, especially by the number of persons they employ, by their capital, or by the quantity of their output.

Another criterion relies on the legal status[22] of the owners, i.e., whether the enterprise is owned and operated by individuals or associations of various types as, for example, partnerships, corporations, limited liability firms, cooperatives and, recently, individual enterprises with limited liability (infra 10). Again considering the owner, enterprises may be owned privately or publicly; in the latter case by the State or any of its agencies, including subordinate entities (e.g., provinces, municipalities). In cases of public ownership, an enterprise may take on various legal forms: it may operate as part of the administrative structure, or as a more or less autonomous entity, or as a corporation according to commercial law. For copper enterprises in Chile, nationalized by the constitutional amendment of 1971, the Presidential Decree of July 7, 1972 (D.O., July 15, 1972) has chosen the term *sociedades colectivas del Estado* (art. 19).

Enterprises also may be mixed in the sense of being financed and controlled by private and public means. In some Latin American countries mixed enterprises[23] are regulated by special laws as, for example, in Argentina (Law No. 12.962, 1964),[24] and in Mexico (D.O. December 31, 1970).[25] In Peru, industrial enterprises with State participation are classified in three groups: State industrial enterprises, established by law with public funds as the only capital; associated State industrial enterprises, operating exclusively with domestic capital including at least 30% of capital from the State or from its enterprises, provided the State has a decisive voice in management and, finally, mixed industrial enterprises as defined in the Cartegena Agreement (*Decreto-Ley* No. 18.900, 1971), provided the State or its enterprises participate with at least 30% of the capital and the State controls managerial decisions (Decree-Law No. 19.262, 1972, art. 10). It may be added that industrial enterprises are also evaluated according to the objectives they pursue: national, social, economic or technological (*ibid.*, art. 11).

Mixed corporations also appear in modern commercial codes, for example, in the Commercial Code of Colombia (art. 461 to 468)[26] and

the new Business Association Law of Argentina (1972, art. 308 to 314)[27] amending the respective provisions of the Commercial Code (1889). Mixed enterprises are also defined in Decision No. 47 of the Andean Group (1971).[28]

Increasingly significant is the distinction between domestic, foreign, and mixed enterprises, depending on the origin of their capital. The Cartagena Agreement, [29] for example, defines as domestic enterprises those established in a particular country and operating with at least 80% domestic capital which fact must also be observed in the "technical, financial, administrative and commercial management." Foreign enterprises, on the other hand, are those with less than 51% domestic capital, while mixed enterprises operate with 51 to 80% of foreign capital, a fact to be reflected in the management of the enterprise (art. 1). The same classification was adopted in Peru (Decree-Law No. 18.748, 1971).[30]

Within the Andean Group, Decision No. 46 (1971)[31] introduced still another type, namely the multinational enterprise. There, foreign participation is limited to 40% (art. 1) while investments originating from domestic investors or investors from other Andean countries may not be less than 15% of the total subregional participation (art. 11).

(3) *Enterprise as a Criterion.* As is well known, the commercial nature of a transaction and, consequently, the applicability of the commercial code rather than the general, i.e., civil code, may be determined by various criteria. One is the mercantile nature of the participants in the transaction (subjective method). Under this criterion the participants may be merchants in fact, or by registration, or by operation of law as, for example, corporations and other business associations. The commercial nature of a transaction may also be determined by the type of the transaction (objective method), regardless of the status of the participants. Of course, there are jurisdictions which combine both methods (mixed method) in a rather complex way. The present trends indicate a preference for the enterprise as the determining criterion, thus substituting the subjective method of the merchant with the equally subjective method of the enterprise. An enterprise may become involved in two ways: one, the enterprise acts as a subject of a transaction acquiring rights and undertaking obligations by buying, selling, etc.; the other, it becomes an object of a transaction as a mercantile thing (*cosa mercantil*), demoted to a position of merchandise in a transaction of sale, mortgage or lease.

The enterprise is used to determine the commercial nature of the transaction in three of the four recently enacted Latin American com-

mercial codes. This new approach was initially set by the Commercial Code of Honduras which combined three criteria: that of merchant, of commercial acts, and of commercial things. In each of these alternatives the enterprise plays a prominent role. Merchants are defined through ownership of commercial enterprises (art. 2, I); commercial acts are those designed to "exploit, transfer, or liquidate an enterprise as well as similar situations" (art. 3). And among commercial things the Code lists "businesses or enterprises for profit and their elements, particularly the name, equipment, trademark and patents" (art. 4).

In essence, Guatemala and El Salvador follow the same patterns. Both have adopted the three basic criteria, with Guatemala identifying commercial acts by listing particular branches of economic activities (art. 2), but retaining among commercial things the "commercial enterprise and its elements" (art. 4, sec. 2). El Salvador remains closer to the Honduran model, both by identifying merchants as "owners of commercial enterprises" (art. 2, I), as well as by characterizing commercial acts as those "aiming at the organization, transformation or liquidation of commercial or industrial enterprises," and adding "acts performed by these enterprises *en masa*" (art. 3, I). Among commercial things the "enterprises for profit and their essential elements" remain unchanged (art. 5, I). The Commercial Code of Colombia shows greater independence but nevertheless uses enterprises as one of the significant criteria. In addition to specific commercial acts enumerated according to the traditional objective method in art. 20 (10 to 18), the Code lists as commercial a number of enterprises, among them those engaged in insurance (10), transportation (11), manufacture and marketing (12), warehousing (13) and publishing (14), a technique reminiscent of the Mexican Commercial Code (1889, art. 75). Furthermore, commercial are also all "acts of merchants related to commercial activities or enterprises" (art. 21), but eliminating, among others, marketing of agricultural and livestock products, provided they are not "processed by an enterprise" (art. 23, sec. 3).

Conversely, the Costa Rican Commercial Code remains outside of this trend by simply covering all transaction regulated in the Code, including the sale of commercial and industrial enterprises (art. 478 to 489).

Enterprises not only display characteristics of a legal unit but also develop an internal order of their own. This arises as a hierarchical structure based on the ownership and on employment contracts, implemented by collective labor agreements and integrated into plant work

rules (*reglamentos de trabajo*)[32] containing "rules binding the workers and employees in the performance of work in an enterprise or establishment" (Mexico, Federal Labor Law, art. 422). In addition to being a legal microcosm in itself, the enterprise becomes involved in a web of legal transactions connecting it with the outside world. The relationships thus created are based on contracts, torts, or on proprietary, criminal and other rules. Traditionally, these relationships are centered on the person who owns and legally represents the enterprise. However, recent developments have, to a considerable degree, abandoned this subjective aspect and substituted the enterprise as the real party in interest, relegating the owner to a lesser, more or less collateral status. As a consequence, debts and credits as well as contracts binding an enterprise become so closely tied to it that in case of changes in ownership they become detached, to a considerable degree, from the person of the owner and remain with the enterprise. The same phenomenon took place with regard to employment contracts which, for the employer, have lost most of their personal characteristics and assumed an objective relationship with the enterprise.

These trends are clearly evident in recent developments in Latin America.

(4) *Transfer.* The most common and, at the same time, the most far-reaching transaction involving an enterprise is its transfer[33] to a new owner. This affects not only the principals but also third parties connected with the enterprise by contractual and other legal ties. Two methods have been developed to deal with problems arising from transfers. These take into consideration factors such as the enterprise to be alienated as a basis for credit extended, also the enterprise as creditor of claims which have arisen in its operations; and, still another, the contractual relationships entered into in behalf of the enterprise in support of its operations. One method is the precautionary method aiming mainly at the protection of creditors. It provides for measures to make the transfer public and thus gives creditors an opportunity to press their claims and to demand payment, even from the purchase price temporarily withheld. The other method, the automatic, provides that the legal relations connected with the enterprise run with the transfer, thus adding to the continuing liability of the original debtor-transferor the new liability imposed on the acquirer.

The Venezuelan Commercial Code as amended in 1954 and the Code of Costa Rica illustrate the precautionary method. In Venezuela,[34] a transfer involves the alienation *inter vivos* of *fondos de comercio*, complete or

in lots, thus terminating the business (art. 155). The alienation must be published in newspapers thus enabling creditors to demand payment within ten days (art. 155, para. 2). In case these requirements have not been met by the transferor, both he and the acquirer are jointly liable for the debts arising from the operation of the enterprise alienated. The same rule applies with regard to creditors who filed their claims but received no payment (art. 155, para. 2). The Costa Rican Commercial Code (art. 478 to 489) contains elaborate provisions. In essence, a transfer (including judicial sale) must be made public with an invitation to creditors to file their claims within 15 days (art. 479). The purchase price will be held in escrow for 15 days (art. 481), to cover claims arising from the operation of the enterprise which has been sold (art. 482). Creditors meet and decide on payments (art. 483). Moreover, they may oppose the sale provided they prove that the purchase price is 10% below the fair value (art. 485). Any sale not meeting these requirements is "utterly null and void in relation to third persons"; the acquirer will be deemed not to have paid the purchase price (art. 488).[35]

Contrary to the principle of *intransmisibilidad de las obligaciones*, recent Latin American codifications prefer the automatic method. Of course, the codes require public notice (Guatemala, art. 656, para. 2), or the use of a public (mainly notarial) act (Colombia, art. 526). The crucial problem involving liability for debts incurred in the operation of the transferred enterprise was solved by providing that the debts follow the enterprise, thus making the acquirer liable (Honduras, art. 649, para. 1). However, most jurisdictions qualify such liability. Mexico's law of Maritime Navigation and Commerce (1963), for example, maintains the liability of the transferor for six months from the registration of the transfer and, without such limitation, in favor of creditors who have during this period voiced their opposition to the transfer of the maritime enterprise (art. 129, para. 3). Similarly, Guatemala provides that the liability of the acquirer cannot be contractually excluded (art. 660, para. 1); however, during the first year from the publication of the transfer, the liability of the transferor will continue and the transfer will have "no effect in regard to creditors who have, during this period declared their opposition" to such assignment (art. 660, para. 2). El Salvador provides for the transfer (*transmisión*) of debts connected with the enterprise (art. 558, para. 1) to the acquirer "without affecting the rights of the creditor to press them against the original debtor," adding *salvo pacto en contrario*. The automatic method has also been adopted in Colombia, but qualified by a number of rules for the protection of creditors. First of all, the liability of the transferor will expire after two months from the registration of the transfer, but only if

creditors have been notified in writing, a notice appeared in newspapers, and the creditor has not objected to the transfer (art. 528) by filing his opposition with the office of the commercial register. In this case, the creditor may demand security for his claim; if it is not forthcoming, the claim may be enforced even if not yet due (art. 530). Debts not appearing on the books or mentioned in the document of transfer will continue to bind the transferor; however, the acquirer will be jointly liable unless he proves his good faith (art. 529). In case the transfer takes place relying on commercial books and these show misinformation resulting in a lesser value of the enterprise, vis-à-vis the price agreed upon, the transferor will have to make good the difference, including damages, if any (art. 531).[36]

The sale of an individual enterprise with limited liability (infra 10) does not affect its existence (Costa Rica, art. 14), a provision implemented by art. 478 to 489 of the Commercial Code dealing with sales of enterprises whenever an establishment is "sold in its greater part or completely, and whenever the transfer is effectuated in two or more lots which surpass the normal business of the establishment" (art. 484).

In most jurisdictions under consideration here, lease contracts are listed among the assets of the enterprise (Honduras, art. 648 and 659; Guatemala, art. 657, sec. 4; El Salvador, art. 557, IV), and run with the enterprise. Particularly extensive are provisions contained in the Colombian Commercial Code (art. 518 to 524); it not only lists leases among the assets of the enterprise but also establishes a lease interest in favor of the acquirer of an enterprise operating on the transferor's premises (art. 516, sec. 5). By contrast, the Argentine Law No. 11.867 (1934), dealing with transfers of commercial and industrial enterprises, does not include leases among the *fondos de comercio* (art. 1). However, Law No. 15.775 (1960), subsequently enacted and regulating urban leases, established an exception from the general prohibition against assignment of leases covered by this law in favor of leases involving transferred commercial and industrial *fondos de comercio* (art. 41), provided such cession was effectuated jointly with the sale of the enterprise and the acquirer continues on the premises the same or some other activity which does not basically change (*desnaturalice)* the nature and aims of the lease.[37]

The transfer of an establishment to another location without the consent of the creditors entitles them to demand payment (Honduras, art. 657; El Salvador, art. 567), including damages (Guatemala, art. 665).

Besides the lease contracts just discussed, there are other contracts affecting not only third persons but the enterprise since, in many instances,

they serve its long-term needs or interests. In general terms, Honduras' Commercial Code provides that contracts will shift from the transferor to the acquirer whenever contracts are related to the enterprise's activities and are not personal to the owner, except *pacto en contrario* (art. 650, modeled after art. 2558 of the Italian Civil Code). However, the third party may terminate such contracts within three months from the date the transfer was made public, provided such party has just cause; in any case, the third party retains contractual claims against the transferor (art. 650, para. 2). Mexico adopted, for maritime enterprises, the same basic rule of subrogation of the acquirer, *salvo pacto en contrario* (art. 128). Guatemala follows, in essence, Honduran patterns (art. 658); El Salvador does it verbatim (art. 559).

Of particular importance to a going concern are employment contracts. In some jurisdictions (Honduras, art. 648, VI; Guatemala, art. 657, sec. 6; El Salvador, art. 557, VI) employment contracts, listed simply among the enterprise's assets, are transferred with the enterprise as are other assets. Detailed provisions appear in the Colombian Labor Code (1950),[38] based on the proposition that the "mere substitution of employers does not terminate, suspend, or modify the existing employment contracts" (art. 67). Similarly, the Mexican Federal Labor Law (1969)[39] provides that transfers of enterprises do not affect existing employment contracts (art. 41); both parties to the transfer remain, during six months following the transfer, jointly liable for claims accrued prior to the transfer, counting from the day notice of the transfer was given to the labor union or to the workers (art. 41, para. 2). The automatic transfer of "debts and obligations arising from employment contracts or from the exercise of rights under this section [k]" from the nationalized mining enterprises to the new *Corporación del Cobre* in Chile is guaranteed by the 1971 addition (No. 17) to the transitory provisions of the Constitution. The *Corporación* is expressly charged with a full and prompt satisfaction of such obligations.[40] The same constitutional addition also provides that employment contracts of copper workers "shall not be affected by any change in the system" (No. 17, k, para. 1).[41]

Of course, where the transfer involves corporate entities or other associations, the rules relating to business associations apply (Honduras, art. 649, para. 2; Guatemala, art. 656, para. 2; El Salvador, art. 558, para. 2).

The transfer of an enterprise imposes upon the transferor a limitation on competition,[42] by prohibiting the opening, within five years, of a new enterprise which "by its object, location and other circumstances, might

mislead the clientele" (Honduras. art. 653, para. 1; Guatemala, art. 663, para. 1; patterned after art. 2557 of the Italian Civil Code). In Colombia such limitation is restricted to two years (art. 563, para. 1).

(5) *Mortgage.* Among other transactions involving an enterprise is its use as a security (*prenda, hipoteca*).[43] Being classified as movables, enterprises may be mortgaged, except that in regard to their immovable assets provisions of *derecho común*, i.e., the civil code, apply (Honduras, art. 646; Guatemala, art. 656; El Salvador, art. 555). Elaborate provisions are contained in the Commercial Code of Colombia. These provide that such a mortgage is available without dispossession of the debtor (*sin desapoderamiento*) and includes all assets listed as belonging to the enterprise, except what the Code terms *activos circulantes*. In case these have been included in the mortgage and subsequently alienated or used up, they will be, according to the 'basket principle', replaced by assets "subsequently produced or acquired in the course of the enterprise's activities" (art. 516).

Particular provisions apply to some transportation enterprises. The Mexican Law of General Ways of Communication (1950), for example, makes amenable to mortgaging the "complete unit of an air transportation enterprise" (art. 362, para. 2), including the concession and other permits and, except an agreement to the contrary, enumerated assets of the enterprise. The transaction is subject to approval by the Ministry of Communications. Similarly, the Civil Aviation Law of El Salvador (1955) allows mortgaging of an aviation enterprise (art. 241).[44]

A review of previous enactments, for example, of the Argentine Law No. 15.348 (1946), will indicate their impact on recent enactments. The Argentine law distinguishes, with regard to enterprises, two types of security: one, the *prenda fija* which, impressed on *fondos de comercio*, includes installations, leases, trademarks, patents and designs, and additional assets listed (art. 11, para. 3), This provision is repeated in the Commercial Code of Costa Rica (art. 478) listing the components of an enterprise. The other type is the floating pledge (*prenda flotante*). It creates a security interest in merchandise and raw materials of a commercial or industrial enterprise for short term credits, and includes not only assets owned by the debtor at the time of pledging but also those which "result from transformation (manufacture) as well as those acquired by replacement" (art. 14), a provision adopted by the Colombian Commercial Code (art. 516).

(6) *Other Contracts.* Following closely the Italian Civil Code,[45] recent Latin American commercial codes make a number of other contracts to

run with the enterprises. Usufruct, for example, comparable to an estate for years, is regulated in Honduras (art. 650, 651, 653, and 654), Guatemala (art. 658 and 664), El Salvador (art. 564, 559, 561, and 563), and Colombia (art. 533). Leases of enterprises appear in the codes of Honduras (art. 653, para. 3, and 659), Guatemala (art. 664), El Salvador (art. 564, para. 2), and Colombia (art. 533), following art. 2561 and 2562 of the Italian Civil Code. Colombia even regulates antichresis (art. 533), under which the enterprise is operated by the creditor who is liable jointly with the debtor for obligations incurred in such operation (Civil Code of Colombia, 1887, art. 2.458).

(7) *Privileges.* Latin American laws do not grant the personnel privileged liens on the products of their labors. This type of security is available only to persons working under *locatio conductio operis* as provided, for example, in the federal Civil Code of Mexico (art. 2644). Nevertheless, a recent amendment to the Venezuelan Civil Code (1942, art. 1870, sec. 4) by the *Ley de Privilegios de los Trabajadores* (G.O. No. 26.603, 1961) imposed a general privilege for salaries on "movable property of the employer," ranking fourth in priority. The Mexican Federal Labor Law (1969) similarly grants workers' salaries preference over other creditors in regard to "assets of the employer" (art. 113).

In some instances, privileged liens are established by law on particular assets of the enterprise. Again turning to Mexico, the Law of Maritime Navigation and Commerce (1963) gives a privileged status to "claims arising from labor relations" against vessels (art. 116, sec. 1). Similar liens, outranking other secured creditors, are given in aircraft to their crews for salaries earned last month of employment (Argentina, Aviation Code, 1967, art. 60); for salaries earned on board aircraft during the last flight (Honduras, Civil Aviation Law, 1967, art. 209; Paraguay, Aviation Code, art. 32), and without limitations by the Aviation Law of El Salvador (1955, art. 247, e). The new Colombian Commercial Code (1971) grants priority to claims for salaries of the crew earned during the last month of employment (art. 1.905, sec. 2), ranking immediately after taxes.

Privileges in favor of personnel exist also in bankruptcy. The Mexican Commercial Code (1889, as amended in 1943), for example, lists among specially preferred claims those belonging to the "personnel of the enterprise as well as to workers and employees whose services have been used directly during the last year prior to the bankruptcy" (art. 262, III), a rule applicable also to maritime enterprises (art. 268).

(8) *Execution.* The enterprise represents a valuable asset for the satisfaction of claims against the owner arising from the operation of an enterprise. In evaluating this possibility, it must be kept in mind that a judicial sale of isolated assets of an enterprise might not bring their real value when disposed of as a part of a going concern. A judicial sale of the enterprise as a whole may be unavoidable, unless there is a possibility that a forced administration is instituted which may not only pay the debts but also save the enterprise, including the jobs connected therewith.

These policies are reflected in many of the recent enactments. In view of the "unity of destiny" Honduras (art. 647, para. 1) prohibits the dismemberment of an enterprise through attachment of assets listed in the Code (art. 648). Excepted are moneys, merchandise. and credits, provided their attachment does not "impede the continuation of the activities of the enterprise" (art. 647, para. 3); the enforcement of specific liens such as mortgages, pledges and special privileges remains unaffected (art. 647, para. 4). Possible is also the attachment of an enterprise as a whole, resulting in a forced administration by installing an *interventor* to control finances (art. 647, para. 2). The same rules obtain in El Salvador (art. 556). Maritime enterprises are amenable to such attachment in Mexico according to the Law of Maritime Navigation and Commerce; the *interventor* will pay current expenses and keep income at the disposal of the authority which ordered the attachment (art. 130). In a similar way, Guatemala (art. 661) provides that an attachment may reach only the enterprise as a whole or one of its establishments, through an *interventor* with powers identical with those held under Mexican law. Nevertheless, moneys, credits and merchandise may be attached provided this does not interfere with the "normal functioning of the mercantile enterprise" (art. 661, para. 2).

The Mexican Federal Labor Law (1969) contains particular provisions regulating the adjudications decided within the scope of this law (art. 836 to 875), to be enforced against enterprises. The law exempts from attachment "machinery, instruments, implements, and animals of the enterprise or establishment, insofar as necessary for the conduct of its activities" (art. 850, III). In case an enterprise or establishment is attached, the enforcement of claims will be by forced administration, conducted by an *interventor* with powers listed in art. 861, I (a to g). A judicial sale of an enterprise or establishment (art. 867) requires a previous appraisal and no less than two thirds of it constitutes the lowest acceptable bid (art. 861, I). The proceeds will be distributed according to art. 874, preference given to claims arising from employment.

(9) *Bankruptcy.* The same policies find expression in bankruptcy. The recently enacted Bankruptcy Law of Argentina (Law No. 19.557, 1972) may be used as an example. Whenever an enterprise is affected by the bankruptcy of its owner, the court has two alternatives: to continue its operations temporarily (art. 182), or permanently (art. 183), the latter according to detailed directives contained in art. 184. Concerning contracts in effect (art. 185), the law continues employment contracts in spite of bankruptcy, except that they remain in suspension for 60 days; however, once the decision is made to continue operations, these contracts regain their force (art. 186). In case the enterprise is sold, the acquirer is deemed to be the bankrupt's successor. As such he is responsible for employment contracts in existence at the time the enterprise was transferred to the acquirer, but the claims which arose prior to the sale will be paid from the bankrupt estate (art. 189). An enterprise may be sold as a unit; or all assets disposed of in case the enterprise will not be continued; or the sale may concern individual assets only (art. 198). The sale may be at public auction or privately (art. 199, para. 3). Individual assets, however, may be sold only at public auction (art. 202).

Many of these principles appear in the Mexican bankruptcy law enacted in 1943. It foresees the continuation of the enterprise to prevent "serious damage to creditors," provided the court finds both viability of the enterprise and the social advantage inherent in its preservation (art. 201). The enterprise may be sold as an "economic unit joining its assets in legal destiny" (art. 204, I). The sale also may be of individual plants (*establecimientos o sucursales*), provided these may be operated separately (art. 204, II), or of part or all of the enterprise's assets (art. 204, III), and finally, of individual assets (art. 204, IV). In regard to claims of the personnel for salaries earned during the six months prior to bankruptcy, the law introduces a novel provision by granting such claims a special privilege against the "merchandise, raw materials, and machinery belonging to the bankrupt at the time when he was declared bankrupt" (art. 265, para. 4).

(10) *Individual Enterprise with Limited Liability.* A business association serves two main purposes: to accumulate financial means and, in most instances, to limit risks connected with business ventures to particular assets, monetary or in kind (*aporte*). In any case, such a type of business presupposes a group of individuals, unless dogmatic scruples conjured up by the one-man association are overcome.[46] Some disadvantages inherent in corporate forms have been alleviated by the limited liability firm (*sociedad de responsabilidad limitada*), but not without introducing others,

among them the exclusion of marketability of participations and, consequently, loss of the financial market.

A new type was suggested by writers, the individual enterprise with limited liability (hereinafter individual enterprise). This novel institution makes it possible to establish an enterprise as a legal entity with its own property and with obligations limited to its assets,[47] without encumbering it with a corporate structure.

(a) *History.* The individual enterprise[48] appeared for the first time in Europe in the Civil Code of Liechtenstein (1926, art. 834 to 896 a).[49] In Latin America, the idea found strong support in Argentina where the individual enterprise came close to being enacted.[50] During the discussion of the law to introduce the limited liability firm (1929), subsequently enacted as Law No. 11.645, a proposal was made to add a final provision (art. 9) which would have introduced the individual enterprise. A complete draft consisting of ten articles was prepared in 1940 by the Buenos Aires Chamber of Commerce and submitted to the Legislature which was also considering a more extensive bill of 25 articles sponsored by Representative Rosito. In 1948, a draft bill, sponsored by Senator Gómez del Junco designed to introduce an *entitad jurídica denominada responsabilidad limitada individual,* was adopted by the Senate. Even though all further legislative attempts failed, the interest in the concept remains alive.[51] The institution also received support from the Inter-American Bar Association which at its 1957 convention in Buenos Aires adopted a declaration in favor of the individual enterprise; it was ratified by the eleventh convention in Miami (1959), and confirmed at the sixteenth meeting in Bogotá (1969).

The first country in the Western Hemisphere to adopt the individual enterprise was Costa Rica. It appears in the 1954 Commercial Code[52] as *empresa individual de responsabilidad limitada* (art. 9 to 16). A dozen years later, Panama[53] enacted the individual enterprise as part of a law dealing with *empresas de responsabilidad limitada,* one of which is the limited liability firm, and the other the individual enterprise (art. 63 to 64), a copy of a draft prepared by Professor Ozores.[54] Most recently, El Salvador introduced the individual enterprise in the new Commercial Code (1970, art. 600 to 622).[55] It may be added that the commercial codes of Guatemala and of Colombia did not adopt the individual enterprise, and neither did Argentina in its extensive modification of the Law of Business Associations enacted in 1972.

(b) *Sources.* As indicated, the provisions regulating the individual enterprise appear in the commercial codes (Costa Rica, El Salvador) or in

a special enactment side by side with the limited liability firm (Panama). Remaining gaps are filled by references to code provisions dealing with business associations generally (Costa Rica, art. 16, 18, 32; El Salvador, art. 616), or with limited liability firms in particular (El Salvador, art. 622). Additional provisions may be gleaned from subsidiary rules, i.e., those appearing in the commercial codes, in the civil codes, and finally customs and general legal principles (Costa Rica, art. 1 and 2).

(c) *Formation.* An individual enterprise comes into existence by a unilateral declaration executed by the founder (*fundador*, Costa Rica, art. 10) who is at least at the particular moment the owner (*dueño, titular*). In it the founder sets aside and dedicates certain of his assets to be the assets of the individual enterprise. These assets constitute the property of the enterprise to be used in its operations. Thus the individual enterprise becomes an "entity having its own autonomy as a *persona jurídica*, independent and separate from the natural person to which it belongs" (Costa Rica, art. 9). Consequently, assets dedicated to the enterprise become its property while the enterprise remains the property of the founder.

The first question is who may set up such an enterprise. Only Costa Rica provides an answer in the sense that legal entities may not establish nor take over individual enterprises (art. 9). The Code does not require that the founder be a merchant.

The enterprise will operate under a commercial name indicating its limited liability, spelled out in full or in an abbreviated form (E.I.R.L.). The omission to include such notice makes the owner liable for debts (Panama, art. 63; El Salvador, art. 601, para. 4). Costa Rica prohibits the use of personal names (art. 10, a) while Panama and El Salvador allow free choice (art. 63 and 601, respectively).

Since the main purpose of an individual enterprise is to limit the risk undertaken by its founder-owner to particular assets dedicated to the enterprise, a reliable inventory is a necessary preliminary step (Costa Rica, art. 10, e; Panama, art. 64; El Salvador, art. 602). The capital of an individual enterprise may consist of money or it may be in kind (*aporte*). A minimum capital is required in El Salvador (art. 606) and in Panama (art. 67), except in cases where an existing enterprise is transformed into an individual enterprise. In this instance the capital may not be less than twice the amount of debts shown in the financial statements (Panama, art. 67). The capital may be increased or reduced (Panama, art. 76; El Salvador, art. 609). Money must be deposited in a bank in the name of the enterprise (Panama, art. 66, El Salvador, art.

605). Immovables belonging to the individual enterprise must be marked as such in the property register (Panama, art. 66, para. 2; El Salvador, art. 603). However, contested negotiable instruments or unreliable credits may not be contributed as capital (El Salvador, art. 604). Costa Rica provides detailed rules for the evaluation of *aportes* (art. 10, c), borrowed from rules applicable to business associations generally (art. 18, para. 9, and art. 32). Panama imposes on the founder unlimited liability for excess valuation (art. 65). In addition to the capital, the founder may provide for additional security (*cuota suplementaria,* El Salvador, art. 613; *reservas voluntarias,* Panama, art. 68, sec. 6).

One way to establish an individual enterprise is by transforming an existing enterprise into one with limited liability. In such a case, the inventory must list all debts of the previous enterprise and the owner remains liable for these debts without limitation (Panama, art. 64). In cases of transformation El Salvador provides for opposition by creditors of the previous enterprise (art. 601).

Once the inventory is completed, it will be included in the founding declaration, executed in the form of a public (usually notarial) act and filed with the proper authority. The declaration must contain the name of the founder, the commercial name of the enterprise and its domicile, its capital, the branch of business. duration, if any, the name of the manager (Costa Rica, art. 10); also additional security if any, and the monthly remuneration of the manager (Panama, art. 68; El Salvador, art. 607).

As a rule, the individual enterprise exists from the moment the declaration is properly filed and inscribed in the public register. Since the establishment of such an enterprise amounts to a diminution of the founder's assets, Panama provides (art. 70) that during thirty days from registration (during which time the enterprise may not function, art. 69, para. 2) any personal creditor of the founder or any other interested person may file an opposition with the circuit court; the opposition may be avoided by the founder through payment of the debt, if due, or by giving security (art. 70). In case the court finds the opposition well taken, it will order the cancellation of the inscription (art. 71).

(d) *Operations.* The individual enterprise is managed by the founder or successive owner (Costa Rica, art. 10, para. 2), or by a manager with a general power of attorney (*apoderado generalísimo*), unless the founding declaration provides otherwise; in any case, the manager may execute a power for court appearances. Changes in the management must be made public (Panama, art. 69, para. 3).

(e) *Liabilities.* The individual enterprise enjoys an unusual dual status. As an independent legal entity, it owns assets and is liable for obligations; yet, at the same time, it is owned by the founder or his successor. This dual status is reflected in liability for debts incurred in its operations. For these debts only the enterprise is liable, as expressed in the Costa Rican Commercial Code (art. 12) that "only assets of the individual enterprise are liable for its obligations without imposing upon the owner any liability, since his liability is limited to provide the capital." The same basic idea is expressed in Panama by providing that obligations undertaken in the operation of the individual enterprise are covered by the assets of the enterprise, including the capital, reserves and profits not withdrawn by the owner, and by the assets assigned by the owner as additional guaranty (art. 72).

Nevertheless, in some situations the owner becomes directly and personally liable for obligations incurred by the enterprise. As already indicated, the owner will be personally liable if, in dealings involving the enterprise, he omits the fact of limited liability (Panama, art. 63; El Salvador, art. 601, para. 4). His liability arises also in connection with overvaluated *aportes* (Panama, art. 65); for improper withdrawals of profits (Panama, art. 73); for fraudulent bankruptcy of the individual enterprise; for misuse of the enterprise for illicit purposes, and for aiming to defraud creditors or perverting provisions of the law (Panama, art. 74). Essentially identical provisions are in force in El Salvador (art. 615).

The next point to discuss is the responsibility of the individual enterprise for the satisfaction of its owner's (non-enterprise connected) debts. In this respect, Panama provides (art. 75) that creditors may not attach assets belonging to the individual enterprise, unless they represent additional security (art. 68, sec. 6), or represent profits properly due to the owner (art. 75). The same rules obtain in El Salvador (art. 612). If this should not suffice, creditors may demand the liquidation of the enterprise (Panama, art. 75, para. 2); El Salvador provides that in case of the owner's bankruptcy, creditors may attach the enterprise and sell it or impose their own administration (art. 612. para. 2). Costa Rican law may be deduced from the fact that the Code provides for judicial sale of an individual enterprise (art. 479).

To prevent improper depletion of assets held by the individual enterprise, withdrawals by the owner are strictly regulated. Costa Rica allows withdrawals of profits only after inventory and if the annual financial statement shows a profit (art. 11). Panama also prohibits any withdrawal of funds, except the owner's monthly remuneration as established in the

founding declaration (art. 68, sec. 8), and of liquid profits properly shown. The owner and the manager are personally and jointly liable for a distribution of profits in violation of these rules (art. 73).

In El Salvador, individual enterprises must report their profits and losses to the *Inspección de Sociedades Mercantiles y Sindicatos* (art. 617).

(f) *Transfer.* Being independent legal entities, individual enterprises may be transferred *inter vivos* as well as *mortis causa.* According to the Costa Rican Commercial Code (art. 14) the "sale of a commercial enterprise, of a shop (*taller*), of the business or of the activity in which [an individual enterprise] engages, does not necessarily result in the liquidation of the enterprises." Panama provides more elaborate rules for both types of transfer (art. 82): *inter vivos* transfers must be reduced to a public document, properly inscribed in the public register and made public; when a case of *mortis causa* arises, provisions regarding succession apply (art. 82. para. 2). In case that two or more persons acquire the same individual enterprise, they may continue operating it as an individual enterprise or transform it into another type (art. 82, para. 5). The acquisition of an individual enterprise either way has no effect in relation to third persons prior to 30 days from registration of the transfer. During this time they may declare their opposition to the transfer (art. 83) in a way similar to the one previously mentioned (art. 70 and 71).

Transfers of individual enterprises and the effects thereof are, if there is not particular provision applicable, governed by rules applicable to transfer of enterprises generally (supra 4). Costa Rica provides (art. 479) that transfers for consideration (*título oneroso*) must be made by public notice inviting creditors to file their claims (art. 478). The price will not be paid prior to 15 days from the date of the notice (art. 480). The pertinent provisions of the Commercial Code of El Salvador (art. 558) have already been summarized.

(g) *Termination.* The duration of an individual enterprise may be set forth in the founding declaration (Costa Rica, art. 10, e). The enterprise may also be liquidated voluntarily (Costa Rica, art. 15; Panama, art. 77; El Salvador, art. 618) or for reasons established by law (Panama, art. 78; El Salvador, art. 619). An individual enterprise must be liquidated because of bankruptcy, but this will not affect the other assets of the owner. Costa Rica qualifies this rule by providing that in case the bankruptcy was *culpable o fraudulenta,* the court will order attachment of the owner's other assets (art. 16 and 960). Panama grants (art. 81) creditors of the individual enterprise preferential treatment over the owner's personal creditors. However, the individual enterprise need not be liquidated, subject to the

right of personal creditors to take advantage of provisions contained in art. 75, namely to demand liquidation of the enterprise (art. 75, para. 2). On the other hand, El Salvador demands liquidation of a bankrupt's individual enterprise even for such cause as the bankruptcy of another individual enterprise owned by the same person (art. 619).

The owner's bankruptcy will result in the liquidation of the individual enterprise in Panama (art. 77, sec. 2), a rule not adopted by El Salvador. There, creditors may attach the individual enterprise in order to sell it or to take over its management (art. 612, para. 2).

(h) *Taxation.* In this respect, only Costa Rica provides a rule (art. 9, para. 2), namely that for purposes of the income tax an individual enterprise and its income shall be included in the personal tax declaration of the owner. It appears that the same rule prevails in other jurisdictions. Equally common is the position that, not being a corporation, an individual enterprise is not subject to corporate taxes.

As promising and inviting as this novel institution may appear, its legislative acceptance in Latin America is limited to three Central American republics. And even there, the actual adoption of the individual enterprise by the business world is disappointing. In Costa Rica the number of registered individual enterprises is reported to be nine, and in Panama it is estimated at less than half a dozen. In El Salvador there is none. These numbers alone, of course, do not tell the whole story without supporting data disclosing the capital and the income. In any case, it seems that the complexity of the institution offsets the hoped for advantages over the corporate type of business associations. Apparently the more manageable limited liability firm, available throughout Latin America, including the three Central American countries, provides a more acceptable alternative. In Costa Rica, for example, corporations compete successfully not only with limited liability firms but also with individual enterprises because of tax advantages they offer. While both, the limited liability firm and the individual enterprise, must keep their assets and activities wide open for all kinds of taxation, corporations with their bearer shares and other advantages, particularly under the 1964 Commercial Code, offer an unparalleled way to avoid taxation of income. This accounts not only for the surprisingly great number of limited liability firms that went corporate but also for the lack of attraction left to individual enterprises.

(II) *EMPRESA:* A SOCIO-ECONOMIC INSTITUTION

Until early in this century, enterprises represented a means to earn profits in a free market by providing goods and services in response to

consumers' needs. Changes originated from two quarters: from inside the enterprise where the personnel, increasingly conscious of its role and effectively organized, clamored for its part, both in terms of profits and in managerial prerogatives and, from the outside, from the State which with increasing intensity intervened not only in matters economic generally, but also in disputes between labor and management.[56]

Changes affecting enterprises as a result of intervention by the State take on various forms, among them, nationalization (*estatización, Verstaatlichung,* no English term yet available). These takeovers by the State may amount to a complete integration of enterprises—with insignificant exceptions—into the State machinery, to be managed as a public service subordinated to the central administrative arm (Soviet Union, Cuba). Another approach is that of mixed enterprises operating in vital areas of the national economy as ambivalent entities relying on both public and private capital and combining public service with profit. In both situations, the general climate of economic activity is, to a considerable degree, determined by alternatives. Either the economy is prevailingly State-owned, controlled and operated, or the so-called private sector, where private capital and private initiative remain in essence free, covers a significant segment of the economy or even competes with State operated enterprises.

While the structure and activities of the various types of State controlled enterprises have been given considerable attention, studies on the status of personnel in such "administrative" economies have been lacking. This aspect shall be the approach in this part of the present inquiry.

Managerial authority based on the combination of ownership and of employment contracts gradually underwent significant changes. The personnel commenced their attack against the most inviting item, profits, and avoided, at least temporarily, challenging managerial prerogatives and assuming of business risks (infra 11). In order to take care of their interests, personnel initially designated representatives vested with growing, statutorily conferred powers (infra 12). In addition to unions, personnel is, at least in one Latin American jurisdiction, recognized as a legal entity (infra 13). From this vantage point only one step was needed to bring the representatives into the managing bodies to share in their functions (infra 14). Finally, in some jurisdictions there began the takeover of enterprises by its personnel, or by the State acting in behalf of the personnel or in the "interest of the people" (infra 15). At this stage, the State becomes totally involved in social and economic matters and any imaginable scheme may be carried out at its pleasure.

The function of the enterprise as a socio-economic institution[57] was formulated in art. 63 of the Ecuadorian Constitution of 1967:

> The State guarantees the enterprise as a community of work whose working factors (*elementos instrumentales*) should be subordinated to human elements; and all these subordinated to the common weal.
>
> The social organization of the enterprise will be developed without prejudice to the authority and unity of management.

(11) *Profit Sharing.* Traditionally, the profits of an enterprise belong to the individual or associative owners, private or public. In regard to the personnel, their earnings are legally unrelated to the profits since they are based on employment and not on partnership contracts. Therefore, the sharing of profits[58] represents a significant innovation expressed as inter-American policy as well as a constitutional tenet. The Inter-American Charter of Social Guarantees, adopted in Bogotá in 1948, recognized in art. 11 the workers' "right to share in profits of the enterprises in which they work, on the basis of justice in a way and amount in accordance with the requirements prescribed by law." Starting with the Mexican Constitution of 1917, the right to share in the profits was granted to personnel employed in "all agricultural, commercial, industrial, and mining enterprises" (art. 123, VI). The same principle was proclaimed in the 1957 Brazilian Constitution among the directives to guide labor legislation calling for "obligatory and direct participation of the worker in the profits of the enterprise," a promise never fulfilled. Ecuador also included profit sharing in both the 1946 (art. 185) and the 1967 (art. 64) constitutions, specifying even the percentage (10%). Similarly, Bolivia's 1967 Constitution—as did the one of 1964—foresees a law to regulate "bonuses, premiums, and other systems of sharing in the profits of an enterprise" (art. 157). Argentina adopted profit sharing by a constitutional amendment (1957, art. 14, para. 2) as one of the protective measures in favor of workers, the "participation in the profits of enterprises, with control over production and cooperation in the management," but without legislative follow-up.

In pursuance of such constitutional initiatives or without them, a number of Latin American countries have adopted laws introducing profit sharing. Some Mexican states enacted such laws immediately following the adoption of the 1917 Constitution. When labor legislation became a matter of federal legislation, the first federal Labor Law (1931) dealt with profit sharing on the nationwide level (art. 100). Following the constitutional amendment adopted in 1962 (art. 123, IX), the new Federal

Labor Law (1969)[59] regulates profit sharing in art. 117 to 131. Peru's 1933 Constitution expressly favored "a regime of participation by employees and workers in the profits of enterprises" (art. 45); the principle was implemented by Law No. 10.908 (1949) and a *Decreto Supremo* of December 23, 1949,[60] subsequently superseded by Law No. 11.672 (1951). Extensive legislation enacted in 1970 and 1971 now regulates profit sharing in industrial, fishing, mining, and telecommunications enterprises.[61] The Labor Code of Chile (1945) contains elaborate provisions on profit sharing, distinguishing between sharing by employees and workers (art. 146 to 153, and 405 to 409, implemented by *Resolución* No. 1.030 of 1949, art. 104 to 123).[62] Venezuela[63] introduced profit sharing in 1936 and developed it by Decree of December 17, 1938, amended in 1941 and 1943; presently, the 1936 law applies as amended in 1945, with modifications added in 1945, 1947, 1961, and 1962. The latter two enactments are summarized elsewhere in this study. Bolivia set by Decree-Law No. 6 (1943), affirmed by Law of November 22, 1945, the participation at 25% of the profits, but replaced it later with an extensive system of bonuses. Ecuador enacted profit sharing by a decree-law (1948) subsequently included in the Labor Code as recodified in 1961 (art. 90 to 101, amended in 1964 and 1970). Most recently, profit sharing was made compulsory in the Dominican Republic by Law No. 288 (1972).

In other Latin American republics profit sharing remains optional as, for example, in Argentina (art. 4 of the Law on the regime of payment of salaries, Law No. 18.596, 1970, 2 *Law. Am.* 201, 1971), in Panama (Labor Code, 1947, art. 181 and 184), and in Guatemala (Labor Code, 1947, art. 92, para. 2). In Uruguay, profit sharing is limited to the *Frigorífico Nacional* (Law No. 12.475, 1957). Colombia enacted in 1948 an elaborate decree (No. 2, 1948); however, the subsequent Substantive Labor Law (1950) made profit sharing optional, with the proviso that the personnel may never assume business risks (art. 28).

Not all enterprises are required to share profits with their personnel. Most enactments include commercial, industrial, and mining enterprises; others cover personnel engaged in agriculture and fishing. In most instances, a minimum number of employed persons is required. And there must be profits to share; in Peru, for example, the minimum amount of profits was decisive (50,000 *soles*, art. 1, Decree-Law of 1948). But even within this limited coverage, further exceptions are made. Mexico, for example, exempts (art. 125), among others, new enterprises, humanitarian institutions, and enterprises with low capital. Exemptions under the recent enactment in the Dominican Republic (art. 2) are summarized elsewhere.[64]

The basic question in profit sharing is, of course, how to determine the amount to be distributed. This is done in two ways. One is to use legally established bookkeeping procedures. In Venezuela, for example, liquid profits are determined by taking gross income, less costs and interest for the invested capital (no more than 6%), less 10% from this amount for the reserve fund (art. 79). The other way is to use profits accepted for income tax purposes as, for example, in Ecuador (art. 96), Chile (art. 150), and Mexico (art. 120, para. 2), the latter even offering a possibility to both sides to contest such basis (art. 121).

The amount of profits set aside for the benefit of the personnel is, in most jurisdictions, determined in percentages. These vary from 10% (Chile, art. 405; Venezuela, art. 760; Dominican Republic, art. 1), to 15% (Ecuador, art. 90), to 20% (Chile, art. 146, for employees), to 25% (Bolivia, art. 1, 1943), and to 30% (Peru, art. 1, 1948). Presently, the percentage in Peru is 25% in industrial (art. 21); 20% in fishing (art. 70), 10% in mining, and 25% in telecommunications enterprises (art. 98). Mexico, on the other hand, took a flexible position by providing that the percentage be determined by the *Comisión Nacional para la Participación de los Trabajadores en las Utilidades de las Empresas* (art. 117), organized as a tripartite commission with equal representations of management and labor (the latter represented by the union), with a voting government official presiding (art. 579). The *Comisión* will set percentages after having determined the "general conditions of the national economy" (art. 118).

Not all members of the personnel qualify for a share in the profits. Some are denied participation because of their high positions in the enterprise, others because of their provisional employment status. Mexico, for example, excludes, among others, directors, managers, and other employees in positions of trust with high salaries (art. 127). High earnings may limit, in some jurisdictions, the available share (Ecuador, art. 90, para. 2; Chile, art. 146, para. 2).

The amount of the share due to individual members of the personnel is allocated according to three criteria. One is based on straight proportion to the salary earned (Venezuela, art. 77; Ecuador, art. 90, para. 2). The other is seniority, usually combined with proportion (Chile, art. 148); there the share (20%) is allocated one half in proportion to earnings and the other half with regard to years of service. Mexico uses the same criteria, but in another way: half of the fund is divided among all participants in proportion to their working days while the other half is allocated proportionally to annual earnings (art. 123); detailed rules

shall be worked out by an enterprise committee composed of representatives of the personnel and management (art. 125). An unusual method was introduced in Colombia in 1948. It relied on 100 points *(cuotas)*, alloted according to the family status, depending on the number of dependents (art. 14), by seniority (art. 15), by reliability (art. 16), and efficiency in work (art. 17). The same *cuotas* appeared in the 1948 Peruvian law (art. 4).

The intended recipient of the share in profits is, of course, the personnel. In jurisdictions adopting the unqualified method, the share is paid directly to the personnel in cash at legally established dates (Ecuador, art. 97; Mexico, art. 124). However, a much greater number of jurisdictions adhere to a qualified method. In some of them, part of the share is deposited in the worker's account in a government approved financial institution, subject to detailed provisions regarding withdrawals (Colombia, 1948, art. 20). In Venezuela, 75% of the share is paid directly to the personnel and 25% deposited in the beneficiary's account (art. 81) from which he may draw in situations listed in art. 82 and 83, for example, for the purchase of housing, in case of invalidity, or in case of death, by his heirs. In Ecuador (art. 90, as amended in 1970) 10% of the total 15% goes directly to the worker while the remaining 5% belongs to the union established in the same enterprise, to be distributed among workers with families, regardless of whether they are members or not. In case there is no union, the 5% will be deposited in the *Banco Central* to be used under orders of the *Inspector de Trabajo*. A similar arrangement is found in Chilean labor law where the share due to industrial workers (art. 384) belongs half to the union (art. 408) and half directly to the worker (art. 409), a rule applicable also to copper workers (Regulation No. 1.030, 1950, art. 114 to 121). In some jurisdictions (e.g., Venezuela, art. 84; Dominican Republic, art. 5) part of the share may be used to finance housing.

The share in profits due to the personnel is generally considered as part of the salary and, consequently, partakes of privileges designed for its protection, particularly against garnishment. Venezuela has enacted a law to make sure that such protection is forthcoming (G.O. No. 27.015, 1962). It provides that no execution may be granted on shares of profits accruing to workers by law or by contract, including various kinds of bonuses, both legal and contractual, except in satisfaction of judgments for support when half of the amount due as shares or bonuses may be garnished.

In addition to direct payments combined with deposits and union

participation, a third method has evolved, namely the investment of a part of the profits in shares *(acciones)* or other participations in the enterprise. However, there is considerable variety in methods to effectuate the underlying idea of making the personnel at least part owner of the enterprise by reinvesting their earnings. In addition to acquisition of general shares of the corporate enterprise, special shares have been introduced *(acciones de trabajo)*. They appear, for example, in the Chilean Labor Code (art. 405, para. 3) and relieve such enterprise from the duty to share profits, provided the enterprise is organized as a corporation with 6% paid-in capital in such shares, to be held by the labor union. On a much larger scale was this idea adopted in Peru with the difference that worker's shares are not held by labor unions but by the *comunidades* (infra 14) operating in the enterprise. The complex structure set up by a series of enactments passed in 1970 and 1971 for industrial, fishing, mining, and telecommunication enterprises may be summarized as follows.

First of all, it must be pointed out that the percentage of participation varies from 10% in mining to 20% in fishing and to 25% in industrial and telecommunication enterprises. However, only part of this share accrues directly and in cash to the personnel: in industrial enterprise 10% out of the 25%; in fishing enterprises 8% out of the 20%, in mining 4% out of the 10%, and in telecommunications 10% out of the 25%. This part of the participation, called *participación líquida,* is allocated half equally to all qualified members of the personnel, and half proportionate to their earnings. In telecommunications, the 10% is divided so that half belongs to the particular *comunidad* and the other half to the *Comunidad de Compensación de Telecomunicaciones,* to be distributed among the *comunidades* proportionate to the number of their members. With these contributions the *comunidad* will establish a *fondo de participación líquida* and distribute it annually among its members, half in equal parts and half proportionate to their earnings.

Second, in industrial enterprises the remaining part of the profits to be shared represents *participación patrimonial* (i.e., 15%) and will be reinvested in the same enterprise through the particular *comunidad industrial* according to a plan submitted by the enterprise. In case no such plan is submitted or if the plan is not approved by the Ministry of Industry and Commerce, the 15% will be invested by acquiring shares "belonging to other partners or shareholders." The *comunidad* will continue receiving in turn non-transferable shares and other instruments of participation, until such reinvestments reach 50% of the enterprise's capital, at which time the "workers will be individually owners of the

shares and participations . . . in accordance with the conditions of the . . . *comunidad industrial*." This will be done by shares issued by the *comunidad* to its members. This is to be repeated every three years with the new shares based on assets acquired from the enterprise during such a period. In other enterprises, the *participación patrimonial* will be again divided. In fishing enterprises the 12% will be reinvested and the shares and participations so acquired will be divided: half retained by the particular *comunidad pesquera* and half going to the *Comunidad de Compensación Pesquera.* In mining enterprises the 6% constituting the *participación patrimonial,* is also reinvested and the shares or participations thus acquired divided so that one fifth remains with the particular *comunidad minera* while four fifths go to the *Comunidad de Compensación Minera,* to be distributed among the *comunidades* proportionate to the man-days of their members *(días-hombres laborales).* In telecommunications the 25% is divided into 10% as *participación líquida* to be distributed in cash, and 15% to be invested in bonds of the particular enterprise or in *valores* issued by the *Corporación Financiera de Desarrollo* (COFIDE). Of the *valores* acquired by the 15% as *participación patrimonial* half flows back to the particular *comunidad* while the other half goes to the *Comunidad de Compensación de Telecomunicaciones* which will issue shares and distribute them among the *comunidades* according to the number of their members.

Finally, in this scheme, the *comunidades* are, as it was just shown, joined into the *comunidades de compensación* established for the particular branch of the economy, to act as intermediate and equalizing agencies.

The complicated mechanism of profit sharing is, in most jurisdictions, supervised by appropriate administrative agencies. As expressed in the 1948 Colombian law, the control over profit sharing belongs exclusively to the State (art. 31). However, it would seem that the interests of the personnel directly involved would warrant some control on their part. Yet it is interesting to find that not only have such controls not been foreseen in most jurisdictions but have been expressly denied in others. Venezuela (art. 95) and Mexico (Constitution, art. 129, IX, and art. 131 of the Federal Labor Law) deny that the right to share in profits implies authority to intervene in the management or administration of the enterprise. On the contrary, in Peru the industrial *comunidades* have the right to inspect all accounting books of the respective enterprises, through officers representing the *comunidad,* who may be accompanied by any member of the *comunidad* as well as by experts hired for such purpose (*Decreto-Ley* No. 19.262, 1972, art. 40).

It is surprising to find that the socialization schemes developing in Latin America refrain from profit sharing. The present Chilean government expressed recently its opposition to such sharing. Instead, the excess *(excedentes)*, apparently meaning surplus of income over costs, as "determined in conjunction with the branch of production shall not accrue to individuals, but shall be accumulated for social purposes or distributed as social benefits *(socialmente capitalizados o repartidos en beneficios sociales)*."[65]

In conclusion, it may be stated that the idea of profit sharing was introduced in Perú in 1948 as a vehicle toward "harmonious cooperation between capital and labor, acting in perfect solidarity to the effect that prosperity results in the betterment of those who work." Profit sharing also serves to increase production of the worker by awarding higher rewards and, finally as an incentive to stimulate their dedication and effectiveness. However, these expectations have not been fulfilled. Due partly to the uncertainties surrounding the making of a profit and to the complexities of accounting procedures, many Latin American countries have shifted from profit sharing to straight increases of earnings through various kinds of bonuses, premiums and other remunerations. As already indicated, Colombia has reduced its profit sharing plan of 1948 to optional schemes. A similar development took place in Bolivia. It is also significant that Perú has reduced direct participation to a small part of the profits and entrusted the greater part of these to the *comunidades*.

(12) *Representations.* Once the status and power of the personnel employed in an enterprise is recognized, a workable organ for its representation and activities must be found.[66] There are two types: the labor unions and the various work councils *(comités de empresas)*. Both types are recognized in Latin American countries, but in some only union representation exists (e.g. Argentina,[67] Brazil,[68] México,[69] and Venezuela[70]).

The other type, the work councils, do not represent particular members but the entire personnel of an enterprise. In Chile, for example, employees, as dintinguished from workers, elect one delegate in enterprises with five or more employees to represent them before the employer and before administrative agencies (Labor Code, art. 155). In Bolivia,[71] the delegates have been introduced in the mining industry in conjunction with its nationalization (*Decreto Supremo* No. 3.586, 1953). They are elected by the general assembly of the plant personnel to represent them and to share in some managerial functions (infra 14). In their former

capacity they supervise work in the enterprise, particularly prevention of damage to the plant (art. 10, a), improper taking of plant property, usurpation of unwarranted privileges, as well as prevention of acts of sabotage (art. 10, b). As part of their duties they are required to report such cases to the union or to the general assembly of the personnel (art. 10, c). Supreme Decree No. 02.117 (1950) has provided for optional *consejos mixtos de empresa*,[72] their membership consisting of two labor representatives (where there is a union, its delegates, art. 2), one representative of the employees and one member representing the employer who also presides (art. 1). In Ecuador, the *comité de empresa* is optional in enterprises with more than 15 workers. It is elected by the personnel (Labor Code, art. 423) and is charged with the following functions: conclusion of collective agreements; defense of rights of the personnel; working for the economic and social betterment of the personnel; and representation in and out of court of personnel in "matters of interest whenever workers do not press such claims themselves" (art. 425). The *comité* operates through its *directiva*, as an executive committee of the *asamblea general del comité* (art. 426).

In Cuba the Law of Labor Justice (No. 1.166, 1964) introduced work committees in enterprises with more than 25 workers, their eligibility being limited to those of "good socialist attitude toward work." Removable by the Minister of Labor, they are supposed to intervene in conflicts between workers and management and act in cases of violation of work discipline whenever these are punishable by loss of wages. Other types of councils have been set up in conjunction with the government sponsored labor union, for example, advisory technical councils manned by members appointed by the management, to advise on production (*Resolución* No. 16.782, 1960, amended by *Resolución* No. 5.797, 1962); also mixed grievance committees with two members from the personnel and two from management, with an official of the Ministry of Labor presiding (Law No. 1.072, 1962).[73]

Uruguay with its widely nationalized economy may be of particular interest. The Constitution of 1967 (art. 65) provides for setting up personnel committees in autonomous entities to collaborate with the directors "in the enforcement of the regulations, the study of budgetary requirements, the organization of services, of labor regulations and in the application of disciplinary measures." Furthermore, in public services administered directly by the State or by concessioners "competent organs to hear disputes between authorities . . . and their employees, and to consider methods and procedures by public authority to maintain continuous service" may be established (art. 65, para. 2).[74]

As it will be shown below, in Peru one of the functions of the *comunidades* is to represent the personnel of the particular enterprise in which they function.[75]

(13) *Comunidades.* The various entities as designed to represent personnel still left it an amorphous aggregation of people employed in the same enterprise. A significant innovation was introduced in Peru by a series of enactments passed in 1970 and 1971.[76] The personnel of enterprises covered by these laws are given the status of a body corporate, a *persona jurídica de derecho privado*, with its own organs, functions, and assets. It performs a threefold function: it acts in a representative capacity; performs a central role in the profit sharing scheme (supra 1), and opens the way to personnel's codetermination, i.e., participation in the management (infra 14).

Comunidades are regulated for each of the economic areas covered by the particular enactments.[77] Within their general functions, interesting mutations may be detected in regard to the proprietary interests. Industrial *comunidades* represent the personnel and administer assets accruing to it (art. 23). The particular law dealing with industrial *comunidades* (art. 2), expanded their purpose by stressing the strenghtening of the enterprise by concerted actions of the personnel and the management not only in the productive process, in property and reinvestment, but also by protecting "rights and interests which the law [Decree-Law No. 18.350] grants to the personnel as owners." Furthermore, they administer assets which the *comunidad* receives in behalf of its members; and finally, they promote advancement of the personnel (art. 3). Similarly, *comunidades* in fishing enterprises represent the personnel and "participate in ownership, management, and benefits produced by the enterprise" (art. 64). Essentially the same purposes are given to *comunidades* in mining enterprises (art. 273). However, the most recently created *comunidades* in telecommunications represent the personnel and only "participate in the management and benefits produced by the enterprise" (art. 92), thus omitting previously mentioned proprietary interests.

As already summarized (supra 11), the *comunidades* perform an essential function in the profit sharing scheme. The particular enactments provide for their organization, membership, assets, adaptation to various types of enterprises as well as liquidation, all too extensive and complex to be summarized within the scope of this study. It may only be repeated here that, except in industry, *comunidades* are organized in *comunidades de compensación*,[78] designed to "strengthen the solidarity of workers . . .

by equalizing the allocation of contributions they receive" (Decree-Law No. 18.810, 1971, art. 68).

(14) *Codetermination (Cogestión).* In Latin America, forms of codetermination, i.e., sharing by the personnel (or its representatives) in the management of the enterprise developed mainly as a consequence of nationalization[79] directed against foreign control rather than for reasons of private property or social reform. Generally speaking, four different ways to manage nationalized enterprises may be distinguished. The first is a simple takeover by the State merging the enterprise with the public administrative machinery, but retaining some degree of autonomy. The second method is the operation of enterprises as State-owned or controlled corporations, with or without private (or even foreign) capital. The third alternative is the operation of such enterprises under a concession by qualified private or semi-private concessioners. And finally, there is the fourth possibility, i.e., a nationalized enterprise becomes the property of and is managed by the personnel. In every one of these four alternatives, the role of the personnel varies. The complete takeover by the personnel (*autogestión*, infra 15), puts the personnel into the shoes of the "capitalist" owner unless restrained by planning, control and general policy norms imposed by the State. In the other cases sketched above, personnel representatives participate in the managing bodies of the enterprises according to its legal status.[80] Codetermination finds expression in two ways: one, it grants personnel a definite number of representatives in the managing bodies; the other also grants representation, but makes it dependent on the amount of invested capital owned or controlled by the personnel. This is the case in Peru. As already shown, part of the profits is reinvested in the enterprise as shares or other types of a participation acquired by the *comunidad* until its share of the invested capital reaches 50%. The amount of capital held by the *comunidad* will increase its representation in the managing body of the enterprise.

After nationalizing the oil industry, Mexico set up an administration (*Acuerdo,* March 30, 1938) vesting power in the *Consejo Administrativo del Petróleo,* consisting of nine members of whom three were labor's representatives from the oil workers' union. A similar scheme was used following the nationalization of the railways.[81] When in 1952, Bolivia nationalized foreign controlled mining (tin) enterprises (Supreme Decree No. 3.223, 1952), what is called *control obrero* was instituted calling upon the miners' delegates to act on the level of the local administration (art. 17). The scope of the scheme was subsequently developed by Supreme

Decree No. 3.586 (1953) granting miners' delegates the right to such participation and to participate and vote in the local management bodies of the *Corporación Minera de Bolivia* (COMINBOL). Consequently, the delegate has the opportunity to familiarize himself with all aspects of the enterprise, including inspection of books. He is also entitled to intervene in sales contracts involving consumer goods and local transportation, among others, in order to "confirm that prices and conditions are the most favorable." The delegate may also supervise the distribution of merchandise in company stores, intervene in hiring and firing of workers, check work sheets, explosives, safety installations, and make suggestions for improvements (art. 11). His main weapon is the right of veto (art. 15) in matters listed in art. 16, but never in technical matters (art. 17). On the higher managerial level *(Directorio Central)* workers are represented by two directors appointed by the government from among three candidates submitted by the labor union (art. 4).

Recently, personnel representatives have been included in a board of directors in Argentina. The *Servicios Eléctricos del Gran Buenos Aires, S. A.* (SEGBA), have been intervened by the State under Law No. 19.139 (1971), but the intervention ceased after the corporation, operating with a majority State participation, amended its charter to include in its board of directors representatives of the personnel of all three groups, managing staff, employees as well as workers, a change approved by Law. No. 19.573 (1972).

Conversely, Cuba has stayed away from *control obrero;* it does not even appear in the nationalization decrees[82] affecting approximately 50,000 enterprises allotted to various ministries and other state agencies with the power to appoint directors, apparently in cooperation with the C.D.R. (*Comités de Defensa de la Revolución*), the block-type committees supporting the regime. As already indicated, the work councils (Law of Labor Justice) do not participate in management and neither do the government sponsored labor unions.

Quite different are the developments in Chile since 1968. The constitutional amendment of 1971 provides that for the nationalized copper industry the Legislature shall consider workers' participation in the management and administration of the newly reorganized mining enterprises. These initiatives found expression in a number of organizational decrees issued by the Ministry of Mining. One of them, involving the *Compañía de Cobre Chuquicamata*[83] (December 27, 1971, D.O. December 30, 1971) provides an example. An administrative council is set up (art. 1) to manage the enterprise, composed of six representatives of the State, appointed by the

President; six representatives of workers are elected by direct vote, and one additional presidential appointee presides (art. 2). Decisions are adopted by simple majority (art. 5). The Council approves, among others, investments, production, and operations "within guidelines established by the *Corporación del Cobre*"; it "sets policies for the management of the enterprise"; supervises operations; appoints and removes the personnel, and enters into contracts on behalf of the enterprise (art. 5). The subsequent Norms for the Coordination of the Administrative Regime of Nationalized Copper Enterprises (D.O. July 15, 1972) emphasize (art. 5) that workers will "participate in the *dirección, administración* and *gestión* of the enterprises to the widest extent, and in conformity with laws and regulations in force or to be promulgated." Particularly they shall "participate in the discussion and formulation of policies for the enterprise and in plans involving investments, production, and operations." Moreover, the executive officers of the enterprise shall "account publicly, before the workers, for the way production and financing of the enterprise is going." Within the scope of the *Gran Minería del Cobre* and the *Empresa Nacional Minera* which will own 95% and 5%, respectively, of the capital (art. 4), the administrative council of the enterprise will be composed of eleven members: four appointed by the President and representing the *Corporación del Cobre,* one, also appointed by the President, representing the *Empresa Nacional de Minería,* both responsible to these corporations, respectively; five elective workers' representatives, and one member again appointed by the President to serve as president of the enterprise and at the same time its director (*gerente general*). In any case, elective representatives of the personnel are in the minority.

The constitutional amendment submitted in 1972[84] and adopted by both Chambers of the Legislature, contains significant innovations. It attempts to guarantee workers' participation in all three classes of enterprises, the social (State operated), the mixed and the private; furthermore, a law shall enable workers to own and operate enterprises regardless of the sector of the economy to which they belong; and as owners, they shall enjoy the assets and share in the profits. The amendment was blocked by a presidential veto[85] which contains specific statements of governmental policies in regard to codetermination:

> The Government favors a most extensive system of incorporating workers in the administration of enterprises in the social as well as in the mixed area under State control. It also accepts that workers manage for their own account certain enterprises provided these enterprises do not involve essential economic activi-

ties which must be reserved to the State; furthermore, workers must not own means of production as their private property.

In regard to the organization, the Government sees in the assembly of workers the "highest organ of participation at the base," to discuss plans and policies "in accordance with the general directives of national planning"; to elect representatives of the personnel to the administrative bodies of the enterprises; and to "censure such representatives." Special assemblies are anticipated for "sections, departments, divisions and other production units." The other type shall be production committees on the level of special assemblies. As to the relationship between the State and personnel representatives, the Government demands a majority of State representatives in enterprises operating in social areas, i.e., areas of eminent State interest. In mixed areas under the control of the State workers' participation shall be effectuated by the "designation of representatives before the management organs." Finally, in mixed enterprises, i.e., with State capital participation, administrative councils may function side by side with the traditional corporate organs; their decisions shall be binding on the State and on the workers' representatives sitting on the board of directors.

As shown above, some of these schemes have already been enacted for the copper mining industry.

In Peru the personnel participates in the management of industrial, fishing, mining and telecommunications enterprises through their *comunidades*. The particular laws and regulations secure the representatives seats on the managing bodies of the enterprises: in industrial (art. 25); fishing (art. 79, Regulation art. 207), and mining (art. 291) at least one, and in telecommunications two members (art. 106). However, their numbers will increase corresponding to the capital reinvested in the enterprise, as already pointed out, until such capital participation reaches 50%. In principle, these members enjoy the same rights and are bound by the same duties and limitations as are other members of such bodies. According to the Law on *Comunidad Industrial* they must vote at the general corporate assemblies as well as at the board meetings as a unit according to the number of shares they hold (art. 45).

(15) *Self-management (autogestión)*. The idea that labor must become the owner of the means of production used in the performance of work would, if strictly applied, lead to a complete and exclusive takeover of enterprises by their personnel.[87] In one or another organizational form, the personnel would be not only the owner and entrepreneur, but also the

employer while remaining, at the same time, as the employee. Thus the functions presently distributed in the operation of an enterprise would merge in one hand. However, even countries where the whole economy or substantial segments thereof are publicly owned and managed, have shied away from *autogestión.*

There have been in Latin America takeovers of enterprises by the personnel; in most of these cases not for the purpose of owning and managing them but rather as protests or political pressure, i.e., provoke the State to intervene (e.g., Chile). In one instance, however, the State took over an enterprise and handed it to the personnel to manage it. This happened in Peru, not for social or economic reasons but to silence a publishing enterprise opposed to the military government. The enterprise was expropriated by a decree-law (No. 16.169, 1970), to be taken over by a cooperative formed from volunteers among employees charged to continue publication (art. 4). Until the cooperative was formed, the assets had to be held by an ad hoc committee constituted by the newspapermen and printers unions (art. 5). The cooperative had to pay for the assets; in the meantime, the nominal value of the corporate shares was deposited with the *Banco de la Nación,* until the courts determined the value of the shares as well as that of the assets of the corporation (art. 6).

The present Chilean government has, as already indicated, voiced[88] its opposition to "workers' individual ownership of means of production of the enterprises." It is indeed difficult to imagine how thousands of workers employed in a modern enterprise could individually own particular assets of the enterprise where they work. In any case, the Government is willing to allow workers to "manage for their own account certain enterprises," provided they are not "engaged in essential economic activities which must be reserved to the State."

Finally Cuba. the most orthodox exponent of Marxism in the Hemisphere, plagued by the fact that in 1970 only 32% of the population was economically active, and absenteeism accounted for 10% to 20% of the working hours lost,[89] is drifting increasingly away from any form of *autogestión* toward a military type of discipline.[90]

(III) CONCLUSIONS

The legal structure of enterprises has, in the last half century, experienced but few substantial innovations even though in many instances the legal title has shifted from private, individual or associative entrepreneurs to public entities. The only innovation, the individual enterprise with lim-

ited liability may be, for all practical purposes, discounted as a viable institution. Thus the traditional associative types continue even in countries with strong tendencies toward statism, i.e., a regime giving the State a preponderant role in the economy as the owner of the means of production or as the planner regulating the distribution of goods produced. Even there the structure of enterprises follows, except where transformed into administrative agencies, in most cases corporate patterns with managerial prerogatives based on the control of the participating public or private capital.

On the part of the personnel, the idea of profit sharing has gained acceptance without affecting the status of the enterprise; in most cases such sharing is limited to privately operated units. Only one country in the Hemisphere has designed such participation to bring, at the final stage, half of the invested capital, at least indirectly, under the control of the personnel as workers' shares. Conversely, countries with socialist leanings reject profit sharing and manage enterprises with minority personnel representation, if any. In most Latin American countries labor unions remain the dominant type of labor representation participating in the management whenever it is made possible by law.

Some Latin American countries have gone quite far in their reformist fervor. However, the great majority of the republics, particularly the most prosperous, consider such efforts with skepticism if not with outright mistrust, not only in view of their ideological background but also because of their economic failures in the Hemisphere and abroad. Nor does it remain unnoticed that such reforms have engulfed countries plagued by inherent social and economic disadvantages, in the belief that the present day miracle maker, the State, will give what people have learned to expect.

NOTES

[1]Piñol Filgueira, El Estado y la Empresa, 3(28) Revista de la Facultad de Ciencias Económicas 956 (1950).

[2]Oppikofer, Das Unternehmensrecht in geschichtlicher und rechtspolitischer Betrachtung (Tübingen, 1927); Plaisant, La Evolución de la Idea de Empresa, 13 Revista de Derecho Mercantil 157 (Madrid, 1952).

[3]Jacobi, Betrieb und Unternehmen als Rechtsbegriffe (Leipzig, 1926).

[4]Arecha, La Empresa Comercial (Buenos Aires, 1948); Casanova, L'Imprese Comerciali (Madrid, 1955); Robles Alvarez, Empresa, 8 Nueva Enciclopedia Jurídica 404 (Barcelona, 1956); Cabanellas, Empresa, 10 Enciclopedia Jurídica Omeba 53 (Buenos Aires, 1959); Fueyo Laneri, Iniciación a la Bibliografía, Especialmente Hispanoamericana, en Torno al Tema de la Empresa, 19 Revista de la Facultad de Derecho y Ciencias Sociales 523 (Montevideo, 1968). Cf. Berle, The Theory of Enterprise Entity, 47 Columbia Law Review 344 (1947).

[5]Despax, L'Enterprise et le Droit (Paris, 1957); Ferrara, Teoría Jurídica de la Hacienda Mercantil (Madrid, 1950); Fuenzalida Puelma, Concepto Jurídico de Empresa y su Relación con Otras Figuras del Derecho, 19 Revista de la Facultad de Derecho y Ciencias Sociales 263 (Montevideo, 1968); Matus Valencia, La Empresa como Sujeto de Derecho Moderno, ibid. 275; Pérez Fontana, La Empresa y el Derecho Comercial, ibid. 303. Generally, Sola Cañizares, Tratado de Derecho Comercial Comparado, vol. 2, at 3 (Barcelona, 1962). Mossa, Nozioni del Fondo di Comercio e della Impresa Commerciale e le sue Prospettive Avenire, 3(5) Actorum Academiae Universalis Jurisprudentiae Comparatae 323 (1956); also, Impresa ed Azienda nel Codice Civile ed in Diritto Comparado, Atti del Primo Convegno Nazionale di Studi Giuridico-Comparativi 300 (Roma, 1953).

[6]Goldschmidt, La Notion Juridique du Fonds de Commerce: Etude Comparative, 9 Cahiers de Legislation et de Bibliographie Juridique de l'Amérique Latine 9 (1952).

[7]Bayitch, La Transferencia de Negocios: Estudio de Derecho Comparado, 12 Boletín del Instituto de Derecho Comparado de México 11 (1959).

[8]For subsequent amendments, see Decree No. 88.168 (1936) regarding the function of the Banco de la Nación Argentina; Decree No. 5.437 (1961) regulating the intervention of attorneys in transfers; also, amendment of art. 157, sec. 4, of the Commercial Code by Law No. 11.729 (1933). The changes occasioned by Law No. 15.775 (1960), regarding urban leases, are discussed under (4); Seara, Transferencia del Fondo de Comercio 60 (Bueno Aires, 1965), also Scolni, Transmisión de Establecimientos Comerciales e Industriales (Buenos Aires, 1955). An attempt in 1959, to amend Law No. 11.867, failed; Camara, Anotaciones al Proyecto de Ley de Transmisión de Fondos de Comercio, 21 (208) Jurisprudencia Argentina (July 27, 1959). According to art. 44 of the new Business Associacion Law (Law No. 19.550, 1972), fondos de comercio as an aporte to a business association must be inventoried and appraised, and provisions regarding its transfer observed.

[9]Cohen, Traité Theorique et Pratique des Fonds de Commerce (Paris, 1948); Jauffret, La Notion Juridique du Fonds de Commerce et ses Consequences, 3 Etudes de Droit Contemporain 1 (1959).

[10]Translated in San Martin & Friker, La Empresa Individual de Responsabilidad Limitada, Buenos Aires (1960), summarized in 8 Revista Jurídica 153 (Tucumán, 1960).

[11]Morant, La Sociología Industrial y la Empresa como Estructura Social y Económica, (21) Revista Jurídica 59 (Tucumán, 1970).

[12]For recent discussions, Nicoló, Reflessioni sul Tema dell'Impresa . . . , 54 Rivista del Diritto Commerciale 177 (1956); Nasi, Osservazioni su di una Recente Teoria dell-Empresa, 58 Rivista del Diritto Commerciale 383 (1960); also Santini, Le Teorie sull'Impresa . . . , 16 Rivista di Diritto Civile 405 (1970).

[13]Barrera Graf, El Derecho Mercantil en América Latina 65 (México, 1963).

[14]Olavarría, Honduras: a New Code of Commerce, 2 Am. J. Comp. L. 66 (1953).

[15]Bayitch, Guatemala: Commercial Code 1970, 3 Law. Am. 27 (1971).

[16]Bayitch, Inter-American Legal Developments, 3 Law. Am. 60 (1971).

[17]Bayitch, Inter-American Legal Developments, 3 Law. Am. 528 (1971).

[18]Barrera Graf, La Empresa en el Nuevo Derecho Mercantil Italiano, 19 Boletín del Instituto de Derecho Comparado de México 85 (1954); also in Estudios de Derecho Mercantil 271 (México, 1958); El Proyecto del Código de Comercio Mexicano, ibid. 291.

[19]Nonardes, La Empresa: Enfoque Sociológico, 19 Revista de la Facultad de Derecho y Ciencias Sociales 479 (Montevideo, 1968); Diaz, El Concepto Económico de Empresa, ibid. 471; also Ganon, Sociología de la Empresa: Características e Implicaciones de la Empresa para el Desarrollo, ibid. 501.

[20]The new Argentine bankruptcy law (1972) uses the term empresa o algunos de sus establecimientos (art. 128).

[21]Real, La Empresa en el Derecho Administrativo, 19 Revista de la Facultad de Derecho y Ciencias Sociales 403 (Montevideo, 1968).

[22]Sola Cañizares, Las Formas Jurídicas de las Empresas, 13 Revista de Derecho Comercial 293 (Madrid, 1952); Adriasola Navarrete, La Transformación de la Empresa (Santiago, 1971).

[23]Benedi, La Empresa de Economía Mixta, (1-2) Boletin del Instituto Centroamericano de Derecho Comparado 139 (1963); Orione, Empresas de Economía Mixta, 10 Enciclopedia Jurídica Omeba 101 (1959).

[24]Camara, Sociedades de Economía Mixta (Buenos Aires, 1954); Gorolillo, Empresas del Estado (Buenos Aires, 1966).

[25]Bayitch, Inter-American Legal Developments, 3 Law. Am. 304 (1971).

[26]Bayitch, Inter-American Legal Developments, 3 Law. Am. 528 (1971).

[27]Bayitch, Inter-American Legal Developments, 4 Law. Am. No. 3 (1972).

[28]Translation in 11 Int'l. Leg. Mat. 373 (1972).

[29]Translation in 8 Int'l. Leg. Mat. 910 (1969). Núñ, Integración Subregional Andina (Santiago, 1971).

[30]Bayitch, Inter-American Legal Developments, 3 Law. Am. 308 (1971).

[31]Translation in 11 Int'l. Leg. Mat. 357 (1972).

[32]Work Rules, 82 Int'l. Lab. Rev. 262 (1960).

[33]Bayitch, Transfer of Business: a Study in Comparative Law, 6 Am. J. Comp. L. 284 (1957); also La Transferencia de Negocios: Estudio de Derecho Comparado, 12 Boletin del Instituto de Derecho Comparado de México 11 (1959).

[34]Sola, Los Fondos de Comercio en el Derecho Venezolano, Opinión Jurídica 103 (Caracas, 1960); Pierce, Latin American Commercial Law: the 1955 Reform in Venezuela, 10 Miami L. Q. 507 (1956).

[35]Cf. Perrota, La Venta de Establecimientos Comerciales e Industriales en el Uruguay, (4) Jurisprudencia Argentina 133 (Buenos Aires, 1958). The Uniform Commercial Code (e.g., art. 676.6-102, Florida Statutes, 1971) applies rules regarding bulk sales only to sales made "not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory." Exempt are, among others, transfers to a local businessman who "becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound" (art. 676.6-103, 6); also a transfer of a "new business enterprise organized to take over and continue the business, if public notice . . . is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors" (id. 7). Cf. Krause Murguiondo, Transferencia de Partes de Establecimientos Comerciales, 11 Revista del Colegio de Abogados de La Plata 177 (1969).

[36]The automatic method combined with joint liability for taxes, e.g., Chile, Law No. 17.322 (1970), making the acquirer of farms, industrial or commercial establishments, plants, etc., jointly liable with the transferor.

[37]Seara, Transferencia del Fondo de Comercio 132 (Buenos Aires, 1965).

[38]Zuluaga Mejía, Substitución de Patronos en la Legislación Laboral de Colombia (Bogotá, 1952).

[39]Buen Lozano, El Concepto de Empresa en la Nueva Ley Federal de Trabajo Mexicana, 21 Revista de la Facultad de Derecho de México 49 (1971).

[40]Bayitch, Inter-American Legal Developments, 3 Law. Am. 525 (1971).

[41]Regarding contracts of agents, representatives, or distributors, see art. 10 of the Nicaraguan law of 1972 (4 Law. Am. 250, 1972), and art. 6 of Law No. 173 (1971) of the Dominican Republic (4 Law. Am. 274, 1972).

[42]Goldschmidt, La Obligación de No-concurrencia y los Subadquirentes de la Hacienda, 50 La Ley 90 (1949).

[43]Camara, Prenda con Registro o Hipoteca Mobiliaria (Buenos Aires, 1961).

[44]Bayitch, Aircraft Mortgage in the Americas: a Study in Comparative Aviation Law, with Documents 52 (1960). A collection of Latin American aviation laws is now available in Mapelli López, Códigos y Leyes de Aviación Civil de Iberoamérica (Madrid, 1970).

[45]Cf. Rotondi, Effetti della Vendita dell'Azienda sui Debiti e i Crediti, 66 Rivista del Diritto Commerciale 173 (1958).

[46]Grisoli, Sociedades Unipersonales y Empresa Individual de Responsabilidad Limitada, in Libro-Homenaje a la Memoria de Roberto Goldschmidt 431 (Caracas, 1967); Pampoukis, La Société d'une Personne, 18 Revue Héllenique de Droit International 358 (1965); Speth, La Limitation de la Responsabilité Commerciale Individuelle: Etude de Droit Comparé, 9 Revue Internationale de Droit Compré 27 (1957) Marcondes Rodríguez, Fundación de la Sociedad Anónima por una Sola Persona, 7 Revista de Derecho Comercial 531 (Montevideo, 1962).

[47]Limitation of liability to specific assets is known since early times as exemplified by the *peculium* and *benefitium inventarii* in Roman law, the latter still alive in some Latin American civil codes. Limitations are available in admiralty in regard to *fortuna del mar* according, for example, to art. 134 of the Mexican Law of Maritime Navigation and Commerce (1963); also art. 1078 of the Panamanian Commercial Code, discussed in Petition of Chadade Steamship Co., 226 F. Supp. 517 (1967). In the United States a business (Massachusetts) trust offers possibilities similar to the individual enterprise, in addition to the contested one-man corporation. The individual enterprise may be compared with a corporation sole (Reid v. Barry, 112 So. 846, Fla. 1927).

[48]See note 10 supra.

[49]Pisko, Die beschrankte Haftung des Einzelkaufmannes, 37 Ztschr. f. d. private u. offentliche Recht der Gegenwart 698 (1910); Marcondes Machado, Limitaçao da Responsabilidade do Comerciante Individual (Sao Paulo, 1956); Camp, Einführung der Einzelunternehmung mit beschrankter Haftung, 27 Schweizerische Juristische Zeitung 112 (1931). Opposed, Vicente Gella, La Responsabilidad Limitada de la Empresa Individual, 16 Revista de Derecho Mercantil 153 (Madrid, 1953).

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[51]Stratta, La Empresa de Responsabilidad Limitada, 55 La Ley 938 (1949); Michelson, Entidades de Responsabilidad Limitada Individual, 55 La Ley 826 (1949); Aztiria, Responsabilidad Individual Limitada, ibid. 835 (1949); Arecha, Empresa Individual de Responsabilidad Limitada (Buenos Aires, 1943); Aztiria, Empresario Individual de Responsabilidad Limitada, in Inter-American Bar Association, Actuaciones de la Décima Conferencia 561 (Buenos Aires, 1957); O'Neall, Empresa Individual de Responsabilidad Limitada, ibid. 565; Orgaz, La Empresa Individual de Responsabilidad Limitada, in Estudios de Derecho Civil 317 (Buenos Aires, 1948); Orione, Empresa Individual de Responsabilidad Limitada, 131 La Ley 878 (1953); Rava, La Limitación de la Responsabilidad del Comerciante Individual, 8 Revista

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[52]Diario Oficial, alcance No. 27 a La Gaceta No. 119, May 27, 1964. Pacheco, Foreign Investment in Costa Rica: the Legal Framework, 3 Law. Am. 246, 248 (1971).

[53]Gaceta Oficial, March 31, 1966, Ley No. 24 de 1 Febrero de 1966.

[54]Ozores, Empresas de Responsabilidad Limitada, 5 Anuario de Derecho 117 (Panamá, 1962); Vianor Herrera, La Nueva Ley sobre Empresas Individuales de Responsabilidad Limitada, (6) Cuaderno de la Facultad de Derecho y Ciencias Políticas 31 (Panamá, n. d.).

[55]Diario Oficial, July 31, 1970.

[56]Humeres Magnan & Nera Manzano, La Intervención del Estado en las Relaciones Laborales de la Empresa, 19 Revista de la Facultad de Derecho y Ciencias Sociales 383 (Montevideo, 1968).

[57]Morant, La Sociología Industrial y la Empresa como Estructura Social y Económica, (21) Revista Jurídica 59 (Tucumán, 1970).

[58]Cabanellas, Control Obrero, 4 Enciclopedia Jurídica Omeba 717 (Buenos Aires, 1956); Flores García, La Participación de los Trabajadores en las Utilidades de la Empresa, 11(32) Boletín del Instituto de Derecho Comparado de México 65 (1958); Gottschalk, Conselhos de Empresa: Representacao do Pessoal na Empresa Privada (Bahia, 1958); Galante, Participación del Trabajador en la Empresa: Ganancias, Producción y Dirección, (5) Revista Jurídica 121 (Tucumán, 1959); Vargas Sánchez, Participación de los Empleados en las Utilidades de las Empresas (Bogotá, 1961); Erdosain, La Participación del Personal en la Administración de Empresas (Buenos Aires, 1970); Alvirez Friscone, La Participación de Utilidades (México, 1966); Muro de Nadal, Nuevos Rumbos en la Participación de los Beneficios, (54) Revista de la Legislación Argentina 12 (March 1971).

[59]Sandoval, The New Mexican Federal Labor Law: An Analysis, 2 *Law. Am.* 386 (1970). Alvirez Friscone, Op. Cit. Supra.

[60]Ramírex Otarola, Codificación de la Legislación de Trabajo y de Previsión Social del Perú 254 (Lima, 1963).

[61]General Law of Industries, Decree-Law No. 18.350 (1970), art. 21 to 29, as amended by Decree-Law No. 19.262 (1972), supplemented by Law on Comunidad Industrial, Decree-Law No. 18.384 (1970), and regulated by Supreme Decree No. 00-71-L.C.-D.S. (1970), art 232 to 243 (Bayitch, Inter-American Legal Developments, 2 Law. Am. 425, 1970; 3 Law. Am. 68 and 307, 1971; Abramovitz, a.o., The Peruvian General Law of Industry, 12 Harv. Int'l. L. J. 312, 1971; Ramírez Bosco, La Participación de los Trabajadores en la Empresa y la Ley Peruana de Industrias, Buenos Aires, 1971; translation in 9 Int'l. Leg. Mat. 1225, 1970). — General Law of Fisheries, Decree-Law No. 18.810 (1971), art. 64 to 104, implemented by Supreme Decree No. 011-71-PE (1971, art. 170 to 230; 3 Law. Am. 55 (1970), and 4 Law. Am. 89 (1971). — General Law of Mining, Decree-Law No. 18.880 (1971), art. 275 to 325, and Supreme Decree No. 025-72-EM/DS (1972); 3 Law. Am. 552 (1972), and current issue. — General Law of Telecommunications, Decree—Law No. 19.020 (1971), art. 170 to 230; 4 Law. Am. 281 (1972). Clinton, The Modernizing Military: the Case of Peru, 24 (4) Inter-American Economic Affairs 43 (1971).

[62]Koch Gonzáles, La Participación de los Empleados en las Utilidades de una Empresa según Nuestra Legislación (Santiago, 1960, memoria).

[63]Guzmán, Estudio Analítico de la Ley del Trabajo Venezolana 857 (Caracas, 1967); Brinsmade, Venezuelan Labor Relations, 4 Miami L. Q. 475, 488 (1950); Febres, A Look at the Scope of Venezuelan Labor Legislation, 5 Int.-Am. L. Rev. 383, 405 (1963).

[64]Bayitch, Inter-American Legal Developments, 4 Law. Am. 273 (1972).

[65]Observaciones del Ejecutivo al Proyecto de Reforma Constitucional (April 7, 1972, El Mercurio, April 8, 1972, p. 28). On the amendment, 4 Law. Am. 262 (1972).

[66]Krotoschin, La Participación del Personal en la Dirección de la Empresa, 60 La Ley 824, 914 (1950); Argimon, Relaciones del Trabajo y Colaboración en la Empresa (Buenos Aires, 1954); Cabanellas, Control Obrero, 4 Enciclopedia Jurídica Omeba 717 (1956); Gottschalk, Conselhos de Empresa: Representaçao do Pessoal na Empresa Privada (Bahia, 1958); Gonzáles Rosales, Las Empresas y la Colaboración Obrero-Patronal, 45 Revista del Foro 444 (Lima, 1958); Gómez Ballesteros, Ensayos sobre la Estructuración de las Empresas en el Nuevo Concepto Obrero-Patronal, 7 (7-8) Revista Mexicana del Trabajo 39 (1960); Despotin, Hacia Democracia Industrial: la Transformación de la Empresa y la Nueva Clase Obrera, in Estudios de Derecho del Trabajo y Seguridad Social en Homenaje al Prof. E. Krotoschin (Buenos Aires, 1967); Pina, La Participación del Trabajador en la Gestión de la Empresa: los Consejos de Empresas (Buenos Aires, 1968); Erdosain, La Participación del Personal en la Administración de la Empresa (Buenos Aires, 1970); also Bayitch, L'Organisation du Personnel d'Enterprise, 1 Cahiers de Frontenex 23 (Geneva, 1947).

[67]Law. No. 14.445 (1958), as asociaciones de primer grado (art. 3,b).

[68]Consolidated Labor Law (Decree-Law No. 5452, 1943), art. 511.

[69]Federal Labor Law (1969), unions of workers employed in the same enterprise (art. 360, II).

[70]Labor Law (1932), unions may be organized by enterprises (art. 167, para. 3).

[71]Alexander, The Bolivian Revolution 103, 132 (1958).

[72]Hernández Vázquez, Las Comisiones Mixtas Obrero-Patronales: Naturaleza y Funciones (México, 1959). The Federal Labor Law of Mexico (1969) provides for mixed commissions within enterprises in two instances: for the drafting of the work rules (art. 424, I), and for "certain social and economic tasks" according to a collective agreement (art. 392).

[73]In Huberman & Sweezy, Socialism in Cuba (1969), labor representations are not even mentioned. However, the flight of workers into entrepreneurship has reached some 30% of private enterprises; it is branded by the official press as "intolerable that a worker whose labor may benefit the whole people, should become a potential bourgeois, a self-centered money-grabber and exploiter of his countrymen" (Granma, March 31, 1968). According to the authors, the trend is toward a "semimilitarization of work" (153). On recent attempts to increase productivity, Bernardo, Moral Stimulus as a Nonmarket Mode of Labor Allocation in Cuba, 6(6) Studies in Comparative International Development 119 (1971).

[74]An interesting example of worker representation is provided in art 17 of the standard work contract with Mexican workers under Agreement Extending and Amending the Agreement of August 11, 1951 (1952, TIAS No. 2586), providing that Mexican agricultural workers, employed in the United States, shall have the right to elect their own representatives who shall be recognized by the employer as spokesmen for the Mexican workers, without affecting the right of individual workers to contact the employer. Bayitch-Siqueiros, Conflict of Laws: Mexico and the United States, a Bilateral Study 167 (1968).

[75]The 1949 Brazilian draft for a labor code (Proyecto No. 1.267) contained provisions dealing with delegates and enterprise committees (title IV, art. 49 to 57), but were eliminated in the Chamber of Deputies (Gottschalk, op. cit. at 222, n. 52). Similar attempts by an official commission (1964) charged with drafting a new labor code in Argentina remained unsuccessful (Erdosain, op. cit.). Developments in Spain (Decree, January 18, 1947, establishing jurados de empresa, supplemented by Regulation, September 11, 1953, and Ordinance, December 12, 1960; also Law on

Codetermination, July 21, 1962, implemented by Decree July 15, 1965) remained characteristically without influence on Latin America.

[76]See supra n. 61.

[77]See supra n. 61.

[78]Fishing, art. 68, 88, and 92; also Regulation, art. 211 to 223; mining, art. 290, 310, 312 and Regulation, art. 100 to 127; telecommunications, art. 107, 120 to 127. For identification of sources, see no. 61, supra.

[79]Katzarov, Théorie de la Nationalisation 235 (Neuchatel, 1960), translated as Teoría de la Nacionalización (México, 1963). For Latin America, Gonzáles Aguayo, La Nacionalización de Bienes Extranjeros en América Latina (2 vol., Mexico, 1969); Lowenfeld (a.o.), Expropriation in the Americas (1971); Bossert, Cogestión y Coparticipación en Empresas Privadas y Estatales, 145 La Ley 5 (March 13, 1972); see also n. 66 supra.

[80]The legal structure of enterprises has to be adjusted for the participation by comunidades. In industry, art. 41 to 46 of the Law on Comunidad Industrial contain provisions applicable to limited liability firms (art. 42); to partnerships (to be transformed in comandit companies or corporations, art. 43) and to corporations (art. 44). Individually owned industrial enterprises are transformed into associations with the comunidad as a member, voting dependent on the amount of capital controlled (art. 41.) Fishing enterprises follow the same rules (Regulation, art. 267 to 210, containing additional provisions for leased enterprises, art. 209). In essence, the same rules obtain with regard to mining enterprises (art. 318 to 325, and Regulations, art. 67 to 99), except that individually owned enterprises turn into limited liability firms (art. 69). Telecommunications are treated as corporations (transitory provision 4).

[81]Expropriation by acuerdo (D.O. June 24, 1937), followed by the Ley Orgánica de los Ferrocarriles Nacionales de México, modified by Decree (D.O., January 25, 1947); a Consejo de Administración consists of ten members, two of them appointed by the railwaymen union (art. 6).

[82]A collection of decrees available in 2 Gonzáles Aguayo, La Nacionalización de Bienes Extranjeros en América Latina 132 (1969).

[83]Bayitch, Inter-American Legal Developments, 4 Law. Am. 264 (1972).

[84]Bayitch, Inter-American Legal Developments, 4 Law. Am. 262 (1972).

[85]Note 65 supra.

[86]For citations, see n. 61 supra.

[87]Bossert, Cogestión y Coparticipación en Empresas Privadas y Estatales, 145 La Ley 5 (March 13, 1972).

[88]Note 65 supra.

[89]R. C., Cuba: from Dogma to Pragmatism? 6 Bolsa Review 196 (1972).

[90]Note 73 supra.