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# The Federal Civil Code of Mexico

Jorge A. Vargas

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# The Federal Civil Code of Mexico

Jorge A. Vargas\*

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## I. INTRODUCTION

Mexico's latest Federal Civil Code was published in the Federal Daily Gazette on May 29, 2000.<sup>1</sup> In reality, save for minor changes, the language of this newly enacted code corresponds ver-

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1. "Decreto por el que se reforman y adicionan diversas disposiciones del Código Civil para el Distrito Federal en Materia Común y para toda la República en Materia Federal, del Código Federal de Procedimientos Civiles, del Código de Comercio y de la Ley Federal de Protección al Consumidor," D.O. 29 de mayo de 2000 (Mex.). The newly enacted Federal Civil Code ("Code") entered into force on Monday, June 7, 2004. Nine days following its publication in the *Diario Oficial de la Federación* ("D.O."), the Spanish text of this Code could be found, with its latest amendments, on the internet website sponsored by Mexico's Chamber of Deputies of the Federal Congress, the *Cámara de Diputados del Honorable Congreso de la Unión*. This website also provides access to the latest texts in Spanish of the Code of Commerce (*Código de Comercio*), the Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*), the Federal Code of Criminal Procedure (*Código Federal de Procedimientos Penales*), the Federal Criminal Code (*Código Penal Federal*), the Code of Military Justice (*Código de Justicia Militar*), the Federal Code of Electoral Institutions and Procedures (*Código Federal de Instituciones y Procedimientos Electorales*), and the Fiscal Code of the Federation (*Código Fiscal de la Federación*). In addition, the same website gives access to the complete texts of two hundred and fifty federal statutes. See *Cámara de Diputados del Honorable Congreso de la Unión*, available at [www.cddhcu.gob.mx/leyinfo](http://www.cddhcu.gob.mx/leyinfo) (last visited Dec. 27, 2004). See also Jorge A. Vargas, *Mexican Law on the Web: The Ultimate Research Guide*, 32 INT'L J. LEGAL INFO. 34 (2004) (including a bilingual list of the two hundred and fifty Mexican federal statutes).

batim to the text of the Civil Code for the Federal District in Ordinary Matters and for the Entire Republic in Federal Matters (*Código Civil para el Distrito Federal en Materia Común y para toda la República en Materia Federal*), published in 1928 in that country and in force since 1932.<sup>2</sup>

Traditionally, at least since 1870 when Mexico adopted its first national code, the Civil Code for Mexico City played a dual role: it applied to *local matters* to the city capital of that nation which, as the venue of the federal government, is recognized as the Federal District (*Distrito Federal*); at the same time, the Code governed *federal matters* throughout the Republic of Mexico. However, this situation changed in May 2000.

Today, Mexico City has its own Civil Code for the Federal District (*Código Civil para el Distrito Federal*) on local matters (which continues to be the 1928 Civil Code, save for a few but important change),<sup>3</sup> and a separate Federal Civil Code that applies to federal matters both in Mexico City as well as in Mexico's thirty-one States.<sup>4</sup> In essence, it is one code with two names.

The reasons behind Mexico's need of having to enact two formally separate but substantively identical Civil Codes is relatively simple: it may be attributed to that country's finding a new path towards an emerging democracy.

Prior to 2000, Mexico was under the absolute political control of its official party, the PRI (*Partido Revolucionario Institucional*), which governed that country for seventy-one long and uninterrupted years. During that period of time, the President of Mexico

2. D.O. 26 de marzo de 1928 (Mex.). The Code entered into force on October 1, 1932, by a decree published in the D.O. on September 1, 1932. D.O. 1 de septiembre de 1932 (Mex.). Originally published by President Plutarco Elías Calles, this Code has been amended several times, including its most recent amendment published in the Official Gazette of the Federal District (*Gaceta Oficial del Distrito Federal*) on May 25, 2000. *Gaceta*, 25 de mayo de 2000 (Mex.).

3. Most of the changes in the *Código Civil para el Distrito Federal* affect family law matters, in particular adoptions, divorce and domestic violence. See *Código Civil para el Distrito Federal* [C.C.D.F.] arts. 86-87, 91, 282, para. VII, 283, 293 & 410 (Mex. 2004).

4. Pursuant to the Mexican Constitution of 1917 (*Constitución Política de los Estados Unidos Mexicanos*), Mexico is politically structured as a federal, democratic, and representative republic composed of thirty-one free and sovereign states in matters regarding their internal order, but united in a federation established in accordance with the principles set forth by the Constitution. MEX. CONST. art. 40 (2004). The national sovereignty rests with the people who exercise said sovereignty through the Powers of the Union in cases within their jurisdiction, and through those of the states in matters that relate to their internal affairs, under the terms established by the Federal Constitution, and those of the States, respectively. MEX. CONST. art. 41 (2004).

exercised virtually unlimited powers throughout the Republic, including Mexico City. In those days, Mexico City, organized then as the Department of the Federal District (*Departamento del Distrito Federal*) or DDF, operated almost like an appendix to the Office of the President of the Republic, who was empowered by the Constitution to appoint personally the Head of the DDF. In other words, at that time the largest city in that country (which already was one of the largest in the world) did not have the right to elect its own mayor.

This situation finally changed in 1996 when, as a result of the sustained efforts principally led by the Democratic Revolutionary Party (PRD), Mexico City was detached from the Office of the President and became a city on its own, with a freely elected Mayor and a local Legislative Assembly of citizens elected every three years by universal, free, direct and secret vote.<sup>5</sup>

This drastic change in the administrative, legal and political structure of Mexico City is clearly reflected in the Federal Constitution, which now reads:

The City of Mexico is the Federal District, the venue of the Powers of the Union and the capital of the United Mexican States (*Estados Unidos Mexicanos*). It shall be formed of the territory which currently has and in the event that the federal powers are transferred to another place, it shall become the State of the Valley of Mexico (*Estado del Valle de México*) with the boundaries and extension assigned to it by the General Congress.<sup>6</sup>

Today, the government of the Federal District is under the control of both the Federal Powers of the Union, on the one hand, and the Executive, Legislative and Judicial organs at a local level, on the other, pursuant to what is prescribed by Article 122 of the Federal Constitution.<sup>7</sup>

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5. MEX. CONST. art. 122 (2004). Article 122 enumerates the powers of the Mexico City local authorities, which are: a) the Legislative Assembly; b) the Head of the Government of the Federal District; and c) the Superior Tribunal of Justice. *Id.* See also Jorge A. Vargas, *Federal District, Legislative Authority, Local Administrative Policies, and Head of the Government*, MEX. LEGAL DICTIONARY AND DESK REFERENCE 181 (2003).

6. MEX. CONST. art. 44 (2004) (trans. by author). See also "Decreto por el que se reforman los artículos 31, 44, 73, 74, 79, 89, 104, 105, 107, 122, así como la denominación del título quinto, adición de una fracción IX al artículo 76 y un primer párrafo al 119 y se deroga la fracción XVII del artículo 89 de la Constitución Política de los Estados Unidos Mexicanos," D.O., 25 de octubre de 1993 (Mex.).

7. MEX. CONST. art. 122 (2004). Article 122 is composed of the following five "Bases:" 1) the Legislative Assembly, 2) the Head of the Government of the Federal

The Federal Civil Code is composed of 3,074 Sections (referred to in Mexico as "Articles") divided into four parts ("Books"), and preceded by some preliminary provisions.<sup>8</sup> Book One (Persons) refers to the rights and obligations of individuals and legal entities (known in Mexico as "Moral Persons"), including: questions relative to their domicile, civil registry, birth, marriage, divorce, death, adoption, parentage and support, parental authority, guardianship, emancipation, absent and missing persons, and the homestead. The newly enacted code modernized some of its family law provisions.<sup>9</sup> Book Two (Property) governs real property and personal property, possession, ownership, usufruct, easements and prescription (i.e., statute of limitations). Book Three (Successions) deals with succession by will, legal and testamentary successions, executors and partition questions. Finally, Book Four (Obligations or Contracts) pertains to contracts, special obligations and their effects, leases, agency, professional services, associations and companies, mortgages, credits and the public registry of property and commerce.<sup>10</sup>

At the outset, it deserves to be mentioned that the language of the Federal Civil Code (as reflected in the Civil Code for the Federal District of 1928) has been literally incorporated, word by word, in each of the thirty-one local Civil Codes enacted by the Mexican States (with insignificant changes from very few States).<sup>11</sup> Accordingly, this means that, de facto, regarding civil

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District, 3) the Organization of the Local Public Administration of the Federal District, 4) the Superior Tribunal of Justice and the Other Judicial Organs in Ordinary Matters, and 5) the Administrative-Contentious Tribunal. *Id.*

8. See C.C.D.F. arts. 1-21 (Mex. 1992). These provisions are found in Articles 1-21, which contain basic principles of law. Specifically, Articles 13-15 of the *Código Civil para el Distrito Federal* should be of interest to U.S. judges and legal practitioners because, *inter alia*, they collectively set forth the standards for conflicts of law and the application (or not) of foreign law. See C.C.D.F. arts. 13-15 (Mex. 1992).

9. See Vargas, *supra* note 1, at 51. The amendments contained in that section of the Code extended to the Code of Civil Procedure, the Penal Code and the Code of Criminal Procedure in the area of domestic violence. See also "Decreto por el que se reforma, adiciona y deroga diversas disposiciones del Código Civil para el Distrito Federal en Materia Común y para toda la República en Materia Federal; del Código de Procedimientos Civiles para el Distrito Federal; del Código Penal para el Distrito Federal en Materia de Fuero Común y para toda la República en Materia de Fuero Federal, y del Código de Procedimientos Penales para el Distrito Federal," D.O., 30 de diciembre de 1997 (Mex.).

10. See Vargas, *supra* note 1, at 51.

11. Some of the few exceptions may be found, for example, in tort law (i.e., extra-contractual liability) in the relatively recent Civil Code of Quintana Roo and in the family law codes of Hidalgo and Veracruz. See generally *Código Civil Para el Estado Libre y Soberano de Quintana Roo* [C.C.QUINTANA ROO] (Mex.); *Código de*

law matters, the Federal Civil Code may be said to be the common law of Mexico governing throughout the entire country.

## II. HISTORICAL BACKGROUND

After Mexico attained its political independence from Spain in 1821, Spanish legislation continued to be applied in the newly recognized nation in a number of key legal areas, including civil law.<sup>12</sup> During the early beginnings of Mexico, the occurrence of constant political upheavals and the vastly ruined economy left by the war of independence demanded a long and challenging process of consolidation for the law of the new country to finally emerge, be formulated and systematized, and then to gradually acquire its distinct legal contours.

Although some isolated efforts at the state level resulted in the formulation of various civil codes in the late 1820s,<sup>13</sup> it was not until half a century later, in the 1870s, when the codification process gained in stature and recognition at the national level.<sup>14</sup> The vigorous and sustained impetus given by President Benito Juárez in favor of codifying a civil and a penal code deserves to be noted. As a result of it, Justo Sierra O'Reilly, Juárez's Minister of Education, formulated one of the most advanced and significant civil works in 1861.<sup>15</sup> However, the French intervention (1862-1867) interrupted these incipient codification attempts.

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Procedimientos Familiares para el Estado de Hidalgo [C.P.F.HIDALGO] (Mex.); Código de Procedimientos Familiares para el Estado de Veracruz de Ignacio de la Llave [C.P.F.VERACRUZ] (Mex.).

12. Jorge A. Sánchez-Cordero Dávila, *Derecho Civil*, in INTRODUCCIÓN AL DERECHO MEXICANO 671 (1st ed., 1983).

13. It is widely accepted that in Mexico, the very first Civil Code was published book by book in the southeastern State of Oaxaca between 1827 and 1828. This work was highly influenced by the French Civil Code of Napoleon of 1804, and as a result, as indicated by Benito Juárez, then governor of Oaxaca, it is said to have caused numerous problems for introducing alien legal institutions which clashed with the traditional values and customs of that State. Bentham reports that the State of Zacatecas produced a draft of a Civil Code which was published on December 1, 1828, although it was never formally enacted. A similar draft was formulated in the State of Jalisco in 1833. See María del Refugio González, *Historia del Derecho Mexicano*, in INTRODUCCIÓN AL DERECHO MEXICANO 60-62 (1st ed., 1983); see also OSCAR CRUZ BARNEY, *HISTORIA DEL DERECHO EN MÉXICO* 562 (1999).

14. All of the Mexican codes were published around this time, i.e., Code of Civil Procedure (1872), Criminal Code (1871), and the Code of Criminal Procedure (1880). See OSCAR CRUZ BARNEY, *supra* note 13, at 574-583; see also HELEN L. CLAGGETT & DAVID M. VALDERRAMA, *LAW & LEGAL LITERATURE OF MEXICO* 62-100 (1973) (narrative on the development and codification of Civil Law in Mexico).

15. The Civil Code drafted by Sierra O'Reilly was adopted and enacted as the Civil Code of the State of Veracruz in 1861. See González, *supra* note 13, at 66.

The defeat of the French invading army was soon to be followed by the tragic execution of Maximilian of Hapsburg and his generals Miramón and Mejía in the City of Querétaro in 1867. A triumphant President Juárez returned to Mexico City and then proceeded to restore the republican and federal form of government. It seems remarkable now that, as a Head of State, President Juárez almost immediately turned his attention to continuing his interrupted codification efforts. In the period from 1868-1870, several special drafting commissions were formed by eminent jurists to formulate a Civil Code,<sup>16</sup> a Criminal Code and a Code of Commerce, as reported by the Secretary of Justice and Public Instruction to the Mexican Congress in 1870.<sup>17</sup>

Finally, the Civil Code for the Federal District and the Territory of Baja California was promulgated on December 8, 1870, and entered into force on March 1, 1871. According to Cruz Barney,<sup>18</sup> this Code was based upon the Sierra O'Reilly draft of 1861 and the Civil Code of the Mexican Empire promulgated in 1866 by Maximilian.<sup>19</sup> For María del Refugio González, another eminent legal historian, the 1870 Civil Code reflected the triumph of the liberal political model, which was to be consolidated in the subsequent Code of 1884.<sup>20</sup>

The Civil Code of 1870 is uniformly characterized as the seminal document which enunciated for the first time, in a methodic and systematic manner, the legal corpus of Mexican Civil Law. According to Batiza, this Code had multiple sources, including the

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16. The Drafting Commission for the Civil Code was formed by Yáñez, Lafragua, Montiel y Duarte, y Egüía y Lis. See *id.* at 83. A new commission, formed later by José María Lafragua, Isidro Montiel y Duarte and Rafael Dondé and responsible for the creation of the Civil Code of 1870, was created by Antonio Martínez de Castro, Minister of Justice of the Juárez Administration. See OSCAR CRUZ BARNEY, *supra* note 13, at 567.

17. See González, *supra* note 13, at 84.

18. OSCAR CRUZ BARNEY, *supra* note 13, at 567. See also Pablo Macedo, *El Código de 1870, Su Importancia en el Derecho Mexicano*, in JURÍDICA, ANUARIO DEL DEPARTAMENTO DE DERECHO DE LA UNIVERSIDAD IBEROAMERICANA 247 (no. 3, 1971).

19. Interestingly, during his ephemeral "Mexican Empire," Maximilian promulgated in 1865 his *Provisional Statute of the Mexican Empire (Estatuto Provisional del Imperio Mexicano)*, which may be included among the most liberal and advanced documents in the constitutional history of Mexico. It should be noted that Maximilian's "Estatuto" had no practical or legal application. For the text of this seldom analyzed document, see FELIPE TENA RAMÍREZ, *LEYES FUNDAMENTALES DE MÉXICO 1808-1982*, at 670-680 (11th ed., 1982) (1957).

20. See María del Refugio González, *Notas para el Estudio del Proceso de la Codificación Civil en México (1821-1928)*, in LIBRO DEL CINCUENTENARIO DEL CÓDIGO CIVIL 136 (1978); MARÍA DEL REFUGIO GONZÁLEZ, *EL DERECHO CIVIL EN MÉXICO 1821-1871, passim* (1988).

discussions of the French Civil Code of 1804 (*Code Napoleon*), the Portuguese Civil Code of 1867, the Code of Switzerland, the Swedish Civil Code, as well as the codes of Sardinia, Piamonte, Naples, Bavaria, Prussia, Austria, and The Netherlands, including the Spanish García Goyena Draft of 1851.<sup>21</sup>

The 1870 Civil Code was so widely recognized and appreciated that its language was adopted verbatim by all of the States of the Republic of Mexico. This was the origin of a practice that has continued up to the present. Moreover, Batiza is of the opinion that more than half of the Articles of the 1870 Code were reproduced in a literal or almost literal manner, in most cases, in some 2300 Articles of the [Civil] Code of 1928.<sup>22</sup>

Mexico's Civil Code of 1884 was, according to Batiza, an almost literal reproduction of the 1870 Code. Consequently, most of the articles of the Civil Code of 1928 (the current Code for the Federal District as well as the Federal Civil Code) "derive" from the Code of 1870, although its language was received through the Civil Code of 1884.<sup>23</sup>

Dr. Ignacio García Téllez, a leading jurist in Mexico at that time and a distinguished member of the Drafting Commission for the 1928 Code, wrote the following about the 1884 Civil Code, then considered a "monument of wisdom and clarity:"

Our Code of 1884 was the faithful expression of legal science enshrined in the famous *Code Napoleon*, source of inspiration of the civil codes of last century and influenced by the doctrines of eminent Roman jurists. The individualism is found as the keystone of codification, and the egalitarian movement of the French Revolution had manifested in its civil law the expression as a dogma of equality before the law, whose rigid principles apply the same to the educated and the uneducated, the poor and the wealthy, the inhabitant of the city and the one who lives away from any communication.<sup>24</sup>

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21. See RODOLFO BATIZA, LAS FUENTES DEL CÓDIGO CIVIL DE 1928, INTRODUCCIÓN, NOTAS Y TEXTOS DE SUS FUENTES ORIGINALES NO REVELADAS 13-16, 28 (1979).

22. *Id.* at 28.

23. *Id.* at 13.

24. IGNACIO GARCÍA TÉLLEZ, MOTIVOS, COLABORACIÓN Y CONCORDANCIAS DEL NUEVO CÓDIGO CIVIL MEXICANO 2 (Editorial Porrúa, 1965) (1932) (trans. by author). In this excellent monograph, the author provides references to Mexico's Civil Code of 1884 and the Domestic Relations Act of 1917, article by article, as well as to the foreign civil codes utilized by the Drafting Commission in preparing the 1928 Code.



## III. THE CIVIL CODE OF 1928

The national social and political movement that violently erupted in Mexico in 1910 was supported by masses of poor and uneducated peasants, farmers, laborers and Indigenous peoples who turned overnight into revolutionaries. The movement not only transformed that country, but also painfully laid down the foundational roots of the modern country that it is today.

The revolution of 1910 exercised a profound and pervasive influence upon the creation of a new country, a new Mexican society, and a new kind of law. In a number of ways, the construction of this social, political and legal model started with the formulation of the Federal Constitution of 1917, which was the first constitution of the twentieth century that was tightly packed with principles and rules with clear socialistic tendencies. The nationalistic property regime established by Article 27, including the institution of the *Ejido*, now superseded. The long and detailed catalogue of labor rights prescribed by Article 123, which were far ahead of their time, and the control of the economy at the hands of the State, now under more flexible controls, may be characterized not only as salient examples crafted by the revolution but as solid pillars which erected that legal edifice known in Mexico as Social Law.<sup>25</sup> It has been reported that regarding "social law" Julian Bonnetcase, the well-known eminent Civil Law jurist, said: "*Le Droit Social est un mot, rien qu'un mot.*"<sup>26</sup> It was impossible for the Civil Code of 1928 to have escaped unscathed from this direct and powerful influence.

The Civil Code of 1928 was enacted by Plutarco Elías Calles, then President of the Republic, while he was in the exercise of extraordinary presidential powers.<sup>27</sup> As it is customary for the formulation of Codes, the Federal Executive appoints a "Drafting Commission" (*Comisión Redactora*) of leading jurists for the task. In this case, the commission was composed of Angel García Peza, Ignacio García Téllez, Fernando Moreno and Francisco H. Ruiz.<sup>28</sup>

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25. See Jorge A. Vargas, *The Constitution of Mexico*, in 1 MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS 40-45 (Jorge A. Vargas, ed., 1998).

26. See J. Castán Tobenas, *El Nuevo Código Civil Mexicano*, in REVISTA GENERAL DE DERECHO Y JURISPRUDENCIA 78 (Alberto Vasquez del Mercado ed., 1930).

27. See C.C.D.F. *Comentarios, Legislación, Doctrina y Jurisprudencia, Doctrina I: Los Orígenes de Nuestros Códigos Civiles*, at xvii (Mex. 1998). It deserves to be pointed out that the Supreme Court of Mexico, in a *Jurisprudencia* decision, asserted that the President's exercise of extraordinary powers was constitutional.

28. See OSCAR CRUZ BARNEY, *supra* note 13, at 570.

The Code was promulgated on August 30, 1928, under the official title of "Civil Code for the Federal District and Territories in Ordinary Matters, and for the Entire Republic in Federal Matters" (*Código Civil para el Distrito y Territorios Federales en Materia Común, y para Toda la República en Materia Federal*).<sup>29</sup> Its text was published in three separate parts in the *Diarios Oficiales* of May 26, July 14, and August 31, 1928. Two corrections (*Fe de Erratas*) were published on July 13 and December 21, 1928. Pursuant to Transitory Article 1, by Presidential decree of August 29, 1932 (D.O. of September 1, 1932), the Civil Code entered into force on September 1, 1932.<sup>30</sup>

In the Introductory Comments (*Exposición de Motivos*) to the newly created Civil Code of 1928, the Drafting Commission wrote:

The social revolutions of this century have provoked a complete revision of the basic principles of social organization, and have laid down to the ground traditional dogmas consecrated by secular respect. The profound transformation that the peoples have experimented as a consequence of their economic development. . . have produced a crisis in all the social disciplines, and the law, which is a social phenomenon, cannot but receive the influence of this crisis. The change in the social conditions of modern life imposes the necessity of renewing the legislation, and the civil law, which forms a part of it, cannot remain impassible to the colossal movement of transformation experimented by societies.

Our current Civil Code [of 1884], which is the product of the economic and legal necessities of another epochs; formulated when the small industry prevailed in the economic field and an exaggerated individualism in the legal order, has become incapable of regulating the new perceived needs and the relationships which, although of a private nature, are strongly influenced by the daily accomplishments of the big industry, and by the progressive triumphs of the principle of solidarity.

To transform the Civil Code, in which the individualist criterion

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29. In 1928, Baja California and Quintana Roo were "Territories" rather than States. The Territory of Baja California was divided into two States: Baja California (in the northern portion, north of parallel 28° N. Lat.) and Baja California Sur by decree, as published in the D.O. of December 31, 1951. See "Acta de la session celebrada el día de septiembre de mil novecientos cincuenta y uno," D.O., 31 de diciembre de 1951 (Mex.). Quintana Roo became a State by decree of October 7, 1974. See "Acuerdo que modifica la concesión otorgada al Banco de Comercio de Veracruz, S.A., por aumento de capital social," D.O., 7 de octubre de 1974 (Mex.).

30. RODOLFO BATIZA, *supra* note 21, at 30.

predominates, into a private social code, it is indispensable to substantially change it, repealing everything which exclusively favors the particular interest to the prejudice of the people and introducing new provisions to be harmonized with the concept of solidarity.<sup>31</sup>

. . . .  
The law must be socialized. A publicist said that to socialize the law will be an indispensable standard of socialization for all the other activities, in opposition to the selfish individual, thus creating a new type of more enlightened man: the social man.<sup>32</sup>

. . . .  
From another viewpoint, the legislation cannot be considered as a body of theoretical principles which are developed with the rigor of a logical reasoning. It should not be forgotten that the law is a body of rules of behavior and that life does not have the inflexibility of the straight line.<sup>33</sup>

The preceding considerations governed the conduct of the Commission and because of this, the Commission did not object to inspiration from foreign legislation in those areas where the national legislation was deficient, and to using the theories of reputed European specialists to propose some changes. The commission considered these foreign theories without neglecting our own problems and needs; above all, they endeavored to attach to the Civil Code the aspirations of economic emancipation of the popular classes which inspired our last social revolution and which materialized in Articles 27, 28 and 123 of the Constitution of 1917.<sup>34</sup>

The central philosophy that is present throughout the Draft may be briefly expressed in these words: to harmonize the individual interests with the social ones, in order to correct the excessive individualism which prevailed in the Civil Code of 1884.<sup>35</sup>

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31. C.C.D.F. *Exposición de Motivos* (Mex. 2001) (trans. by author).

32. These Introductory Comments were directed to the Secretary of the Interior (*Secretario de Gobernación*) and dated on April 12, 1928. See IGNACIO GARCÍA TÉLLEZ, *supra* note 24, at 18 (trans. by author).

33. *Id.* C.C.D.F. *Exposición de Motivos* (Mex. 2001) (trans. by author).

34. Article 27 of the Mexican Federal Constitution sets forth the legal regime of private and public property, Article 28 establishes the bases for the control and direction of the national economy by the federal government, and Article 123 enunciates the fundamental principles upon which Mexican Labor Law is formulated, as reflected in the provisions of the Federal Labor Act (*Ley Federal del Trabajo*). See MEX. CONST. arts. 27, 28 & 123 (2004).

35. C.C.D.F. *Exposición de Motivos*, at 7-37 (Mex. 2001).

## IV. THE LEGAL SIGNIFICANCE OF CODES IN MEXICO

By definition, countries within the civil law tradition, like Mexico,<sup>36</sup> have codes that form an important part of their legal system. Indeed, some of these codes may trace back their ancient legal parentage to the historically famous *Corpus Juris Civilis*, compiled under the direction and statutory authority of Roman Emperor Justinian in 533-534 A.D.<sup>37</sup>

For countries in Latin America with a direct Spanish origin,<sup>38</sup> such as Mexico, codification works may find an early historical predecessor in the *Siete Partidas* instituted around 1250 by King Alfonso X of Castile and Leon.<sup>39</sup>

However, most of the modern codes relate to a common and universal ancestor, which is the French Civil Code of 1804,<sup>40</sup> known as *Code Napoleon*, designed and formulated by Napoleon Bonaparte, then First Consul, as a brilliant, elegant, and concise work directed at unifying French private law. The enunciation of the law in this French Civil Code was so lucid and the methodol-

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36. It is indisputable that Mexico's "official" legal system belongs to the civil law tradition. However, in parallel with the "official" legal system based upon the Spanish law imposed by the Conquistadores after the violent conquest in 1519-1521, Mexico currently also has a customary normative system practiced by its indigenous peoples, such as the Náhuatl, Mixteco, Otomí, Purépecha, Tarahumara, Tzotzil, Yaqui, Zapoteco, etc. Incredibly, it was not until 1992, when President Salinas de Gortari, in response to demands advanced by indigenous groups, amended Article 4 of the Mexican Federal Constitution to acknowledge that, "[T]he Mexican nation has a pluriethnic composition originally based on its indigenous peoples." See Jorge A. Vargas, *NAFTA, the Chiapas Rebellion, and the Emergence of Mexican Ethnic Law*, 25 CAL. W. INT'L L.J. 1, 44, 50-52 (1994) (emphasis added).

37. Flavius Anicius Justinianus (Emperor Justinian) assigned a team of compilers to the task of collecting the vast body of laws and writings of jurists. The code of laws became known as the *Corpus Juris Civilis*, and the compilation of jurists' writings as *The Digest*. See ANDREW STEPHENSON, *A HISTORY OF ROMAN LAW* 293-294 (Little, Brown & Co., 1912).

38. For an interesting narrative of the historical codification process that took place in Spain, see *Historical Preface*, THE CIVIL CODE FOR THE FEDERAL DISTRICT AND TERRITORIES OF MEXICO, at iii-xii (Otto Schoenrich, trans., 1950).

39. FRANCISCO TOMÁS Y VALIENTE, *MANUAL DE HISTORIA DEL DERECHO ESPAÑOL* 237-242 (4th ed., 1995). Actually, the title of these manuscript texts is *Libro de las Leyes* (Book of the Laws), completed circa 1263 or 1265. *Id.* at 237.

40. See generally THE FRENCH CIVIL CODE (John H. Crabb trans., 1977); André Tunc, *The Grand Outlines of the Code Napoleon*, 29 TUL. L. REV. 431 (1955). The *Code Napoleon* was voted into law on March 21, 1804. Among its most important contributions were a trial by jury, the right to divorce, and the replacement of the feudal system with a philosophy of equality under the law. Napoleon himself, recognizing the importance of his achievement, wrote, "My true glory . . . is not to have won forty battles . . . . Waterloo will erase the memory of so many victories . . . . But what nothing will destroy, what will live eternally, is my Civil Code." See THE CODE NAPOLEON AND THE COMMON LAW WORLD 102 (B. Schwartz ed., 1956).

ogy and systematization of its legal corpus so rational, that it became "the model" of a civil code. It has been said that this Code "initiated the contemporary system of civil law as we know it today with its codifications."<sup>41</sup>

This explains the fact that, just a few decades after its adoption, this Code exercised a powerful and incisive influence in countries throughout Europe, Latin America, and East Asia for having defined both the substance and the scope of the Civil Law, as well as its format and legal architecture.<sup>42</sup>

In Mexico, the influence of the Code Napoleon upon that country's civil law was most significant and originated from two major sources: first, as a direct source used by Justo Sierra when preparing Mexico's first Civil Code of 1870; and second, in an indirect manner, principally through the language of the Spanish García Goyena Draft of 1851 and that of Maximilian's Civil Code of the Mexican Empire of 1866, since both of these codes were in turn clearly influenced by the French Civil Code of 1804.

Turning now to the meaning and legal significance of codes, it may be appropriate to recall that, in a historical sense, "code" may be simply defined as a "compilation of legal provisions."<sup>43</sup> Currently, "code" is understood as the written formulation of a specific branch (i.e., civil, commercial, criminal, etc.) of positive law<sup>44</sup> (i.e., the law which is in force today) presented and organized under a certain subject, plan, system and method.<sup>45</sup> Legal specialists are of the unanimous opinion that the modern notion of code dates back to the codification development process that originated circa XVII century Europe under the influence of rationalist thinking and liberal philosophies.<sup>46</sup>

In Mexico, the Civil Code is at the center of the multiplicity of legal acts and interactions that take place, on a daily basis, princi-

41. THE FRENCH CIVIL CODE, *supra* note 40, at 2.

42. See JOHN H. MERRYMAN *et al.*, THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA, AND EAST ASIA 1149-1163 (1994); RUDOLF B. SCHLESINGER *et al.*, COMPARATIVE LAW 245 (6th ed., 1998).

43. See María del Refugio González, *Código*, in NUEVO DICCIONARIO JURÍDICO MEXICANO 584-586 (Raúl Márquez Romero ed., No. 93, 1998).

44. According to Rafael de Pina, *Derecho Positivo* is "the body of legal norms which compose the legality established by the legislator, as well as those provisions which were in force at a given time and were eventually repealed, turning into the historic law of a given nation." In contrast to "natural law," which may be defined as the "law that should be," "positive law" is the law that is today. See RAFAEL DE PINA & RAFAEL DE PINA VARA, DICCIONARIO DE DERECHO 238-239 (30th ed., 2001).

45. *Id.* at 585.

46. *Id.*

pally between and among individuals. The provisions of this Code constitute the crux of private law, i.e., the law that applies to the most essential rights and obligations of private citizens, including their relations with other individuals, as part of their personal and private affairs of life, in contrast to public law, which regulates the general interests of the Nation.

The provisions in this Code, systematically ordained under each of its four parts (i.e., Books), govern questions pertaining, in Book One, for example, to gestation, births, acknowledgment of children, adoptions, tutelage, emancipation, marriage, divorce, and death. In other words, the Civil Code legally accompanies each person throughout each of the stages of his/her life, literally from conception to death, prescribing rules and principles formulated to ease any person's way of navigating through society, and by utilizing these principles to assist courts in adjudicating disputes peacefully and thus render justice in an expeditious and equitable manner.

## V. SALIENT ASPECTS OF THE FEDERAL CIVIL CODE

Interestingly, as suggested earlier, the reason for adopting a federal civil code for Mexico was not for revising or modernizing the language of the 1928 Civil Code but more for recognizing that Mexico City had become an independent political entity. Accordingly, this new political entity, like the other thirty-one States, needed to have its own civil code, separate and formally different (albeit substantively identical) from the Federal Civil Code of Mexico.

In other words, the legal language of the 1928 Code was considered to be, in general, adequate to be maintained and "adopted" in 2000 to serve as the country's Federal Civil Code. This explains why said legal language was simply taken from one format and then literally poured into the other format without hesitation. Thus, the Federal Civil Code of 2000 still contains the core of those norms and principles inspired by the legal philosophy of the early XX century which was enshrined in the 1928 Code and which continues to apply now, federally, in the dawn of the XXI century.

These are a few of the salient aspects of the Federal Civil Code of Mexico:

- The legal equality between man and woman constitutes the central and fundamental principle governing the relations between them, within and outside the family.

Women are not to be subject to any restriction, because of their sex, in the acquisition and full enjoyment of their civil rights.<sup>47</sup>

- Regarding the temporal requisite for the applicability of laws and regulations, the principle of no retroactivity reigns supreme, in symmetry with Article 14 of the Federal Constitution. Thus, no law or governmental decree is to be applied retroactively to the prejudice of any individual.<sup>48</sup>
- Article 12 enunciates the Principle of Limited Territoriality: Mexican laws apply to all persons within the Republic, as well as to acts and events within its territory or under its jurisdiction, including those individuals who submit themselves thereto, except when the law prescribes the application of foreign law or it is otherwise provided by international treaties and conventions to which Mexico is a party.<sup>49</sup>
- Choice of law is subject to the application of the well-known principles of *Lex rei sitae*, *Locus regit actum*, *Lex loci executionis*, etc.<sup>50</sup>
- The principles governing the application of foreign law, a legal phenomenon that seldom took place in Mexico prior to the 1988 amendment, are clearly inspired by the leading Inter-American conventions and other instruments on private international law.<sup>51</sup>
- Foreign law shall not be applied when it is invoked as an attempt to evade the application of Mexican law (*Fraud au loi*) or runs contrary to principles or fundamental institutions of Mexico's public order (*Ordre public*).<sup>52</sup>
- Family law provisions were modernized by favoring the rights of women within the marriage and divorce con-

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47. C.C.D.F. art. 2 (Mex. 2004).

48. C.C.D.F. art. 5 (Mex. 2004). MEX. CONST. art. 14 (2004).

49. C.C.D.F. art. 12 (Mex. 2004). This principle was introduced in Mexico in 1988 (D. O. of January 7, 1988), as part of a more comprehensive revision involving the enunciation of conflict of laws rules and the applicability of foreign law in that country. "Decreto de Promulgación del Acuerdo entre los Estados Unidos Mexicanos y la Comunidad Europea para la Cooperación en material de Control de los Precursores y Sustancias Químicas Utilizados con Frecuencia en la Fabricación Ilícita de Estupefacientes o de Sustancias Sicotrópicas," D.O., 7 de enero de 1988 (Mex.). See Jorge A. Vargas, *Conflict of Laws*, in 2 MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS 241-273 (Jorge A. Vargas, ed., 1998).

50. C.C.D.F. art. 13 (Mex. 2004). See Vargas, *Enforcement of Judgments & Arbitral Awards*, *supra* note 48, at 275-305.

51. C.C.D.F. art. 14 (Mex. 2004).

52. C.C.D.F. art. 15 (Mex. 2004).

texts, by incorporating a special section on domestic violence, and by establishing a more comprehensive type of adoptions.<sup>53</sup>

- The novel notion of “moral damages” was added to the section on extra-contractual liability in cases arising out of illicit acts (e.g., tort law cases). It seems that moral damages may have a certain legal symmetry with the notion of equity as developed by the Anglo-Saxon legal tradition.<sup>54</sup>
- Contrary to the individualist approach adopted by the Napoleonic Code and by the Mexican Civil Code of 1884, property continues to be under the influence of the legal philosophy that predicates that the legal notion of property is to be utilized as a means of advancing the social function of the State. This philosophy is clearly reflected in the tenor of Article 27 of the Federal Constitution.<sup>55</sup>
- Intellectual property is no longer a part of the Civil Code (as it was in the 1928 Code) but continues to be governed today by the specific federal legislation enacted on this matter.<sup>56</sup>
- The freedom to contract constitutes the fundamental principle recognized by the Code. Thus, contracts are perfected by mere consent, except those which must

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53. C.C.D.F. arts. 162, 178, 207, 266, 282-83 & 293 (Mex. 2004). See generally Jorge A. Vargas, *Family Law in Mexico*, 9 SW. J. L. & TRADE AM. 5 (2002). Many of these changes responded to Mexico's recent adherence to certain international conventions on family law matters.

54. C.C.D.F. arts. 1916 and 1916 Bis. (Mex. 2004). See Jorge A. Vargas, *Moral Damages under the Civil Law of Mexico: Are These Damages Equivalent to U.S. Punitive Damages?*, 35 U. MIAMI INTER-AM. L. REV. 183 (2004). See also Vargas, *Tort Law in Mexico*, *supra* note 49, at 209-239.

55. In this regard, the third paragraph of Article 27 prescribes: “[t]he Nation shall at all times have the right to impose on private property the modalities dictated by the public interest, as well as the right to regulate, for the benefit of society, the utilization of natural resources susceptible to appropriation in order to provide an equitable distribution of the public wealth, to take care of its conservation, to attain a well-balanced development of the country and to improve the living conditions of the rural and urban populations.” MEX. CONST. art. 27 (2004) (trans. by author).

56. See the Federal Copyright Act (*Ley Federal del Derecho de Autor*), published in the *Diario Oficial* of December 24, 1996 (as amended), and its Regulations of May 1998. “Decreto por el que se deroga la fracción XVI del artículo 387, se reforma el artículo 419, y se adiciona un Título Vigésimo Sexto al Libro Segundo, todos ellos del Código Penal para el Distrito Federal en materia de Fuero Común y para toda la República en materia de Fuero Federal 3,” D.O., 24 de diciembre de 1996 (Mex.); “Acuerdo relativo a la salvaguarda agropecuaria del tercer protocolo adicional del Acuerdo de complementación económica número 17, mediante el cual se informa que se ha rebasado el cupo mínimo de importación para las mercancías comprendidas en la fracción arancelaria que se indica,” D.O., 22 de mayo de 1988.



comply with the formalities established by the law. All persons not excepted by law are capable of contracting.<sup>57</sup>

## VI. COMMENTS ABOUT "DECODIFICATION"

In closing, the reader should take note of two recent trends that have emerged in Mexico with respect to the Federal Civil Code and the so-called "Decodification."<sup>58</sup>

Regarding the Federal Civil Code, it has been alleged that Mexico does not need a Federal Civil Code.<sup>59</sup> Civil law, whose essence is found in the civil code, as seen earlier, is eminently a body of principles and rules that govern the relations between and among individuals. That code enunciates the most essential rights and obligations of individuals, as an inherent component of their private and personal affairs. Therefore, civil law is to be formulated and codified exclusively at the local level by each individual State.<sup>60</sup>

To buttress this argument, it is being argued that the Civil Code of 1928 was and is primarily a "local" code for the Federal District. If it was enacted as a "federal" code this was only because the President of the Republic enacted it while in the exercise of "extraordinary powers" conferred upon him by a special decree.<sup>61</sup>

In addition, a constitutional argument is advanced: Article 73 of Mexico's Federal Constitution of 1917, which expressly enumer-

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57. See generally C.C.D.F. (Mex. 2004).

58. "Decodification" refers to the thesis that Mexico is undergoing a process of producing a growing number of individual legislative enactments on specific and specialized legal areas in response to both domestic and international influences. Rather than incorporating these emerging areas as part of the respective code, these recent statutes depart from the codes thus signaling a "decodification" process.

59. According to Dr. Miguel Acosta Romero, this assertion is part of an "academic controversy" which advocates that, "the power to legislate on civil matters corresponds to the states and *not* to the federation." See C.C.D.F., *supra* note 27, at xvi.

60. Pursuant to Article 43 of Mexico's Federal Constitution of 1917, Mexico has thirty-one states and one Federal District. The states are: Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán and Zacatecas. MEX. CONST. art. 43 (2004).

61. In addition, Dr. Acosta Romero points out that the Civil Code of 1928 was enacted by President Alvaro Obregón as a result of amendments made to the Constitution of 1917 empowering the Federal Executive, as an exception, "to legislate for the Federal District on all matters." C.C.D.F., *supra* note 27, at xvii.

ates the powers of Congress to legislate, does not include the power to enact a "Federal Civil Code."<sup>62</sup> Out of a lengthy list of areas where Congress is explicitly empowered to legislate, enunciated in detail in thirty paragraphs, there is no reference whatsoever to civil law matters. Accordingly, the exclusion of the Federal government from civil matters appears to be in symmetry with Article 124 of the Federal Constitution, which prescribes: "[T]he powers not expressly conferred by this Constitution upon federal officials, are understood to be reserved to the States."<sup>63</sup>

Now, a few words about "decodification." In the past, countries enacted civil codes as a compendium of the essential rights and obligations of individuals in a given society. There is no doubt that these normative bodies served their function well, but this "code format" has become outdated.

As a result of the recent social and economic progress at the national and global scale, jointly with the impressive scientific and technological discoveries and developments over the last decades, the legal system entered into a rapid process of diversification and specialization.<sup>64</sup>

This process led to the unavoidable consequence of enacting a large and growing number of specific pieces of legislation. These new legislative enactments not only derive from civil code subjects but also overlap, expand and especially substitute and modernize the provisions of the this code.

Examples of these "specialized" statutes include: the Federal Daily Gazette Act, the General Population Act, the Federal Code of Electoral Institutions and Procedures (COFIPE), the Federal Labor Act, the General Act on National Assets, the Federal Act of Archeological Monuments and Zones, the National Water Act, the Federal Hunting Act, the Fishing Act, the Human Settlements Federal Act, the Federal Consumer Protection Act, the Navigation and Maritime Commerce Act, the Federal Tourism Act, the Agrarian Act, the Federal Act on Lotteries and Games, the Agricultural Associations Act, the Cattle Associations Act, the Investment Societies Act, etc.<sup>65</sup>

Evidently, this process of "decodification" is not limited to the

62. *Id.* at xvi.

63. *Constitución Política de los Estados Unidos Mexicanos*, AGENDA DE AMPARO 2004, at 99 (Editorial ISEF, 2004) (trans. by author).

64. See C.C.D.F., *supra* note 27, at xxi.

65. *Id.* at xxx-xxxi.

Civil Code but affects, in general, other legal areas as well.<sup>66</sup>

## VII. CONCLUSIONS

Today, Mexico is undergoing an exciting and remarkable transformation.<sup>67</sup> Many positive efforts are already changing and modernizing its legal landscape. For example, a project directed at reforming and improving the administration of justice has already been sent to Congress. As part of this objective, the old and inefficient system of relying on written motions throughout the criminal proceedings, which complicated and slowed down the criminal court apparatus, is being substituted now by a new system based on oral trials.<sup>68</sup>

The relatively new notion of human rights is acquiring a deeper legal significance, thus enriching the already generous catalogue of constitutional rights enunciated by the Federal Constitution of 1917 and becoming a permanent and valuable component of the legal culture of the Mexican people.<sup>69</sup> Inspired by the Freedom of Information Act, Mexico launched in 2002 a successful national program allowing Mexicans and foreigners alike to have access to governmental information at the federal, state and municipal levels.<sup>70</sup> Furthermore, the winds of change

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66. These areas include mercantile, criminal, and procedural. *Id.* at xxviii.

67. For the latest and most current overview of that country's situation, see President Fox's "Fourth State of the Nation Report of the Federal Administration, 2004-2006" delivered before Congress on September 1, 2004, *available at* <http://www.presidencia.gob.mx/cuartoinforme> (last visited Feb. 10, 2005). For more information on this subject, see Center for U.S.-Mexican Studies, Conference Report, Project on Reforming the Administration of Justice in Mexico (Dr. Wayne A. Cornelius & Dr. David A. Shirk comps., 2003). See also DAVID H. BAYLEY, U.S. DEPT. OF JUSTICE, *DEMOCRATIZING THE POLICE ABROAD: WHAT TO DO & HOW TO DO IT* (2001).

68. See text of the legislative bill to "Reform the Public Security System and Criminal Justice," *available at* <http://www.seguridadjusticia.presidencia.gob.mx>. In this bill (dated at the Presidential Residence of "Los Pinos" on March 29, 2004), a Federal Prosecutor's Office with constitutional autonomy and a model guaranteeing the presumption of innocence, as well as balanced and expeditious trials, oral, transparent and public, are proposed. Legislative bills, as well as the texts of federal statutes, are available by consulting the Mexican congressional website at <http://www.cddhcu.gob.mx/leyinfo>.

69. See 2004 ANNUAL REPORT OF THE NATIONAL COMMISSION OF HUMAN RIGHTS (2004). See also *Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en México, Diagnóstico sobre la Situación de los Derechos Humanos en México* (2004).

70. See "Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental," D.O., 11 de junio de 2002 (Mex.); "Acuerdo por el que se establece la integración y funcionamiento del Comité de Información de la Auditoría Superior de la Federación," D.O., 11 de junio de 2003 (Mex.). The Instituto Federal de Acceso a la Información Pública (IFAI) was especially established, *inter alia*, "to promote and

are so vigorous and unprecedented in that country over the last few years that some voices have already been heard from different quarters (academicians, politicians, legal practitioners and government officials) suggesting that Mexico should contemplate adopting a new Constitution for the XXI century.

These transformations are not limited to the legal arena. Mexico is currently undergoing substantial changes working towards a true democracy, improving its political system, revitalizing the economy, strengthening the national educational system, attempting a better and wider distribution of wealth, recognizing the special rights of children and the elderly, fighting poverty and diseases, and gradually beginning to recognize and protect the special rights of Indigenous peoples who have been abandoned and discriminated against since time immemorial.

There is no doubt that the Federal Civil Code enacted in 2000, like its predecessors, is going to play a decisive and vital role in the transformation and modernization of Mexico.

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disseminate information regarding the exercise of the right of access to public information; to resolve on the denials of information requests; and to protect personal data. . . ." See "Decreto por el que se reforma el artículo noveno transitorio del Decreto de Ley de los Sistemas de Ahorro para el Retiro y de reformas y adiciones a las leyes General de Instituciones y Sociedades Mutualistas de Seguros, para regular las Agrupaciones Financieras, de Instituciones de Crédito, del Mercado de Valores y Federal de Protección al Consumidor, publicado el 23 de mayo de 1996, así como los artículos Segundo y tercero transitorios del Decreto por el que se reforma y adiciona la Ley de los Sistemas de Ahorro para el Retiro, publicado el 10 de diciembre de 2002," D.O., 24 de diciembre de 2002 (Mex.). For additional information, see the following websites: <http://www.informacionpublica.gob.mx>; <http://www.ifai.gob.mx>.

