EXpropriation of American Oil Interests and Its Effect
on United States-Mexican Relations since 1938

APPROVED:

C. A. Bridges
Major Professor

ABM McAlister
Minor Professor

C. A. Bridges, Acting
Director of the Department of History

Dean of the Graduate Division
EXPROPRIATION OF AMERICAN OIL INTERESTS AND ITS EFFECT
ON UNITED STATES-MEXican RELATIONS SINCE 1938

THESIS

Presented to the Graduate Council of the North
Texas State Teachers College in Partial
Fulfillment of the Requirements

For the Degree of

MASTER OF SCIENCE

By

Erwin C. Buell, B. S.
149276
Pilot Point, Texas
August, 1947
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. GROWTH OF AMERICAN OIL INTERESTS IN MEXICO</td>
<td>1</td>
</tr>
<tr>
<td>Diaz and Foreign Capital</td>
<td></td>
</tr>
<tr>
<td>Changes in Mining Codes, 1884-1909</td>
<td></td>
</tr>
<tr>
<td>Spread of Doheny Interests</td>
<td></td>
</tr>
<tr>
<td>Difficulties of Early Pioneers</td>
<td></td>
</tr>
<tr>
<td>Changes under the Constitution of 1917</td>
<td></td>
</tr>
<tr>
<td>Petroleum Law of 1925-1926</td>
<td></td>
</tr>
<tr>
<td>Calles and Foreign Oil Interests</td>
<td></td>
</tr>
<tr>
<td>II. THE MEXICAN LABOR DISPUTE AND EXPROPRIATION</td>
<td>38</td>
</tr>
<tr>
<td>Cardenas' Attitude toward Labor</td>
<td></td>
</tr>
<tr>
<td>Organization of Labor under Cardenas</td>
<td></td>
</tr>
<tr>
<td>Demands of Labor</td>
<td></td>
</tr>
<tr>
<td>Reply of the Oil Companies</td>
<td></td>
</tr>
<tr>
<td>The Strike - 1937</td>
<td></td>
</tr>
<tr>
<td>Investigation of Labor Board</td>
<td></td>
</tr>
<tr>
<td>III. POLITICS AND EXPROPRIATION</td>
<td>65</td>
</tr>
<tr>
<td>Changes Made by Cardenas</td>
<td></td>
</tr>
<tr>
<td>Reorganization of Supreme Court</td>
<td></td>
</tr>
<tr>
<td>Expropriation Law - 1936</td>
<td></td>
</tr>
<tr>
<td>Creation of National Petroleum Administration</td>
<td></td>
</tr>
<tr>
<td>Expropriation Decree - 1938</td>
<td></td>
</tr>
<tr>
<td>Supreme Court Upholds Expropriation</td>
<td></td>
</tr>
<tr>
<td>IV. DIPLOMATIC ASPECTS OF EXPROPRIATION</td>
<td>87</td>
</tr>
<tr>
<td>Statement of Position by the Oil Companies</td>
<td></td>
</tr>
<tr>
<td>Attitude of the United States Government</td>
<td></td>
</tr>
<tr>
<td>Mexican Defense of Expropriation</td>
<td></td>
</tr>
<tr>
<td>Negotiations for Settlement</td>
<td></td>
</tr>
<tr>
<td>Final Settlement</td>
<td></td>
</tr>
</tbody>
</table>
CHAPTER I

GROWTH OF AMERICAN OIL INTERESTS IN MEXICO

The seizure of all foreign owned oil property by the Mexican Government under the presidency of Cardenas in the Spring of 1938 caused an international crisis which for a time threatened the solidarity program of the Western Hemisphere. This was not merely a question of seizing foreign owned properties, but a conflict between two basic ideals concerning private property rights and the fundamental rights of governments and their duties to their nationals investing in foreign lands. Although there were several foreign countries interested in the settlement of the oil controversy, the burden of the dispute fell upon the United States. The fast developing European crisis, the hesitancy of any European country to question the Monroe Doctrine, and the fact that United States interests owned the larger portion of foreign holdings in Mexico made the United States the logical nation to pursue the question to a settlement agreeable both to Mexico and to the foreign investors.

To Mexico the question was one of national sovereignty, to the United States a question of international law. Mexico was attempting to regain her national inheritance and the United States was attempting to uphold her rights to protect
the legitimate interests of her nationals. For Mexico it was a social and economic question, while for the United States it was merely a question of legality. It is true that material interests were pushing the United States State Department; nevertheless, all the Department's arguments were purely legalistic in nature. Though the United States held that Mexico or any nation has the right to pass such legislation as they see fit, governing property within the country, the United States also held that these laws should not take away legally acquired rights of foreign investors.

There is some doubt concerning the legally acquired rights of our investors in Mexico, especially those acquired during the administration of Porfirio Diaz. The entire controversy centered around exploitation of Mexico's resources by foreign investors who poured into Mexico under the liberal administration of Diaz. Though Diaz was the recognized head of the Mexican Government, present day leaders in Mexico hold that Diaz overstepped his authority by altering the laws governing the exploitation of natural resources.

Porfirio Diaz came to power in Mexico in 1876 by overthrowing President Lerdo who had succeeded Benito Juarez. Mexico was on the threshold of her first era of peace since her troubled nation was founded under the first constitution of 1824. During this time of grasping for existence, Mexico experienced almost as many constitutions as she did rulers. Diaz in his own way was beginning a new era for Mexico which
led her to world recognition and to the position of a respected neighbor. Through methods of force Diaz controlled Mexico with an iron hand for over thirty years. These years were years of peace and development, but development which sorely cost Mexico at a time when she could ill afford the cost. Her millions of mestizos and Indians were living in poverty, and her rich resources were lying idle for lack of capital and initiative to develop them. Diaz was determined to make of Mexico a progressive nation, but he only succeeded in thirty years in plundering his people of millions of dollars of resources.

Diaz fully realized that there were open to him two courses by which he might develop the resources of Mexico. He could borrow money from foreign countries to develop the resources, or he could invite foreign capitalists into Mexico by granting them concessions. The former course was not practical, for with the borrowed capital Mexico would have to import foreign experts as well as machinery. She would have to pay at least four per cent interest and would have to assume all the risks involved. Realizing that neither his people nor the Mexican officials knew anything about the oil business Diaz proceeded to place Mexico's natural resources upon the counter for purchase by foreign investors who came pouring into Mexico.¹

¹George Creel, The People Next Door, p. 273.
In choosing the other course Díaz and Jose Limantour, his financial genius, played a long prudent game. To develop the oil resources of Mexico on the domestic plan, they would have found it necessary to import foreign experts capable of taking charge of the undertaking because few, if any, Mexicans of that period had had any experience in large corporation management or in the highly specialized business of finding and producing oil. Also, it was a gamble; let the foreigners take the risk.²

By the time the early American petroleum pioneers came into Mexico Díaz had things thoroughly under control. He offered many inducements to these foreign entrepreneurs, to encourage them to take advantage of the opportunities in Mexico. Almost all corporations that came to Mexico prior to the revolution that overthrew Díaz were given concessions which exempted them from taxation for periods ranging from ten to twenty years. This inducement, however, was not a new or novel idea for in the United States individual states as well as municipalities offer certain industries a period of tax exemption to induce them to build their industries within the locale of the state or municipality.

Díaz and his group showed no special favors to Americans. It is likely that certain privileges may have been granted, but it is generally conceded that the same advantages were granted to all capitalists, whatever their nationality. Nor were the concessions generally such as would yield huge profits without much expense, effort and ingenuity on the part

²William E. McMahon, Two Strikes and Out, p. 50.
of the holders of the concessions. Some of the concessions were no more favorable than had been secured from the United States or from the individual state governments of the United States. 3

Without a doubt the greatest concession granted by Díaz to foreign investors was the change of the mining laws which had come down from the old Spanish laws. These changes became one of the chief causes of misunderstanding between the United States and Mexico in the subsequent controversy brought on by the expropriation of United States holdings in Mexican oil lands. It is argued very ably by leading Mexican politicians that Díaz overstepped his authority in the changes which departed from the old Spanish mining codes that placed ownership of natural resources, including oil, in the government. During the colonial period the Spanish crown had controlled all mineral rights, granting concessions to individuals for their exploitation. 4 As a general rule the crown received in return for the concession one-fifth of the returns from such exploitations, but not at any time did the surface owner or concession holder consider himself to have perpetual rights to the subsoil deposits. With these Spanish laws as a background the early constitutions of Mexico specifically provided that the nation should own all subsoil deposits.

3 J. Fred Rippy, The United States and Mexico, pp. 311-312

The Constitution of 1857 distinctly stated that "in the nation is vested direct ownership of all minerals, solid, liquid, or gaseous." However, the Diaz mining law of 1884 (Article 10) provided: "Salts found on the surface, fresh and salt water, whether surface or subterranean, petroleum and gaseous springs, or the springs of warm medicinal waters" were the "exclusive property of the owner of the land" who was given the right "to develop and enjoy them without formality of claim or formal adjudication." The expression "petroleum and gaseous springs" was sufficiently ambiguous, but the subsequent law of 1892 definitely gave the owner of the surface perpetual subsoil rights in petroleum, rights reiterated in even more specific terms in the law of 1909.\footnote{Carleton Beals, \textit{Mexican Maze}, pp. 343-344.}

The purpose of such changes cannot be doubted. It is apparent that Diaz made these changes to induce foreign capitalists to invest in Mexico and to develop her resources. These new laws did away with State control of subsoil deposits, placing them in the hands of the owner of the surface. Under the new laws the foreign companies obtained titles to whatever subsoil deposits there might be under the land owned by them. With this clearly understood the entrepreneurs of the United States and other foreign countries entered the field of Mexican oil. Under these new laws the companies were not required to get from the government concessions to exploit the subsoil deposits, nor were they required to state their intention to prospect for mineral deposits when they obtained the titles to the land.

The foreign pioneers in the petroleum industry acquired their rights in the only method available under the existing
Mexican law, by purchase or lease of the surface land. Under these laws the acquisition of the surface land gave the owner perpetual rights to exploit the subsoil deposits of petroleum.6

There were several individual adventurers as well as companies who attempted to make Mexican oil pay dividends, but it was not until 1901 that Doheny came to Mexico to prospect for oil. Doheny had prospected for gold and other minerals in the United States before becoming interested in the petroleum industry. He had become very wealthy through his discoveries of oil in California and with his partner, Canfield, came to Mexico to determine the possibilities of Mexican petroleum. Doheny came to Mexico on the invitation of Robinson who had been hired by Maz to manage the Mexican Central Railroad. Robinson had been more or less forced to build a spur from San Luis Fotosí to Tampico and saw in the development of the oil industry a possibility of making the railroad pay for itself.

Doheny was much discouraged upon passing through the swampy, tropical lands around Tampico, but his discouragement was soon forgotten when he saw the bubbling oil springs at Cerro de la Pez. He immediately returned to the States for capital to organize the Mexican Petroleum Company to start exploration for the new development. Upon completing the


6Frederick S. Dunn, The Diplomatic Protection of Americans in Mexico, p. 335.
organization of the company Doheny bought 280,000 acres for $325,000 as the original acreage, later adding such land as he could buy or lease. The accusation that the Doheny interests were acquired through concessions from Diaz are unfounded, for these holdings were acquired from private owners. Though the methods were not always clearly above board, his titles did stand the early test cases in the local courts as well as the United States courts. Doheny was encouraged by Diaz, but was also asked not to sell his interests to the Standard Oil Company without first offering the holdings to the Mexican Government.

In February, 1910, he established a camp ("Elbano") in the uncomfortable jungles on the Tampico branch of the Mexican Central which penetrated a wild country of dense tropical jungle and at great expense, and in the face of dangers of disease, and difficulties of securing satisfactory labor, he equipped it with homes, ice plant, water distillation plant and electric plant (and electric fans) to make life endurable there. 7

Soon after the opening of the first wells by Doheny other companies began to enter the race for domination. The chief of these companies were from the United States but the powerful English interests connected with Dutch Shell were given concessions by Diaz. It seems that before the end of his reign Diaz began to fear the power of the United States interests and encouraged the English firm to move in to counterbalance the influence of the other foreign interests.

7James M. Callahan, American Foreign Policy in Mexican Relations, p. 517.
Diaz showed some favoritism to the English by granting them concessions on public lands. He saw in the methods of the United States interests a threat to the sovereignty of his government. Some of the devious methods used by these foreign companies were not acceptable even to Diaz.

In some cases these companies controlled the essential water supply which they could cut off and render the waterless tracts useless. After the tracts were abandoned they could be legally denounced and the companies could claim possession. 8

Such extreme methods were seldom resorted to by the oil companies for most of the land could be bought for a few pesos or leased very cheaply. As a general rule the companies leased from the peons, paying small royalties.

The oil operators in dealing with these extremely poor and ignorant peons took full advantage of the situation. The peons were signed up in groups, usually on the basis of small royalties. Quite frequently the peons were willing to take a thousand pesos in cash rather than a royalty, even though the royalty eventually might be worth much more. In the opinion of attorneys who made a specialty of the matter, there were some cases of corruption but, taken as a whole, the deals were legal even though questionable ethically. 9

8 Hudson Strode, Timeless Mexico, p. 207.
Of course in dealing with the more intelligent owners the companies paid more reasonable prices.

In order to maintain peace and to protect their leases each company had its own hired bands of armed thugs. These "guards," as they were called, were usually employed to protect the leases against encroachment by other companies rather than against the natives, as many writers like to suppose. Such actions, however, doubtless caused Diaz to turn more and more toward English firms during the latter part of his reign and doubtless his attitude caused the United States companies to favor the Madero Revolution. It is suspected that they not only encouraged Madero but that they rendered financial aid as well.

The companies were just beginning to receive dividends from the millions of dollars invested during the exploration period when disaffection against Diaz began to grow. Hardly any of the large wells had been discovered and many of the smaller companies had quit work in bankruptcy. The Doheny interests and British, however, were able to stay on due to the large amount of reserve funds these established interests had available. Even after the discovery of "gushers" in his first drilling Doheny had to build tanks or pipe lines to accommodate the flow. The company's biggest problem, however, was developing a market, and it was probably saved by a contract for crude oil to be delivered to the Standard Oil
Company. By 1911 the production of Mexican fields had reached approximately eleven million barrels per year.

The slow progress made in developing Mexican oil was due to many causes. It was not a simple matter for a foreign company to go into Mexico and develop these fields. The difference between the two countries caused considerable trouble in adjustment both for the companies and the natives with whom they worked. One of the chief difficulties arose over the question of titles, their validity and the methods of keeping them straight. These difficulties usually arose from the peculiarities in Mexican law which made the purchase of land much more difficult in Mexico than in the United States. Mexican law required that all the owner's heirs must approve each transaction which involved the sale of lands. This had not been observed by Mexican officials or by the owners, for much of the land was considered to be worthless prior to the discovery of oil. These conditions naturally gave rise to many troublesome law suits, and were excellent sources for blackmail.

From this source rose the persistent report that all American titles were faulty. This could easily be true, through no fault of the companies, however. The blame for such poor registration of titles must be laid not with the companies but with the local Mexican officials who failed to keep their records correctly prior to the discovery of oil and the acquisition of these lands by the oil companies.
These first oil lands were in very inaccessible areas of the sub-tropics. The larger part of the United States interests centered inland from Tampico, having practically no means of transportation and being one of the most unhealthful regions of Mexico. Among the problems facing these new oil companies were the problems of sanitation, transportation and securing a market.

The improvement of living conditions was essential before the companies could hope to produce. They had to build homes for the laborers as well as the American executives and technical experts. Much credit must be given to these companies for their work in introducing to the areas sanitary methods of living. They must of course conquer malaria; however, with the research by the army in both Cuba and the Panama Canal Zone they had adequate knowledge to overcome the disease.

Most important, however, was the rise in the standards of human life. Up to the border of the petroleum districts the peonage system of labor was common, while within the petroleum districts a free system of labor existed. From the beginning the oil companies paid good wages, and after they made their big discoveries their wages were the highest in Mexico - a fact which was never denied by the most ardent exponent of expropriation. It being necessary to house the workers in these isolated regions, the companies did the work thoroughly. The workers coming from poor mud huts similar
to the hogans of our Navajo Indians soon found themselves living rent-free in comfortable brick or wooden houses, often with electric lights. ¹⁰

Doubtless not all the companies were able to create such living conditions, but on the whole the living standard and health conditions were greatly improved by the companies. In most areas the companies established free medical service and later built hospitals. Wherever these settlements built by the oil companies grew up there were to be found schools and recreational facilities for the children of the laborers, built and maintained by the company and far superior to the local schools maintained by the government.

Of course many of these benefits were brought about in compliance with new social laws, but as a rule the companies did not limit themselves to the bare minimum required by law. They found that by improving such facilities they could maintain superior workers as well as insure better educated workers for the future. These improvements would not have been possible, however, had not the companies been able to create a market for their products.

At the time of the discovery of oil in Mexico there was not a great demand for petroleum products, but through an intensive campaign the companies literally created a market. By 1910 when the companies actually began to produce in the

¹⁰McMahon, op. cit., p. 41.
important fields the automobile was coming into American life through the work of Henry Ford and others. Many of the railroads in the United States as well as in Mexico were converting their coal burning engines to oil burners that proved more economical. The market was also expanded by the conversion of the modern navies to oil as a fuel immediately prior to World War I.

The companies found that in order to get their products to market it was necessary to build a transportation system. Though some oil could be transported by the Mexican Central Railroad they found it necessary to construct pipe lines to the port at Tampico. Once the facilities around Tampico were improved and enlarged to take care of the oil flow the companies then turned their attention to building transportation systems to other parts of the globe. It was here that the forerunner of the modern tanker was first put into use. The fact that the companies owned these tankers and transported most of their own oil had a disastrous effect on the Mexican Government when it took over the foreign oil holdings, for it was unable to seize the tankers and had no shipping facilities.

Just as the dreams of these early pioneers seemed to come true, the long awaited revolution, which overthrew Diaz and a series of lesser generals, started. During these years of chaos one general after the other in rapid succession overthrew his predecessor only to be overthrown himself. Throughout this chaotic period the oil business boomed, and
the greater part of the concessions obtained by foreign oil companies were secured. Eighty miles southwest of Tampico the famous "Cerro Azul No. 4" was brought in in 1916. This fabulous well produced 57,000,000 barrels in less than six years. Although this was a world record, other wells in this area were increasing the flow of Mexican oil. Throughout this period the companies were consistently able to increase their production and maintain some type of peace. Regardless of who was the president in power in Mexico City he hesitated to interfere with the oil companies for the period of tax exemption was past and he was able to collect heavy revenues from these companies.

The money paid in taxes was not, however, the only expense and worry the companies were encountering, for almost like clockwork some bandit chief would swoop in to demand a tribute. Though the paying of tribute might offend the government in power the companies could not afford to close the wells down or to neglect them. If they were allowed to stop or to flow too fast salt water might come in and ruin the field. The State Department usually advised the companies to pay the tribute, but it also advised them to notify the Mexican Government in order to avoid bad feelings. These conditions continued until in 1917 when Carranza blasted his way to the presidency bringing an even more serious difficulty in the form of a new constitution which provided for the nationalization of all subsoil deposits and a return to the pre-Diaz theory of property rights.
Carranza won the support of the Mexican people by promising them land and by his constant tirades against foreign capital. He pointed out very forcefully that Díaz had made Mexico the "mother of foreigners and the stepmother of Mexicans." He pointed to the "swollen profits" of foreign oil interests without considering the millions they had spent before they realized any return. His accusation was groundless if one is to consider the report of a group of international auditors who in 1937 gave the over-all profits of foreign oil interests in Mexico as 4.25 per cent. Nevertheless on May 1, 1917, the constitution went into effect.

The new constitution was a novel document in many respects. Its new, or almost new, ideas of social legislation and property rights seemed to be original and included for the first time in a constitution. The portion that caused so much stir in the offices of the big oil companies was known as Article 27. Article 27 covered several topics dealing with property, but the sections dealing with oil rights caused the greatest problem, both to the United States and to Mexico.

Carranza had given the foreign oil companies an idea of what they might expect in his decree of January 7, 1915, in which he ordered, "... the suspension of all works in connection with the exploitation of petroleum, pending the enactment of new legislation governing the exploration for and the
exploitation of the oil and gas deposits of the country.\textsuperscript{11}

This decree was not enforced; however, the companies were not surprised when they read the provisions of Article 27 which nationalized all subsoil deposits.

\textit{In the nation is vested direct ownership of all minerals or substances which in veins, layers, masses, or beds constitute deposits whose nature is different from the components of the land, such as minerals from which metals and metaloids used for industrial purposes are extracted; . . . petroleum and all hydrocarbons - solid, liquid or gaseous.}\textsuperscript{12}

This clause nationalizing all petroleum interests was not the only limitation placed upon the foreign companies, for the legal capacity to own land or to exploit minerals was limited to Mexicans. The government could, however, grant concessions to foreigners if they renounced all rights to invoke the protection of their respective governments. This new legislation brought about immediately a clash of vital interests for which there seemed to be no immediate solution. These existing rights acquired legally by the companies seemed in danger in spite of the fact that the constitution plainly stated that Article 27 should not be construed as being retroactive to the detriment of any person.

Among the primary issues raised by the revolutionary programs set forth in Article 27 of the 1917 constitution the

\textsuperscript{\( ^{11} \text{Dunn, \textit{op. cit.}, p. 228.} \)}

\textsuperscript{\( ^{12} \text{H. N. Branch, arranged, \textit{The Mexican Constitution of 1917 Compared with the Constitution of 1857}, p. 17.} \)}
nationalization of petroleum deposits received the first attention and generated the greatest amount of heat in diplomatic circles. The obvious purpose of Article 27 was to break the control of foreign investors over the prosperous oil industry of Mexico and to vest that control in Mexican hands. This was part of the program to make Mexico and the Mexicans economically independent.\textsuperscript{13}

The oil companies started protesting the provisions of the Constitution of 1917 almost immediately and sought diplomatic protection. The State Department in a series of note exchanges was assured that there would be no retroactive enforcement of the constitution; however, they could get no satisfactory interpretation of Article 27. The companies well knew the position of the Mexican Government and feared the article might be given a different interpretation when written into an organic law. They still considered the rights acquired under the Diaz legislation to give them the privilege to exploit the resources. They believed that in leasing or buying the surface land they acquired full and perpetual ownership of the petroleum deposits which the constitution now declared to reside unconditionally within the sovereignty of the State.\textsuperscript{14}

\textsuperscript{13}Dunn, \textit{op. cit.}, p. 332.

Under the direction of Carranza the Mexican Government practically stopped the major companies from operating. In lieu of organic laws putting Article 27 into effect Carranza issued a number of decrees which were protested bitterly by the companies as being confiscatory. On February 19, 1918, under the guise of taxation Carranza issued a decree which if followed would have been a practical admission by the companies recognizing their rights to subsoil deposits as being null and void.

This measure was so worded that existing owners of the oil properties could not have complied with it without impliedly admitting that the ownership of subsoil deposits of petroleum belonged to the government. For example, Article 4 of this decree purported to assess properties worked by surface owners with an "annual rental" of five pesos per hectare and also with a royalty of five per cent of the products in cash or in kind, as might be determined in each case by the Minister of Finance. Article 14 required land owners and leasees to register their oil properties with the government within three months. At the expiration of that time, all oil properties not registered were to be considered vacant (open to denouncement by third persons).15

Following numerous vigorous protests from our State Department Carranza modified the decree in that such lands as were not registered would not be open to denouncement by third parties. During his administration Carranza hindered the operation of oil companies and even granted drilling rights to his favorites on land held by foreign companies. To answer the protests of the United States Government Carranza

maintained that his decree was purely one for taxation and that taxation was entirely within the jurisdiction of the State. He stated that only the Mexican courts could pass upon the equality of distribution of the taxes. The companies felt that these measures were designed entirely to nationalize oil rights acquired prior to the 1917 constitution, thus making the law retroactive.

Secretary of State Lansing stated after Carranza's decree that:

The investments of American citizens in the oil properties in Mexico have been made in reliance upon the good faith and justice of the Mexican Government and Mexican laws, and my Government cannot believe that the enlightened Government of a neighboring Republic at peace and at a stage in its progress when the development of its resources so greatly depends on its maintaining good faith with investors and operators, whom it has virtually invited to spend their wealth and energy within its borders, will disregard its clear just obligations toward them.16

It seems rather apparent that Carranza did not feel as our State Department did concerning United States oil rights in Mexico. He countered by stating that all were treated alike, Mexican and foreign without exception. All companies, domestic and foreign were expected to follow the new decrees. The United States Government, however, continued to press for clarification of the laws and reminded Carranza that "under international law 'every nation has certain minimum duties to perform with regard to the treatment of foreigners, irrespective of its duties to its own citizens,' and in

16 United States Foreign Relations, 1918, p. 707.
default of such performances it was the right of a foreign
government to enter protest."17

This muddled state of affairs did not last too long for
Carranza was overthrown and subsequently executed because he
had been unable to deliver on his many promises. He was suc-
ceeded in 1921 by General Obregon who, in order to gain recog-
nition of his government, was in a more conciliatory frame of
mind than Carranza had been. The oil controversy reached a
temporary settlement soon after Obregon came to power when
the Mexican Supreme Court upheld the rights of the Texas
Company to lands upon which exploitation had taken place.

The Supreme Court of Mexico had affirmed the principle
that all lands legally acquired before May 1, 1917, were
private property under the constitution. The article na-
tionalizing the subsoil rights was, it declared, not retro-
active and did not affect pre-existing rights legally acquired.

The Supreme Court confirmed this opinion by four other
decisions to the same effect. As regarding oil claims, it
declared that the owner must have performed "positive acts"
proving his intention to produce oil. This "positive act"
consisted of exploration work or some type of development of
the property.18

17 Dunn, op. cit., pp. 343-344.
18 McMahon, op. cit., pp. 55-56.
Although the Mexican Government held that these decisions of the court proved beyond a doubt the non-retroactivity of the new laws, they had little effect in clarifying the position of the Government concerning the status of the reserve lands which composed eighty per cent to ninety per cent of the company holdings. The question which arose now was what did the Mexican Government consider a "positive act?" The companies and the United States Government maintained that all titles or leases to land acquired prior to 1917 should be respected.

Obregon in order to gain the recognition of the United States agreed to send commissioners to a conference in an attempt to settle the difficulties between the two countries. This conference, known as the Bucareli conference, temporarily settled the meaning of the positive act. The Mexican Commissioners held that even under the Diaz laws owners of the topsoil could not become owners of the subsoil until they had performed a positive act. According to their interpretation the government was making a donation of the subsoil rights. However, under the Napoleonic Code upon which Mexican law is based, a gift is not complete until the receiver performs some positive act indicating his willingness to accept the gift.\(^{19}\)

At this conference the Mexican Commissioners agreed that the

\[^{19}\text{C. W. Hackett, The Mexican Revolution and the United States, 1910-1926, p. 372.}\]
owners who had performed a positive act prior to May 1, 1917, would maintain all their rights, and those who had not performed a positive act would be given preferential rights to the exclusion of third parties.

Perhaps the most important settlement made by the conferences was the definition given by the Mexican Commission regarding the policy and definition the Mexican Government would follow concerning the "positive act." The "positive act" was defined as being:

...drilling, leasing, entering into any contract relative to the subsoil, making investments of capital in lands for the purpose of obtaining the oil in the subsoil, carrying out works of exploitation or exploration of the subsoil, and in cases where from the contract relative to the subsoil it appears that the grantors fixed and received a price higher than would have been paid for the surface of the land because it was purchased for the purpose of looking for oil and exploiting same if found; and, in general, performing or doing any other positive act, or manifesting an intention of a character similar to those heretofore described.20

With the proclamation of such a liberal interpretation the plight of the oil companies seemed brighter. This improved condition was only temporary, however, lasting through the administration of Obregon. When Calles followed in orderly constitutional procedure in 1924, once again the foreign oil interests feared the worst. Calles had been called communistic even before he became president, and upon his inauguration he bent his energies to bringing about the long delayed

enforcement of the Constitution of 1917, which the people rightly considered to be their Magna Charta and a guaranty of all their revolutionary aims.\(^21\)

The new petroleum law initiated by Calles in 1925 had three outstanding requirements to which the companies were vigorously opposed. The law required all foreign owners under pain of forfeiture to confirm all holdings upon which the positive act was performed prior to May 1, 1917, for which they would receive a fifty-year concession to exploit. These leases were renewable providing the holder had fully observed the terms of the concession. It further provided that those who had not performed the positive act might obtain a fifty-year concession being dated at the beginning of the original contract. These provisions in themselves were restrictive enough; however, Calles added to the law the Calvo Clause, which made it mandatory for all foreign concession holders to renounce the right to appeal to their respective governments for diplomatic protection.

The foreign holders of petroleum lands saw their titles suddenly converted into fifty-year leaseholds under increasingly complex conditions and growing tax burdens. It looked to them as though the Mexican Government was deliberately trapping the funds and ability which they had been invited to invest under constitutional guaranties. The United States Government took the position in the diplomatic disputes which followed that, while not denying the right of a nation to reform its constitution and legislation in

\(^{21}\)"Our Mexican Diplomacy," The Nation, CXXII (February 10, 1926), 130.
in its own way, such reforms could not (as the new
Mexican constitution itself said they could not) be
applied ex post facto to property rights already se-
cured by foreign nationals in contracts in good faith
under earlier constitutions and laws. This legalistic
position, at least debatable, paid no attention to the
circumstances, propriety, or morality, under which such
a former legal system had existed. The United States
also contended that a foreign national could not,
without consent of his government and solely by his
own will sign away any right to protection by his
government.22

Most of the foreign oil companies failed to register
their titles for the fifty-year concessions on the grounds
that the act was retroactive and confiscatory. Though they
were given until January 1, 1927, to register only a few of
the smaller companies registered. There were of course
several reasons for the failure of the companies to exchange
their titles for concessions. In the first place they would
be giving up once for all any rights they might have to hold
and exploit subsoil deposits. They would be left at the mercy
of the Mexican Government that had proven to be anything but
friendly.

The validity of their titles might also have had some
effect upon the companies' hesitation to register their claims.
The Mexican law placed upon the companies the burden of proving
the validity of their titles acquired before May 1, 1917.
This legislation was doubtless designed to bring to light any
fraudulent titles and make it possible for the Mexican

22Samuel F. Beis, A Diplomatic History of the United
States, p. 557.
officials to weed out once and for all these faulty titles. This re-examination doubtless resulted from the casual manner whereby Doheny and many of the early Americans obtained certain lands.\textsuperscript{23}

The companies contended that the granting of a concession for a limited period would not be confirmation of previously existing rights. They also disagreed with the limited scope now placed upon the definition of a positive act. So bitter were the companies' contentions, and so insistent was the State Department in its denunciation of the confiscatory effect of this new law that the Mexican Government did not force forfeiture of claims even when a company failed to register its claims.

The legislation and enforcement of Article 27 of the Constitution of 1917 had long been obstructed by vigorous protests from the United States State Department. Our government failed to recognize the right of Mexico to legislate on matters which would affect the rights of our nationals, even though our own states have time after time passed even more restrictive acts without drawing a protest from foreign governments. Mexico held, and rightly so, that she could legislate in any way she deemed necessary concerning property rights. She stated that until the foreign investors had exhausted every remedy offered by Mexican courts, and until

\textsuperscript{23}Ludwell Denny, \textit{We Fight for Oil}, pp. 85-86.
Mexican courts had found the laws to be unconstitutional, the companies had no right to appeal to their governments for diplomatic interference.

Minister of Foreign Affairs, Saenz, replied to a note from our State Department by saying that,

Although he agreed to the principle that acquired rights may not be impaired by retroactivity or confiscatory legislation, he remarked that the mere retroactive character of law could not properly be a subject of objection for diplomatic representation until it had produced confiscatory or other harmful effects.\(^{24}\)

The diplomatic battle continued between the two governments, neither willing to retreat from its former position. Mexico refused to recognize the right of our State Department to intervene for the companies. Mexico held that the Mexican courts were the only proper agents to decide upon the effect of the new laws and to pass upon their constitutionality. While this dispute was going on Calles was pushing the organization of a government owned oil company to compete with foreign interests.

Although the government company was organized with a flourish and had the advantage of valuable concessions in proven areas it did not succeed in any of its purposes. It did not succeed in furnishing competition to the foreign interests nor did it bring in any sizeable income to the government. In granting concessions to the government company

\(^{24}\text{Callahan, op. cit., p. 604.}\)
the Mexican officials took advantage of a joker in the Constitution which placed all waterways and tributaries in the hands of the government.

Since all these rivers were spotted with lakes and lagoons the drillers for the Mexican Company took possession of banks or dry beds and proceeded to take millions of barrels of oil from the proven lands of the foreign companies. Even though Mexico had by this time developed experts in the field of petroleum they drilled time and again on the edge of an oil deposit with disastrous results. Drilling on the edge of a pool almost always brings in salt water which ruins the field. This not only caused losses to the foreign companies, but also loss in taxes to the government on the millions of barrels of oil rendered unrecoverable by the influx of salt water.

Though the Calles-Oberon party had won a military victory, it was losing in the economic battle. Restrictive legislation and consequent sabotage by the oil companies had reduced the oil production and had consequently reduced revenues. Production dropped from 193,000,000 barrels in 1921 to 90,000,000 barrels in 1926, and the revenues fell from $42,000,000. in 1922, when they contributed almost one-third of the government's regular income, to less than $18,000,000. in 1926.25

In the face of this sudden drop in revenues and the apparent failure of the Mexican Government company, Calles was

25Denny, op. cit., pp. 73-74.
realist enough to understand that government ownership and operation of the petroleum industry was not desirable. Although Calles seemed to have the support of the Mexican people as well as the masses of Americans, his reforms were not working out so well. He was finding over and over the lack of efficiency in the government sponsored projects, and the failure of these projects caused him to start moving away from his original leftist position.

Public opinion in the United States was widely divided; however, the rank and file of American citizens were opposed to intervention in Mexico regardless of the confiscatory nature of the Mexican laws. The "Teapot Dome" scandal which involved the Doheny interests caused the American public to distrust these oil companies - a distrust that has not been lived down to this day. Although newspaper correspondents glibly predicted or hinted that war might come, the people wanted to know why our soldiers and dollars must be spent to rescue the bad investments of the wealthy.

Some journalists seemed to over-emphasize the issue as a serious blow to United States sovereignty. They seemed to have forgotten that Mexico also has some measure of sovereignty over her nation. Such extreme views were expressed by the Washington Post, sometimes considered to be a semi-official State Department voice.

[26] "Mexico’s Move to Confiscate American Property," Literary Digest, XCI (December 11, 1926), 5.
Mexico's attempt to assert the right to confiscate American and other foreign property is an attack upon the sovereignty of every nation affected. No government can bargain away its sovereign powers.

This attack by Mexico upon the world's established law cannot succeed. When the matter is fully analyzed, Senators will be ashamed that they ever proposed to arbitrate such a question.

There is no possibility of a clash between the United States and Mexico if the sovereign right of the United States is not attacked. The United States is not guilty of any aggression. It respects every Mexican right. 27

Regardless of the conditions prevailing on the diplomatic front, the conditions of economic instability had much to do with the changing attitudes of Calles regarding foreign owned and operated oil companies. With a decrease in taxes due to the drop in oil production his government was experiencing more and more difficulties in making financial ends meet.

The restrictive measures had caused the oil companies to slow production and exploration in the old areas as well as in prospective fields. Calles seemed to be becoming more reasonable. This, some people thought, was a result of his increasing personal wealth, while others indicate it to be a direct result of the influence of the new United States ambassador, Dwight Morrow.

In the appointment of Morrow Coolidge made a wise choice, for never has the United States had a more considerate ambassador sincerely interested in the Mexican people, their

27 "The Demands for Arbitration with Mexico," *Literary Digest*, XCII (February 5, 1927), 11.
problems and their government. Morrow, who was a lawyer and a partner in the House of Morgan, had no pre-existing prejudices but took up his duties in Mexico with an open mind and a sincere desire to understand the people with whom we seemed to be constantly carrying on a diplomatic quarrel. Through his quiet persuasive manner he soon won the confidence of Calles. Together they talked over Mexico's problems, with Calles explaining to Morrow the things he hoped to do and how he would accomplish these projects.  

Morrow found that the fundamental difficulty between the two governments was the disagreement concerning the character of the petroleum legislation of 1925. Mexico refused to listen to the protests of the United States because the Mexican Government felt that the United States had never presented evidence of concrete acts of aggression against foreign capital invested in the petroleum industry, "whose rebellion and defiance of the laws are such as no independent nation can allow."  

The Mexican Government stands on much firmer ground in contending that the confiscatory nature of the Mexican laws can only be determined by the courts, and that the American

29 "Calles Calls Us Down," Literary Digest, XCIV (September 24, 1927), 12.
grievances would be established only when specific property had been confiscated without compensation, and when such compensation had been definitely refused.30

Morrow decided, therefore, that the only possible method of finding a solution was to seek for that solution not in the debatable precepts of international jurisprudence but within the area of Mexican municipal law. Article XIV of the Constitution of 1917 laid down the principle that no legislation should be retroactive. If, therefore, he could obtain Mexican authority for defining the Petroleum Law as being of a retroactive nature, then that law could be declared unconstitutional by the Mexicans themselves. He hoped, in other words, to achieve his object, not by external pressure or authority, but through the normal operation of existing Mexican institutions. For this purpose he availed himself of the thin end of a very ingenious wedge.31

The law of 1925 had stated that all rights acquired prior to May 1, 1917, must be confirmed by fifty-year concessions, subject to forfeiture of claim for failure to register for confirmation of title. As a punishment for failure to register the government had refused drilling permits to the defaulting companies. The companies then brought suit in the Mexican courts and had their contentions confirmed that a concession for a limited time is not a confirmation of a previous right. The courts also added that until this contention was satisfactorily adjudicated the companies could not be considered to have forfeited any of their rights.

The Supreme Court of Mexico upheld the decisions of the

30Ernest Gruening, Mexico and Its Heritage, p. 609.
lower courts and declared Articles 14 and 15 of the Petroleum Law to be unconstitutional. This decision settled the illegality of the fifty-year concessions and apparently indicated a change in the attitude of the Mexican Government. Both the Mexican Government and the United States scored in the decision of the Mexican Supreme Court declaring that the Petroleum Law could not deprive the oil companies of rights acquired prior to May 1, 1917.

Mexico gained its main point. The Mexican Government had held that the constitutionality and the confiscatory character of the Petroleum Law were points for the Supreme Court to decide upon. The Government declared that no violation of lawful rights had been intended and invited Americans who believed themselves injured to appeal to the Mexican courts. Now that the companies had appealed to the Supreme Court, the court handed down a decision satisfactory to all.32

The American oil companies were divided in their opinion of the court's decision. Those in Mexico were inclined to be more optimistic than the New York lawyers. These men argued that the decision did not declare the entire Petroleum Law unconstitutional, but merely the fifty-year concession clause. They also objected to the "positive act" provision, under which the companies stood to lose all their vast undeveloped reserves, and to require also that they prove their titles.

32"Our Oil Victory in Mexico," Literary Digest, XCL (December 10, 1927), 5-6.
The State Department on the other hand tended to accept the decision as a step in the right direction, and it became apparent that the companies would either have to abide by the laws or carry on their fight without support of the United States Government. This prospect did not appear to the companies as a bright one for they had had support by the United States State Department in former disputes with the Mexican Government.

The Supreme Court had declared part of the law to be unconstitutional, but the law remained as first passed. Due to the peculiarities of Mexican law the decisions of the Supreme Court do not alter a law, but the law remains upon the books in its original form until amended by the legislature. Soon after the decision of the court was handed down, Calles sent a recommendation to the legislature asking that they make proper amendments to the Petroleum Law in order that it might conform to the court’s ruling. Some officials felt that Calles’ decision to have the court’s ruling written into law was derived from the fear that the United States might support some candidate who was opposed to the Calles machine. Morrow had a hand in working out an amendment that would be acceptable to both the Mexican Government and to the American companies.

The law as it now stands with amendments abolishes the fifty-year concession feature on lands acquired before 1917, but it creates a much stricter interpretation of pre-1917
rights. Lands acquired before 1917 must have been actually worked prior to 1917, thus ruling out vast tracts considered to be held under the pre-1917 rights in the subsoil. The new amendment still insisted that these pre-1917 rights must be confirmed within one year by application to the Mexican Government for concessions. However, the oil companies, like the priests, did not want to register their properties, for they feared that their dubious titles might not be accepted by the Mexican officials.33

Under the new law the oil companies were able to retain their rights to lands upon which they had actually developed the resources; however, their vast reserve lands faded away. The new law restricted the definition of the "positive act" but did not include the Calvo clause. For the Calvo clause it substituted a clause which nullified the transfer of title to another foreign person or corporation.34 The companies, it seemed, stood to lose much more under the new law than under the old one; however, since the amendment was acceptable to the State Department the companies' only recourse was to accept the amended law and try to prove as many of their titles as possible.

The Mexican position, which seems newer to have been succinctly or categorically stated, may be summarized in the form in which it finally developed

33Carleton Beals, "Dwight Morrow Agrees with Mexico," The Nation, CXXVI (January 25, 1928), 93.
somewhat as follows: The nation never intended to vest and never did vest, by any of its laws, ownership of gas and petroleum in the surface owners; the utmost effect of its laws was to give the owners of the surface the exclusive right to exploit their properties for oil; therefore, no surface owner had actual ownership of gas and petroleum under his soil, unless and until some act was done by him looking to the exploitation of such materials; and, since the surface owners who had performed no such acts thus had no actual ownership in the gas and petroleum underlying their properties, the Mexican Government might, in accordance with its "Juridical traditions" change the rules under which the mining titles to such substances might be obtained by such surface owners or their lessees.35

The amendments to the Petroleum Law seemed to set the pattern of official action to be expected as long as Calles was president, or as long as he remained in control of the election of his successors. Calles decided to conform to the Constitution by serving only the one term but he continued to select the candidates who took the presidency. In his own way he saw that his candidates had no serious opposition and that they did not develop any radical ideas differing from his policies. The oil companies enjoyed, during the remainder of Calles' control, peaceful conditions, but most of them did very little exploration in new fields. Their apparent lack of interest might stem from the fear that Calles would soon pick a candidate who would prove stronger than he. Nor did they wait long for this, for in 1934 Calles selected Cardenas

35T. Reuben Clark, "The Oil Settlement with Mexico," Foreign Affairs, VI (July, 1928), 602.
to be his successor, and a period of socialization was soon inaugurated.
CHAPTER II

THE MEXICAN LABOR DISPUTE AND EXPROPRIATION

The place of labor in the action taken by the Mexican Government to expropriate the foreign owned oil properties in Mexico cannot be underestimated when making a study of this question. For centuries in Mexico labor had suffered and had had little or no protection. Organized labor did not become strong in Mexico until several decades after it had gained recognition in most other advanced countries. There had been an intermittent social revolution going on in Mexico since Hidalgo, the priest, started the movement for Mexican independence in 1810; however, there have been very few of Mexico's rulers who cared to aid labor and those who did usually remained in office for such a brief period that any advancement for the laboring classes was impossible.

The first real advances made by labor were not until after the Constitution of 1917, which contained the famous Article 123. This article which formed a labor code gained almost as much publicity as Article 27 dealing with the nationalization of the subsoil rights. The article deals with two major fields: (1) the regulation of labor conditions and (2) the regulation of the labor contract.¹ Most of these clauses were not of a

¹W. E. Walling, The Mexican Question, p. 120.
radical nature; however, a few seemed new or novel. "These clauses are those (1) providing for a minimum wage for all classes of labor, (2) forbidding overtime for more than three consecutive days, and (3) assuring to labor a right to a share in the profits."  

The clauses caused some comment; however, the profit-sharing clause is the only one which caused employers much trouble. The employers objected to the methods used by the Government in determining the amount of profits and the distribution. The most novel clauses may be found under the regulation of the labor contract. These clauses are as follows:

XIX. Shut-downs shall be lawful only when excess of production renders it necessary to close down in order to maintain prices above the cost of production, and when previously approved by the Board of Conciliation and Arbitration.

XX. Differences or conflicts between capital and labor shall be submitted for settlement to a Board of Conciliation and Arbitration consisting of an equal number of representatives of the employers and workmen, and one representative of the Government.

XXI. If the employer refuses to submit his differences to arbitration or to accept the decision of the Board, the labor contract shall be considered terminated, and the employer must indemnify the workmen by the payment of three months' wages, in addition to liability incurred by reason of the dispute. If the workmen reject the decision of the Board the contract will be considered terminated.

XXII. The employer who discharges without just cause for being a member of a union or syndicate, or for having taken part in a lawful strike, must at the option of the laborer, either perform the contract, or indemnify the workman by payment of three months' salary. He will also have the same obligation if the

\[2\text{Ibid., p. 121.}\]
workman leaves his employ on account of lack of good faith on the part of the employer, or mistreatment either as to his own person or that of his wife, parent, children, brothers or sisters. The employer may not evade this responsibility when the mistreatment is committed by subordinates or agents acting with his consent or knowledge. ³

With the guaranties of the Constitution of 1917 well established the labor movement became prominent in Mexico. The C.R.O.M. (Confederation Regional Obrera Mexicana) was organized in 1919 as the Mexican counterpart of the A.F. of L. Organizers were sent from the United States to Mexico to aid in the organization of Mexican labor; however, these men had nothing to do with the formation of policy. The accusation made by many employers of foreign nationality that Mexican labor takes orders from Moscow is unfounded. "The truth is that it is well-nigh as indigenous as the cactus or the maguey."⁴ Labor in Mexico is strictly Mexican. The guaranties written into the Constitution of 1917 were formulated before the Bolshevik Constitution was inaugurated in Russia.

In Mexico the Revolutionists had an entirely different theory from the "Reds" in Russia. The Mexican labor movement aligned itself with the Government after the first few hectic years and as labor organization the C.R.O.M. did not participate in politics. The Labor Party was organized by Luis Morones but was a separate organization from the C.R.O.M.

³Ibid., p. 123.
⁴Edward A. Ross, The Social Revolution in Mexico, p. 104
which had been organized by Morones also. Through cooperation with the Government labor hoped to bring about a gradual change from capitalism to a modified type of socialism. They hoped for a gradual disappearance of private capital, but realized that Mexican economy now depended on an uninterrupted flow of capital into Mexico. The early labor leaders did not propose confiscation, as in Russia, but an orderly socialization brought by law with full compensation for expropriated properties as soon as labor was sufficiently trained and disciplined to run such industries as might be expropriated. One of their chief concerns was to replace bad capitalists with good ones, and maintain sufficient control over capital to insure labor an adequate income and improved social standards.

The labor movement gained momentum under the administrations of Obregon and Calles, even though both men became more conservative in the latter part of their administrations. Throughout the period from 1924 until 1934, during which Calles controlled the Mexican Government, the C.R.O.M. under the leadership of Luis Morones was the only important union and was organized on the same general plan as the A.F. of L. However, in the early 1930's another labor leader, Lombardo Toledano, came to the forefront with an organization similar to the C.I.O. Toledano's organization was called the C.T.M. and soon became the more powerful of the major labor organizations. The C.T.M., originally called the General Confederation of Workers and
Peasants, was an offshoot of the C.R.O.M., which was slowly crumbling away due to the excessive corruption of its leaders. Morones had sold his followers high, and his personal fortune ran well into the millions.

When Cardenas became president of Mexico in 1934, with the blessings of Calles, Mexico had for the first time a president whose entire program was built around the plan for the social and economic improvement of the masses. Cardenas had been in office only a short time when an unprecedented wave of strikes broke out in all parts of the country. Calles immediately took upon himself the responsibility of denouncing the strikers and calling for a firm hand. He insisted that they had no right to strike and endanger the government which guaranteed their protection. Calles indeed set the stage for a showdown to determine how Cardenas proposed to handle the situation. The two had been having difficulties over policy for some time.

Cardenas moved in such a way as to support labor and guarantee fair settlement of their strikes. He also dismissed the cabinet members forced on him by Calles and soon exiled Calles. This move brought the newly organized C.T.M. squarely behind Cardenas and his Six-year Plan. "The support of the C.T.M. was a final bulwark in Cardenas' position. He needed nothing more to achieve complete independence."  

—Verna C. Millan, Mexico Reborn, p. 106.
finally reached that desired position of cooperation with the Government which would guarantee to labor the rights set forth in the Constitution of 1917.

When Cardenas assumed office and announced his revolutionary program the oil companies, especially American owned ones, began having constant employee trouble. The unions began sanctioning slow down strikes and strikes of minor importance for seemingly minor demands. Among the first gains was the "Exclusion Clause," which provided that the company must hire only union men for jobs covered by labor contracts, and must discharge upon demand from the union any union member who had been discharged from the union. In this way the union controlled its membership thoroughly.

The Mexican labor movement had grown strong under the protection of the Government, and its problem was to obtain the observance of its charter by capital. From the viewpoint of labor the expropriation of the foreign-owned oil properties was necessary to curb this group of capital which had defied the labor code.6 The Six-year Plan in Article 6 stated that in regard to the class struggle inherent in our system of production the Government had the duty of aiding the labor unions of the working classes to rebuild and strengthen their organizations.7

---

7 Ibid., p. 105.
When Cardenas became president the struggle between the old labor union, the C.R.O.M., and the new union, the C.T.M. (Confederation of Mexican Workers), was closing with the C.T.M. of Lombardo Toledano emerging the winner. Under the dynamic leadership of Toledano, a former professor who lost his position because of his radical theories, the C.T.M. took over the field of labor in Mexico with the blessings of the Cardenas administration.

During the years before Cardenas' administration the workers in the oil industry formed unions, but under the influence of the Government they merged into the Syndicate of Petroleum Workers, which soon affiliated with the now powerful C.T.M. This move placed the oil workers in a powerful bargaining position by the autumn of 1936. Under the new organization of labor Cardenas felt that he could better aid labor in gaining the goals set out by the Constitution of 1917.

The Constitution gave labor a definite goal, and the unions realized that if they reached these constitutional guarantees they must do so through cooperation with the government. This explains the important role which has been played by labor in Mexican politics. It was not until 1931, however, that the Federal Labor Law was enacted, and not until the administration of Cardenas that it was enforced.  

---

Cardenas felt that labor had been the victim of capitalistic exploitation and had left no doubt as to where his sympathies were when he stated that "any employers feeling weary of the social struggle should turn their industries over to the workers or the government."\footnote{9}

With the support of the aggressively organized labor groups Cardenas increased the laws guaranteeing the rights of labor, thus encouraging the unions to seek greater concessions from the foreign-owned companies, especially those of the oil industry. They began to seek increasing control over the books and management of the companies, as well as increasing social benefits. Many observers of the oil companies base their theory that Cardenas systematically planned the expropriation of oil properties upon the labor laws and other laws of the Six-year Plan.

The theory of "economic capacity" as introduced during Cardenas' administration became one of the big guns used by labor against the oil companies. According to this theory the wage demands of a union should not be based upon comparative wages in other industries but upon the ability of the individual industry to pay. This is not a novel idea for in theory it has been, and is being, practiced in the United States by the leading labor unions. Only time can prove the soundness of such a theory. It is definitely opposed to the old type

\footnote{9Ibid.}
capitalism which has dominated Mexico as well as her neighbors for many years.

In the summer of 1936 the Petroleum Workers Union started a series of highly secret meetings which the oil companies suspected meant trouble. There had been much unrest throughout the industry, and the union was capitalizing on this situation to begin its campaign for better contracts.

In November the Syndicate of Petroleum Workers sent to each of the seventeen main foreign-owned companies a letter containing a new and uniform collective contract. This contract was to cover the entire petroleum industry and replace any other contract that might be in force at the time. Several of the companies had contracts which would not expire for at least another year and in some cases two years; however, the union insisted that the workers must have a uniform contract in order to eliminate the discontent among the workers, and to eliminate the existing lack of economic equilibrium. The contract contained many new ideas that would make operation in Mexico by foreign companies almost impossible, not from a monetary standpoint but from a managerial standpoint. The Syndicate of Petroleum Workers was demanding not only increased benefits but a greater representation in the technical and managerial fields.

Though the contract covered one hundred sixty-five pages, the chief demands of the union are summarized in the following
quotation from McMahon who served as head of the legal staff of Standard Oil in Mexico City.

A forty-hour week with fifty-six hour pay.
A horizontal increase in wages all up and down the line. Some of these increases ran as high as thirty-five per cent. The minimum demand was seven pesos a day for unskilled labor, as a basic wage alone.

In case the companies reduced personnel, the men laid off must receive ninety days' pay, plus twenty-five days for each year of service. The companies might not shift personnel from one job to another without the consent of the union.

The company must furnish free medical, surgical and dental service regardless of the origin or cause of the illness. This must apply not only to employees but to their families.

The companies, again at their own sole expense, must provide and maintain offices, meeting halls and clerical staffs for the exclusive use of the unions in their respective territories. They must provide cars and chauffeurs, with upkeep and wages, for the exclusive use of the union leaders.

The section regarding vacations and holidays began with the fundamental demand that every employee who had been in the service of a company for from one day to five years should have a yearly vacation of twenty-one working days. Five to ten years of service called for forty days; ten to fifteen years, sixty days; all this with full pay.

The company, on demand, must furnish any worker going on vacation with first-class transportation to and from any point which he chose to visit.

At any time, and as often as desired, any workman might have, on request, three days' leave of absence with full pay. The contract demanded heavy extra pay for overtime.

This singular document came to a climax in the clauses regarding management. They began with the flat demand that the company might not reduce personnel nor discharge any employee without full consent and approval of the Syndicate; nor might any employee in refineries, terminals and main offices be moved, transferred or re-located without the approval of that same court of last resort. The contract then moved on up to the offices where a certain proportion of executives, such as superintendents and heads of sub-departments must be members of the union and responsible for their actions to the
union alone. They amounted to about half of the executive forces.\(^{10}\)

Though these demands were clearly impossible for the companies to meet the Syndicate of Petroleum Workers threatened to strike. As is customary according to law the union filed a ten-day strike notice with the companies involved and the Government. The strike was to go into effect automatically if the companies did not accept the new uniform collective contract. Cardenas knew that an industry-wide strike involving some 15,000 oil workers would be detrimental to the economy of the country as well as an unpopular strike. He suggested a labor-employer convention to draw up within six months a collective contract to be binding on the companies.

The convention began its sessions late in 1936, but from the beginning the companies realized that they would be unable to secure a compromise contract from the union. Within twenty-four hours after the convention opened labor had turned down every counter-proposal made by the companies. As the convention dragged on the union continued to increase their demands rather than to attempt to compromise.

The oil companies maintained that their wages were higher than the wages in any industry of Mexico; however, the union countered this claim by showing that the living expenses in the oil fields, where everything was imported, was extremely high. The workers' actual wages were lower than the wages in

\(^{10}\) McMahon, op. cit., pp. 73-76.
other industries. The oil companies throughout the controversy maintained their inability to pay the increased wages and social benefits, but did offer wage increases amounting to a total of $2,000,000 in hope of averting a general strike late in May when the period of discussion was scheduled to end.

The chief difference between the union and the companies seemed to be over the question of management. Although there were many clauses in the social benefit portion of the contract that were displeasing to the companies, they heartily disagreed on the question of filling responsible positions with union men who were responsible only to the union. The companies knew that through the use of the "exclusion clause" any union man could be controlled by the union which was in turn controlled by the government.

At the end of six months period set aside for discussion of the labor dispute the Syndicate of Petroleum Workers announced its intention to call a general strike despite the counter proposals of the companies, which the union considered unacceptable.

The general strike began May 28, 1937, and on the same day the entire petroleum industry in Mexico became paralyzed. Though the companies declared the strike to be illegal, actually there seems little doubt of its legality.

Article 260 of the labor law of 1931 provides:
A strike must have as its purpose:
I. To effect an equilibrium among the different factors of production, harmonizing the rights of labor with those of capital;
II. To effect the revision, in case of need, of the collective contract, at the end of its period of operation, subject to terms and circumstances which this law provides . . . .
If the Board of Conciliation and Arbitration finds a strike illegal, it may declare the labor contract terminated. II

The strike in progress was declared legal by the National Labor Board, much to the chagrin of the companies, for they were then liable to pay full wages during the strike.

No strike in the brief history of the Mexican labor movement has carried such wide implications as this strike. Its most sardonic aspect was the attempt of the oil companies to represent themselves as the benefactors of Mexican labor. Coming from a group who in the past had stopped at neither fraud nor subsidy of revolt to enable them to grab the oil bearing regions of Tampico and Vera Cruz, this was an unparalleled piece of imprudence.

As the Mexican Government's official statistics have many times shown, these foreign oil companies, dominated by the Standard Oil Company and the Royal Dutch Shell Oil Company and controlling ninety-five per cent of Mexican production, had been operating under highly favorable conditions. Their taxes had been considerably lower than the taxes in the United States; productivity had been much greater; profits in relation

---

to investments had been enormous; and wages had been about one-fourth the American level. Reliable calculations have placed the net profit annually sent out of Mexico to foreign stockholders at more than 75,000,000 pesos, a figure which did not take into account the profits later realized on petroleum products shipped abroad.\(^{12}\)

The strike which had now been going on almost a week had begun to grow very unpopular and President Cardenas attempted to intervene by calling upon both the companies and the Syndicate of Petroleum Workers to present their best terms. The effort to bring about a compromise ended in failure but the union abruptly appealed to the National Labor Board to arbitrate the strike. Though the companies declared the nature of the case to be out of the jurisdiction of the Labor Board, the Board took the case upon the grounds that it involved "causes of economic order." The oil union asked the Board to examine the companies' financial ability to meet the demands of labor. The Board then by a majority vote agreed to make an investigation and the strike ended June 9, 1937; however, the real trouble for the companies was just beginning.

The steps taken by Cardenas, according to Mexicans, have fallen within the limits of Mexican law. The strike of the

oil workers in May, 1937, was duly recognized by the Government as legal, and it was temporarily settled in June. The men returned to work with the promise that an "economic investigation" would be made by the Federal Commission on Arbitration and Conciliation, which was a legal step within the rights of labor. Under Mexican law a just wage was based upon the ability of the employer to pay.13

Over the protests of illegality from the companies the Board appointed a special committee to start the investigation of the financial ability of the companies to pay the required increases. Labor knew that the companies could not long remain in power in Mexico and fulfill their demands. They were playing for higher stakes in this game than the mere winning of a strike. From the very beginning the committee knew that its report would receive a favorable reaction from the Labor Board as well as the administration. The companies maintained that the economic clause was to protect the employer against unreasonable demands of labor, but the Labor Board held that the law worked both ways.

The Board appointed two men from the financial departments of the government to work under the direction of Jesus Silva Herzog in the investigation of the companies' books. Herzog was especially undesirable to the companies for he was

13Hubert Herring, "Mexico Claims Its Own," The Nation, CXLVI (April 16, 1938), 440-441.
an avowed Communist and investigator for the Department of National Economy. There was no doubt that his sentiments were with the union.

Both the companies and the union appointed advisors to the committee, but the union held the upper hand all the way. The committee based its investigation on the years 1934 through 1936, while the companies recommended a ten-year period. The committee worked for weeks going through every detail of the companies' books and in thirty days after the closing of the inquiry Herzog presented his report of 900,000 words to the Labor Board. This long report must have been prepared long before the strike for the time involved was too brief for three men to prepare such a lengthy report. Their daily output would have been 10,000 words each!

The special commission made its investigation with the assurance that the oil companies had made huge profits. They held that the companies had used devious methods in hiding the extent of these profits. In Herzog's report he emphasized much of the historical background of the oil industry. He pointed out that the oil production in Mexico from 1901 to 1937 amounted to 1,365,609,081 barrels, with a value of $1,691,608,334. He estimated that without the slightest fear of error the companies operating in Mexico had earned profits exceeding a billion dollars.\footnote{J. Silva Herzog, "Mexico's Case in the Oil Controversy,"} Mexico and the United States, p. 68.
The commission found that the oil companies had ended 1936 with a reserve exceeding 77,000,000 pesos, and for the period of 1934–1936 had a net profit of 16.81 per cent on their invested capital. However, the companies who hired neutral experts to audit their books claimed to show only a net profit of 7.5 per cent and a surplus of only 26,000,000 pesos. Their figure for a ten-year period was a net profit of 4.25 per cent.\(^{15}\)

In the commission’s recommendation was an increase in social benefits and wages amounting to approximately 26,000,000 pesos or a total expenditure of 75,000,000 pesos. This was not far above the company offer to spend a total of 69,000,000 pesos for wages and social benefits. If the commission report contained a true evaluation of the companies’ profits, the companies were well able to pay the increase. The true figure probably lies between the commission’s report and the companies’ report, since the companies did offer to meet the demands just before expropriation.

The commission, in explaining the difference in the companies’ figures and the commission’s figures, said that the companies had concealed many types of profits. The commission explained that the differences were due to the sale at less than the market price to affiliates, assignment of expenses

\(^{15}\) McMahon, \textit{op. cit.}, p. 98.
to improper years, undue depreciation of equipment, hidden benefits, high buying costs from affiliates for use in Mexico, and high salaries to administrators.16

One example of hidden profits cited by the commission was entries of the Mexican Petroleum Company, El Agüila. El Agüila sold all its petroleum in 1936 to the Eagle Oil and Shipping Company, a subsidiary of the Canadian Eagle Oil Company. It sold its oil at 2.07 pesos a barrel with an added discount of five per cent, which amounted to 1.96 pesos in round figures. At the same time the Huastica Petroleum Company, a North American company, sold its oil at 3.19 pesos a barrel.17

Large corporations have often been known to pad reports to cut down the profits shown on their books to avoid taxes. No doubt both parties were justified in some of their claims; however, in view of the practices and methods of the oil companies the report of the government commission should be nearly correct. After summing up a general report on the financial conditions of the oil companies whereby the commission proved to its own satisfaction the ability of companies to pay, they also made recommendations for a new contract. This report drew up the detailed outline of the terms of the contract as follows in a summary given by an attorney, Gordon.

16 Gordon, op. cit., p. 111.
17 Herzog, op. cit., p. 74
The report provided that only a limited number of confidential positions could be filled by non-union men. This provision later assumed great importance as the companies charged that it deprived them of the control of management. Some restriction was placed on the hiring of men for temporary work in order to prevent the companies using that method as a device for avoiding union help. Provision was made for the replacing of foreign technicians by Mexicans and for the technical training of approximately one worker (or the son of a worker) for every five hundred employees at the companies' expense. The companies were to provide sanitary houses for which they could charge rent at the rate of six per cent per annum on the tax value. . . . The company was required to discharge those workers who lost union standing, but was not in such cases held liable for the three-months discharge wage. The five-day forty-hour week was established with pay on the basis of a fifty-six hour week. Provision was made for a savings fund to which the workers and employer equally contributed. The companies were required to supply educational and recreational facilities. Vacations from twenty-one to thirty days, depending upon the length of service, with full pay, were provided. . . . Eight legal holidays were provided, with the recommendation for eight additional ones. The union gained a large measure of control over changes in personnel. Liberal medical provision was made even for causes of non-occupational illness; indemnity for death or incapacity, whether due to occupational or non-occupational causes, was also provided. Old age pensions were established at rates varying from 65% to 85% of the former wage, to be paid by the company. . . . A minimum wage of five pesos per day was provided, and provision was made for increasing the wages then in effect from 10% to 25%.\(^{18}\)

The greater percentage of wage increases was to go to the lower income brackets, and the entire contract was to be retroactive to the day of the strike.

Following the submission of the report to the Labor Board the companies and the union were given seventy-two

hours to formulate their objections and to present them to the Labor Board. The Labor Board appointed a special commission known as Group Seven to consider the complaints. This group was composed of one representative each of labor, the companies, and the Government. The government representative was to be the neutral representative, but under the circumstances he was definitely pro-labor.

In presenting their objections to the commission’s recommendations the companies pointed out that their industry paid the highest wages in Mexico. They also summarized all the social benefits provided by the oil companies for their employees. The companies contended that they had always considered the interests of their employees when formulating company policies. They asked Group Seven to set aside the recommendations of the Herzog commission on the grounds that the conditions outlined by the commission would make their continuance in Mexico economically impossible. The companies saw that this was not just a labor controversy but a more basic economic controversy and a conflict of ideals for which they refused to accept any responsibility. The companies’ auditors estimated that the added expense to the companies in carrying out the recommendations of the commission would not be 26,000,000 pesos but 40,000,000 pesos.\footnote{\textit{Oil and Gas Journal}, XXXVI (February 24, 1938), 41.} They argued that this was more than their annual profits; however,
even that figure was below the profits estimated by the commission. The government at one time was willing to assure the companies that the expenditures would not have to exceed the 26,000,000 pesos, but they were unable to compromise the clauses which called for increased union control over management and technical fields.

The accusation has been leveled against the companies that they tried to reduce the reserve in the Bank of Mexico thereby causing an economic depression and crises. The companies, said Mexican sources, hoped through economic pressure to cause the government to give in and allow them to operate as usual. By sending their reserves out of Mexico a mild economic panic was caused in that many Mexican capitalists began to send their capital out of Mexico. The companies, however, insisted that they did not send money out of Mexico until after local capitalists had sent some 85,000,000 pesos to the United States for deposit. This was after the Supreme Court had upheld the commission's report and expropriation seemed inevitable.

When the companies and the union had filed their briefs the decision was left to the Labor Board or Group Seven. Group Seven, a special group, was to render its decision within seventy-two hours; however, they delayed for nearly sixty days. This situation caused Toledano to threaten to call the oil workers out on strike unless the decision was reached immediately. The Syndicate of Petroleum Workers did
go so far as to strike in certain key locales, but under the threat of Cardenas to bring out the army, they returned to work. On December 18, 1937, Group Seven rendered its decision in favor of labor by adopting the Herzog report with a few minor changes, and handed it to the companies.

. . . analyzing this award of Group Seven at leisure, the representatives of the companies came to the conclusion that in three years or so the only foreigners left on the staff of any company would be its general manager, by which time every native Mexican employee would stand responsible not to the management but to the union or government. To insure this result, the award provided that a mixed commission composed, like Group Seven itself, in such manner as to give the government and the union a perpetual majority, should adjudicate all disputes between capital and labor.20

Though the intention of the Board of Labor was to create a special arbitration board for labor disputes, with the government representative acting as a neutral party, the companies could not accept this theory, for they could not, in their own minds, separate labor and politics. This board would be even more prejudiced than the regular Labor Board, which had decided almost nine out of every ten cases in favor of labor. Another unusual feature of this decision was that it was rendered against all the companies as a group and not individually. The Board made no effort to allocate the increase among the companies according to their ability to pay, but required them all to meet the same terms.21

20McMahon, op. cit., p. 112.

The companies promptly announced their inability to meet the award and appealed to the Supreme Court of Mexico to have the award set aside. The companies held that the decision had been drafted under such marked partiality toward the union and prejudice against the companies that to put its provisions into effect would render the companies helpless to control their own company. The companies alleged that the award of the Labor Board violated both the Federal Labor Law and the constitution, and the companies sought an injunction against the enforcement of the award.

The conflict was not in reality a labor controversy, but a clash of ideologies. The oil companies were interested in the profitable operation of properties they considered legally acquired and fairly administered. Labor on the other hand could not agree that the industry had been fairly administered, and the Mexican Government still held that most of the properties had been acquired through questionable methods.

The controversy was not only a conflict of ideologies, but it was aggravated by many irritating circumstances. Mexican labor alleged that the companies had persistently violated the laws, and the companies were confronted on the other hand by what they apparently regarded as pettifogging.

^22^ Stocking, op. cit., p. 62.
activities and guerilla warfare conducted by coyote lawyers and petty politicians.\textsuperscript{23}

The situation was deadlocked when the Supreme Court took the case; however, the deadlock was soon broken by the Court's decision upholding the Labor Board award on all counts. That the Supreme Court was influenced in its decision by Cardenas the companies had little doubt, for on February 15, 1938 the attorney general asked the Court to uphold the Labor Board's decision. A few days later Toledano, in speaking before a national meeting of the C.T.M. assured the delegates that the Court would decide against the companies. At this same meeting Cardenas let it be known that "the policy of the Mexican Government will be to continue to protect the conquests of the proletarian classes."\textsuperscript{24} There was little surprise on March 1, 1938, when the Court rendered its decision in favor of the Labor Board's award.

The companies in their appeal to the Supreme Court held that the action violated the Constitution in that the Board appointed a special group to investigate the complaints; however, the Court ruled the action of the Labor Board to be in order. On the other count the companies held that the action was a violation of the Labor Law in that the investigation had been made upon economic grounds. The companies held that

\textsuperscript{23}\textit{Ibid.}, p. 63.

\textsuperscript{24}Frank L. Kluckhohn, \textit{The Mexican Challenge}, p. 113.
the "economic conflict clause" was written in the law to protect the employers. This contention was also denied by the Court which held that the law was not violated in that the union had drawn up its contract; the company had declared its inability to pay the award; therefore, the union had acted entirely within the law in asking an investigation on economic grounds.

The companies were charged by the Labor Board to put the contract as drawn up into effect, but by March 14 the companies had still refused to act, whereupon the Labor Board issued an ultimatum requiring the companies to comply with the contract.

Upon the insistence of both the foreign governments represented the oil companies contacted Cardenas in an attempt to reach a compromise. The companies, it seemed, had been expecting diplomatic intervention, but when both the United States and British Governments insisted the companies agreed to pay the increase in wage demands and social benefits if the union would delete the management clauses from the contract. The Syndicate of Petroleum Workers refused to make any changes in their demands and appealed to the Board to void the contract which according to Mexican law went into effect when the Supreme Court upheld the Labor Board's first award. The Labor Board voided the contract on March 17, 1938, and immediately all work in the oil fields stopped. The
stoppage of work in the entire industry was a danger to national economy to such an extent as to give the Government grounds for expropriation.
CHAPTER III

POLITICS AND EXPROPRIATION

The election of Cardenas to the presidency of Mexico in 1934 brought to Mexico, for the first time since Juarez, a president who had the welfare of the people instilled in his plans. Though he was elected with the support of Calles, it was soon evident that he had no intention of being dominated by the dictates of Calles. He was chosen by Calles because he was a mild mannered man and because he had no particular political background which seemed to indicate that he would become a true president. Cardenas made an extensive tour of Mexico, talking to the man on the street, the man in the field, and Mexicans from all walks of life, getting them to express their needs, their hopes and aspirations. Cardenas wanted them to feel that he was one of them, and their friend.

Cardenas was a rare combination for a president, in which his Indian logic and intuition seemed to dominate his actions. In the early part of his administration he broke with Calles and was, from that time on, free to carry into action the program he had so enthusiastically outlined during his campaign. His chief obstacle now was the economic status of Mexico and the vast field of social and economic improvement to be covered by his Six-Year Plan. He realized here the
advantage of cooperation with foreign capital to bring about such a program, but it is evident that he expected that capital to be obedient to Mexican laws and customs.

The ties of blood were to prove much stronger in Cardenas than those of experience. From the very beginning he seemed restless in the thwarted turbulent atmosphere of political circles when called upon to spend day after day confined to his office. Quite frequently Cardenas would break away from the routine to visit some remote region where, among the Indians and sad-eyed mestizo peasants he could feel the throbbing reality of the unknown Mexico. Cardenas knew that no political administration could remain in power unless it radically improved the lives of these forgotten people of Mexico.¹

The measure of his responsibility doubtless caused him to carry out, in an almost ruthless manner, the program which he felt would aid his people most.

Cardenas had no place in his plans for corrupt, selfish politicians who were following the Revolution for personal gains; however, in one six-year term he found it impossible to eliminate these men - hangers on of other administrations. He had the Social Revolution well stamped in his mind and was determined to carry into effect the provisions of the Constitution of 1917, which had for twenty years remained

unenforced or only partially enforced. This condition was chiefly a result of pressure from foreign governments, the United States in particular, which was used to "protect" their/capitalists who had large investments in Mexican natural resources.

Soon after coming to power Cardenas broke with Calles, the dictator behind the presidency since 1924, and launched his Six-Year Plan for the fulfillment of the Social Revolution in Mexico. Cardenas, from the very beginning of his administration, was very antagonistic toward foreign capital. He was little interested in the loud protestations of the foreign capitalists as to the validity of their claims, for he saw the effect of their bleeding of Mexican resources and realized how little the Mexicans actually received from this vast wealth which was flowing out of the country to enrich peoples of other lands with no thought for Mexico and her future. He did not deny that the companies had come to Mexico under laws then existing and had obtained, to the satisfaction of the existing government, legal titles. He saw only the methods used by these financial giants as they had bullied government after government in Mexico to bow to their wishes or suffer defeat under the frown of the United States Government. The United States Government had heretofore sufficiently sustained the companies in their campaign against regulation or adequate taxation.
Cardenas entrenched himself with the people by organizing the Mexican Revolutionary Party to include the agriculture, industrial, and government workers. Through this new party he was able to secure sufficient support to insure the enforcement of his Six-Year Plan. The Six-Year Plan called for the extension of the agrarian program, guaranteeing for labor the rights written into the Constitution of 1917, as well as the effective nationalization of the subsoil as provided by Article 97 of "The Plan." This nationalization called for the "enlargement of the national zones of oil reserves. A fixed reserve of oil-bearing lands shall at all times be available for meeting our country's future needs."2

The problem of the federal zones seemed to hold up production in both the British and American zones, for the companies did not know just what their rights might be under the new administration. In November of 1937, however, the British-owned Mexican Eagle Company negotiated a treaty with the Mexican Government under which they would pay from fifteen per cent to thirty-five per cent royalties to the Mexican Government for concessions and drilling permits. The company seemed relieved to obtain such an agreement, but Cardenas interpreted it as a victory for Mexico. In December of the same year leading American companies were approached

2Gordon, op. cit., p. 103.
informally and asked to make similar agreements with the Government in return for approval of concessions which had been pending for some time. The American companies declined to enter such a contract in that this would be a recognition of the ownership of subsoil deposits by the Mexican Government; a theory in practice in many countries but as yet not accepted in the United States. It was clear that the American companies were forcing the Mexican Government to an actual showdown, the outcome of which must be expropriation.

From the beginning of his administration it was clear that Cardenas intended to regain control of the vast natural resources of Mexico and to divert more of the wealth from these resources to the enrichment of Mexico and to the raising of the standard of living of her millions of underfed and underprivileged. One of the main purposes of the Six-year Plan as stated in the platform declares that "efforts will be made to prevent foreign companies from continuing monopolizing existing mineral deposits."

Though foreign capital did monopolize at this time, the greater percentage of Mexico's oil production the Mexican Government controlled about eighty-six per cent of the possible oil-bearing lands. The proven fields were under foreign domination, for the Mexican Government had not had the funds nor the required experts to develop her vast resources.

---

³Gaither, op. cit., p. 15.
Though the companies accused the Mexican Government of progressive confiscation, it will be noted that there was during Cardenas' administration no modification of the Petroleum laws. He relied entirely upon the previous laws passed under Galles, and generally accepted by both the United States and the oil companies. There were several political moves made, however, to insure the fulfillment of the Six-Year Plan.

One of the changes brought about by Cardenas in enforcing his Six-Year Plan involved the reorganization of the Supreme Court of Mexico. This change, for which many lawyers of the oil companies criticized the administration severely, reminds us of the unsuccessful attempt of our own former president to bring the Supreme Court under the domination of the executive. Cardenas, however, was successful in his move, and by constitutional amendment had the term of the justices changed from a life term to a six-year term coinciding with the term of the president who appointed them.

In changing the Supreme Court Cardenas could more thoroughly control the entire Government. The oil companies had suspected that Cardenas was out to grab their holdings and this move seemed to sustain their ideas. To take such a drastic step as expropriation he must carefully prepare the way both by molding public opinion and by overcoming the legal precedent laid down by the Supreme Court decisions supporting immediate cash payments for expropriated properties. The Supreme Court
had been originally organized on the same basis as the United States Supreme Court, and had several times prevented wholesale seizure of foreign property by the Government.

This move to reorganize the Supreme Court was, according to the executives of the oil companies, a part of the plan Cardenas was unfolding which ultimately meant confiscation of all foreign-owned property in Mexico. Perhaps Cardenas felt this move necessary in order to carry out his program for the betterment of Mexico.

The chain of events in Mexico seemed undoubtedly to be pointing toward expropriation in view of the fact that Congress, in 1936, gave the president power to expropriate property by decree on the basis of public utility. Under this new law "public utility" was loosely construed to include the defense, conservation, or utilization of natural resources. Almost any crisis, even of minor importance in national affairs, might be interpreted as of sufficient economic importance to be classified as an emergency under this new law.

The Expropriation Law of 1936 became a powerful weapon in the hands of the president in the turbulent years ahead. This law made possible expropriation by presidential decree in an emergency and eliminated the prolonged court procedure. The important parts of the law are as follows:

Article I. Causes of public utility are considered:
V. The satisfaction of collective necessities in case of war or internal upheavals, the supplying of cities or centers of population with foods and other articles of necessary consumption, and the proceedings used to combat epidemics, animal epidemics, fires, plagues, floods, or other public calamities.

VII. The defense, conservation, development or utilization of the natural elements susceptible of exploitation.

X. Measures necessary to avoid the destruction of natural elements and the damages which property may suffer to the prejudice of the collectivity.

Article 4. The declaration to which the foregoing article refers will be made by means of a resolution which will be published in the "Diario Oficial" of the Federation and the interested parties will be notified personally. In case their address is not known, the second publication of the resolution in the "Diario Oficial" of the Federation will have the effect of a personal notification.

Article 8. In the cases to which Sections V, VI, and X of Article 1 of this law refer, the Federal Executive, when the declaration has been made, may order the occupation of the properties which are the subject matter of the expropriation or of the temporary occupation; or may impose the immediate execution of the dispositions limiting ownership, without the filing of the administrative recourse for revocation suspending the occupation of the property or properties in question or the execution of the disposition limiting ownership.

Article 10. The price which shall be fixed as indemnity for the thing expropriated, will be based upon the amount which is listed as its fiscal value in the cadastral or tax collecting offices, whether this value be declared by the owner or simply accepted by him in a tacit way by having paid his taxes upon this basis. The increase in the value or diminution which private property may have had because of improvements or deterioration occurring after the date of the fixing of the fiscal value, will be the only element which shall be subject to an expert appraisal suit and a judicial decision. The same shall be observed when objects, the value of which is not fixed in the tax offices, are in question.
Article 17. Against the judicial resolution which fixes the amount of indemnity, there will be no recourse, and the making of the appropriate deed which will be signed by the interested party or, in his default, by the Judge, shall be carried out.

Article 20. The expropriating authority shall fix the forms and periods in which the indemnity shall be paid, which shall never be a longer period than ten years.4

This law was seriously attacked by the foreign-owned oil companies as being unconstitutional, but not until the expropriation took place was its legality tested in the courts. At this time it was found constitutional by the Mexican Supreme Court. Such a decision settled, for all practical purposes, any question concerning the legality of a law. The courts of a country are the only proper interpreters of the nation’s laws. It is doubtful that the law was designed for the sole purpose of grabbing the oil properties, as the companies later declared, but rather, to serve as an aid to the enforcement of the Six-Year Plan if such drastic action were needed.

The law was attacked by the Mexican Bar Association which stated that if the proposed law intended to authorize the expropriation of the elements of an industry or the industry itself, the law was clearly unconstitutional. "The unconstitutionality consists first in the private individual being despoiled of his property without trial by a duly

4Ibid., pp. 53-55.
constituted court and second, the executive becomes the judicial power—a violation of Articles 49 and 89 of the Constitution.\textsuperscript{5}

Some observers point out that, although this law was clearly designed to bring about the seizure of foreign-owned companies, almost sixteen months elapsed after its enactment before any definite action was taken, except to propose by dicta in the Supreme Court decisions for the coup against the oil companies.\textsuperscript{6}

Many observers feel that the discovery of the Poza Rica field was the psychological turning point in relations between the Mexican Government and the oil companies. This field seemed to prove that Mexico still had vast amounts of petroleum yet untouched, and it is quite evident that Cardenas did not want this reserve to fall into the hands of foreign companies. The events of his administration show a steady trend toward expropriation. This step was not a sudden move but a well planned program of nationalization of basic industries.

As a move, apparently, to test the reaction of the United States Government toward expropriation the Mexican Government in November of 1937 nationalized 350,000 acres of oil land under lease to the Standard Oil Company and its subsidiary, the Richmond Petroleum Company, thus reversing a previous

\textsuperscript{5}McMahon, \textit{op. cit.}, pp. 120-121.

\textsuperscript{6}Gaither, \textit{op. cit.}, p. 55.
Mexican Supreme Court decision which had established the companies' title to the land. 7

As a part of the pattern of government control over the oil industry the Cardenas administration created in 1937 the National Petroleum administration to handle all Government oil business. This included the collection of rentals, royalties, and taxes from foreign companies, as well as full control over the production of the Government-owned wells, and the vast reserves now controlled by the Government. This agency was organized under the direct control of the president to explore and exploit oil lands for the benefit of the national economy, as well as to regulate internal markets and the exportation of petroleum. 8 Thus by threatening Government competition and generally supporting labor the Mexican Government had conducted a flank attack rather than a frontal attack on the holdings of the foreign oil companies. 9

After the creation of the National Petroleum Administra-
tion the Government prepared a decree which would require all oil companies operating in Mexico to pay royalties on all lands held under lease and to carry out their production and exploration under the direction of the Ministry of National Economy. This move would definitely place the control of the

7Kluckhohn, op. cit., p. 109.
9Ibid., p. 134.
oil industry under the Government, and would affirm the ownership of the Government of all subsoil rights. Thus the constant, slow movement of the Government brings one step nearer the nationalization of the petroleum industry.

_El Nacional_, the official organ of the National Revolutionary Party, reported on January 6, 1938, that fifteen million acres of petroleum lands had been declared national reserves and placed under the National Petroleum Administration. This official action had as its objective the transforming into a national asset a natural element that belongs to the nation and the keeping of the profits within Mexico.\(^{10}\)

In his drive toward the nationalization of the natural resources and basic industries Cardenas came upon a ready-made solution in the labor dispute between the oil companies and the Syndicate of Petroleum Workers. He not only had a dispute which, under the new laws and the new interpretations of the Supreme Court, would give him full use of his plan, but also placed before him the most unpopular of all the foreign-owned businesses. The unpopularity of the oil companies was not confined to Mexico alone, for the people of the United States had hardly forgotten the Teapot Dome Scandal, which involved the same companies operating in Mexico.

One suspects after reading the demands of labor that the higher standard of living was not the main purpose of the

\(^{10}\)Kluckhohn, _op. cit._, p. 112.
movement, but that they, with the backing of the Government, intended to make it impossible for the companies to operate. The Government could then take the companies over by default. Cardenas knew that in this movement he would have the support of the United States labor interests which had become a powerful figure in United States politics.

Prior to the administration of Cardenas and the labor dispute the oil business had been one of corruption and had been maintained many times by force. The conclusion may be drawn that the oil industry in Mexico has been correctly described as a dirty game. Bribery, extortion, fraud, theft, and murder have been incidental to the industry; however, for every bribe given among the oil men there was a bribe-taker among the Mexican officials. 11

Regardless of the position taken by either the Mexican Government or by the oil companies, it may be safely stated that neither outdid the other except in the end the Government was the winner despite the cries of illegality heard from every company office.

As the labor dispute dragged on during 1937 and 1938 Cardenas time and again intervened. He was determined to insure Mexican labor its fair returns. In the beginning the labor dispute apparently was separate from politics; however, as the case proceeded the alliance between labor and the

11Gruening, op. cit., p. 617.
Government became more and more open. Labor could hardly have withstood the opposition of the oil companies had not the Government been constantly alert and firm.

When the case had been finally decided by the Labor Board and its decision upheld by the Supreme Court the next move was left either to the companies, or in event of their failure, to the Government. The companies declared their economic inability to meet the demands of the new collective contract drawn up by the Labor Board and the threatened shutdown of the petroleum industry immediately became a national question.

President Cardenas issued his decree of expropriation March 18, 1938. This decree was the first use of the power granted him by the Expropriation Law passed in 1936. All property of the seventeen foreign oil companies involved was seized upon the nineteenth of March. This seizure included the concessions, oil field equipment, storage equipment, automobiles, pipe lines, camps, offices and equipment, houses, books, accounts, and even the incoming mail and bank deposits. The seizure was made with the help of the army without a court order or prior notice. Under the law payment would be made for the actual equipment, less depreciation, over a period not to exceed ten years.

The reason given for expropriation was fear of a national economic crisis arising from the closing of all work in the industry. This would cause the shutdown of practically every
other major industry in Mexico. The companies argued, of course, that they had had nothing to do with the shutdown, that it was entirely the work of the Mexican Government and labor. They held that they could not be held responsible since the contract upheld by the Government was clearly an economic impossibility.

Under Mexican law and its interpretation by Mexican courts the Mexican Government had no alternative. The companies by refusing to accept the decision of the Labor Board, which had been upheld by the highest Mexican tribunal, had declared themselves in default. The strike had been a result of the companies' refusal to sign the contract awarded by the Government, and the country faced an economic crisis. In a speech President Cardenas stated the Mexican Government's position.

The case is clear and evident. The Government is compelled to apply the Law of Expropriation now in force, not only to exact obedience and respect from the oil companies, but by reason of the fact that the award of the labor authorities terminated the labor contract between the companies and their workmen. Unless the Government took possession of the companies' plants, immediately paralysis of the petroleum industry would ensue, and all other industries and the general economy of the country would suffer incalculable damage.\(^\text{12}\)

It is apparent that the economic suit for higher wages and better working conditions was not the only issue involved in the dispute which had led to expropriation. That the

\(^{12}\)The True Facts about the Expropriation of the Oil Companies' Property in Mexico, p. 77.
Mexican Government was determined to regain control of its natural resources, it is quite evident. At the last minute the companies had offered to increase wages, but Cardenas refused to withdraw his decree. He had good reason for refusing as he later indicated in a speech. He said, "If we had accepted, it would have been a victory for labor over capital, but by refusing the offer, it was a great victory of the Mexican people against foreign imperialism."\(^{13}\)

The companies had proven their opposition to the Expropriation Law in November of 1937, for they had then expected Washington to give them support as in times past. The question of Washington's attitude was more than of academic interest. Apparently the oil companies had been encouraged by the talk of a coming strong hand in Washington's Mexican policy to declare open war upon the Cardenas administration, for in a statement to the press on November 11, they announced that they would refuse to obey the Mexican law if it did not conform to their interests.\(^{14}\)

Under such circumstances the Government had little choice. They could expropriate the properties and rid Mexico of foreign domination or they could give in and have their entire legal system refuted. The Cardenas administration held that the concessions merely granted the companies the privilege to

\(^{13}\)Gaither, op. cit., p. 27.

\(^{14}\)L. O. Prendergast, "American Money in Mexico," The Nation, GXLV (November 27, 1937), 506.
explore and did in no way give them a title to unrecovered oil. The Government was asserting its right to the subsoil deposits. It had attempted to control the exploitation of these deposits, and being thwarted in this, their only recourse was seizure.

The expropriation came as a climax to a twenty-year struggle between the Mexican Government and labor on one hand, and the United States and British Governments and the oil companies on the other. Since Mexico's nationalistic social revolution found expression in the Constitution of 1917 the Mexican Government had attempted to regain control of her industries from foreign control. In spite of the appeals of the companies and the propaganda published by them, it seemed apparent that public opinion both in Mexico and the United States was strongly in favor of the Mexican Government's action. This feeling was expressed in the following quotation from the New Republic:

More than twenty years ago Mexico rewrote her constitution and reserved to the state ownership of all subsoil mineral rights, including oil. In doing this, she followed the example of most other countries throughout the world; there are few nations so foolish as the United States which permits the people's heritage to be recklessly squandered for the benefit of private pocketbooks. For various reasons Mexico had never followed up the Constitution by nationalizing the oil wells and pipe lines. Through a series of compromises, foreign companies were permitted to continue to exploit Mexican oil on a lease and royalty basis. Now, however, Mexico is proceeding to take

15 Thomson, op. cit., p. 122.
over the industry. No doubt there will be some individual injustices, and these should be rectified; but in general, no one can doubt that the Government has a perfect right to its action. The oil companies have had twenty years' warning; they have profited enormously in the past; other countries have taken parallel action. We are glad to see that thus far the American Government has taken a sensible, realistic and conciliatory view of what Mexico is doing, in great contrast to our arrogant meddling in former years.16

Other expressions such as the following from The Nation indicate how the liberal thought in the United States was forming.

On March 18th the showdown was reached in the stud-poker game between the Mexican Government and the foreign oil companies. The oil companies had attempted to call what they fondly imagined was a government bluff by refusing to comply with a decision of the Federal Labor Board, upheld by the Supreme Court on March 1, ordering them to sign a collective contract with their workers. The order increased wage rates and social service by twenty-six million pesos a year above the 1936 level, established a forty-hour week, and granted the workers a certain degree of participation in management. The oil companies protested publicly that these conditions rendered operation unprofitable and, indeed, impossible, but in private they readily enough admitted their ability to pay the increases.17

The companies now challenged the legality of the Expropriation Decree, by filing a complaint with the Supreme Court of Mexico to have the decree set aside and the property returned to the companies. The companies went to great detail to prove that the action was illegal. They maintained that


17 "The Revolt Against Oil," The Nation, CXLVI (March 26, 1938), 346.
public utility was not involved, and that since public utility was the only constitutional basis for expropriation the decree was illegal. They also held that the companies were not given advance notice and that the expropriation order was not issued by the courts.

In a statement soon after the expropriation, Harry F. Sinclair expressed the view of the major oil companies.

In spite of the unreasoning attitude of the syndicate officials as distinguished from the workers themselves, the presentation of irrefutable evidence that the demands made by them could not be carried out and, to say the least, the non-judicial attitude of the courts, I believe that some basis will be established on which we can continue to stay in business in Mexico. Owing to the conditions that have prevailed for some time, the Mexican Sinclair companies have made no recent contributions to the profits of Consolidated Oil Corporation, and from this point we can regard the present situation with some degree of equanimity while awaiting the day when the present attempt to confiscate foreign-owned oil properties is corrected by the working of what is still supposed to be the international rule against denial of justice and confiscation of property.18

The oil companies seemed to feel that it would be only a matter of time until the companies would be given a free hand again. Whether they looked for the State Department to intervene or not is not clear; however, they felt their cause was clearly legal. In spite of the Court's previous decision they appealed to the Supreme Court to have their properties restored.

18 Oil and Gas Journal, XXXVI (February 24, 1938), 22.
In their suit before the Supreme Court of Mexico the companies pointed out that an expropriation proceeding consisted of three basic parts. These steps included first, a declaration of public utility and suit in which the Government proves public utility exists; second, it must be followed by an appraisal made by the Court with the aid of experts; and third, payment of the price in return for a deed from the owner. The Expropriation Law of 1936, however, had changed the procedure slightly.

The Supreme Court would, the companies felt sure, attempt to justify the action of Cardenas. In the decision they went into great detail to find the action of the Mexican Government to be constitutional.

Many incidental points were discussed by the court, but the principal issues decided were these:
1. Whether prior notice and a hearing were necessary prerequisites of the expropriation.
2. Whether the reason of public utility existed for the expropriation.
3. Whether movables as well as immovables could be expropriated.
4. Whether a concession granted in pursuance of the terms of the Constitution and the Petroleum Law could be expropriated and, if so, what should be the measure of the indemnity.
5. Whether a provision for payment, over a period of ten years, of an amount based upon a percentage of the value of the oil to be recovered from the properties expropriated, satisfied the requirement of indemnity contained in the Constitution.¹⁹

In the Court's decision rendered against the companies on December 2, 1939, the Court held that the Government did

¹⁹Geither, op. cit., pp. 142-143.
not have to give prior notice; that public utility need not exist in fact, but that fear of an economic crisis was sufficient evidence of public utility. The Court also held that since the ownership of the subsoil had been consigned to the Government by the Constitution of 1917 the concessions held by the companies did not give them claim to the unrecovered oil. The Court held that the movables as well as immovables were subject to expropriation, and that the Government acted within its constitutional right to provide for payment over a period of years. On all counts the Supreme Court upheld the Government in its expropriation action.

After the Court's decision the companies sought to show how both the decisions of the Court in regard to the labor dispute and the expropriation were political and did not follow the law. The companies held that the decision was a departure from former court decisions which had upheld the right of immediate compensation. The Court, however, as is customary when departing from established jurisprudence, explained that this case was decided on the merits of high national interest and should not be bound by former decisions.

The decision of the Supreme Court of Mexico against the companies settled the question of expropriation as far as Mexican law was concerned. The companies had now exhausted every local remedy available in Mexico and were free to apply to the State Department for diplomatic intervention, since they felt there had been a denial of justice. Our
State Department, however, refused to question the right of the Mexican Government to expropriate property, nor did the State Department question the methods used in expropriation, but insisted that the question now to be settled was adequate compensation for the properties taken. /Secretary of State Cordell Hull expressed the view of the United States Government when he said:

This Government has not undertaken and does not undertake to question the right of the Government of Mexico in the exercise of its sovereign power to expropriate properties within its jurisdiction. This Government has, however, on numerous occasions and in the most friendly manner pointed out to the Government of Mexico that in accordance with every principle of international law, of comity between nations, and of equity, the properties of its nationals so expropriated are required to be paid for by compensation representing fair, assured and effective value to the nationals from whom these properties were taken.

Despite the decisions of the courts of Mexico and the statements of our own State Department, the companies held that there could be no solution except immediate cash payment for the expropriated properties, unless the Mexican Government was willing to return the properties. The estimated valuation according to the companies was slightly less than $500,000,000, a figure impossible for Mexico to add to her already huge national debt.

Quite frequently the turn of events seem to work for

---

the betterment of knotty international disputes. Here the changing of presidents in Mexico seemed to bring hope for a peaceful settlement. Camacho who was elected to succeed Cardenas was much more conservative. The adoption of the Good Neighbor Policy by the Roosevelt administration and the serious state of world affairs made it imperative that the United States and Mexico seek an amicable settlement of the oil question immediately.
CHAPTER IV

DIPOLMATIC ASPECTS OF EXPROPRIATION

The expropriation of foreign-owned oil properties in Mexico by the Government brought a question of international scope to the attention of the world—especially the western world. The expropriation became a question of diplomatic interest to the United States as soon as it was apparent that Mexico had taken the step without providing adequate means for immediate reimbursement to the companies for the property taken. The legality of the expropriation process was not so much in question as the fact that without adequate payment expropriation becomes confiscation. Thus the chief interest of the United States, in the settlement, was adequate compensation. The three parties involved took great pains to clarify their positions in the question under consideration.

To the companies the expropriation was the culmination of a carefully planned program of confiscation. The companies contended all along that the action was confiscation in that Mexico had not provided for adequate compensation and indeed they doubted Mexico's ability to pay such indemnity in event the Government actually intended to pay for the property.

The companies pointed out that the movement was against all previous agreements made between Mexico and the United
States in which Mexico agreed that the provisions of the Constitution of 1917 would never be construed to be retroactive to the detriment of any individual. It is true that Mexico had long attempted to undo the acts of Díaz' administration and to bring more fully under the control of the Government the natural resources of Mexico. That Díaz acted against the national interest in changing the fundamental laws of Mexico regarding her mineral deposits is evident; however, now that these companies were operating under such laws, they desired to have their rights respected.

The companies felt that they had been victims of gradual confiscation in that for years before the final expropriation they could feel the restraints of the Government gradually making production more difficult. The series of labor laws passed in the early 1930's indicated the growing sentiment in Mexico toward socialism. That the oil companies paid higher wages than any other industry did not seem to satisfy labor, but instead it seemed to mark the oil companies as the main target for the Government and labor to work on.

The labor laws had been only one of the acts which indicated to the companies that the Government was following a gradual process of expropriation. The granting of concessions and drilling permits became increasingly important as a weapon used against the companies. The Government began the practice of imposing losses on the companies through failure to grant confirmatory concessions which took the place of fee titles
under the amended Petroleum Law of 1925. "In fact, some four hundred and twenty-six applications covering more than six million acres have never been acted upon."

All actions of the Government seemed to be fitting into a pattern, and the oil companies' allegation that the real issue was confiscation seemed logical. The complete plan for the nationalization of the basic industries was announced by Cardenas in his Six-Year Plan, when he was inaugurated December 1, 1934. Nine months after his inauguration Cardenas declared that the industrialists who were weary of the social struggle could turn their industries over to the workers or to the Government. Soon after enacting a law to enhance the Government's control over commerce and industry Cardenas enunciated the rule that labor's demands upon capital should be limited only by economic capacity. Almost immediately after the general strike threat the Expropriation Law was passed and this act was followed by the establishment of the National Petroleum Administration.  

The last obstacle in the road to expropriation was removed, according to the companies in stating their position, when Cardenas brought the Supreme Court under his complete domination. This paved the way for the expropriation and assured that such action would be supported by the highest

---

1 Standard Oil Company (N.J.), The Present Status of the Mexican Oil Expropriations, p. 35.

2 Ibid., pp. 35-36.
tribunal. In their defense the companies attempted to show that the decision of the Supreme Court of Mexico upholding the Expropriation Law of 1936 and the Expropriation Decree of 1938 amounted to a denial of justice, and therefore expropriation of the oil properties was a legitimate problem for diplomatic intervention.

The companies, in summing up their defense cited five distinct conclusions of the Supreme Court which they held to be denials of justice. The Supreme Court of Mexico held:

That in spite of Article 27 of the Constitution, which provides that "private property shall not be expropriated except for reasons of public utility and by means of (mediante) compensation," nevertheless the Mexican Nation has the dominium directum over the subsoil petroleum and in depriving the owner, lessee, or concessionaire of his further right to exploit the oil underneath his land is not depriving him of any right of property and therefore need make no compensation thereafter.\(^3\)

The Supreme Court in its decision decided that the concessions held by the oil companies were only concessions to explore for oil and as such were of no real value which should be considered when estimating the amount of compensation due the companies for the property expropriated. The Court held that confirmatory and thirty-year concessions alike did not entitle the companies to any rights to unrecovered oil under the land held by them under title or lease. To the Government these concessions were in all respects like a franchise and

\(^3\)Standard Oil Company (N.J.), Denials of Justice, p. 8
could be revoked without compensation for their future value or true value. To the companies the true value included the expectation of future profits from the amount of oil that experts deemed recoverable within the duration of the concession; while the Mexican Government considered their true value to be the value of the equipment and limited production expenditures. The real value of ownership stated the companies is derived from the rights attached to it.

The Court in acting to take away the concessions of the oil companies was acting contrary to the Petroleum Law of 1925 which provided that concessions might be forfeited only for failure to carry on regular works, for transfer to a foreign government, for failure to make the required deposits of guaranty, or for failure to pay proper taxes. Thus, pleaded the companies, they were being deprived of the bulk of the value of their properties when they were deprived of the right to explore for and extract the oil found.

The second denial of justice was stated by the Standard Oil Company as follows:

The Mexican Supreme Court further held that in spite of Article 27 of the Constitution which provides that expropriation shall only be accomplished through judicial procedure and requires, with the Expropriation Law, a preliminary procedure to establish the necessity for the taking, a designation of the specific property to be taken, an occupation of the property after judicial hearing only, and payment of compensation, nevertheless the administrative seizure of the property, without preliminary procedure, without designation of the specific property to be taken,
without judicial procedure, and without payment of compensation is valid.\(^4\)

This second statement or denial of justice, declared the companies, was made in flagrant disregard for both the Mexican Constitution and the laws made in pursuance of the Constitution. The Mexican Constitution is, as are most other constitutions, very specific in its protection of private property rights, and places many limitations on the Government's right to expropriate property. The companies held that since neither the Expropriation Law nor the Expropriation Decree provided for judicial procedure they were unconstitutional. Nowhere, stated the companies, did the Constitution empower the Government to seize and operate an entire industry.

The Supreme Court of Mexico, however, in this case held that the urgency of the question justified such action as the occupation of properties before judicial procedure had been taken. The Court stated that "when the Nation is expropriating in the exercise of sovereign power the declaration of administrative authority is sufficient for the immediate occupation of private property."\(^5\)

The third proposition which the companies considered a violation of the Constitution of 1917 and a denial of justice was stated as follows:

\(^4\)Ibid., p. 21.

\(^5\)Ibid., p. 23.
In spite of the provisions of the Constitution, Article 27, that expropriation must be carried out by means of compensation, which as the Supreme Court has previously held must be immediate, certain and effective, that is, in cash, the Supreme Court now holds that Article 20 of the Expropriation Law is constitutional although it permits payment over a period of ten years, that, by way of exception, the oil expropriation is valid because the value of the properties is beyond Mexico's capacity to pay promptly, and although the Expropriation Decree leaves the payment uncertain and contingent inasmuch as it is to be made out of an undetermined percentage of the future production of oil from the companies' properties.\(^6\)

The companies, still maintaining that the Expropriation Law of 1936 was unconstitutional, declared that extended payment for properties seized was unconstitutional and that the mere fact that the value of the properties was too great to make immediate payment feasible had no bearing upon the question. The Constitution sets the value to be that for which the properties are rendered in the tax offices. This alone, stated the companies, indicates that the properties to be seized must be so specified in the decree. Since Cardenas did not specify the properties to be seized but left that to the discretion of the Secretary of National Economy, the companies held that there had been no legal expropriation.

To further prove the illegality of the action the companies cited that in several cases property had been taken which the Court later held should not have been taken, such as books, accounts, and cash.

To prove that compensation was very unlikely the companies

\(^6\)Ibid., p. 26.
showed that the payment, which was to be made with oil from the properties, was to be determined by an unnamed authority who would set a specified percentage of production to meet the payments to the companies. This payment was made even more uncertain by the fact that under Mexican management the industry might not be able to satisfy domestic needs to say nothing of the payment to the oil companies.

The companies pointed out as a fourth denial of justice that the facts justifying expropriation did not exist, but that the Supreme Court accepted the statement of President Cardenas that a case of public utility existed. The companies felt that the reasons for expropriation were of a penal and allegedly social nature rather than for public utility. The real basis seemed to be to punish the companies for their refusal to abide by the extravagant and impossible contract which the union proposed and the Labor Board had approved. The companies, however, declared that they did not refuse to accept the contract, but that they stated such a contract would be economically disastrous; consequently, the union had asked the Labor Board to void the contract. This action brought the threat of paralysis in the oil industry which caused Cardenas to issue the Expropriation Decree.

The fifth proposition or denial of justice as stated by the companies concerned the property for which the companies should be compensated when and if the Mexican Government acted. This proposition was as follows:
The Mexican Supreme Court further held that the only property to be compensated for is the capital legitimately invested in order to obtain production in the wells plus the tax value of real estate and installations at their cost, notwithstanding the fact that much investment is made in exploring unproductive land and that such costs are a definite charge on the industry even if it could be assumed, contrary to fact, that investments could ever be the measure of value.7

As has been pointed out by the companies the Court voided the obligation of compensation for the expropriated right to explore for and extract the oil, and to further reduce the obligations to compensate, the Court held that only such trifles as the physical equipment and capital directly invested in productive areas needed to be compensated for. This new conception of compensation did not consider the large sums risked by the companies in unproductive areas, nor did the Court admit the value of the expectation of profits which might have been earned while the concessions were in force.

The novel evaluation of the properties expropriated by the Government caused much comment from the companies. In using the tax value the Government had an unusually low evaluation due to the practice, both in the United States and Mexico, of rendering property far below its true value. The further reduction of compensation due the companies was brought about by the Mexican Government's assertion that the

7Ibid., p. 45.
companies owed large sums in taxes and indemnities to the workers.

It was held by the Government of Mexico that the termination of the contract by the Labor Board made the companies liable to pay the workers three months discharge pay as provided in the new contract. The companies felt that such indemnities would practically wipe out any compensation the companies might expect from the Government.

The oil companies had little confidence in Mexico's ability to pay for the properties seized. They held that regardless of the final estimate of the value Mexico with her present foreign debt could never hope to pay the oil companies what they considered to be a fair price for the properties. They also argued that payment in kind was doubtful in view of the lack of experienced and technically trained men to operate the newly expropriated oil industry. A Mexican attorney stated in an article that in view of Mexico's present financial status it would be impossible for her to compensate the companies in ten years or even twenty years.

It is evident that in stating their position the companies were trying to convince the United States Government, the Mexican Government, and the general public that the only reasonable and fair solution to the question would be the return of the properties to the companies. In their analysis of the Court's decision the companies attempted to show that
there was in reality no legal expropriation but a flagrant unconstitutional confiscation by the executive decree.

The companies were seeking the aid of the United States Government to force Mexico to make some type of settlement which would return control of the properties to the oil companies. Their defense was well planned, for they could see the vast investments of American interests in other Latin American countries slipping away unless the United States Government took positive action. "The future of our foreign policy, perhaps the future of democracy in the Western Hemisphere, may depend upon strength or weakness, the wisdom or stupidity, of our action in the present crisis."

The United States investments in Latin American countries amounted to approximately three and one-half billion dollars, and the oil companies as well as other investors were extremely interested in the attitude of the United States Government concerning expropriation.

In previous years the United States Government had opposed every move made by Mexico to expropriate the properties of the American-owned oil companies. That the United States Government prevented the full enforcement of the Constitution of 1917 by the Mexican Government is apparent, for each time the Mexican Government attempted to increase its control over the natural resources the State Department intervened. Our

\[\text{McMahon, op. cit., p. 143.}\]
Government had made agreements with Mexico on several occasions to clarify and protect foreign property in Mexico. The Bucareli conference and the Calles-Morrow agreements are examples of such action. As a rule the United States Government moved to prevent the enforcement of legislation which seemed confiscatory; however, in 1938, when Cardenas expropriated the oil properties, no such action was taken by the United States Government.

Apparently the attitude of the United States Government had changed under the influence of Cordell Hull who was attempting to put the Good Neighbor Policy into actual practice. Secretary Hull accepted the right of the Mexican Government to expropriate property for public use. Hull also maintained, as is shown in the following quotation, that adequate compensation must be made for lands taken.

In the opinion of the United States the legality of an expropriation is contingent upon adequate, effective, and prompt compensation.

The difference between our two Governments with respect to this principle lies in the fact that the Mexican Government has assumed and continues to assume a right without compliance with the conditions necessary to give such exercises a recognizable status of legality.9

The above statement of Cordell Hull's tends to show the trend in the attitude taken by the United States Government in the question. Secretary Hull insisted that Mexico had resorted to confiscation unless the property was paid for.

The United States had been very lenient in its dealings with Mexico in that despite the expropriations the Government continued to purchase Mexican silver, and thus aid President Cardenas in averting a complete collapse of Mexican economy. To further elaborate upon our consideration toward Mexico Secretary Hull and others of the State Department did not approve the use of economic sanctions against Mexico. At this time such sanctions could easily have ruined Mexico's economy and perhaps have caused the collapse of the Cardenas administration.

The chief reason for the change in United States policy seemed to arise from the desire of the Roosevelt administration to promote hemispheric solidarity in the face of the existing world conditions. The main principles of the Pan-American Program were built around the settlement of disputes through arbitration and conciliation. The United States attempted to bring about a settlement of this dispute but was unable to do so, chiefly due to the unbending stubbornness of the oil companies.

In the face of the demands of the United States State Department that there must be adequate compensation for the expropriated properties, Mexico attempted to justify her action as legal procedure of Mexican law. Mexico stated that the right to expropriate was not the real issue involved, for the right to expropriate property for the benefit of the public use is recognized by all nations. The Mexican Government
maintained that Mexico was willing and able to pay adequate compensation, but that many obstacles to such arrangements had been brought up by the companies.

The real issue, according to the Mexican Government, was whether the oil companies, relying solely on their powerful financial organization and on the support which they systematically requested from their governments should be permitted to disregard the laws of the country. In addition to securing highly disproportionate profits on their investments they had treated with contempt the decisions of the courts and had paid only such taxes as they had seen fit. The Mexican Government alleged that the companies had sought to enjoy special privileges in respect to labor conditions and, in short, had attempted to treat the governments of the American nations by methods more humiliating than those employed in colonial possessions.\(^{10}\)

The Mexican Government built much of its case around the fact that the companies had continuously opposed the Mexican Government and, according to Mexican leaders, had treated with impunity Mexican laws. Though the companies had been bound to respect the laws of Mexico, the Government pointed out that from the beginning, through force and financial power, bribery and threats the companies had had their own way in operating in Mexico. To Mexico the expropriation was nothing

\(^{10}\) The True Facts about the Expropriation of the Oil Companies' Property in Mexico, p. 13.
more than seizure of property from those who had refused to obey Mexican laws.

In referring to the influence of the large companies in Mexico, President Wilson had once stated that:

... "order" has been purchased in Mexico at a terrible cost when it has been obtained by foreign assistance. The foreign aid has almost invariably been conditioned upon "concessions" which have put the greater part of the resources of the country which have as yet been developed in the hands of foreign capitalists, and by the same token under the "protection" of foreign governments.

Those who have successfully maintained stable order in Mexico by such means have, like Díaz, found that they were the servants, not of Mexico, but of foreign concessionaries.11

Further evidence that the companies had not always followed Mexican law is cited by the journalist, Kluckhohn:

The arrogance of the large foreign operators during the Díaz period carried over into the epoch of "The Revolution." All too often, foreign owners and managers took the view that they were a special and superior breed that should not be bound by Mexican domestic regulations and laws. They sought to run their affairs in a high-handed manner that would not have been permitted in the colonies of the world's major nations, let alone in a sovereign state. While proprietors in the United States gradually changed their attitudes under pressure from public opinion and organized labor, in Mexico many retained their 1900 viewpoint.

Through bribery and corruption, and by obtaining occasional diplomatic aid from their governments, the large companies exerted pressure upon Mexican governments. Despite frantic protests to the contrary today, there is every reason to credit the assertions of Mexican regimes that foreign companies sought to dominate them in order to maintain the position of absolute individualists and to be permitted to run their affairs in their accustomed high-handed manner.12

11Ibid., p. 15.
12Kluckhohn, op. cit., pp. 22-23.
Expropriation of the foreign-owned oil properties in Mexico would rid her once and for all of the influence of these companies that had sought to dominate the Mexican governments. Even though Cardenas admitted in his Expropriation Decree that expropriation was partially for public utility and partially as punishment for the companies' refusal to respect Mexican laws and courts, the Mexican Government maintained that the expropriation was carried out according to legal procedure. The Government cited, as historical background, the various laws passed during the administration of Carranza and Calles which were so strongly opposed by the companies. The Government pointed out that through seeking diplomatic intervention of their respective governments the companies had flagrantly refused to obey the organic laws passed in pursuance of the Constitution of 1917. They also pointed out that when the companies finally appealed to the Mexican courts, through the insistence of Ambassador Morrow, their rights were upheld by the Supreme Court of Mexico.

The Mexican Government, in defense of its action of expropriation, denied that it had followed a preconceived plan of expropriation as the companies seemed to believe. The Mexican Government declared that it had followed laws of previous administrations already accepted by the United States and the oil companies. Cardenas declared that he had not asked for any new laws regulating Article 27 of the
Constitution, since the existing laws were adequate. The expropriation of the oil companies' property came only after the Government found itself compelled to act in the face of the rebellious and defiant conduct of the oil companies. This expropriation included, of course, the concessions which the Mexican Nation had granted to the companies for the exploration and exploitation of oil.\textsuperscript{13}

Cardenas had been forced to expropriate the oil companies' property in order to prevent wide-spread economic panic resulting from the closure of the oil industry. The companies had stated that they could not operate under the terms of the new contract.

The Mexican Government felt that it had been acting entirely within its constitutional rights by requiring the companies to improve their wage scale and social benefits to labor, and even proposed to set up a special committee to insure that the companies would not have to increase expenditures above the additional 26,000,000 pesos awarded to labor by the Labor Board.

The Mexican Supreme Court upheld the action of the Government in all respects. It had always been a generally accepted theory that the Supreme Court of any country is the highest and sole interpreter of its Supreme Law. In pointing out that their Supreme Court's decision should be respected the Mexican Government quoted from John Marshall.

\textsuperscript{13}The True Facts about the Expropriation of Oil Companies Properties in Mexico, p. 71.
The judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus no court in the universe which proposed to be governed by principle would, we presume, undertake to say that the courts of Great Britain, of France, or of any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal which would correct such misunderstanding. 14

Thus it seems as though expropriation, which had originally been designed to protect the economic stability of Mexico, had developed into a fight for supremacy between the Mexican Government and the foreign oil companies. The companies had no right to set themselves up as a tribunal to review the decisions of the highest Mexican tribunal. Mexico maintained all along that she was willing and able to pay adequate compensation for the properties, and since adequate compensation for the properties was the only point considered in the diplomatic exchanges between the United States and Mexico, the question was not really one of diplomatic concern, but only one of domestic concern for Mexico.

The Mexican Government has made diligent efforts to do whatever is necessary, not only to effect an appraisal of the expropriated properties but also to fix the method of payment; using, as a basis to arrive at a fair valuation, that which will truly represent the real interests involved in this controversy. As a matter of fact the question of appraisal of property value would have been terminated long ago, had the oil companies been willing to cooperate, through direct negotiations with the Mexican Government. Said companies, however, have refused to discuss the question

14 Ibid., p. 130.
of valuation, and likewise, refused to appear before the courts, as is required by law in such cases.\(^{15}\)

The causes for the failure of either party to meet the demands of the other stemmed from the desire of the companies to have their property returned in view of the fact that they held the theory that in order to make adequate compensation the Mexican Government would have to pay for the unextracted oil under the leases held by the companies. The Government refused to recognize this theory as a basis for payment, for they contended that all oil is the property of the State until it has been extracted.

The Government based its appraisals in three categories. First, the real property of the companies should be paid for at the rate listed in the tax offices for taxation; second, other properties belonging to the companies should be appraised by experts; and third, the concessions should be paid for at the rate corresponding to the expense incurred in obtaining these concessions.

Mexico insisted that under the Government management production had not fallen off, and exploration was increasing the output of Mexican fields. She held that even the fantastic value attributed to the property by the companies could be met. The companies estimated their value to be between $250,000,000 and $500,000,000. However, the companies' own books did not bear out this contention.

\(^{15}\)Ibid., p. 88.
Mexico, on the other hand, when maintaining that
the properties do not have the value attributed to
them by the companies, bases its contention on the
companies' own books, which are kept in accordance
with the most modern methods of bookkeeping and which
show a net value for the fixed assets of 115,576,042.55
Mexican pesos; of this amount the sum of 50,199,277.77
pesos belongs to the American companies.\textsuperscript{16}

It was these figures that were used in later negotia-
tions to determine the compensation due the companies. The
companies pleas that the Government did not take into con-
sideration the huge sums spent by the companies in early ex-
ploration were answered by the fact that Doheny spent $3,000,000
in exploration before obtaining paying quantities of oil and
that the English spent slightly more before opening up the
fabulous Poza Rica field. It was pointed out by the Mexican
Government that most Mexican fields flowed and required less
labor output. Some wells were recorded as having produced
as high as 100,000,000 barrels of oil before they were ex-
hausted. These fields had many which produced over 100,000
barrels a day.\textsuperscript{17} Mexico pointed out that with such produc-
tion the companies' original investments were returned many
times. Mexico held that the millions spent by unsuccessful
companies that had long ago quit Mexico, could not be charged
from the profits of the successful companies.

The only possible solution to this vexing question for

\textsuperscript{16}\textit{Ibid.}, pp. 94-95.

\textsuperscript{17}Harry P. Middleton, \textit{Industrial Mexico}, p. 55.
Mexico had to be based upon the considerations stated by the Mexican Government.

I. It has been shown that the Mexican legislation, like that of the other countries, clearly establishes the right to expropriate private property by payment of just compensation.

II. The foregoing principle enacted in the Mexican legislation is not contrary to any principle of International Law.

III. Mexico has persistently and publicly declared its intention to pay a fair compensation for the expropriated properties of the oil companies.

IV. Mexico is able to make the corresponding payment within a reasonable time.\textsuperscript{13}

Mexico refused to accept any method of settlement which would in any way return the companies to Mexico, and upon the insistence of the United States State Department the companies entered into a series of private negotiations with the Mexican Government to attempt to work out a solution to the problem. The oil companies appointed as their representative an attorney, Donald R. Richberg, to carry on the negotiations in which the Mexican Ambassador to Washington, Castillo Najera, and President Cardenas participated. These private negotiations opened in Mexico City March 8, 1939, and discussion of the problem was started with the following understanding:

\textbf{Mr. Richberg:} He is not unaware of what has been the nature of the maneuvers by the companies; he knows what they have done, not only in Mexico, but also in the United States. Disapproves the unbecoming conduct of these fellow citizens of his, but repeats, it is better to throw a veil over the past, and place the foundation of a new era; to institute a method of cooperation which will insure rational benefits,

\textsuperscript{13}The True Facts about the Expropriation of the Oil Companies' Property in Mexico, p. 263.
not only to those persons interested in the present case but also to new capital that investors were anxious to invest in Mexico. . . .

Mr. President: He is in accord with those points of view and states that Mexico would gladly welcome investors who care to cooperate, in obedience to our laws and inspired with human kindness; a sentiment which was found lacking in the oil companies. There are other enterprises owned by foreign capital in Mexico, which have not had any difficulties with the Government, with the exception of necessary movements to preserve the equilibrium between capital and labor. These industries flourish under the protection of our laws and feel neither insecurity nor anxiety.19

With this apparent understanding before them the two representatives, Richberg for the oil companies and President Cardenas for Mexico, entered into discussions of the problem. Each presented his viewpoint in an effort to find a workable solution. From the beginning, however, it was evident that the two parties were as far apart as ever, for Mexico refused to consider any settlement which would return the companies to the unrestricted management of the oil properties, and the companies could not agree to turning over the management to the Mexican Government.

The companies thereupon proposed, as a compromise from their legal rights to the return of their properties, the following objectives or bases of discussion:

An arrangement under which there will be:

(1) Provision through the medium of a long-term contract for the operation by the respective companies of properties taken, in accordance with the terms of the contract free from restrictions, claims of obligations not embodied therein.

(2) A fixed schedule of rates definitely determining all taxes and similar payments to be made during the life of the contract.

19Ibid., pp. 105-106.
(3) A reciprocal guarantee, for the life of the contract, of reasonable and workable labor conditions.

(4) An appropriate measure and means of reimbursement for losses sustained by the companies to date of contract by reason of seizure of properties on March 18, 1938.

(5) Upon expiration of the long-term contract all claims and interests of the companies in producing properties in Mexico to be released and transferred to the Mexican Government, without payment of any further consideration.⁰²

The Mexican Government made a brief statement of its position. The plan for an understanding and settlement of the dispute, and continued cooperation of foreign capital in the exploitation of Mexican oil, was presented by Cardenas.

I. Immediate compensation after appraisal.
II. Long-term contract for cooperation between the companies and the Government in the exploitation of the petroleum industry.
III. Arrangements for new investments to promote the industry: exploration work establishment of refineries, etc.

In the second paragraph, regarding the long term contracts, the relations between the Government and the companies, as well as the labor problems, would have to be considered in such way that the management or administration will be left in the hands of the Mexican Government, which could accept the technical collaboration of the experts recommended by the companies.⁰²¹

The two parties differed on the question of management. The companies took the position that to insure their investments they must have control of the management; however, Mexico felt that her contribution of the natural resources


⁰²¹The True Facts about the Expropriation of the Oil Companies' Property in Mexico, pp. 108-109.
was the greater of the two investments and therefore the Government should control the management. The Government contended that under the terms proposed by Richberg the companies would be in a more favorable position than before the expropriation, in that all labor conditions, taxes, and such items would be fixed in the contract.

After these private negotiations broke down nothing was accomplished except the final settlement between the Mexican Government and the Sinclair interests, until the United States Government opened negotiations. Through representatives of the Sinclair interests and the Mexican Government an agreement was worked out whereby the company would receive $3,500,000 for their properties, and in return they would withdraw all claims against the Mexican Government. The original payment of $1,000,000 was made with the signing of the agreement, and the remainder was to be paid in three years. This agreement may have influenced the other companies even though they condemned the settlement at the time.

To facilitate the advancement of hemispheric solidarity the State Department insisted that the settlement be made covering the remainder of the claims; however, Mexico refused to arbitrate. She held that the problem was one of domestic nature rather than of international concern and should be worked out between the oil companies and the Mexican Government.

The United States State Department and the Mexican
Government signed an agreement November 19, 1941, for the settlement of the oil claims. The two governments decided on the method to determine the value of the properties which the Mexican Government had expropriated. This was to be done by two experts, one appointed by each government. If the experts failed to agree upon the value, the two governments agreed to seek through diplomatic channels to determine the amount of compensation to be paid the companies.  

Mexico made a deposit of $9,000,000 to be applied on the compensation to the oil companies provided an agreement could be reached.

Secretary Hull agreed to help small companies interested in buying Mexican oil and thus break the boycott of Mexican oil by Standard Oil and its subsidiaries. The oil companies, however, were not to be bound by the agreement and did reject the arrangements. W. S. Farish, president of Standard Oil of New Jersey, said the oil companies could not accept the arrangements because:

(1) It purports to validate the original confiscation, which violated international law, and thereby jeopardizes all foreign investments.
(2) It promises to pay over a period of eleven years from the time of expropriation by a government which already is now hopelessly in default on its foreign debts, and thereby repudiates the principle enunciated by the United States Government that valid expropriation is conditioned on the payment of "adequate, effective, and prompt" compensation.

---

Aside from these fundamental principles, the agreement itself is so vague and ambiguous as to seem to the companies dangerous; and it binds the companies to accept a speculative promise in exchange for their tangible properties.23

On April 12, 1942, the experts, Morris L. Cooke representing the United States and Manuel J. Zebada representing Mexico, made their report, in which they placed the value of the expropriated properties of the American interests, exclusive of Sinclair, at $23,995,991. Both President Roosevelt and President Camacho gave the experts' report their official blessing, and it was the general consensus of opinion that the companies would accept under pressure from the State Department.24

The final agreement between the United States Government and Mexico was reached on September 29, 1943, and acceptance by the companies ended the question of the expropriation of the foreign oil properties in Mexico as far as the United States and Mexican Governments were concerned.

The manner and conditions of payment of compensation to the United States Government for the benefit of certain American nationals who sustained losses as a consequence of the expropriation of petroleum properties in Mexico in March, 1938, were agreed upon September 29, 1943, through notes exchanged by the acting Secretary of State of the United States and the charge d'affaires ad interim of Mexico. This exchange

23"United States-Mexico Fact Does Not End Oil Controversy," Oil and Gas Journal, XL (November 27, 1941), 31.

of notes was the second and final step taken by the
two governments to implement the basic agreement of
November 19, 1941, in which they agreed that each would
appoint an expert to determine the just compensation
to be paid American nationals whose properties, rights,
or interests were affected to their detriment by acts
of the Government of Mexico subsequent to March 17,
1938. At the time of the exchange of notes of November,
1941, the Mexican Government made a deposit of $9,000,000
on account of the compensation to be paid.

The final step in the implementation of the agree-
ment of November 19, 1941, was the preparation and sub-
mission of the joint report of April 12, 1942, by
two experts, Morris L. Cooke, representing the United
States, and Manuel J. Zevada, representing the Republic
of Mexico. That report placed a valuation of
$23,995,991. on the losses sustained by American nationals,
including all elements of tangible and intangible value,
and provided for interest at three percent per annum
from March 18, 1938, to the date of the final settle-
ment on all balances due; and the valuation was in con-
formity with the basic agreement, final.

The manner and conditions of payment by the Govern-
ment of Mexico to the Government of the United States
were fixed in the note exchanged September 29, 1943, as
follows:

"The amount due was $23,995,991 plus $5,141,709.34
interest at three percent per annum on all unpaid
balances from March 18, 1938 to September 30, 1947,
the date set for the final payment; a total of
$29,137,700.84.

"After deducting the $9,000,000. deposited in
 cash by the Government of Mexico at the time of the
signing of the agreement of November 19, 1941, the
balance due was $20,137,700.84."

The balance was to be paid in the following in-
stallments: $3,796,391.04 on September 30, 1943, and
the balance in four equal annual installments each of
$4,085,327.45.

With the signing of the oil agreement a knotty question
was solved, and the promotion of solidarity and good neighbor-
liness was greatly assisted. The agreement no doubt was in-
fluenced in a great measure by the emergencies of war, and

of the Pan-American Union, LXXVII (December, 1943), 715.
also by the more conciliatory and cooperative attitude of Camacho.

This settlement did not involve the interests of the Royal Dutch Shell which had held the concessions to the fabulous Poza Rica field. "The British Government has declined to sponsor a negotiated settlement and, presumably, continues its original stand that nothing short of return of the properties will be satisfactory.\textsuperscript{26}

\textsuperscript{26} \textit{Oil and Gas Journal}, XLII (October 7, 1943), 40.
CHAPTER V

EXPROPRIATION IN RETROSPECT

The question of the legality of the expropriation of foreign-owned oil properties in Mexico takes on a social as well as economic aspect in view of those affected directly and indirectly by the act of the Mexican Government. There are times when it may seem that the question of legality stands in the way of progress, especially to reformers who have an intense desire to make for their country a respected place among the family of nations. It is not infrequent that great social upheavals tend to burst the bounds of law when once the movement gains momentum. Each nation in its growth to maturity feels at times that it is bound by laws imposed by larger and more powerful countries—laws that have become accepted as international law.

In the Social Revolution, which finally reached some semblance of maturity under the administration of President Cardenas, investors of other nations saw danger to the principles of capitalistic enterprise. The process of social change through orderly legal procedure is a slow way to bring about social and economic equality to a nation where its masses have been, from the beginning of its existence, living in the squalor, filth, and ignorance of poverty. The reformer has a tendency
to forget that the respect of laws and orderly development is one of the great factors which builds the confidence of other nations in ability of his nation to accept responsibility and honor its obligations. He sees only the poverty of his people and turns upon methods of force.

Before the Mexican Government was the vast investments of foreigners that had drained millions of dollars from the country, leaving little in the way of permanent economic benefits to the people of Mexico. The question of sacrificing the respect of other nations hardly seemed to over-balance the social and economic benefits which could be derived for the Mexican people through seizure. In seizing the vast oil industry we do not have conclusive proof that the Mexican Government had fully taken into account the responsibilities involved in the operation of such an industry, or whether through its operation the Government could give the people of Mexico added benefits which would raise their standard of living.

The expropriation was designed to equalize the opportunities as well as the economic stability of the Mexican people and their Government. It grew out of a complex which had grown into a hatred of foreign investors. The picture that had been painted to the populace was not a pretty one, for it caused them to see these foreign capitalists as mercenary greedy corporations who sought to bleed the country of its resources in order that they might live in luxury. This
is not an unusual complex, for many nations seemingly ex-
ploited by more powerful nations have revolted from the begin-
ning of civilization. In this revolt many people who had
little or no influence in the formation of policies have suf-
fered.

Those who suffered most as a result of the expropriation
were the some 300,000 small stockholders of these giant
corporations. Among these thousands were those who had their
life savings wiped out. Our nation was faced here with the
problem of protecting the investments of small investors. It
was the task here to balance the effect of this loss against
the possible benefit which might be derived for the Mexicans.
Whether the small compensation finally derived from the
Mexican Government was sufficient to balance the loss is a
problem which can only be answered by the benefits made
available to the Mexican people.

Should a government guarantee the investments of its
citizens made in foreign countries is a question which has
faced every world power whose economic structure has expanded
into foreign fields, seeking there new industries to develop.
This problem can hardly be solved until the people of our
nation and other nations are willing to give up certain
rights in favor of a world government or organization of
nations. As long as nations are living under divergent
political systems there will be insolvable economic and social
problems. Until the laws governing property are internationally
codified and accepted by all nations we will have injustices to those who seek to invest in foreign countries. The interests of our nationals cannot be sacrificed to total disregard for law; however, the interests of the nationals of these nations cannot be made subservient to foreign investors. The fact that a fair adjustment took so long indicated a lack of understanding between the two nations.

That the expropriation question was a political question as well as an economic question cannot be denied. In the realm of politics as well as economics there arose that same feeling that the foreign companies had been guilty of interference with the Government to the detriment of Mexico. During the period of constantly changing presidents the companies were at a loss as to just what their rights might be. It is natural that they would seek to support a candidate who seemed favorable to them, or one who indicated he would respect their previously acquired rights; however, in doing so they did not always consider that the candidate they supported might not have the interest of his own country at heart. It is evident that in entering the field of politics they frequently backed men who could be easily bribed, having their own selfish interests held above their responsibility to the people they governed. In this way the foreign corporations built up enmity between themselves and the masses of Mexico. It was also very easy during this time of upheaval to gain questionable title to valuable oil-bearing lands.
Leading Mexican politicians might rightfully feel that for such actions these corporations should suffer; however, who suffers most, the large corporation or their thousands of small investors who have little or no voice in the formation of policies. Mexico sought by law to bring about the nationalization of her natural resources, but in doing so she disregarded the established principles of international law governing the actions of nations in regard to the rights of foreign nationals within their borders at times. That a nation may make the laws she deems necessary in regard to her own nationals is an established rule.

The political reaction in Mexico against foreign investors stemmed from the basic change in political theories embraced by the new regime in power. For twenty years the political change had been taking place only to reach fruition in the administration of Cardenas. This change was a result no doubt of the change sweeping many other nations. There was an attempt to make the resources of a nation of collective benefit to all its peoples. In this new system the foreign investors, from countries where private enterprise was the basic principle of their economic structure were struggling against the move which was bringing the collectivist economic theory as the basic principle of the nation's economic structure. Expropriation became the solution to the struggle between the two economic systems. Each nation must determine for its people the system of government best suited for their
particular need. This is nations' reason for existence—to serve its people.

Mexico had no strong capitalistic class to build a free capitalistic economy upon; therefore, her leaders sought in the collectivist theory the answer to her problems. This action was entirely within the scope of the jurisdiction of her government; however, it did not exempt that government from the duty of respecting the investments of foreign national within her jurisdiction. It must be remembered that these investors had been invited by previous administrations to enter into Mexico and develop the resources. The question is not one of justifying the actions of the government that invited them to Mexico. Whether this action was made in the best interest of the country is not a question to be decided now. The fact cannot be erased that these entrepreneurs came to Mexico in good faith. There should always be some compensation for those who suffer as a result of political changes and upheavals.

Expropriation came as an inevitable result of the social and political revolutionary upheaval which gripped Mexico. It seemed to be the solution to the political commitments of the Revolutionary Party to improve the economic status of the Mexican masses. In carrying out the expropriation the Cardenas administration picked a psychological moment to bring their plans into full fruition. There was at this time a world-wide sentiment which was working against the huge capitalistic
corporations. The world-wide depression, and the unorthodox methods practiced by the corporations tended to increase the sentiment against them. In countries like Mexico any administration in power was politically bound to improve the economic conditions of their peoples, even if they did so at the expense of foreign investors, whom they are bound by international law to protect.

The expropriation of foreign-owned oil properties in Mexico was not merely a question of hemispheric interest, for it included the properties of Dutch and English companies, which created an international question. The United States here found itself the representative not only of American companies but also of the European countries. The Monroe Doctrine, which prevented any nation outside the western hemisphere from interfering with the affairs of this hemisphere also placed upon the United States the responsibility to see that European interests were respected by the American nations.

Expropriation without adequate compensation is a breach of international law. Since the United States had taken upon itself to protect the American nation from outside interference, she had also taken the responsibility of insuring respect for international law by the American nations.

Though England broke diplomatic relations with Mexico she had little recourse against what she considered a denial of justice to her nationals. The action taken by the United States in the settlement of this problem was greatly influenced
by the two important factors of hemispheric solidarity and
the rapidly developing world crisis which broke into a world-
wide war before complete settlement.

The outcome of the settlement may easily have been dif-
ferent had not World War II developed to dwarf all other
international problems. The general unsettled conditions
in Europe and Asia and the war on both continents made settle-
ment of the controversy between Mexico and the United States
imperative. During a time when our national sovereignty was
threatened by a much greater force we found it necessary to
forego certain losses to the United States nationals who lost
property in Mexico in order to solidify the western hemi-
sphere. The European crises offered a much greater threat to
international law than the confiscation of foreign-owned oil
properties by Mexico. Though it appeared at the time that
the United States was losing the respect of other nations it
is apparent that in the long run the American policy was
successful.

In holding that she had not violated international law
by promising to make deferred payments for the expropriated
properties, Mexico was not alone, for several international
jurists at that time were upholding Mexico's action. Mexico
pointed to the abolition of slavery and the prohibition of
intoxicating beverages in the United States as examples of
taking property without compensation. She also pointed to
numerous European countries who had in their constitutions
provisions which provided for expropriation with or without compensation as the State might determine.

The expropriation of foreign-owned oil properties by Mexico came at a very inconvenient time in that it was decreed the same year that the meeting of the Pan-American nations had been scheduled to meet at Lima, Peru. This conference was designed for the promotion of peace and hemispheric solidarity. In view of the developing world conditions it was the desire of the leaders of the American nations to bring about a more cordial understanding among the nations of this hemisphere. The Roosevelt administration was determined not to allow this difference between the two governments to interfere with the Pan-American Program. Secretary Hull's attitude and handling of the situation contributed greatly to the success of the conference at Lima and gave the smaller nations assurance that our Government had abandoned its former policies of diplomatic intervention and "dollar diplomacy."

In the negotiations which were sponsored by the United States State Department during the five years following the expropriation of the oil companies' property, the United States manifested the essence of friendly cooperation for the improvement of social and economic conditions throughout the Americas. The United States showed respect for the national sovereignty and integrity of smaller nations and through such actions did much to build up a code of laws for our hemisphere
which were respected by all the American nations. The war of course brought on the greater need for cooperation and understanding and tended to erase much of the bitterness and distrust that Mexico had felt toward the United States.

The tactful handling of this question, though it might temporarily deprive some of our investors of portions of their investments, laid a much firmer basis for economic cooperation between the United States and Latin America. It is true that the fabulous profits of former years will never be reaped again by American enterpreuners; however, future investments will be more in the form of cooperation with the other nations, than the outright exploitation of former years. These investments will, as a result, be less productive but more secure. By bringing political security to the American nations we will in turn bring economic security—the safeguard of investments regardless of nationality.

During the war and since the peace, the United States Government has loaned vast sums to Latin American governments to aid them in the exploitation of their great reserves of natural resources. This expenditure will lay the basis for future private investments in Latin America. The cooperation with Mexico in recent years has proven the far-reaching effect of peaceful settlement of international questions, and should be a shield against future expropriations of foreign investments.
BIBLIOGRAPHY

Books


Denny, Ludwell, We Fight for Oil, New York, Alfred A Knopf, 1928.


Public Documents


The True Facts about the Expropriation of the Oil Companies' Property in Mexico, Mexico City, Government of Mexico, 1940.


Reports


Articles

Beals, Carleton, "Dwight Morrow Agrees with Mexico," The Nation, CXXVI (January 25, 1928), 91-93.

"Calles Calls Us Down," Literary Digest, XCIV (September 24, 1927), 12.

Clark, Reuben, Jr., "The Oil Settlement with Mexico," Foreign Affairs, VI (July, 1928), 602.

Herring, Hubert, "Mexico Claims Its Own," The Nation, CXLVI (April 16, 1938), 440-442.


"Mexico's Move to Confiscate American Property," Literary Digest, XCI (December 11, 1926), 5.


Oil and Gas Journal, XXXVI (February 24, 1938), 88, 226, 241.

Oil and Gas Journal, XLII (October 7, 1943), 40.


"Our Oil Victory in Mexico," Literary Digest, XCV (December 10, 1927), 5-7.


"The Demands for Arbitration with Mexico," Literary Digest, XCII (February 5, 1927), 10-11.

"The Revolt Against Oil," The Nation, CXLVI (March 26, 1938), 346.

"United States-Mexico Pact Does Not End Oil Controversy," Oil and Gas Journal, XL (November 27, 1941), 31.