Mexican Commercial Law, 1854-1884

Robert C. Means
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I. INTRODUCTION

On January 1, 1881, the first Honduran commercial code entered into force. What the event signified for Honduras I do not know. One of the event’s incidental by-products, however, was that Mexico was left as the only Latin American country lacking a national commercial code. This fact is odd enough in itself: in both legal culture and commercial development Mexico ranked among the most advanced countries of Latin America. It is the odder because Mexico had once had a national code, promulgated in 1854. But the code had become caught up in the political cross currents of the period, and in 1867 it was finally repealed as national legislation. In some Mexican states it continued to govern, but in the other states and in the Federal District and territories commercial law reverted to the law of colonial New Spain. This meant principally the commercial ordinances drawn up by the merchants of the Spanish port of Bilbao and promulgated in 1737. The Ordinances had once constituted the basic commercial law for Spain and its empire. In 1881 they governed only in Mexico, and there they continued to govern until the country’s second commercial code entered into force in 1884.

The present study is concerned in the first place with tracing, in broad outline at least, the development of Mexican commercial law from the adoption of the country’s first commercial code in 1854 to the enactment of its second code at the end of 1883. This history consists of three largely separate lines of development: the history of the 1854 code as national legislation, a history that effectively ends with the fall of Maximillian in 1867; the code’s subsequent history as local legislation in a number of the Mexican states; and

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1. ORDENANZAS DE LA ILUSTRE UNIVERSIDAD Y CASA DE CONTRACAOIN DE LA MUY NOBLE Y MUY LEAL VILLA DE BILBAO (INSERTOS SUS REALES PRIVILEGIOS) APROBADOS Y CONFORMADOS POR EL REY NUESTRO SENOR DON FELIPE QUINTO (QUE DIOS GUARDE) AÑO DE (1813) [hereinafter cited as Ordinances of Bilbao.]
the efforts after 1867 to enact a new national code. The problems offered by
the second line of development — the state adoptions of the 1854 code — are
primarily factual. All memory of most of the state adoptions appears to have
been lost to modern scholarship, and as a consequence even the best attempts
to analyze the role of law in the Mexican economy during this period have
rested, to some degree, on false factual assumptions. The pattern of state
adoptions described in this study is still incomplete: for the seven states that
apparently did adopt the code virtually nothing is known beyond the bare fact
of adoption, and as to a majority of the Mexican states it still is not possible
even to say whether they did or did not adopt the 1854 code. Any plausible at-
ttempt to explain the pattern must therefore await additional facts.

The troubled history of the 1854 code down to 1867 and the long delay in
enacting a new national code after that date are, on the other hand, for the
most part well known. However, the explanations offered for them — the
1854 code’s association with the hated Santa Ana, and the constitutional
obstacles to enactment of a new one — appear to be incomplete. Playing a
significant part in both the fate of the 1854 code and the failure immediately to
enact a new one was the incongruence between the scales of Mexican national
time on one hand and world time on the other. Mexico at the middle of the
last century was scarcely beginning to emerge from a medieval legal and socio-
economic order. The transformation occurred, however, within the context of
an expanding capitalist world order. It was this new order that provided the
ideology and legal institutions on which the liberal leaders draw. Transferred

2. Clagett and Valderrama state that “a few of the States” adopted the 1854 code, but they do
not cite any authority, nor do they refer to any specific state adoptions. H. L. CLAGETT & D. M.
VALDERRAMA, A REVISED GUIDE TO THE LAW AND LEGAL LITERATURE OF MEXICO 129 (1973)
[hereinafter cited as CLAGETT & VALDERRAMA]. Similarly, Margadant states that “some of the
states promulgated local commercial codes, inspired in the Lares Code (while the others returned
to the Ordinances of Bilbao).” G. F. MARGADANT S., INTRODUCCIÓN A LA HISTORIA DEL
DERECHO MEXICANO 130 (2d ed. 1976) [hereinafter cited as MARGADANT]. The only specific
references to state adoptions that I have found in the secondary literature are to the states of
Puebla and Veracruz. R. L. MANTILLA MOLINA, DERECHO MERCANTIL. INTRODUCCIóN Y CON-
CEPTOS FUNDAMENTALES. SOCIEDADES 14 (1946) [hereinafter cited as MANTILLA MOLINA]; J.
OLAVARRíA ÁVILA, LOS CÓDIGOS DE COMERCIO LATINOAMERICANOS CON UNA INTRODUCCIóN
DE DERECHO COMPARADO EXTERNO 219 n.13 (1961) [hereinafter cited as OLAVARRíA ÁVILA].

3. See Coatsworth, Obstacles to Economic Growth in Nineteenth-Century Mexico, 83 AM. HIST. REV. 80, 99 (1978), arguing that Mexico in 1877 lacked the legal institutions essential to capitalist
development. The argument quite possibly is correct, but to the extent that a commercial code in
fact governed in a number of Mexican states, it would have to be stated in somewhat different
terms, perhaps emphasizing the distinction between the formal written law and law-in-practice or
the need in a developing country for governmental support going beyond the provision of a
facilitative legal framework.

4. The only addition here made to the standard account is that the 1854 code was briefly put
back into force by General Miramon in 1860, see note 11 infra.

5. Cf. W. EBERHARD, CONQUISTORS AND RULERS: SOCIAL FORCES IN MEDIEVAL CHINA 13-17
(2d ed. 1965); I. WALLERSTEIN, THE MODERN WORLD-SYSTEM: CAPITALIST AGRICULTURE AND THE
to the Mexican milieu, both ideas and laws were apt to acquire both an ideological and a practical significance quite different from that which they had in the European nations where they had their origin.

The study draws upon the historical accounts in Mexican commercial law treatises and other secondary works. To the extent that it adds to those accounts, it is based principally on a survey of the business association cases published in several legal journals of the period and a more selective sampling of the general commercial law cases in these same journals. The journals used are the official Seminario Judicial, which, with the exception of a two-year period, published Supreme Court and some lower federal court opinions continuously beginning in 1870, and several unofficial journals: the Gaceta de los Tribunales and Anales del Foro Mexicano, published during the early 1860's, and El Foro, published continuously beginning in the middle of 1873.

The unofficial journals did not limit themselves to court decisions. A typical issue of El Foro, for example, might contain two or three case reports, an installment of a scholarly article (often translated from a foreign journal), and a miscellany of official notices and editorial comments on the contemporary legal scene. The reasonably systematic survey of the cases therefore has yielded also a quite unsystematic assortment of additional information bearing on the study. Nonetheless, the materials used for the study hardly exhaust the available sources relevant to the questions discussed, and the conclusions reached must therefore be tentative. One general conclusion appears unlikely to be altered by further research, however: the pattern of events and causation for the years here studied is both more complex and more interesting than appears to be assumed in existing historical accounts. Mexico's commercial law did not remain static during the period, nor was its evolution simply a delayed

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6. In general the fullest account appears in CLAGETT & VALDERRAMA, supra note 2. To place commercial law development in the context of general Mexican legal development and general Latin American commercial law development, see MARGADANT, supra note 2; ÓLAVARRÍA ÁVILA, supra note 2.

7. The journal was established under Decree of Dec. 8, 1970, published following the title page of its first volume. Volumes 1 through 7 were published 1871-1876, and then no additional volumes were published until 1881; when publication was resumed the first volume was designated as volume 1 of the segunda época. The 1870 decree called for publication of the final decisions of the federal courts since the reestablishment of the republic in 1867. However, few if any of the decisions in volume 1 date from before 1870. Lower federal court decisions are published through volume 3 of the segunda época but only in connection with the decision of the Suprema Corte on appeal; lower court decisions not appealed to the Suprema Corte thus are not reported, and beginning with volume 4 of the segunda época, lower court decisions are not published even in connection with decisions of the Suprema Corte.

8. The Gaceta was established in 1860 and published through June 13, 1863, when the republicans abandoned Mexico City before the French and conservative forces. The Anales was established in 1864 and continued publication through March 3, 1866. See CLAGETT & VALDERRAMA, supra note 2, at 408 nn.7, 8. For the present study this writer had available a complete set of the Gaceta but only volume 1 of the Anales, covering the last four months of 1864.
copy of European legal development. It was Mexican legal development, shaped in significant part by Mexican forces.

II. THE 1854 CODE AS NATIONAL LEGISLATION

Most of the nations of Latin America first codified their commercial law around the middle of the last century, and with few exceptions did so by adopting a foreign code with relatively minor modifications. Mexico's first code was of the general pattern. Promulgated in 1854, it has been variously characterized as based on both the Spanish and French commercial codes and as being "sino una copia revisada y corregida del Español de 1829." That the latter view at least is wrong is apparent from even a cursory comparison of the Spanish and Mexican codes. It was, however, in no sense an original juridical work. Most of its structure clearly was Spanish; probably so, too, were most of its articles.

The work appears to have been the work of a single man, Teodosio Lares, Minister of Justice in Santa Ana's eleventh and last administration. The

9. The first issue of El Foro appeared on June 1, 1873, and it was published continuously during the period of this study, although volume 3, covering the second half of 1874, was not available to this writer in preparing the study. The eighth volume of El Foro is designated as the first volume of the segunda época. However, beginning with El Foro's sixteenth volume (which would have been volume 9 of the segunda época), the "segunda época" numbering was abandoned except for the title page of each volume. See Advertencia, 16 El Foro 1 (Jan. 1, 1881).

A significant legal journal of the period that has not been surveyed for this study is El Derecho, published from 1868 to 1872 during the period here studied and then again from 1890 to 1903. CLAGETT & VALDERRAMA, supra note 2, at 425 n.4.

10. 1 J. PALLARES, DERECHO MERCANTIL MEXICANO 261 (1891) [hereinafter cited as PALLARES] (only the first volume of this work appears ever to have been published).

11. 1 F. DE J. TENA, DERECHO MERCANTIL MEXICANO (CON EXCLUSION DEL MARTIMO) 48 (3d ed. 1944); Prudhomme, Le Code de Commerce Mexica, Pedone Lauriel, Paris, 1894, at XXI, quoted in Olavarría Ávila, supra note 2, at 219 n.11. A variation on this view is that of Clagett and Valderrama: "The code consisted of 1,091 articles arranged in an adaptation of the form of the Napoleonic Code of 1808 but also showed strong influences of the 1829 Spanish Code in this field." CLAGETT & VALDERRAMA, supra note 2, at 128. This statement seems clearly to be wrong: The 1854 code may have been influenced by the French code, but its basic structure is unmistakably Spanish rather than French.

12. Compare CÓDIGO DE COMERCIO DE MEXICO [C COM] (1854) with CÓDIGO DE COMERCIO DECRETADO, SANCIONADO Y PROMULGADO EN 30 DE MAYO DE 1829 (nueva ed. 1829). Both codes contain the same five books; but Book III of the Mexican code, governing bankruptcy, has been extensively altered or perhaps is not even based on the Spanish code, and other parts of the Mexican code appear to have no direct Spanish counterpart. E.g., C COM bk. I, tit. 1; bk. III, tit. 3, § 4. Presumably the Mexican code did not reflect a very high order of originality, but it was significantly more original than the Colombian code that had been promulgated a year earlier. See Means, Codification in Latin America: The Colombian Commercial Code of 1853, 52 TEX. L. REV. 18 (1973) [hereinafter cited as Means].

13. The code is universally attributed to Lares, and I have found no suggestion that anyone assisted him in the work. See e.g., Margadant, supra note 2, at 154; PALLARES, supra note 10. Even minimal details regarding the drafting process are lacking, however, nor does there appear to exist any biographical treatment of Lares himself more extensive than those appearing in general reference works. See Lares, Teodosio, in DICCIONARIO PORR UÁ DE HISTORIA, BIOGRAFÍA Y GEOGRAFÍA DE MÉXICO 1159 (4th ed. Mexico 1976). Of his legal background, the Diccionario
political connection was unfortunate. The code was promulgated on May 1, 1854. Fifteen months later the Santa Ana regime collapsed in the face of advancing liberal forces; the commercial code outlived the regime by less than four months. It was not merely the chance link to the Santa Ana government that doomed it, however. The code's fate has generally been attributed to its link to Santa Ana, but that explanation appears to be at least incomplete. No doubt the code's provenance caused the liberals to view it with suspicion, but the liberals' accession to power brought no general repeal of Santa Ana's legislative work. What brought the code down was its relationship to the fueros possessed by the major corporate groups of Mexican society. The fueros typically involved both special substantive rules, more favorable than those of the general civil and penal law, and special courts to administer them. The issue of the fueros' continued existence was one of the major fault lines dividing Mexico's elite in the political struggles leading up to Santa Ana's final turn in power, and they were the target of the first of the liberal Leyes de Reforma enacted after his fall, the Law Juarez, promulgated November 23, 1855.

The law on its face was no more than incidentally concerned with the substantive commercial law. It was officially entitled the Ley sobre administracion de justicia y organica de los tribunales de la nacion, del distrito y territorios, and it was, as its title suggests, primarily concerned with procedure and court organization. Four articles are relevant here:

Art. 1. Until the administration of justice in the nation is definitively arranged, the laws that governed in this field on December 31, 1852, will be observed, with the modifications established by this decree.

merely states that in his youth he "marché a Mexico [City] para hacer la carrera de leyes." Nothing in his background suggests any experience with commercial law. This would suggest that he at least received substantial advice in preparing the code, but there is no direct evidence of this.

14. Discussions of the reasons for the liberal attack on the 1854 code are quite brief, and it is unclear whether liberal antipathy towards Santa Ana is being put forward as the explanation for the entire attack on the code, including its provisions establishing commercial tribunals, or only as the explanation for the extension of the attack to the code's substantive provisions. If the former is meant, the argument seems certainly to be wrong. In the latter version the argument is more plausible but is still, in this writer's view, an incomplete description of the forces that led to the code's repeal.

The question of the motives behind the code's repeal must be distinguished from the question whether the 1856 communication of the Minister of Justice fairly interpreted the purpose of the 1855 law. Mantilla Molina argues that the law itself merely repealed the code articles relating to commercial tribunals, supra note 2, at 13, and he is of course supported by the law's literal text. Probably the contemporary interpretation of the 1855 law was the broader one, however. As discussed in the text, the 1856 communication treated repeal of the code at the national level as an unquestioned fact; the issue with which it dealt was whether the code could be reenacted by a state.

15. 7 LEGISLACION MEXICANA O COLECCION COMPLETAE DE LAS DISPOSICIONES LEGISLATIVAS EXPEDIDAS DESDE LA INDEPENDENCIA DE LA REPUBLICA 598, no. 4572 (M. Dublan & J. M. Lozano eds.) [hereinafter cited as LEGISLACION MEXICANA].
Art. 42. The special tribunals are abolished, with the exception of the ecclesiastical and military tribunals. The ecclesiastical tribunals will cease to have jurisdiction in civil matters, and will continue having jurisdiction over the common offenses of the individuals of their fuero, pending the enactment of a law regulating this point. The military tribunals will also cease to have jurisdiction in civil matters, and will have jurisdiction only over the purely military offenses or the mixed offenses of the individuals subject to the fuero of war. The provisions of this article are general for all of the Republic, and the States may not vary or modify them.

Art. 45. The regular civil courts will have jurisdiction over commercial and mining matters and will decide them under the ordinances and laws peculiar to each field. . . . The provisions of this article . . . are general for all of the Republic.

Art. 77. All of the provisions regarding administration of justice promulgated from January of 1853 until the present date are invalid and without any effect.16

The commercial tribunals thus were abolished, and Book IV of the code, which established and regulated them, was effectively repealed. Unlike the special military and ecclesiastical courts, which continued to exist but with a reduced jurisdiction, those for commerce were deprived of all function, their jurisdiction transferred to the ordinary civil courts. But what of the remaining four books of the code, which set out the substantive commercial law?

Under the Ley Juárez, commercial matters, like those concerning mines, were to be governed by “the ordinances and laws” peculiar to them, and if any law was peculiar to commerce, it surely was the Código Lares. Nor would the code seem to fit the language of article 77’s general repealer. The code’s provisions were of course concerned with the administration of justice in the sense that they were intended to be applied in the courts. In that sense, however, virtually every law and decree enacted since the beginning of 1853 would have been included within the repeal, and that fairly clearly was not the intent.

For practical purposes the doubts regarding the implications of the Ley Juárez for the commercial code were ended the following year. In December of 1855, the governor of one of the states — which one is not known — apparently had responded to the Ley Juárez by promulgating the code as state law.17 Subsequently, one of that governor’s successors inquired of the national government whether this act was valid, and on October 19, 1856, the federal Minister of Justice replied:

16. Id. (translation by the author). Unless otherwise noted all translations are by the author.
17. The only source of information regarding this incident is the text of the communication of October 29, 1856, quoted immediately below in the text. See note 18 infra and accompanying text.
To the inquiry that Your Excellency makes in your communication of the 24th of the present month, concerning whether the Commercial Code promulgated March 16, 1854, should be considered to be in force in that State by reason of having been adopted by one of your predecessors in the decree of December 3rd of last year, although with some limitations; the Very Honorable acting president, in use of the powers with which he is invested, has seen fit to declare: that the cited code was repealed by arts. 1 and 77 of the law of November 23rd of last year; that for this reason, the cited decree of December 3rd is invalid, and in commercial matters the laws anterior to the year of 1853 should govern in all of the Republic. 18

That the _Ley Juarez_ repealed the code at the national level appears not to have been questioned and is, indeed, implicit in the code’s adoption by the unknown state. Under the interpretation of the Minister of Justice, the law also barred commercial codification by the Mexican states.

If the Minister’s interpretation effectively confirmed the fact of the code’s repeal, it does little to explain why. Abolition of the commercial tribunals was an integral part of the structure and purpose of the _Ley Juarez_; their abolition was related to Santa Ana only in the sense that Santa Ana had become the leader of the party supporting the continued existence of special courts and laws. To a modern mind, however, the substantive provisions regulating negotiable instruments and business associations belong to a world wholly removed from that of clerical and military privilege. There is, indeed, from a modern standpoint, a nice irony in the code’s repeal: Benito Juarez, the Man of Laws, struck down Mexico’s first modern law of commerce. The irony is, however, anachronistic.

The nineteenth-century commercial codes occupied an ambivalent historical position. Functionally, they laid the legal basis for a modern capitalist economy; within the civil law tradition, it is in the commercial codes that a general statutory framework for the modern business corporation was first created. Historically, however, the codes were among the last remnants of the medieval corporate legal order, the special statute of a group defined by law and economic function. In Europe by the middle of the nineteenth century the commercial codes’ modern functional role appear to have obliterated any politically effective memory of their historic roots, but in Mexico this was not yet true. The legal status of traditional corporate groups was an important issue in Mexico in 1855; the special legal requirements of a modern capitalist economy were not. Hatred of Santa Ana was perhaps not irrelevant. It may explain why the code was repealed and the Ordinances of Bilbao were left standing. 19 If so, however, the hatred was embedded in a world view in which

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19. The attack was in fact subsequently extended to The Ordinances of Bilbao as well. See note 35 infra.
a commercial code could appear less a vehicle for Mexico's modernization than a vestige of its colonial past.

The liberal victory was not yet final, however. In 1860 the conservative general Miramon was in control of Mexico City and Teodosio Lares again occupied the position of Minister of Justice. On September 12 the civil courts were directed to apply the 1854 code pending the reestablishment of special commercial tribunals.20 Miramon soon fell, but in 1862 the French captured Mexico City and placed Maximilian on the throne of the new Mexican Empire. In 1863 the Código Lares was decreed to be in force for the third and last time.21

III. THE STATES, THE CODE AND THE CONSTITUTION

Historical accident and ideology had combined to link the Código Lares to the conservative side in the battle for Mexico, and the final defeat of that side in 1867 marked also the end of the code as national legislation. Maximilian's 1863 government decree was never expressly repealed. No repeal was necessary. Maximilian's Government had been, in the eyes of Juarez, wholly illegitimate, and its legislative acts were expunged from the pages of official legal history, not merely repealed but deemed void \textit{ab initio}.22

In some of the Mexican states, however, most of the code's history still lay before it. At least one state had sought to adopt the 1854 code after its first repeal in 1855.23 Now, following Maximilian's fall, Puebla adopted the code in June of 1868,24 and the legislature of the state of Mexico followed suit the following month.25 Guanajuato and Veracruz adopted the code some time before 187326 and Aguascalientes some time before 1876,27 and presumably

23. \textit{See} notes 17, 18 \textit{supra} and accompanying text.
25. Judgment of April 17, 1874, Tribunal Superior de Justicia del Estado de Mexico, primera sala, Toluca, \textit{4 EL FORO} 314 (April 30, 1875). According to the court, the state civil procedure law of July 11, 1868, art. 625, provided that the "Código de comercio se observe en toto no se oponga a la Constitucion general y a la del Estado."
26. \textit{See} Judgment of Sept. 27, 1873, Suprema Corte, Mexico, [1873] 4 Seminario 895; Judgment of Sept. 3, 1875, Distrito del Estado de Veracruz Llave, \textit{5 EL FORO} 241 (Sept. 12, 1875). In the first case, \textit{amparo} was sought against a bankruptcy proceeding under the Guanajuato commercial code, but the petitioner does not appear to have challenged the validity of the code. The second case also involved a petition for \textit{amparo}, but in this instance the petitioner (successfully) challenged the validity of the Veracruz commercial code. The 1873 date is based on the date of the Supreme Court decision in the Guanajuato case and on the date of the first state court proceeding referred to by the federal district court in the Veracruz case.
27. Judgment of July 29, 1878, Distrito del Estado de Aguascalientes, \textit{4 EL FORO} (2a época)
the code continued to govern in Hidalgo and Morelos after those states were carved out of Mexico in 1869. 28 On the other hand, Coahuila, Durango and Jalisco did not adopt the code, 29 nor, apparently, did the Yucatan. 30

Of the remaining states nothing is now known. The evidence for state adoptions is drawn principally from published commercial law cases. Such cases are most likely to arise in commercially active states, which presumably also are the ones most likely to adopt a commercial code. The eleven states mentioned above therefore cannot be treated as a fair sample of the twenty-seven states forming the Mexican federation. At most, the proportion of code adoptions among the eleven might be treated as a plausible upper limit for the federation as a whole; this would imply that the code governed in somewhere between seven and eighteen states. 31 In the other states and in the Federal District and territories commercial matters were still covered by the Ordinances of Bilbao.

This pattern, complex enough in itself, was further complicated by doubts regarding the constitutional validity of the state codes and, to a lesser extent, of the Ordinances of Bilbao as well. The broadest challenge was based on Article 13 of the 1857 Constitution:

In the Mexican republic, no one can be judged by private laws, nor by special tribunals. No person nor corporation can have fueros, nor enjoy emoluments that are not compensation for a public service and determined by law. The fuero of war continues to exist solely for the offenses and infractions that have a precise connection with military discipline. The cases of this exception will be clearly fixed by law. 32

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150 (Aug. 23, 1878). The adoption of the code by Aguascalientes is perhaps linked to the close association of Teodosio Lares with that state. See note 13 supra.

28. On January 15 and April 16, 1869, respectively. F. TENA RAMíREZ, LEYES FUNDAMENTALES DE MEXICO 1808-1957, 697 (1957) [hereinafter cited as TENA RAMíREZ]. Thus, both states were created after the state of Mexico had adopted the 1854 code.

29. The Ordinances of Bilbao were applied by a Coahuila court in 1880 and by Jalisco courts in 1876 and 1883, and they were also involved in a petition for amparo from the state of Durango that reached the federal Supreme Court in 1875. Judgment of Jan. 31, 1880, Tribunal Superior de Justicia del Estado de Coahuila de Zaragoza, segunda sala, Saltillo, 7 EL FORO (2a época) 437, 442 (June 12, 15, 1880); Judgment of Aug. 14, 1876, Tribunal de Justicia del Estado de Jalisco, 7 EL FORO 214 (Sept. 16, 1876); Judgment of June 1, 1883, Tribunal Superior de Circuito de Guadalajara, 21 EL FORO 5 (July 4, 1883); Judgment of Dec. 1, 1879, Suprema Corte, Mexico, [1879] 7 Semanario 186. For Jalisco, see also Revista de los Estados, 2 EL FORO (2a época) no. 32 (Aug. 23, 1877), quoting La America of Guadalajara.

30. The evidence for the Yucatan is less direct, consisting of an 1879 article published in La Revista de Merida arguing for the continued force of the Ordinances of Bilbao (against the argument that the state had no commercial legislation) and making no mention of a state commercial code. Manzanilla, Legislacion mercantil, 6 EL FORO (2a época) 79 (July 26, 1879), reprinted from La Revista de Merida.

31. If Morelos and Hidalgo are excluded because they presumably obtained the code by inheritance, five of the remaining twenty-five states are known to have adopted the code and three are known not to have done so. Applying the 5:3 ratio to the twenty-five states gives an upper limit of sixteen code adoptions, and adding Morelos and Hidalgo brings the limit to eighteen.

32. CONSTITUCION DE 1857 art. 13, in TENA RAMíREZ, supra note 28, at 608.
The article raised the policy of the Ley Juarez to the level of constitutional principle, and unlike the 1855 law, it contained no language exempting the Ordinances of Bilbao. If its prohibition extended to the 1854 code, presumably it extended to the ordinances as well.

The problems lay in the article’s first sentence, which forbade both “private laws” and “special tribunals.” The question whether commercial tribunals would constitute special tribunals within the meaning of Article 13 had been mooted by the Ley Juarez itself, which had expressly abolished such courts and transferred their jurisdiction to the ordinary courts. Even the states that adopted the 1854 code appear to have made no attempt to reestablish the commercial courts. A special substantive commercial law remained, however: the 1854 code in some states and the Ordinances of Bilbao elsewhere. The question was, did the special rules of the code and ordinances constitute “private laws”?

The Article 13 argument was raised in at least two reported cases. In the first, an 1874 case, a debtor in the state of Mexico used the argument to challenge the validity of the state commercial code under which his bankruptcy proceeding was being conducted. Two years later the Tribunal Superior of the Federal District was faced with the argument in connection with the efforts of creditors to foreclose on a debtor's property under the Ordinances of Bilbao. Both courts rejected the argument and on substantially the same ground: that the commercial law rules being applied were not a special law but were applicable to all persons. Possibly the argument was made in other reported cases; almost certainly it was made in unreported ones. But it must seldom, if ever, have met with success. The rationale of the Mexico state court and District Tribunal Superior appears to have accorded with the accepted interpretation of Article 13. In the end, moreover, the argument was simply

33. Puebla expressly excluded the code provisions establishing commercial tribunals from its adoption of the code, see 3 RECOP. DE LEYES, supra note 22, at 139, and the fact that none of the other post-1867 cases surveyed for which a state court can be identified involved a special commercial tribunal suggests that the other states adopting the code did likewise.

34. Judgment of April 17, 1874, Tribunal Superior de Justicia del Estado de Mexico, primera sala, Toluca, 4 EL FORO (2a época) 314 (April 30, 1875).

35. Judgment of Feb. 23, 1876, Tribunal Superior de Justicia del Distrito, Mexico, 6 EL FORO (2a época) 153 (Feb. 29, 1876); cf. Judgment of June 18, 1882, Civil, Mexico City, 21 EL FORO 45 (July 18, 1883); Counsel for one of the parties argued that the ordinances are no longer in force “por el cambio de nuestro ser politico.” The court rejected the argument, noting counsel’s failure to cite any constitutional or statutory provision repealing the ordinances.

36. This writer’s survey of the reported cases purports to be exhaustive only for business association cases, but through the journals’ indices I have also sought to examine every case either involving a state commercial code or concerning the general validity or applicability of the Ordinances of Bilbao. Any case involving the Article 13 argument thus should have been included.

37. See R. RODRIGUEZ, DERECHO CONSTITUCIONAL ESCRITO PARA SERVIR DE TEXTO A LOS ALUMNOS DEL COLEGIO MILITAR 385 et seq. (2d ed. 1875); M. CORONADO, ELEMENTOS DE DERECHO CONSTITUCIONAL MEXICANO 31-33 (1887).
too ambitious. If accepted, the argument would have brought down the entire structure of commercial law throughout Mexico and would have effectively foreclosed its reconstruction without a constitutional amendment. It was one thing to strike down a single state's commercial code and throw its merchants back upon the Ordinances of Bilbao; it would have been quite another to leave not only provincial merchants but also the merchant community of Mexico City with nothing but the general rules of the civil law.

A second and much narrower constitutional challenge to the code and ordinances was directed at their bankruptcy provisions, which were argued to violate constitutional guarantees by permitting the modification of contract rights without the consent of the creditor. The argument was first put forward in connection with the Puebla commercial code. On June 24, 1868, the Puebla legislature had declared the Código Lares to be in force in the state. To avoid constitutional difficulties, the legislature had excluded from its declaration the code provisions establishing commercial tribunals and also any other provisions that might conflict with the federal constitution. On the 28th of the following month the Ministry of Justice directed a communication to the state governor. It was a rambling document and a rather odd one, not a decree or even a resolution but merely a set of arguments for the governor's consideration, "so that if you consider them well-founded you will initiate the respective clarification or amendment of the cited decree." With respect to the code's bankruptcy provision, the Minister referred in general terms to the manner in which the conflict between contract rights and bankruptcy had been resolved in the United States. Presumably he favored a similar resolution for the state code, but the point was not pursued in the communication.

Whether the Puebla legislature complied with the Ministry's suggestions is not known: after the July 28th resolution the Puebla code and its constitutional difficulties make no further appearance in the sources examined. Bankruptcy law was again attacked on constitutional grounds in an 1875 speech before the Colegio de Abogados in Mexico City. The speech is

38. See notes 52-54 infra.
39. The 1857 Constitution had no contracts clause. The federal Ministry of Justice in its Communication of July 28, 1868, regarding the Puebla code, 3 Recop. de Leyes supra note 22, based the argument on the prohibition against ex post facto legislation in Article 14. In a speech given before the Colegio de Abogados de Mexico seven years later, it was the power of the majority of creditors to bind the minority in bankruptcy proceedings under the Ordinances of Bilbao that was deemed to violate the constitutional guarantee, which evidently was considered to be implicit in Article 27's prohibition against taking property without compensation. Gomes Parada, Historia del comercio y de su legislacion, 5 El Foro 401, 402 (Oct. 31, 1875), (disertación read before Colegio de Abogados de Mexico, Oct. 23, 1875) [hereinafter cited as Parada].
40. See 3 Recop. de Leyes, supra note 22, at 139.
41. Id.
42. Id.
43. Parada, supra note 39.
significant as evidence that the argument then still had some intellectual currency and also because it was this time directed against the Ordinances of Bilbao; but neither the fact of the speech nor its content does anything to establish the argument's continued practical force. On the whole, it seems likely that, in this respect at least, the 1868 communication was a sport and that the argument soon thereafter ceased to constitute a significant practical obstacle to state commercial codification.

The immediate source of the most serious constitutional problems did not lie in the constitution's individual guarantees but in the constitutional supremacy of the federal government. The federal supremacy argument had two bases. One was the Ley Juarez, which had already in 1856 been interpreted to bar state commercial codification. The second was the constitutional allocation of legislative power between the national and state governments. The national government's power in the commercial field was defined by Article 72(X), which empowered the Mexican congress "to establish the general bases of the mercantile legislation." Just what was intended by this language appears to be unknown. What was in fact accomplished was to call into question not only the power of the states but also that of the national government to enact general commercial legislation.

The specific source of the difficulty was the phrase, "general bases." The language was not new to Mexican constitutional law: the 1836 constitution had empowered the national congress "to give the government general bases and rules for the habilitation of all classes of ports"; similarly, an 1842 constitutional proyecto empowered it "to decree bases for the acquisition of real property by foreigners." As the two examples suggest, however, prior to 1857 the phrase had been used to indicate that the national congress had the power to act in an area but that it should delegate the detailed exercise of that power to the national administration. But Article 72(X) was not concerned with delegation: at no time did anyone suggest that the congress should establish a general framework of commercial legislation within which the national executive could issue detailed rules. Article 72(X) defined not merely the limits of federal legislative power but the limits of federal power of any

44. Constitucion de 1857 art. 72(X), in TenA Ramirez, supra note 28, at 618. The 1824 constitution had contained a commerce clause (Art. 49 (XI) translated directly from the United States Constitution. Its language is said to have been unduly vague, and it therefore was replaced by three more specific provisions: Article 72(X), Article 72(IX), quoted infra at text accompanying note 48, and Article 72(XV), which empowered the national government to regulate maritime commerce. 3 Recop. de Leyes, supra note 22, at 139. The latter two provisions were reasonably clear. Article 72(X), however, was worse than vague, since it threatened to prevent both national and state government from enacting a commercial code.

45. Leyes Constitucionales (Mex. 1836), ley tercera, art. 44(X), in TenA Ramirez, supra note 28, at 219.

46. Segundo proyecto de Constitucion art. 70(XXXVI) (1842), in TenA Ramirez, supra note 28, at 388.
kind; beyond that limit lay not the rule-making authority of the national administration but the legislative power of the states.

The phrase "general bases" on which state-federal boundary depended is hardly a precise one, but it is perhaps no vaguer than those that have grown up around the Commerce Clause in United States constitutional law. The problem with Article 72(X) lay not so much in the vagueness of its language as in the nature of the thing divided. The problem can perhaps most easily be seen by comparing the provision with the preceding fracción, Article 72(IX), which empowered the Congress "to impede by means of general bases, that onerous restrictions are established in the commerce between one state and another." Under Article 72(IX), the Mexican congress could legislate to prevent what would in the United States be called undue burdens on interstate commerce, but it was required to do so by means of general rules rather than on a case-by-case basis; within the limits imposed by those rules, states could then legislate for their own independent purposes. In the field of commercial law governed by Article 72(X), however, both the national and state governments would be regulating the same activity and would be doing so for broadly similar purposes. By employing the phrase "general bases" in a context involving neither delegation to a subordinate administrative power nor separation of two essentially independent legislative activities, the constitutional draftsman had created the danger that no one would possess the constitutional authority to legislate effectively in the commercial field.

If the limiting language of Article 72(X) meant anything, a complete regulation of commercial activity was beyond the power of the federal government. The extent of the federal power depended on the meaning given to the phrase "general bases." On any reasonable interpretation, however, its power to enact a commercial code was at least open to serious question, and this constitutional question played some role in Mexico's long delay in enacting a new national code, discussed in the next section. The implications of Article 72(X) for the state commercial codes were less clear. If the national legislative power to enact general bases was considered to be exclusive, state commercial codification was even more effectively barred than was national codification. Article 72 made no reference to exclusivity. The constitutional validity of the state commercial codes turned on whether exclusivity should be implied.

The Article 72(X) argument was raised in the 1868 communication regarding the Puebla code, but in a vague and inconclusive fashion. The issue was

47. U.S. Const. art. 1, § 8.
48. Constitución de 1857 art. 72(IX), in Tena Ramírez, supra note 28, at 618.
49. The communication in fact refers to Article 85, but it seems that it is Article 72 that is meant. Article 85 sets out the powers of the President and makes no reference to commercial legislation.
first sharply drawn with respect to the Veracruz Code. The city of Veracruz had been Mexico’s principal port since early in the colonial period, and even in the years of the República Restorada its lawyers were, to judge from the reported cases, more than a match for those of Mexico City in the commercial law field. It is not surprising that the state was one of those adopting the Código Lares.

The conflict over the code’s validity appears to have been confined to a period of less than a year during 1875 and 1876. It first arose in an action to collect on a pagare’ issued in 1857 by José Febrero Loredo.50 In 1862 Andrés López brought suit in the Tribunal Mercantil, which declared its willingness to attach Febrero’s goods if López would find them and denounce them to the court. There appears then to have been no further proceeding until 1873, when López brought suit in Veracruz state court, stating that Febrero had goods in the jurisdiction and seeking to have them attached to satisfy the pagare’. The state court dismissed the claim on the ground that the statute of limitations provided for such claims in the 1854 commercial code had run. On appeal before the state Tribunal Superior de Justicia, López argued that his action was not based on the pagare’ but on the 1862 decision of the Tribunal Mercantil, for which the prescribed period was twenty years. He further argued that the case should be governed by the laws in force when the obligation was issued and not by the commercial code.

The Tribunal Superior affirmed the decision. López sought amparo in the federal district court for Veracruz. By the standards of United States constitutional law, the case seemingly did not present the question of the code’s constitutional validity. From the district court’s summary account — the only one that we have — it appears that López had not raised the constitutional argument in state court but had merely argued that the commercial code was not in force in 1857 and therefore should not govern the obligation. In any event the latter argument seemingly offered a sufficient ground for granting him relief51 without calling into question the validity of the code. The district court appears not to have been well schooled in the passive virtues, however. It held that the application of the commercial code constituted both a violation of the individual rights of López and an invasion of the sphere of federal power.52 The state code violated Articles 1 and 77 of the Ley Juárez and, in addition, Article 72(X) of the 1857 constitution; the latter gave the national congress the

50. Judgment of Sept. 3, 1875, Distrito del Estado de Veracruz Llave, Veracruz, 5 EL FORO 241 (Sept. 12, 1875).
51. Relief presumably could have been granted under Article 14 of the Constitution, which prohibited ex post facto legislation.
52. These were two of the three grounds justifying amparo under Article 101 of the federal constitution and Article 1 of the Law of Jan. 20, 1869, 10 LEGISLACION MEXICANA, supra note 15, at 521, no. 6515. The third ground was invasion of the sphere of state sovereignty by the federal government.
power to establish the general bases of the commercial law, and the states therefore could not legislate "sobre este punto." The petition for amparo was granted.54

The district court's opinion was handed down in September of 1875. The following May the issue came again before the same federal judge.55 Amparo this time was being sought by the defendant in a bankruptcy proceeding under the state commercial code. In a short opinion the judge again held that the commercial code was not in force in Veracruz, this time citing only the Ley Juárez. Amparo again was granted. There the constitutional challenge ended, at least in the reported cases. Towards the end of 1877, the Tribunal Superior of Veracruz handed down an opinion dealing with the obligation of the endorser of a negotiable instrument.56 The decision turned on the meaning of Article 445 of the commercial code, but the court made no reference to the amparo decisions holding the code invalid. Nor is there any indication that counsel for either party raised the constitutional argument. The court discussed at some length the article's meaning, but the code's constitutionality was implicitly treated as a matter beyond question.

In February of 1878 another negotiable instrument case came before the Tribunal Superior, and the pattern was repeated: the code was cited and its meaning expounded with no hint of doubts regarding its constitutional validity.58 It is possible that the Tribunal's casual attitude towards the constitutional issue was linked to the massive turnover in the federal judiciary at the end of

53. The court supported its conclusion regarding the exclusivity of the federal power under Article 72(X) by citing Articles 117 and 126 of the Constitution. Article 117 provided that powers not expressly granted to federal officials were reserved to the states, while Article 126 established the general supremacy of the federal constitution over state law. They thus established that if the Article 72(X) power was exclusive it would not be reserved to the states, and any state exercise of the power would be invalid, but they did nothing to establish its exclusivity.

54. There is no indication whether the amparo granted in this case and in the one discussed immediately below in the text were effective. If the district court judge was soon replaced by one less sympathetic to the claim of the code's invalidity, see note 58 infra, it seems not unlikely that the amparo simply was ignored, especially in the case of López, where the amparo order required action rather than inaction on the part of the state courts.

55. Judgment of May 27, 1876, Distrito del Estado de Veracruz Llave, Veracruz, 7 El Foro 10 (July 5, 1876).

56. This was, however, only one of three grounds for granting the petition. The first two grounds were that the state court in question lacked jurisdiction over the case and that "no [esta] vigente en el Estado el Código mercantil en lo relativo a la calificación de quiebra y castigo del delincuente." The quoted language suggests that some of the code's bankruptcy provisions were excluded from the state law adopting the code. (It should be noted that the existence of this putative state law can only be inferred from the cases applying the code or declaring it invalid; the law is not even cited in the opinions.)

57. Judgment of Nov. 27, 1877, Tribunal Superior de Justicia de Veracruz, 3 El Foro (2a época) 41 (Jan. 18, 1878).

58. Judgment of Feb. 5, 1878, Tribunal Superior de Veracruz, Jalapa, 3 El Foro (2a época) 182 (Mar. 9, 1878).
1876 as a result of the victory of the forces of Porfirio Díaz.\textsuperscript{59} Its lack of concern appears in any event to have been justified, for the reported cases show no further successful challenge to the code. Of the other state codes, only that of Aguascalientes appears to have been directly challenged under Article 72(X) in the reported cases; the Mexico and Guanajuato state codes were involved in \textit{amparo} suits, but apparently without the Article 72(X) issue being raised;\textsuperscript{60} and I have found no state or federal case involving the other codes. In the Aguascalientes case, decided in 1878,\textsuperscript{61} Wenceslao Azpeita sued Luis Soto in state court on a \textit{libranza}. As a result of the suit, an urban property belonging to Soto was attached. Soto petitioned the federal district court for \textit{amparo}, arguing, \textit{inter alia}, that the proceeding was improperly subjected to the 1854 commercial code. The district court denied the petition: A special commercial legislation is needed for “the prompt and expeditious progress of commercial speculations, credit and transactions demanded by enterprises and business associations”; hence, while the national congress does not act, this need has been met by the existing commercial legislation (presumably meaning the Ordinances of Bilbao) or that enacted by the states, “this being the reason why the state and federal tribunals have respected the special laws that have been enacted on this subject and have not deemed them to violate the guarantees established by the Constitution.”\textsuperscript{62}

The fact that one federal tribunal recently had been quite disrespectful of a state commercial code was not mentioned by the Aguascalientes court. Nonetheless, the reported cases give no reason to doubt its statement that by 1878 an effective judicial consensus did exist that the state commercial codes were constitutionally valid. The consensus perhaps did not extend to the national executive. The González administration apparently argued that the legislative power conferred by Article 72(X) was exclusive with respect to banking,\textsuperscript{63} and logically the argument should have applied with equal force to general commercial legislation. However, if the broader argument was made it appears to have won no acceptance in the courts. Subsequent to the two successful challenges of the Veracruz code, state commercial codes were involved in six reported cases among those surveyed. In the Aguascalientes case, the

\textsuperscript{59} In the federal district there appears to have been a complete turnover in the judiciary. \textit{See}, \textit{e.g.}, items appearing at 7 \textit{EL FORO} 405, 413, 423, 449, 450 (1876). Presumably there was also substantial turnover outside the federal district as well.

\textsuperscript{60} Judgment of June 14, 1879, Distrito del Estado de Mexico, Toluca, 6 \textit{EL FORO} (2a época) 3 (July 1, 1879); Judgment of June 13, 1879, Distrito del Estado de Mexico, Toluca, 6 \textit{EL FORO} (2a época) 2 (July 1, 1879); Judgment of Sept. 27, 1873, Suprema Corte, Mexico, [1873] 4 \textit{Seminario} 895.

\textsuperscript{61} Judgment of July 29, 1878, Distrito del Estado do Aguascalientes, 4 \textit{EL FORO} (2a época) 150 (Aug. 23, 1878).

\textsuperscript{62} \textit{Id.}

\textsuperscript{63} \textit{See El proyecto de ley general sobre Bancos de emision}, 20 \textit{EL FORO} 157 (March 1, 1883), criticizing the national government’s position.
constitutional challenge was expressly rejected; in the other five there is no indication that it was even raised.\textsuperscript{64} Any generalization regarding the constitutional challenge to the state commercial codes must be tentative. For the seventeen years between Maximillian's fall and the enactment of a new national commercial code, the surveyed cases include only eleven involving a state commercial code. Of the seven states for which there is some evidence of code adoption, only four are represented in the cases. In only three of the cases were constitutional arguments expressly considered, and none of these appears to have been appealed to the national Supreme Court.\textsuperscript{65} It appears, however, that in the end no state commercial code ceased to be applied by reason of an asserted conflict with the federal constitution or with federal legislation. If the 1854 code was not universally adopted by the Mexican states, the reason was not to be found in the 1857 constitution but in the fact that the legislatures of many states chose not to act.

IV. ENACTMENT OF A NEW NATIONAL CODE

A. A Short History

For more than a decade following Maximillian's fall, efforts to enact a new national commercial code proceeded with little sense of urgency. The Minister of Justice appointed a three-man codification commission in 1867.\textsuperscript{66} Work was slowed by personnel changes, but by the end of 1869, Book I and part of Book II were complete.\textsuperscript{67} The project continued to progress only slowly, however.

\textsuperscript{64} The five are the two Veracruz cases cited in notes 57, 58 supra; the two Mexico cases cited in note 60 supra; and an additional Mexico case: Judgment of Aug. 8, 1878, Primera Instancia del Distrito de Chalco, Chalco, 4 El Foro (2a época) (Aug. 31, 1878).

\textsuperscript{65} The Guanajuato state commercial code was cited in the district court opinion and in the argument of the promoter fiscal accompanying the opinion of the Suprema Corte cited in note 60 supra, but the code's constitutionality was not discussed. The code was not even cited in the opinion of the Suprema Corte.

\textsuperscript{66} \textit{Memoria que el Secretario de Estado y del Despacho de Justicia e Instruccion Publica Presenta al Congreso de la Union en marzo de 1868}, at 39-41 (1868) [hereinafter cited as 1868 MEMORIA]; \textit{Memoria que el Secretario de Justicia e Instruccion Publica Licenciado Joaquin Baranda Presenta al Congreso de la Union}, at XLII-LIII (1889) [hereinafter cited as 1889 MEMORIA]. The three original members of the commission, Rafael Martinez de la Torre, Cornelio Prado and Manuel Inda, were described by the 1868 MEMORIA as "personas versadas en los negocios y en la jurisprudencia mercantiles."

\textsuperscript{67} \textit{Memoria que el Secretario de Estado y del Despacho de Justicia e Instruccion Publica Presenta al Congreso de la Union en 15 de Noviembre de 1869}, at 2 (1870). Martinez and Prado were too busy to carry out their duties and soon resigned. They were replaced by Jose Maria Barros and Alfredo Chavero. In addition, about this time Ramon Rodriguez together with another lawyer prepared a complete code project, and Rodriguez was
The addition of representatives of Cámara de Comercio to the commission probably did little to speed the work, and within the government probably few were even aware of the commission’s existence; it is not even mentioned in an otherwise full discussion of codification in the Minister of Justice’s 1873 Memoria. By 1876, a draft was nearly complete, but work appears to have stopped altogether at that point for several years. An 1877 attempt to get things moving again evidently failed. The immediate reasons for the failure are unknown but the fundamental reason appears to have been the continued lack of political support. In 1877 and again in 1878 and 1879, President Díaz discussed codification in his annual address to the congress, but commercial law was not mentioned.

Work on the code was initiated again at the end of 1879, and in his 1880 address, Díaz reported that:

The secretary of Justice and the Commercial Code commission have almost completed the respective project that was begun some years ago. It will be submitted to the congress before the close of the present legislation sessions, so that this very significant improvement in our legislation can be quickly realized.

added to the commission. 1889 Memoria, supra note 66. The nature of the Rodriguez project and its influence in the commission’s work are unknown, although it appears that it may be available in the Library of Congress collection. See Clagett & Valderrama, supra note 2 at 130 n.4, citing both an 1869 proyecto and an 1870 proyecto; to judge from their length, they probably are, respectively, the Rodriguez project and the partial draft that had been completed by the commission by that time.

68. Pedro Martin and Martin del Castillo were added to the commission as representatives of the Cámara. Their probable role is suggested by the 1889 Memoria, supra note 66: “La Cámara de Comercio como encargada de vigilar los intereses de este ramo, solicitó que algunos de sus miembros tuvieran participio en la formacion de una ley de tanta transcendencia para los negocios mercantiles.” It appears that the Cámara’s representatives participated actively in the commission’s deliberations throughout its life, and that they were probably the source of the internal conflicts that helped to delay completion of the project. Cf. Memoria que el Secretario de Justicia e Instrucción Pública presenta al Congreso de la Unión 13, 165-68 (1878); Memoria que el Secretario de Justicia e Instrucción Pública presenta al Congreso de la Unión, at XLIII, 101 (1882) [hereinafter cited as 1882 Memoria].

69. Memoria que el Encargado de la Secretaria de Justicia e Instrucción Pública presenta al Congreso de la Unión en 15 de Septiembre de 1873 (1873).

70. Fernández, El año de 1875, 6 El Foro 5 (Jan. 1876).

71. The 1889 Memoria, supra note 66, attributes the halt to the “ocupaciones particulares de los miembros de la referida Comisión e inconvenientes de otro género.”

72. See Memoria que el Secretario de Justicia e Instrucción Pública presenta al Congreso de la Unión 13, 165-68 (1878), publishing various communications among the government, the Cámara de Comercio, and the codification commission.

73. See Apertura de sesiones del Congreso de la Unión, 2 El Foro (2a época) 237 (Sept. 22, 1877) (discussing reform of federal civil procedural code); Discursos pronunciados en la apertura del nuevo congreso constitucional, 4 El Foro (2a época) 221 (Sept. 19, 1878) (discussing reform of federal civil procedure and criminal procedure codes); Discursos pronunciados por el Presidente de los Estados Unidos Mexicanos, ante el Congreso de la Unión, en lo de Abril de 1879, 5 El Foro (2a época) 249 (April 4, 1879) (discussing reform of federal civil procedure code).

74. 1882 Memoria, supra note 68, at XLIII.

75. Discursos pronunciados por el Presidente de los Estados Unidos Mexicanos ante el Congreso de la Unión,
As the President promised, the project was submitted to the national congress on September 28, of that year, but it appears to have remained there without further action. It was ignored by El Foro during the rest of 1880 and 1881 and was not mentioned in the 1881 presidential address, although President González did touch on problems of administration of justice and plans to enact a new municipal code.

The government again turned its attention to commercial codification in 1882, but the obstacles confronting the code were by this time not limited to congressional lethargy. Two weeks before the presidential address, El Foro had begun a series of articles strongly criticizing the code project for its "espíritu de reglamentarismo." The criticism produced a reply from Manuel Inda, chairman of the codification commission, and El Foro in turn disclaimed any intent of attacking the code draftsmen. As to the code project itself, however:

In the hands of our governors, friends of favoritism, it lends itself to being the ruffian (if we may be permitted the phrase), the obedient slave under whose protection the government protects the monopoly of the mercantile establishments and sacrifices the elements of commercial activity and liberty for the benefit of favorites.

In the congress the code progressed slowly. Not until the spring of 1883 did it receive its first reading in the Cámara; in the intervening year it had, according to El Foro, received a "minucioso y concienzudo estudio" on the part of one of the chamber's committees. The government apparently despaired of securing its enactment by conventional legislative means, for in June the executive was empowered not merely to promulgate the code, but also to revise the project before adopting it. The power was not used, however. The argument over the constitutional power of the congress to enact a national com-

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76. Discurso pronunciado por el Presidente de los Estados Unidos Mexicanos ante el Congreso de la Unión, el 10 de Abril de 1880, 7 El Foro (2a época) 249 (April 6, 1880). Still in 1880, however, it appears that most attention continued to be focused on reform of the procedural codes. See Código, 7 El Foro (2a época) 431 (June 10, 1880); Los trabajos de legislación encomendados al ejecutivo, 8 El Foro (2a época) 13 (July 6, 1880); Los nuevos códigos, 8 El Foro 153 (Aug. 27, 1880).

77. Discurso pronunciado por el Presidente de los Estados Unidos Mexicanos ante el congreso de la Unión el 10 de Abril de 1881, 16 El Foro 245 (April 5, 1881).

78. Discurso, supra note 76.

79. El Proyecto del Código de Comercio, 18 El Foro 209 (March 21, 1882). The series was continued in 18 El Foro, issue nos. 55, 58, 63, 67, 71, 72 and 81 (1882).

80. 18 El Foro 246 (April 1, 1882).

81. Hechos diversos, id. at 247.


83. Decree of June 20, 1883, 16 Legislación Mexicana supra note 15, at 576, no. 8812. Manuel Inda, Alfredo Chávez and Luis Pombo were appointed to undertake the revision. Memoria que el Secretario de Justicia e Instrucción Pública presenta al Congreso de la Unión, at XXI (1884) [hereinafter cited as 1884 Memoria].
mercial code by this time had evidently become a major obstacle, and no action was taken on the code until that argument was finally laid to rest on December 14 by constitutional amendment. The next day the congress delegated its new (or at least newly clarified) power to the President, and on April 20, 1884 González used the delegated power to promulgate Mexico’s second commercial code.

B. Historical Data: The Question of Delay

The code became effective on July 20, 1884, not quite seventeen years after Maximillian’s fall had brought a final end to the Código Lares as national legislation. During the intervening years the Código had continued to govern in a number of the states; but in the other states it did not, nor did it govern in the Federal District or territories. The commercial law in the latter jurisdictions reverted to the ordinances drawn up by the merchants of the port of Bilbao nearly a century before Mexico secured its independence.

That such a state of affairs should have arisen can be adequately explained by the confusion and political strife leading up to the French intervention. The fact that it continued for nearly two decades following the restoration of the republic requires some further explanation. Mexico did not lack the juridical resources to enact a new commercial code before 1884. Indeed, no great resources were required if one was willing simply to adopt a foreign code; but Mexico had already demonstrated in the 1854 code that it could at least

84. Oddly enough, the constitutional argument is not even mentioned in the 1884 MEMORIA, supra note 83, which carries an internal date of September 16, 1883. So far as appears, the government then still expected to promulgate the code on the basis of the decree of June 20. Something of the government’s constitutional theory can perhaps be inferred from the 1880 message accompanying the code project when it was submitted to the Congress in 1880, published in the 1882 MEMORIA, supra note 68, at 101. The communication refers to the project as the “proyecto de Código de Comercio, para el Distrito Federal y el Territorio de la República y las disposiciones sobre derecho maritimo y las bases generales de la legislacion mercantil, para los Estados de la Republica.” This characterization formally recognizes the distinction between the plenary power of the national congress with respect to commercial legislation in the federal district and territories and its limited power with respect to the rest of the nation. The recognition is no more than formal, however, since only a single project was submitted.

85. As amended, Article 72(X) empowered the national congress “para expedir códigos obligatorios en toda la República, de minería y comercio, comprendiendo en este último las instituciones bancarias.” TENA RAMÍREZ, supra note 28, at 707.

86. 41 RECOP. DE LEYES, supra note 24, at 502. The preceding day the congress had authorized the president to promulgate reforms of the federal civil, penal and civil procedure codes. Decree of December 14, 1883, id. at 702.

87. 16 LEGISLACION MEXICANA, supra note 6, at 721, no. 8950.

88. The Colombian Commercial Code of 1853 was prepared in a few months and probably by a draftsman almost wholly lacking in any background in the commercial law. The changes in the Spanish model code were as a result relatively few and technically undemanding. See Means, supra note 12.
make substantial modifications in a foreign model. The competence of Mexican lawyers in the commercial law field probably increased during the following decades. Nor does political instability appear to have played much if any role after the republic was restored in 1867. Codification commissions were appointed and maintained, and something like a complete code project seems to have been ready by around 1876. The enactment of a federal civil code in 1870 suggests that a complete commercial code project could have been ready sooner if the matter had appeared sufficiently important.

The doubtful language of Article 72(X) evidently played some part in the delay, but only, it appears, in the final months. The first suggestion that the congress might lack the power to enact a national commercial code that I have found is in the El Foro articles on the code project published in 1882. In the fourth of the articles, the author criticized the draft code provision requiring merchants to publish certain notices in the national or state Diario Official: Article 72(X), he argued, empowered the national government to lay down "bases generales" for commerce but not "detalles reglamentarias." The argument was perhaps part of a broader effort by liberals to employ the article's language as a weapon against the increasing centralization of economic regulation. The following year the argument was developed more fully in an editorial attacking the new national bank law. In the 1882 article, however, it played only a minor role. The argument had not been mentioned in the earlier articles in the series, nor was it mentioned again in subsequent ones. More surprisingly, it also did not appear in a new series of articles on the code published in the following May.

89. See note 25 supra.
90. In the earliest cases surveyed, from around the 1850's, the authorities cited consist primarily of civilian commentators and of the seventeenth-century Cura Filética of Hevia Bolaños. See, e.g., Judgment of Oct. 13, 1849, Quinto de lo Civil, Mexico, aff'd, Judgment of June 30, 1853, Suprema Corte, sala tercero, 1 ANALES DEL FORO MEXICANO 53 (Oct. 1, 1864); Judgment of Jan. 3, 1855, Civil, Mexico, 2 GACETA DE LOS TRIBUNALES 958 (Dec. 7, 1861). By the end of the 1870s, cases sometimes cited a wide range of specifically commercial legal literature. See Judgment of Nov. 27, 1877, Tribunal Superior de Justicia de Veracruz, 3 EL FORO (2a época) 41 (Jan. 18, 1878). It should be noted, however, that the case last cited is from Veracruz, and there is no non-Veracruz case displaying equal commercial sophistication among those surveyed. A more extensive survey of general commercial law cases and probably a direct study of Mexican cognitive legal institutions relevant to the commercial law would be necessary to distinguish the secular increase in the general level of sophistication in the commercial law field from the geographical variation in such sophistication at any given time. Cf. R. C. MEANS, UNDERDEVELOPMENT AND THE DEVELOPMENT OF LAW: CORPORATIONS AND CORPORATE LAW IN NINETEENTH-CENTURY COLOMBIA ch. 3 (to be published by University of North Carolina Press, 1980) [hereinafter cited as MEANS, UNDERDEVELOPMENT].
91. 18 EL FORO 248 (April 4, 1882).
92. El proyecto de ley general sobre Bancos de emision, 20 EL FORO 157 (March 1, 1883).
93. El proyecto de Código de Comercio, 20 EL FORO 321 (May 2, 1883). Indeed, it appears that the argument may not have been taken seriously until the last months of 1883. See note 85 supra.
Obviously, at some point the constitutional argument did come to have some weight, since it was thought necessary or at least prudent to amend Article 72(X) before promulgating the code. But the argument appears to have had nothing to do with the delay down to 1882 at least, and when it was seriously raised, it was quickly disposed of by constitutional amendment. Moreover, Article 72(X) was at most an obstacle to the enactment of a national commercial code. The congress lacked even an arguable basis for enacting a national code in the civil field, but it could and did enact a code for the federal district. No constitutional impediment prevented it from doing likewise for commercial law. The fundamental reason for delay must be found elsewhere, not in the existence of substantial obstacles to commercial codification but in the absence of any strong force supporting enactment of a code. Simply stated, Mexico did not enact a new commercial code until 1884 because it had no pressing need for one. It was only in the 1880’s that a combination of technological and socio-economic change began to present significant legal problems that could not be adequately resolved within the framework of existing law. Until then, the needs of Mexico’s commerce were, on the whole, adequately met by the Ordinances of Bilbao.

C. The European Experience

1. From Chartered Trading Company to New Business Corporations

The Ordinances were nearly a century and a half old when Mexico enacted its second commercial code, but their age was in itself a matter of no consequence. Laws do not by themselves, even in a figurative sense, rust or decay. They may become inappropriate with the passage of time, but only as the result of changed circumstances and values. The commercial law and the commerce that it governed had changed little in their essentials for centuries preceding the promulgation of the Ordinances of Bilbao; the merchants of eighteenth-century Spain would have found little to surprise or inconvenience them in the rules applied by the commercial courts of medieval Italy. In the countries of northern Europe this long period of stasis was soon to be undermined by a complex of changes centering on the industrial revolution and to a considerable extent the legal response to these changes was embodied in the new commercial codes. In Mexico, however, the techniques and problems of commerce continued until the last decades of the nineteenth century to be those of pre-industrial Europe. Until then, commercial codification in Mexico might offer useful reforms for dealing with familiar problems; it was not an essential measure for coping with the new problems of the industrial age.

It was in the business association field that the new commercial law embodied in the nineteenth-century codes differed most radically from the older ones. The traditional commercial law was a law of market transactions, concerned almost exclusively with the flow of goods and services between independent economic entities; intra-organizational economic relationships
were almost wholly ignored. It did of course regulate business associations; they are, for example, the sole subject of chapter 10 of the Ordinances of Bilbao. That chapter's provisions are, however, concerned principally with the companies' external legal relationships: with requirements of publicity and questions of partners' liability for company debts. Company formation and liquidation are treated, although there too the interests of company creditors are dominant; the internal relationships of a continuing partnership are scarcely mentioned. The boundaries of the traditional commercial law accurately reflected the nature of the pre-industrial economy. Much economic activity was of course still ordered by tradition or within the framework of particularistic relationships. Where economic relationships were rationalized, however, the market was the dominant ordering force. Business associations typically were small partnerships or comanditas and represented only a modest extension beyond the individual entrepreneur; companies large enough to involve internal resource transfers comparable to the external transfers regulated by the market were rare.

The very limited role of larger business associations is illustrated by Spain's imperial development. Business associations of some size and complexity twice played a role in that development. In the sixteenth century joint stocks involving a substantial number of investors financed some of the voyages of exploration and conquest. These companies roughly paralleled in time and function the English joint stocks that financed the privateering voyages of Drake and Frobisher. In retrospect, the English ventures can be seen to have represented an important step towards the development of the charter corporations of the seventeenth century and, ultimately, the modern business corporation. In themselves, however, neither the English nor the Spanish joint stocks posed significant new problems of internal business organization. In essence they were devices linking a syndicate of port-based capitalists to a

94. The fundamental purpose of the company-law chapter is set out in its third paragraph: persons subject to the jurisdiction of the Consulado of Bilbao are directed to follow the regulations set out in the chapter so that, in order to maintain good faith and the public security of the common commerce, "all merchants should have exact notice of [the companies,] so that by this means they can direct their respective business affairs with greater confidence and knowledge . . . , avoiding the inconveniences that customarily result from lack of such notice."

Ordinances of Bilbao, supra note 1, ch. 10, para. 3.

95. The only provision dealing with the internal relationships of a continuing partnership is the second paragraph, which in general language requires good faith and precise compliance with the obligations assumed in the partnership agreement. It should be noted that the modern Uniform Partnership Act contains little more in the way of regulation of the internal affairs of a continuing partnership. Where modern business association law differs significantly from that of the Ordinances of Bilbao is not in its partnership law but in its regulation of a form of business association unknown to eighteenth-century commercial law: the business corporation.

96. The following discussion is based on Means, Underdevelopment, supra note 90.
speculative overseas venture. The explorer or privateer might owe a legal obligation to his backers, but no effective company institutions did or could exist to monitor his performance. Time and distance effectively precluded supervision once an expedition cleared the harbor. The one decision that could to some extent be controlled by investors was the choice of voyage. Such a decision was embodied in the formation of the joint stock itself, which was organized for a single venture and dissolved on its completion; the decision to undertake a new voyage was made through the formation of a new company and not through the internal institutions of an existing one.

Problems of internal organization could arise only if the joint-stock form was applied to commercial enterprises of a more permanent nature. In Spain this occurred in the eighteenth century, when the Bourbon kings turned to chartered trading corporations in an attempt to retrieve the fallen economic fortunes of their empire. No general corporate law regulated the companies; like their northern European counterparts, each Spanish corporation was organized on the basis of its own ad hoc charter. Unlike the Ordinances of Bilbao, the charters did have to deal in some detail with internal company organizations; they were in this respect the forerunners of the modern law of business corporations. However, in Spain and its empire, there was not a continuous development from the chartered trading company to the modern corporation. The era of the charter corporation lasted scarcely thirty years in Spain. The justification for the corporations' joint-stock form as well as their monopoly privilege lay in their dual rule: not only the commercial one of carrying on trade but also the governmental one of establishing a stable framework within which trade could be conducted. For the strictly commercial function, partnerships or comanditas might suffice, but the governmental function involved economies of scale and externalities that placed it beyond the capabilities of the ordinary business associations of the traditional commercial law.

The combination of commercial and governmental functions proved to be unstable. In the latter half of the eighteenth century the corporations' governmental functions were assumed by the Spanish state and their monopoly privileges revoked. Shorn of privilege and exposed to competition, the corporations failed quickly. For the commercial functions left to them, their size was a disadvantage rather than a benefit. Within the eighteenth century economy, the market was a far more efficient allocator of resources than the corporations' internal controls.

There was nothing specifically Spanish about the charter corporation's decline in overseas trade. Throughout the Atlantic area by the end of the eighteenth century, trade was being conducted principally by individual entrepreneurs and partnerships linked by markets. In northern Europe, however, economic development by that time had already begun to create a new domestic function for large share companies. Enterprises such as manufacturing and railroads required investments that were not only large but also fixed; unlike a merchant's inventory, the capital goods embodied in
them could not be redirected to other enterprises without substantial loss. Yet few investors were willing to commit their savings irrevocably for a period that might be measured in decades. The solution was to convert a single large and fixed investment into numerous modest and readily saleable ones by interposing a corporate share company between enterprise and investor.

2. Inadequacy of Traditional Commercial Law

The rules of the traditional commercial law were inadequate for the new business corporations. The fact that corporations could not be formed without state authorization may be marked down to the accidents of legal history. In Germanic law, incorporated groups could be freely formed on the basis of private contract, and it was the general triumph of Roman law principles rather than the intrinsic nature of corporations that dictated a different rule during the centuries between the reception and the modern era of free incorporation. Even with free incorporation, however, corporations' internal complexity and dependence on public investment required a legal regulation that was not, like the traditional commercial law, limited to external legal relationships. It was necessary to define formal institutions and procedures for identifying those actions that would be attributed to the corporation and not merely to the individuals taking them. Further, some assurance had to be provided that the actions of corporate managers would fairly reflect the interests of shareholders. The necessary rules might be laid down in ad hoc charters or drawn up by promoters in corporate bylaws, but neither solution was wholly satisfactory. If corporations were to become broadly important economic institutions, a framework at least had to be provided by general statute.

Within the civil law tradition the development of a general corporate law was closely tied up with commercial codification. It was the draftsmen of the French commercial code who, within that tradition, first brought corporations within the ambit of the commercial law. They did so by linking corporations to partnerships and *comanditas* and regulating all three forms within a single code title or business associations. This basic structure was adopted in all subsequent codes. Consequently commercial codification implied enactment of a statutory law of business corporations, and it was through enactment of a commercial code that many Latin American countries first acquired such a law. Conversely, however, the need for a commercial code depended to a considerable degree on the need for corporate law. The inclusion of provisions regulating business corporations was one of the few respects in which the early commercial codes differed significantly from precodification law, and the only important respect in which the rules contained in the codes had no counterpart at all in the traditional commercial law.

D. *Development of Mexican Business Association Law in the Courts*

1. The Cases

It appears that Mexico had little need for a corporate law down to the early 1880's. Certainly the reported cases offer little evidence that existing law was
inadequate to the needs of Mexican businessmen. A total of forty-eight business association cases — cases turning in part at least on questions of business association law — have been found in the journals surveyed. This number excludes the sociedad legal cases dealing with the marital partnership between man and wife. Mexican law’s characterization of the marital relationship as a partnership was more than metaphorical: courts did in fact apply conventional partnership law concepts and authorities to the sociedad legal cases. However, such cases cast little light on the adequacy of Mexican partnership law for other purposes.

For similar reasons, I have also excluded what might be called “Indian cases.” One of the more questionable achievements of nineteenth-century liberal reform in Mexico was to break up the system of communal property of the Indian villages. Often the Indians resisted and one tactic was to form a company to perform substantially the same functions as the abolished community in the village lands. When national and state governments opposed, the Indians sometimes sought amparo. The resulting cases dealing with the Indians’ constitutional right to form such companies are complex and fascinating,97 but the lessons that they hold are not for the present study. The forty-eight cases considered here thus arise out of business associations formed for ordinary pecuniary purposes, and a majority of them turn on the kinds of legal questions that had been the principal concerns of business association law for centuries.

The largest single category of cases, fifteen in all, arise out of the attempts of company creditors to satisfy their claims from the assets of individual

97. See, e.g., Juan Estrada, Judgment of Nov. 9, 1882, Suprema Corte de Justicia, [1882] 5 Seminario (2a época) 553.

98. Judgment of Feb. 9, 1852, Quinto de lo Civil, Mexico City, 2 GACETA DE LOS TRIBUNALES 492 (June 29, 1861); Judgment of Jan. 13, 1855, Civil, Mexico City, 2 GACETA DE LOS TRIBUNALES 958 (Dec. 7, 1861); Judgment of Mar. 13, 1857, Primero de lo Civil, Mexico City, 3 GACETA DE LOS TRIBUNALES no. 38 (Sept. 20, 1862); Judgment of Nov. 6, 1862, Tercero de lo Civil, Mexico City, rev’d, Judgment of June 1, 1864, Suprema Corte de Justicia, tercera sala, 1 ANALES DEL FORO MEXICANO 4 (Sept. 4, 1864); Judgment of Mar. 1, 1873, Tribunal Superior de Justicia del Distrito, segunda sala, Mexico City, 1 EL FORO 609 (Dec. 5, 1873); Judgment of April 26, 1875, Tercero de lo Civil, Mexico City, 4 EL FORO 341 (May 13, 1875); Judgment of Sept. 18, 1875, Quinto de lo Civil, Mexico City, 5 EL FORO 393 (Oct. 29, 1875); Judgment of Oct. 9, 1875, Sextio de lo Civil, Mexico City, 6 EL FORO 455 (Nov. 18, 1875); Judgment of April 6, 1876, Sextio de lo Civil, Mexico City, 7 EL FORO 62 (July 22, 1876); Judgment of Aug. 14, 1876, Tribunal de Justicia del Estado de Jalisco, 7 EL FORO 214 (Sept. 16, 1876); Judgment of Oct. 12, 1876, Quinto Menor, Mexico City,, 7 EL FORO 297 (Oct. 17, 1876); Judgment of Jan. 11, 1881, Tribunal Superior de Justicia, cuarta sala, Mexico City, 16 EL FORO 103 (Feb. 11, 1881).

With the exception of the case last cited, all of the cases turn on one or both of two questions: (1) whether the person who signed the contract giving rise to the obligation had authority to act for the company, and (2) whether the individual defendant was an associate in the company. In the case, however, the court seemingly gave effect to a clause in the partnership contract limiting the responsibility of the partners to their capital contribution. In support of this position the court cited Article 2362, of the 1870 federal Civil Code which makes a partnership a legal entity separate from the individual partners. CÓDIGO CIVIL art. 2362 (Mex. 1870).
associates or successors in interest to the debtor company. Three other cases present the reverse question, whether an associate’s creditors could levy on his interest in the company, and six others concern the power of an associate to act for the company in a lawsuit, in transferring company property, or in receiving payment for a debt owing to the company. All of these cases, as well as four others of a miscellaneous nature, arise out of market transactions between a company or its associates and an outside party. Company law is relevant to the rights and remedies available to the parties to the transaction, but consideration of the internal structure and relationships of the companies generally does not go beyond simple questions of agency power.

Twenty-two of the cases do deal with intracompany relationships. Eight of these cases concern associates’ competing claims to the assets of a dissolved company and thus turn on a determination of the assets belonging to the company and of the associates’ respective rights to those assets under the con-

99. Judgment of Oct. 20, 1879, Tribunal Superior del Distrito, tercera sala, Mexico City, 7 EL FORO (2a época) 182 (Mar. 9, 1880), continued in 7 EL FORO (2a época) nos. 47-50 (1880), aff’d, Judgment of May 25, 1881, Tribunal Superior del Distrito, primera sala, Mexico City, 17 EL FORO 137 (Aug. 19, 1881), continued in 17 EL FORO nos. 36-37, 39-40 (1881); Judgment of June 1, 1883, Tribunal Superior de Circuito de Guadalajara, 21 EL FORO 5 (July 4, 1883).

100. Sr. Juez of May 18, 1859, Primero de lo Civil, Mexico City, 1 GACETA DE LOS TRIBUNALES 347 (June 2, 1860); Judgment of Segunda Sala del Tribunal Mercantil, 1 GACETA DE LOS TRIBUNALES 335 (May 26, 1860); Judgment of July 11, 1860, Quinto de lo Civil, Mexico City, 2 GACETA DE LOS TRIBUNALES 295 (April 20, 1861).

101. Judgment of Feb. 16, 1887, Cuarto Menor, Mexico City, 1 EL FORO (2a época) 261 (April 12, 1877); Judgment of Nov. 9, 1878, Tribunal Superior de Justicia, tercera sala, Mexico City, 4 EL FORO (2a época) 342 (Nov. 5, 1878); Judgment of Dec. 13, 1882, Setimo Menor, Mexico City, 20 EL FORO 61 (Jan. 24, 1883).

102. Judgment of Jan. 17, 1878, Tribunal Superior, segunda sala, Mexico City, rer g, Judgment of April 2, 1877, Letras de Tlalpam, 3 EL FORO (2a época) 126 (Feb. 19, 1878); Judgment of Nov. 29, 1878, Tribunal Superior del Distrito, segunda sala, Mexico City, 5 EL FORO (2a época) 34 (Jan. 5, 1879).

103. Judgment of April 23, 1879, Tribunal Superior de Justicia del Distrito, primera sala, Mexico City, 5 EL FORO (2a época) 358 (May 16, 1879).

104. Judgment of Mar. 21, 1855, Tribunal Mercantil de Mexico, 1 GACETA DE LOS TRIBUNALES 395 (June 23, 1860) (whether there is incompatibility in a company’s accepting a commission to collect on a negotiable instrument on which one of its associates is the payor); Judgment of Tercero de lo Civil, 1 GACETA DE LOS TRIBUNALES 511 (Aug. 11, 1860) (whether associates of a dissolved company can continue the lease held by the company); Judgment of Aug. 17, 1878, Segundo de lo Civil, Mexico City, 4 EL FORO (2a época) 214 (Sept. 14, 1878) (whether company legally exists absent a notarized contract); Judgment of April 3, 1883, Primera Instancia de Altar, 21 EL FORO 70 (July 26, 1883) (whether transferee of interest in partnership is bound by transferor’s obligations).

105. Judgment of April 5, 1862, Tercero de lo Civil, Mexico City, 3 GACETA DE LOS TRIBUNALES 409 (May 24, 1862); Judgment of April 11, 1864, Tribunal Superior de Justicia, primera sala, Departamento de Puebla, 1 ANALES DEL FORO MEXICANO 135 (Nov. 19, 1864); Judgment of Aug. 8, 1871, Suprema Corte de Justicia, [1871] 2 Seminario 241; Judgment of Sept. 21, 1875, Tribunal Superior de Justicial del Distrito, primera sala, Mexico City, 5 EL FORO 289 (Sept. 28, 1875); Judgment of Nov. 9, 1875, Suprema Corte de Justicia, [1875] 7 Seminario 147; Judgment of Aug. 18, 1877, Primera Instancia del Distrito de Toluca, 3 EL FORO (2a época) 318 (May 1, 1878); Judgment of Nov. 29, 1879, Sexto de lo Civil, Mexico City, 6 EL FORO (2a época) 466 (Dec. 18, 1879); Judgment of July 31, 1882, Tribunal Superior del Distrito, tercera sala, Mexico City, 20 EL FORO 361 (May 17, 1883).
trato de sociedad. These determinations can involve difficult questions of fact or contractual interpretation, but in general the difficulties are unlikely to be made appreciably easier by a different substantive commercial law. It is the remaining intracompany cases, twelve of them, that are of primary interest here.

The twelve cases fall into two groups. The first consists of eight mining company cases. Mining companies had been the most complex form of business association in Mexico during the colonial period, and during the period of this study they were still the most complex form of domestic business association in common use. No doubt many Mexican mines were owned by single individuals or small partnerships, but share companies also were frequently used. Moreover, additional capitalists might be associated in the enterprise as aviadores.

This complex structure together with the risks and large capital requirements of the mining enterprises produced internal conflicts that had no close counterpart in the simple partnerships typical of commerce. The principal sources of conflict appear to have been two. First, purchase of a barra or share in a mining company carried with it an open-ended commitment to participate pro rata in additional investments in the mine as required by majority vote of the shareholders. A shareholder who failed to make the required investment apparently was not personally liable, but he did thereby forfeit his existing interest in the mine. Not surprisingly, in several cases shareholders challenged the attempt to deprive them of their interest, and courts were forced to undertake a detailed consideration of the companies' internal structure and procedures that was never required in the ordinary business association cases of the period. The second major source of conflict was the relationship between the aviadores and the original shareholders. The aviadores were

106. A potential exception was the penultimate case cited in the preceding footnote, in which the dissolved company was a business corporation. In the event, however, the court resolved the case without reference to corporate-law principles. The case is discussed infra at note 131.

107. An avio is a loan made to a miner or mining company. In some cases the aviador acquired a security interest in the mine or its products; in others, he effectively became co-owner of the mine. Aviadores are regulated by title 16 of the Mining Ordinances of New Spain, and the basic forms of the contract of avio are set out in Article 1 of the title. REALES ORDENANZAS PARA LA DIRECCION, REGIMEN Y GOBIERNO DEL IMPORTANTE CUERPO DE LA MINERIA DE NUEVA-ESPAÑA Y DE SU REAL TRIBUNAL GENERAL (1783) [hereinafter cited as Mining Ordinances]. The Mining Ordinances continued to govern in Mexico until replaced by a mining code in 1884. CLAGETT & VALDERRAMA, supra note 2, at 272.

108. Mining Ordinances, supra note 107, tit. 11, art. 4.

109. Id., tit. 11, art. 8.

110. Judgments of Oct. 18 & Nov. 24, 1860, Arbitros Licenciados, Mexico City, 1 ANALES DEL FORO MEXICANO 205 (Dec. 31, 1864), reprint ed in 2 GACETA DE LOS TRIBUNALES 677, 700 (Aug. 31 & Sept. 7, 1861); Judgment of Oct. 12, 1871, Suprema Corte de Justicia, [1871] 2 Seminario 371; Judgment of Aug. 20, 1875, Supremo Tribunal de Justicia de San Luis Potosí, segunda sala, 5 EL FORO 394 (Oct. 29, 1875); Judgment of May 22, 1878, Sexto de lo Civil, Mexico City, 3 EL FORO (2a época) 428 (June 8, 1878); Judgment of April 3, 1880, Tribunal Superior de Justicia, primera sala, Mexico City, 7 EL FORO (2a época) 305 (April 24, 1880).
not simply passive creditors, but might become actively involved in operating the mine. Their relationship to the original shareholders involved conflicts of interest that sometimes reached the Mexican courts.\textsuperscript{111}

The remaining four cases of intracompany conflict involve ordinary partnerships or \textit{comanditas}. The plaintiff in each case alleged that he had been wrongfully excluded from the company.\textsuperscript{112} In a case decided by the Mexican Supreme Court in 1853, the plaintiff accused his partner of wrongfully excluding him from the management and profits of a partnership formed to rent and cultivate a \textit{finca}.\textsuperscript{113} In an 1882 case, the general partner of a \textit{comandita} operating a textile factory accused the limited partners of wrongfully attempting to depose him as manager of the company and of failing to make their agreed capital contribution.\textsuperscript{114} In another 1882 case, plaintiffs sought an accounting with respect to the administration of a \textit{hacienda} purchased by a partnership allegedly existing between them and the defendants.\textsuperscript{115} Finally, in a third 1882 case, the plaintiff sued to require the defendant to formalize an alleged agreement making the plaintiff a participant in the profits from a steamboat line operating under a contract with the national government.\textsuperscript{116}

There is, in addition, one final category of cases that merits special attention. It consists of four cases involving business corporations. Functionally, the cases involve the most traditional kinds of problems. Three arise out of actions by company creditors against shareholders or successors in interest, and the fourth involves a shareholder’s claim to share in the assets of a dissolved company; and under those headings the cases have already been noted. The fact that the cases involve business corporations, however, might be expected to pose special problems within a legal system in which such companies received no explicit statutory recognition.

Significantly, three of the four corporations involved in the cases were organized under the 1854 code during one of the periods when it was in force.

\begin{itemize}
  \item \textsuperscript{111} Judgment of Aug. 28, 1876, Tribunal Superior de Justicia del Distrito, Mexico City, 7 \textit{El Foro} 217 (Sept. 19, 1876); Judgment of June 7, 1879, Supremo Tribunal de Justicia del Estado de Guanajuato, 6 \textit{El Foro} (2a época) 304 (Oct. 18, 1879); Judgment of Mar. 21, 1882, Tribunal Supremo de Justicia de Guanajuato, 19 \textit{El Foro} 29 (July 12, 1882).
  \item \textsuperscript{112} Also falling into this category is a mining company dispute that appears not to have been formally reported but was described in a long letter published as a supplement to \textit{El Foro}. Letter from José M. Aguire & Tomas Ruiz, to editors of \textit{El Foro} (Mar. 8, 1876), 6 \textit{El Foro}, no. 53 supp. (March 21, 1876).
  \item \textsuperscript{113} Judgment of June 30, 1853, Suprema Corte de Justicia, Mexico, \textit{aff"{g}}, Judgment of Oct. 13, 1849, Quinto de lo Civil, Mexico City, 1 \textit{Anales del Foro Mexicano} 53 (Oct. 1, 1864).
  \item \textsuperscript{114} Judgment of Jan. 19, 1882, Tribunal Superior de Justicia, tercera sala, Mexico City, 18 \textit{El Foro} 98 (Feb. 8, 1882).
  \item \textsuperscript{115} Judgment of July 30, 1882, Tribunal Superior de Justicia, primera sala, Mexico City, 19 \textit{El Foro} 65 (July 25, 1882).
  \item \textsuperscript{116} Judgment of Dec. 21, 1882, Tercero de lo Civil, Mexico City, 21 \textit{El Foro} 295 (Oct. 17, 1883).
\end{itemize}
at the national level. Two cases arose out of the bankruptcy of a mutual fire insurance company organized in 1865, two years after Maximilian had decreed the 1854 code again to be in force.\textsuperscript{117} Persons seeking insurance apparently were required to assure payment of premiums by giving postdated notes. In 1866, the company was declared in bankruptcy, and in 1875 its assets, consisting in part of its policyholders' unpaid notes, were distributed among its creditors. In the first case, decided in 1875, plaintiffs had been awarded the defendant's notes for their services on the committee administering the company's bankruptcy.\textsuperscript{118} In the second case, decided the following year, plaintiffs received the defendant's notes as successors in interest to a policyholder who had suffered a fire loss.\textsuperscript{119} In both cases, plaintiffs brought suit to collect on the notes, and the courts were required to determine whether the defendants were liable notwithstanding the company's legal basis in the legislation of the Maximilian government.

In 1879 another case involving a code-based corporation came before the Mexican courts.\textsuperscript{120} The corporation had been organized in 1854 by Lizardi and Rubio to exploit the tobacco monopoly that had just been awarded to them. In 1856 it was agreed that Lizardi's interest would be sold to the company, and he did deliver his shares. The company failed to pay for them, however, allegedly because of its lack of diligence in collecting a credit against the government. Lizardi's widow sued the defendant for the amount due on the shares, on the theory that the defendant was a successor in interest to one of the corporation's shareholders. The questions before the courts were two: Were the shareholders of the corporation personally liable for the company's debts? And was the defendant in fact a successor in interest to one of the shareholders?

Finally, in an 1879 case, the plaintiff sued the Mexico-Tlalpam railroad company for the value of his shares in the dissolved corporation from which the defendant company had acquired the enterprise.\textsuperscript{121} On the merits the questions raised were no different than those posed by the partnership dissolu-

\textsuperscript{117} See note 21 supra.
\textsuperscript{118} Judgment of April 26, 1875, Tercero de lo Civil, Mexico City, 4 EL FORO 341 (May 13, 1875).
\textsuperscript{119} Judgment of July 10, 1876, Quinto de lo Civil, Mexico City, 7 EL FORO 62 (July 22, 1876).
\textsuperscript{120} Judgment of Oct. 20, 1879, Tribunal Superior del Distrito, tercera sala, Mexico City, 7 EL FORO (2a época) 182 (Mar. 9, 1880), continued in 7 EL FORO nos. 47-50 (1880), aff'd, Judgment of May 25, 1881, Tribunal Superior del Distrito, primera sala, Mexico City, 17 EL FORO 137 (Aug. 19, 1880), continued in 17 EL FORO nos. 36-37, 39-40 (1880).
\textsuperscript{121} Judgment of Nov. 29, 1879, Sexto de lo Civil, Mexico City, 6 EL FORO (2a época) 466 (Dec. 18, 1879), continued in 6 EL FORO no. 118 (1879), reprinted in 18 EL FORO 414 (June 6, 1882).
tion cases: What was the value of the company's assets, and in what proportion was plaintiff entitled to share in them? However, the company's corporate or share-company form made the assertions of plaintiff's claim procedurally more complicated.

2. Resolution of Intra-Company Dispute Cases

Of course, Mexican law provided a resolution for the intra-company and corporate cases in the sense that in each case a Mexican court handed down a decision purportedly resting on established legal principles. A Mexican court cannot, anymore than a United States court can, announce that a case has no solution. It is probably even less inclined than a United States court to announce that the only solution is one created *ex nihilo* by the court itself. The question, therefore, is not whether Mexican law offered a resolution but whether a commercial code would have provided a significantly better one. For the mining company cases the answer is no, not because the company law principles of the Ordinances of Bilbao were adequate but because they did not apply. Rather, a special set of legal rules for mining companies was already provided in the Mining Ordinances of New Spain.\(^{122}\) The mining ordinances, unlike the Ordinances of Bilbao, expressly took account of the share company form and laid down some rules regarding its internal organization. Possibly the rules were not adequate, although this is not apparent in the reported cases. If so, their inadequacy was not relevant to the need for commercial codification; any reform of the rules was more likely to occur through a new mining code than through assimilation of mining companies to the general business associations governed by a commercial code.

On the other hand, for the remaining four intra-company cases, and for the four corporate cases, the Mexican courts in principle had only the legal rules of the civil and precodification commercial law. In three of the intra-company cases — the 1853 *fina* case,\(^{123}\) the 1882 *hacienda* case,\(^ {124}\) and the 1882 textile factory case\(^ {125}\) — the court found civil law rules that it deemed directly controlling, and in two of the cases a satisfactory resolution appears to have been achieved. In the 1853 case the court concluded that the plaintiff had indeed been fraudulently excluded from participation in the company and granted him relief under a law of the *Partidas* dealing with fraud between partners.\(^ {126}\) In the 1882 *hacienda* case the court found that the plaintiffs had made no con-

\(^{122}\) See notes 107-09 supra.

\(^{123}\) See note 113 supra.

\(^{124}\) See note 115 supra.

\(^{125}\) See note 114 supra.

\(^{126}\) The court cites Partida 5, tit. 10, law 5, which provided in part that "[where a man
tribution to the partnership and therefore under Civil Code Article 2353, were not entitled to any part of the profits.\(^\text{127}\) However, in the textile factory case, something appears to have gone badly wrong. Citing Civil Code Article 2413,\(^\text{128}\) the court held that the limited partners could revoke the plaintiff's power to represent the company. However, it also held that appointment of a new managing partner would have to be made with the unanimous consent of the associates. Since the plaintiff presumably would not consent to the appointment of a new manager, the practical effect of the court's decision would appear to have been to leave the company with no lawful manager at all. It appears doubtful that the Civil Code in fact required any such result. On the other hand, it might be argued that the danger of such a commercially unsophisticated court reaching such a decision would have been reduced by the more detailed regulation that a commercial code would provide.

The 1882 steamboat line case\(^\text{129}\) led the court to go beyond at least the direct application of existing civil and commercial law rules. The step from existing rules to the resolution of the case was only a small one and probably was not even necessary. It suggests, however, something of the scope of flexibility and interstitial development in the pre-codification law of business associations. Against the plaintiff's claim to be allowed to participate in the profits of the enterprise, the defendants argued that a partnership could be proved only by a notarized contract. The court rejected the argument on two grounds. The first was that a notarized contract is required to establish the existence of a company only with respect to third parties and not for relations among the associates themselves. This argument was supported by citation to the civil code and the Ordinances of Bilbao, and would seem to have been sufficient to dispose of the case. However, the court bolstered it with a second and independent argument. It held that commercial companies can be divided into four categories: partnerships, \textit{comanditas}, corporations, and \textit{sociedades mercantiles en participacion}. The company involved in the instant case was of the last kind.

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\(^\text{127}\) Article 2353 provides that "[e]ach associate should contribute money, other goods or labor to the association." \textit{Código Civil} art. 2353 (Mex.). Plaintiffs conceded that they had not contributed labor but argued that the defendants had wrongfully prevented them from doing so. The court dismissed this argument on the ground that they had failed to pursue their remedies at the proper time.

\(^\text{128}\) "The designation as administrator conferred on an associate by the contract of association cannot be revoked, even by a majority of the other associates, except for legitimate cause; but if the designation is made during the term of the association, it is revocable by majority vote." \textit{Id.}, art. 2413.

\(^\text{129}\) \textit{See} note 116 \textit{supra}. 

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and such companies can be proved by any kind of evidence recognized by the common law. The classification of business associations used by the court was not to be found in the Ordinances of Bilbao but was a creation of the French commercial code. As authority for this, the court cited a French treatise and Mexico's own 1854 commercial code. The court conceded that these sources did not constitute law. However, they were "respectable doctrine" and therefore admissible.

3. Resolution of the Business Corporation Cases

The disposition of the four business corporation cases generally paralleled that of the cases involving intracompany disputes in unincorporated business associations. Three of the four cases were resolved solely on the basis of civil or pre-codification commercial law, while in the fourth case, the court also drew on the post-codification development of modern commercial law. The railroad company case was somehow transformed into a dispute over the stamp tax owing on certain documents; but to the extent that it was treated as a business association case, the plaintiff's claim was dismissed on the ground that it could be asserted only by the shareholders' representative in the company's liquidation. This ground perhaps was related to the fact that the company was a corporation in the sense that the number of shareholders may have made such an indirect representation practically necessary, but the principle invoked presumably was drawn from the law of bankruptcy.

The tobacco monopoly case and the 1876 fire insurance company cases were resolved on the basis of ordinary contract law principles. The statutes of the corporation formed for the tobacco monopoly had contained a clause purporting to limit shareholders' liability to the value of their shares. Under the Ordinances of Bilbao, the court noted, partners are in general liable without limit. However, that rule should be understood to apply to the claims of third parties who are unaware of the agreements of the individuals forming the company, but in no manner should it apply, in the absence of an express agreement, to those who not only are aware of the agreements but are parties to them. Since the plaintiff's claim was based on that of Lizardi, one of the founding shareholders of the corporation, the court held that the defendant was not liable even if he were a successor in interest to one of the other shareholders of the corporation.

In the insurance company cases, contract law was used for the opposite purpose, i.e., to establish the liability of the defendant shareholder/policyholder.

130. The court quotes Pradier-Fodire (presumably P. L. E. PRADIER-FODIRE, PRECIS DE DROIT COMMERCIAL, of which the second edition had been published in 1872), and C. COM. art. 266 (Mex. 1854).
131. See note 121 supra.
132. See note 120 supra.
133. See note 118, 119 supra.
The defendant in each case argued that the insurance contract on which his obligation rested was void — because it was celebrated under the laws of the empire — and in each case the argument was rejected by the court on the ground that the obligation grew out of a contract valid under the general rules of the civil law. The contract was approved by imperial legislation, but that legislation was not essential to its validity. Therefore, the nullity of the legislation did not carry with it the nullity of the defendant's obligation.

This contract law argument was sufficient to dispose of the matter, and in the 1876 case the court's opinion went no further. In the 1875 case, however, the court continued: The contract was not one between the defendant and the company, but rather, by the contract the defendant became an associate of the company. The contract was in fact one for a sociedad anonima, "authorized by the commercial code of May 18, 1854, in force in the time of the so-called imperial government." 134 In such a company the responsibility of the associates extends to the value of their shares, and thus in the case of the defendant to the value of his note.

In support of this last principle the court cited Article 243 of the 1854 code. The citation was apposite in the sense that it did set out the principle applied by the court, but unlike the court in the steamboat line case, the court here made no attempt to explain why the code could be cited at all. Whatever the rationale, however, use of the code in the two cases suggests that the distinction between the states that adopted the code and those that, together with the federal district, did not, was less clear in practice than in theory. Even in the latter jurisdictions the code was employed by counsel 135 and, on one theory or another, sometimes cited by the courts. At a minimum, it must have played a useful role in suggesting the structure and possible solutions for new legal problems.

V. CONCLUSION

What do the cases signify with respect to commercial codification? The answer must, I think, consist of several parts. First, the reported cases suggest little need for a commercial code. A code might have produced a more sensible result in one case and perhaps would have provided a more secure legal basis for the results in a few others, but there is nothing in the cases to indicate the existing law was fundamentally inadequate in the business association field. The Ordinances of Bilbao, like any general law, could be extended and modified through use of doctrine, but for the most part no such development

134. Judgment of April 26, 1875, Tercero de lo Civil, Mexico City, 4 EL FORO 341 (May 13, 1875).
135. Judgment of Jan. 31, 1880, Tribunal Superior de Justicia del Estado de Coahuila de Zaragoza, segunda sala, 7 EL FORO (2a época) 437 (June 12, 1880), continued in 7 EL FORO (2a época) 442 (June 15, 1880). Counsel also cited the 1829 Spanish commercial code.
was necessary. Outside of mining, the great majority of cases were precisely the kind with which the Ordinances had been intended to deal. Second, there appears to be no reason to believe that the reported cases are grossly unrepresentative of the universe of Mexican business association conflicts during this period. The legal journals did not report all court decisions, and many disputes no doubt did not even reach the courts but were resolved by arbitration or other means. The distribution of cases does accord reasonably well with what we know of the Mexican economy of the period; but in any event, the critical question is not whether, say, disputes involving agricultural partnerships are fairly represented in the reported cases, but whether the cases significantly understate the importance of business corporations and the legal problems associated with them. To the latter question the answer appears to be no.

Until roughly the end of the period covered in this study, domestic business corporations appear to have played an insignificant role in the Mexican economy. Underdevelopment was of course one reason for this, but not the only one. Colombia had a much smaller economy and a generally less developed one, but business corporations became important a decade or more earlier in Colombia than in Mexico. Economic development could have ambivalent implications for the use of business corporations in nineteenth-century Latin America. It created new business opportunities, but it also tended to narrow the area within which domestic business corporations had some advantage over alternative forms of economic organization. Mexico’s greater and more liquid wealth appears to have permitted enterprises to be undertaken by a simple partnership or comandita that in Colombia would have re-

136. It appears that arbitration was most frequently used in disputes connected with dissolution of a company. The Ordinances of Bilbao required that company contracts include a clause providing for arbitration of such disputes. Ordinances of Bilbao, supra note 1, ch. 10, no. 16, and three of the five business association cases referring to arbitration arise out of dissolution of a company: Judgment of April 11, 1864, Tribunal Superior de Justicia, primera sala, Departamento de Puebla, 1 ANALES DEL FORO MEXICANO 135 (Nov. 19, 1864); Judgment of Sept. 21, 1875, Tribunal Superior de Justicia del Distrito, primera sala, Mexico City, 5 EL FORO 289 (Sept. 28, 1875); Judgment of Nov. 9, 1875, Suprema Corte de Justicia, [1875] 7 Seminario 147. The two non-dissolution cases referring to arbitration concerning mining companies. Judgments of Oct. 18 & Nov. 24, 1860, Arbitros Licenciados, Mexico City, 1 ANALES DEL FORO MEXICANO 205 (Dec. 31, 1864), reprinted in 2 GACETA DE LOS TRIBUNALES 677, 700 (Aug. 31 & Sept. 7, 1861); Judgment of Aug. 20, 1875, Supremo Tribunal de Justicia de San Luis Potosí, segunda sala, 5 EL FORO 394 (Oct. 29, 1875).

The reason for singling out dissolution controversies is suggested by the text of the Ordinance of Bilbao provision requiring arbitration clauses: “because at the termination of Companies, their accounts being closed, there commonly arise among the interested parties many doubts and differences from which proceed long and costly suits, capable of ruining everyone.” Not all dissolution disputes were submitted to arbitration, however. Judgment of Aug. 18, 1877, Primera Instancia del Distrito de Toluca, 3 EL FORO (2a época) 318 (May 1, 1878).

137. See MEANS, UNDERDEVELOPMENT, supra note 90, ch. 4.
quired a corporation or substantial joint stock. Development also meant that foreign investors and entrepreneurs were generally more familiar with Mexican business opportunities than with Colombian ones. In commercial banking, where Colombian business corporations first found a significant and successful economic role, knowledge of domestic law and credit practices appears to have given Colombian entrepreneurs a significant advantage over foreign ones, and the banking field was dominated by domestic companies. Mexican bankers appear to have enjoyed no similar advantage over foreign competitors, and during much of this period the only modern commercial bank was the Mexico City branch of the Bank of London and South America.

Until the 1880s, therefore, the economic activities for which Mexican business associations were formed did not present the combination of magnitude and risk that would have required resort to complex share companies. Mining was the exception, but for mining companies Mexican law already provided special legal rules. Elsewhere, business associations continued to be simple economic entities linked to each other by market forces. For such an economic structure, the precodification law of business associations was generally adequate.

Yet this cannot be the entire story. A number of states found it worthwhile to adopt the 1854 code, and at the federal level a commission was established and kept at work. The significance of this activity should not be exaggerated. Adoption of the 1854 code required only a simple decree, and many states failed even to make that effort; nor does any great urgency appear to have attached to the efforts to enact a new national code prior to about 1880. Nevertheless, an appreciable number of Mexicans obviously believed that commercial codification would carry some advantages. This belief may have rested to some degree on an unthinking association of codification with progress, but presumably some at least of the proponents of codification had specific benefits in mind. Just what those benefits were is unknown: prior to the 1880s both complaints regarding the Ordinances of Bilbao and arguments in favor of commercial codification were cast in general terms. They made no reference to specific problems or reforms.

138. For manufacturing, compare id. with Rosenzweig, La Industria, in 1 EL PORFIRIATO: LA VIDA ECONÓMICA 311, 450-63 (D. Cosio Víllegas ed. 1965) [hereinafter cited as Cosio Víllegas (vol. 7, part 1, of Historia Moderna de México). To develop this point systematically it would be necessary to assemble comparative capitalization data for Colombian and Mexican manufacturing enterprises for the period before corporations came to be commonly used in Mexican manufacturing (roughly, the period of this study and before). Possibly the Colombian enterprises, for which corporations or joint stocks almost invariably were used, were more heavily capitalized, but it seems more likely that the reverse was true.

139. See Rosenzweig, Moneda y bancos, in Cosio Víllegas, supra note 138, at 789, 800 et seq.

140. Statements or arguments regarding the inadequacy of the Ordinances or the need for a commercial code fall into three general categories:
However, at least in the minds of some Mexicans there apparently were benefits. Thus, the pattern of limited state codification and ineffective action at the federal level appears to have been the result of relatively weak conflicting pressures. On one side a support for codification that was real but neither very intense nor very widespread; on the other, inertia and probably also the opposition of some groups whose interests might be injured by the changes associated with codification. At the state level, where "codification" in fact involved only the enactment of a simple decree, the balance favored codification in some states but not in others. At the national level, where efforts were directed towards preparation of an entirely new code, nothing was accomplished. Not until the economic transformations of the porfiriato began to present entirely new legal problems did the balance of forces at last swing definitively in favor of codification.

(1) Conclusory statements making no reference at all to legal problems that are not adequately dealt with by the Ordinances or that would be better dealt with by a modern code. E.g., Revista de los Estados, 2 El. Foro (2a epoca) 150 (Aug. 23, 1877) referring to "the unforgettable Ordinances of Bilbao, which every learned lawyer of Jalisco blushes to cite," 1884 MEMORIA, supra note 83, referring to "the advantages of a Commercial Code, adapted to the present needs of the country, which are not satisfied by the Ordinances of Bilbao."

(2) Statements making very broad or vague references to such problems. 1868 MEMORIA, supra note 66: the Ordinances are "inadequate for the epoch in which we live, in which mercantile practices have changed, in which contracts unknown [when the Ordinances were promulgated] are celebrated, and in which there is not that admirable good faith that once was general." 1889 MEMORIA, supra note 66: "Mercantile operations multiply, commerce acquires new form and greater importance as relations with foreign powers are broadened, and the legislation must accommodate itself to these transformations of progress."

(3) Statements referring to more specifically defined problems. I have found only two such statements made before 1883. An 1875 business association case applied the federal Code of Civil Procedure to an appeal from an arbitration growing out of the dissolution of a partnership. Even if the company were deemed to be a commercial one, the court said, there is no code of commercial procedure, "nor any law in force that governs arbitral judgments in commercial matters (since the Ordinances of Bilbao are defective and do not merit that name); . . ." The second appears in an article written in 1877, in which the author argues that bills of exchange have changed, and the Ordinances of Bilbao hinder their free circulation by imposing needless formalities and also fail to provide a prompt remedy for the creditor. Alberto Lombardo, Letras de cambio, 2 El. Foro (2a epoca) 181 (Sept. 4, 1877). To these two explicit criticisms of the Ordinances should be added the fact that in 1875 El Foro published a Proyecto de ley sobre sociedades anónimas e instituciones de crédito, 5 El. Foro 394 (Oct. 29, 1875).

For the year 1883 alone (the last year covered in this study) three statements referring to specific inadequacies of the precodification commercial law appear in the sources surveyed. Two refer to its failure to regulate railroad transportation. Judgment of May 8, 1883, Primero Menor, Mexico City, 20 El. Foro 297 (Apr. 24, 1883); El proyecto de Código de Comercio, 20 El. Foro 321 (May 2, 1884). The third refers to the failure of existing law to govern business corporations and the consequent need for special legislation for the constitution of bank corporations. Casasus, Ligeras consideraciones sobre la organizacion e influencia de los bancos hipotecarios, 21 El. Foro 371 (Nov. 14, 1883).