THE OIL AND LAND CONTROVERSY BETWEEN
THE UNITED STATES AND MEXICO

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I. BEGINNINGS OF THE LAND CONTROVERSY

1. Brief History of Mexico's Land Problem

The land problem lies deeply rooted in Mexico's past. Centuries before the Spanish Conquest, the nomads arriving from the North found the arable land already occupied. This led to open warfare for the possession of the land, which has carried on down, even to the present, through struggles between neighboring tribes and villages.

This demand for land was so keen that it resulted in the development of a fairly well organized system of land-tenure among the Aztecs long before the Spaniard arrived. Land was held in common, usually by the subdivision of the pueblo, the calpolli or kinship group. In addition lands were held hereditarily by the heads of families, and public plots were cultivated for the benefit of the tribe and the Aztec overlords.

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1 Gruening, "Land Question in Mexico," American Economic Review, XX, Sup. 51-52
2 See Redfield, Tepoztlan, A Mexican Village, 63-64
3 McBride, The Land Systems of Mexico, 24
4 Redfield, op. cit., 61
5 Tannenbaum, The Mexican Agrarian Revolution, 3
Bandelier claimed that the communal holdings were the only recognized form of land-tenure among the Aztecs. However, there is evidence that before the Conquest there were departures from the communal system, which were later to be perpetuated in the huge individual holdings of the Spanish conquistadores. An early variation was the growth of fairly large estates with serflike tenants bound to the soil.

After the Spanish Conquest, the crown determined to preserve the essential features of Aztec land-tenure. A typical decree illustrating this commanded that "the sale, gift, or confirmation of lands be made with great care so that to the Indians may retain—with good measure—both the private and communal lands...and that under no circumstances these may be sold or alienated." In fact, there was scarcely a law on this subject which did not contain a plea that the Spanish respect Indian rights.

The Spanish sovereigns found it an impossible
task to carry out their good intentions because of the scarcity of good land and the resultant struggle between the Indians and the whites for possession of the choice land.\textsuperscript{10}

This conflict introduced the \textit{encomienda} into New Spain. As originally used in the West Indies the unit of allotment had been the individual chief and his followers.\textsuperscript{11} The governor would distribute the Indians to the Spaniards under a deed similar to the following one: "To you, so-and-so, are given in trust ("se os encomiendan") under chief so-and-so, fifty or one hundred Indians, with the chief, for you to make use of them in your farms and mines, and you are to teach them the things of our holy Catholic faith."\textsuperscript{12} When the \textit{encomienda} system was adopted among the sedentary Indians of Mexico, the unit of place was used and villages were allotted to the Spanish conquerors.\textsuperscript{13}

Theoretically the encomendero owned neither the Indian nor his property, but the law was so easily cir-

\textsuperscript{10} Phipps, \textit{op. cit.}, 23  
\textsuperscript{11} McBride, \textit{op. cit.}, 44  
\textsuperscript{12} Sir Arthur Helps, \textit{The Spanish Conquest in America}, I, 138-139  
\textsuperscript{13} McBride, \textit{op. cit.}, 44
cumvented that their lands were quite generally usurped.\footnote{Phipps, op. cit., 30} The evil effects of the system led the Spanish sovereigns to make repeated legislative attempts to suppress it.\footnote{Tannenbaum, op. cit., 5} These laws were not successful in abolishing encomiendas until natural conditions in Mexico began to work in the same direction. As the wilder Indian tribes were encountered on the advancing frontier, Spanish colonists lost their desire for encomiendas, and were glad to escape the responsibility of civilizing, converting, and protecting the Indians, as well as the increasingly impossible task of exploiting their labor.\footnote{Bolton, "The Mission as a Frontier Institution in the Spanish-American Colonies," American Historical Review, XXIII, 45} These two forces gradually reduced the encomiendas after 1700 and they were finally abolished in 1720.\footnote{Phipps, op. cit., 36}

The process of concentration of land during the colonial period was not confined to the granting of encomiendas. Large estates were also created by gifts from the King, by purchase from the Indians or the Crown, or by direct conquest.\footnote{Tannenbaum, op. cit., 6}
Another attempt to break up land concentration came in 1767 when the property of the Jesuits was confiscated.19

The War for Independence in Mexico was more than a political movement. In its early stages it was largely motivated by the agrarian ambitions of the Indians.20 The achievement of independence in 1821 saw the rewards going, not to the masses, but to the clergy and the large landholders.21

After independence several attempts were made to take lands from the church. These reached a national scope in the Law of Expropriation of June 25, 1856. This law, called "ley Lerdo," provided that all church lands should be transferred to the tenants at a capitalization which at 6 per cent would bring the rent. Church lands which were not rented were to be sold at auction.22 Although the purpose of the law was to make property more mobile, its result, as far as can be estimated, was to make a few rich land speculators richer.23

19 Tannenbaum, op. cit., 8
20 Ibid., 8
21 Phipps, op. cit., 65-60
22 Tannenbaum, op. cit., 9
23 Phipps, op. cit., 78-80
Important in this connection is the attack that was made after independence on village communal lands. The Constitution of 1857 declared that all communal property was to be allotted in severalty to the individuals concerned. Civil and ecclesiastical bodies were denied the right to acquire any other property than such buildings as were needed by the corporation. In a decree on July 12, 1859, President Juárez completely nationalized church lands.

Disappointing as had been some of these attempts to restore the land to the people, they were sincere steps in the right direction. Porfirio Díaz came into power in 1876 and proceeded to defeat the purpose of the reform laws by carrying on a steady encroachment of communal lands. Once the land was allotted in severalty to the Indians they were easy prey for the land speculators.

By 1910 this process had gone so far that the State of Morelos, for example, was owned by twenty hacendados, or large landholders. In all Mexico 3,103,402 agricultural laborers had lost their lands and were held

24 McBride, op. cit., 130
25 Phipps, op. cit., 84
26 Ibid., 113
in debt peonage by 834 hacendados. These peons, with their families, numbered 9,000,000 to 10,000,000, or from about three-fifths to two-thirds of Mexico's total population.27 It has also been estimated that by 1910 over 90 per cent of the Indian communal villages on Mexico's fertile central plateau had been deprived of their lands.28

The reform to destroy land feudalism and to return Mexico to its people had failed; the new land policy of the Diaz regime was beginning to bear treacherous fruit.

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27 Phipps, op. cit., 127

2. The Revolution of 1910

It was against this social and economic background that the revolution of 1910 began. Strangely enough, Francisco Madero, the motive force behind the outbreak, thought the significance of the upheaval lay in its political designs.\(^2^9\)

At first Diaz ignored Madero's campaign for the presidency, but imprisoned him at San Luis Potosi when his attacks became personal. Madero later fled to San Antonio, Texas, and from there on October 5, 1910, issued his famous call for revolution—the Plan de San Luis Potosi.\(^3^0\) The third section of this plan contained the following significant statement:

> In abuse of the law on public lands numerous proprietors of small holdings, in their greater part Indians, have been dispossessed of their lands by rulings of the department of public development (fomento) or by decisions of the tribunals of the Republic. As it is just to restore to their former owners the lands of which they were dispossessed in such an arbitrary manner, such rulings and decisions are declared subject to revision, and those who have acquired them in such an immoral manner, or their heirs, will be required to restore them to their former owners, to whom they shall also pay an indemnity for the damages suffered.\(^3^1\)

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\(^{29}\) Hackett, op. cit., 342

\(^{30}\) Priestley, *The Mexican Nation: A History*, 398

Madero's promises led the peons to rise in rebellion all over Mexico, and he was elected president in October, 1911.32 It has been claimed that Doheny and Standard Oil agents encouraged this revolution, thinking that the overthrow of Diaz was necessary to stop the growing concessions to the British.33 Testimony before the Senate Committee on Foreign Relations in 1913 tended to show that American oil interests had subsidized the revolution. Lawrence F. Converse, an American officer in Madero's army, testified that Madero had himself told him that United States bankers were to advance him money and that Standard Oil interests had bought bonds of the provisional government and were backing it in its revolution, in return for oil concessions in Southern Mexico.34 Another significant fact is that Madero soon began to make concessions to the Standard Oil Company rather than to Mexican Eagle, the British company.35

Many believe that the secret support of the United

32 Stuart, Latin America and the United States, 127
33 Ludwell Denny, We Fight for Oil, 46
34 Ibid., 46
35 Stuart, op. cit., 128
States Government was another cause of Madero's revolution. Be that as it may, we do know that the United States recognized the new government and tried to keep Madero in power by suppressing counter-revolutionary movements against him. 37

Despite his initial success, however, Madero proved to be an impractical dreamer and soon lost his popularity when he did nothing to carry out his pledges. Zapata, an Indian in the State of Morelos, visited him and asked that the lands taken from the villages during the dictatorship of Diaz be restored without delay. Madero refused to take immediate action, arguing that the problem was such a complicated one that he needed time to study the matter. Zapata repudiated Madero and on November 28, 1911, issued his famous Plan de Ayala. 38

Its introduction read as follows:

Let Senor Madero—and with him all the world—know that we shall not lay down our arms until the ejidos of our villages are restored to us, until we are given back the lands which the hacendados stole from us during the dictatorship of Porfirio Diaz, when justice was subjected to his caprice.

36 Stuart MacCorkle, "American Policy of Recognition Towards Mexico," Johns Hopkins University Studies in Historical and Political Science, LI, No. 3, 82; and Denny, op. cit., 46

37 MacCorkle, op. cit., 83

38 Tannenbaum, op. cit., 159-160
We shall not lay down our arms until we cease to be unhappy tributaries of the despotic magnates and landholders of Morelos. We shall not lay down our arms as long as we are forced by poverty and hunger to make our children cultivate the master's fields, when they are still in the tender years of childhood and have not yet learned the alphabet. 39

Taking advantage of this growing unrest, Felix Diaz, nephew of the former president, started his ten day revolt, which lasted from the ninth to the eighteenth of February, 1913. Victoriano Huerta, the commander of the government troops, then turned against Madero and ordered his arrest. The president resigned under pressure and Huerta became head of a provisional government. Madero was murdered while being escorted to prison, precipitating a serious discussion as to the advisability of recognizing Huerta. Ambassador Henry Lane Wilson urged his recognition but President Taft preferred to turn the matter over intact to the new administration. 40

President Woodrow Wilson, who decided to follow his much criticized policy of "watchful waiting," withheld recognition from Huerta. 41

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39 Phipps, op. cit., 137
40 Stuart, op. cit., 128-129
41 See MacCorkle, op. cit., 87-89
II. CARRANZA AND THE CONSTITUTION OF 1917

1. Carranza's Activity, 1913-1916

Huerta had never been able to establish order in Mexico and it was not long until the reform elements began to revolt. Venustiano Carranza, governor of the State of Coahuila, rose against him on February 19, 1913, and soon issued the Plan of Guadalupe with the object of re-establishing constitutional government. It is significant that this plan gave no attention to the agrarian problem.1

In April, 1914, occurred the Tampico incident and the American occupation of Vera Cruz.2 Huerta was forced to resign in July and turned over the executive office to Francisco Carbajal, his Chief Justice. The latter's rule was ended by Secretary of State Bryan's suggestion that he give way to Carranza. The Constitutionalist Army occupied Mexico City in August, but after the forces of Villa and Zapata marched against him, Carranza was forced to transfer his capital to Vera Cruz.3

He then began to see that his program must be

1 Tannenbaum, op. cit., 164
2 Priestley, op. cit., 423
3 Ibid., 429-430
broadened to attract much-needed support to his banner.
He knew that he must make it clear that he and his fol-
lowers were dedicated to the task of putting an end to the
evils of the past. It was with this in mind that Carran-
za issued the decree of December 12, 1914, promising,
among other things, to "give satisfaction to the econ-
omic, social, and political needs of the land;" to dis-
solve the large estates and restore the land to the vil-
lages; and to revise the laws relating to the exploit-
atation of mines, oil, water, forests, and other natural
resources, "for the purpose of destroying monopolies
created by the ancient regime and to eliminate and to
prevent the formation of others in the future."4 We
see here the germ of all the later controversies over
land and oil.

On January 6, 1915, Carranza issued his provis-
ional agrarian decree, which has been called the "first
constructive act of the revolution of 1910."5 The signif-
icant provisions of this decree may be summarized as fol-
lows: First, it nullified all illegal sales of lands,
water rights and forests made by governmental authorities
and all laws by which the administration of Diaz had so

4 Tannenbaum, op. cit., 165-168
5 Hackett, op. cit., 344
acted, thus restoring title to the villages. Second, it provided that villages which needed community lands (ejidos) and those which were unable to secure the restoration of their lands because of faulty titles, should be given lands according to their needs, "the National Government expropriating the necessary lands to that effect from those immediately adjoining the townships in interest." Third, it provided for the creation of a National Agrarian Commission of nine members, presided over by the Secretary of Fomento; a local commission for each State and Territory; and such special executive commissions as might be determined in each State. Finally, it outlined a specified procedure for the restoration of ejidos and for court appeals by persons who might be injured by the expropriation of their lands.\(^6\)

The effect of this decree was to enlist wholeheartedly to Carranza's cause the elements of the hitherto divided Mexican populace, and to make Villa an outlawed rebel.\(^7\) On October 19, 1915, Carranza was granted "de facto" recognition by the United States Government, and the next day President Wilson proclaimed an embargo on the shipment of arms to counter-revolutionists in Mexico.\(^8\)

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\(^6\) For an English translation of this decree see Hackett, op. cit., 403-405

\(^7\) Ibid., 345-346

\(^8\) MacCorkle, op. cit., 92-93
Angered at Carranza's recognition, Villa sought to embarrass him by involving him in difficulties with the United States. The Santa Ysabel massacre took place in January, 1916. When this news reached Washington there was a strong sentiment developed in favor of armed intervention in Mexico. In March Villa made his raid on Columbus, New Mexico. This led to Pershing's punitive expedition, which occasioned serious diplomatic exchanges.

On August 15, 1916, while the two Governments were still wrangling over the presence of American troops in Mexico, the office of the ministry of fomento, colonization and industry, by direction of Carranza, issued a decree "requiring foreigners to renounce their national protection when acquiring rights to certain real property in the Republic of Mexico." All denouncements or applications filed with this office were to be suspended until the foreigner in question obtained a certificate bearing the renunciation issued by the ministry for foreign affairs. They were allowed four months to present the certificate. On December 15, 1916, the period was extended till April 15, 1917.

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9 See Rippy, The United States and Mexico, 345-351
10 Stuart, op. cit., 135-136
11 For an English translation of this decree see Hackett, op. cit., 405-407
In a note on January 19, 1917, to Walter Thurston, representing American interests in Mexico City, Lansing instructed him to advise the proper authorities that the United States Government did not accept the decrees of August 15 and December 15, 1916, "as annulling the relations existing between it and its citizens who may acquire properties in Mexico or as affecting its rights and obligations to protect them against denials of justice with respect to such properties."\(^{12}\)

Since that time various reasons have been adduced for the calling of this convention and the resultant adoption of the Constitution of 1917. One explanation which has been advanced is that the Carranza Government was acting in accord with the United Government.

Interesting in this regard is the following statement made by Borden J. Boudé, Representative from New York:

"No one doubt, if he can draw intelligent conclusions from rules, prevalence facts, and the several political interferences, and administrative persecutions, under which American and British oil producers were laboring, were conceived by Venustiano Carranza as a means of impeding and

These decrees help explain the sweep of the revolution which carried Carranza along to the adoption of the Constitution of 1917. Tannenbaum tells us that Carranza had not originally planned to give Mexico a new constitution. It was not until September 15, 1916, that he issued the proclamation calling a constitutional convention to reform the Constitution of 1857. The convention convened on November 21, 1916, in the old city of Queretaro, and closed on January 31, 1917.

From time to time various reasons have been assigned for the calling of this convention and the resultant adoption of the Constitution of 1917. One explanation which has been advanced is that the Carranza Government was working in accord with the German Government. Interesting in this regard is the following statement made in the House of Representatives on March 3, 1919, by Norman J. Gould, Representative from New York:

Who will doubt, if he can draw intelligent conclusions from cold, unpleasant facts, that the outrages, political interferences, and administrative persecutions, under which American and British oil producers were laboring, were conceived by Von Eckhardt and suggested to Carranza as a means of impeding and

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13 The Mexican Agrarian Revolution, 172
14 Ibid., 173
ultimately, through the operation of Article 27 of the new Mexican Constitution, cutting off entirely the supply of fuel oil upon which American and British Navies and merchant ships were depending to win the war?15

A proclamation of October 1, 1918, by Felix Diaz, then the commander in chief of the national army of reorganization, also points in this direction:

Another phase of the plot (German-Carrancista) is that which relates to the problem of the Mexican oil. It is well known that 75 per cent of the oil used by the allied fleets is produced in Mexico. The Germans have plotted to arrange matters with Carranza so that gradually the extraction of oil in Mexico will become impossible, and if necessary the wells will be set on fire. In this manner the movements of 75 per cent of those navies will be paralyzed as if that percentage of the allied fleets had been sunk. All these machinations favor only the Carranza government and the German Empire with irreparable sacrifice to the Mexican people.16

A much saner view than expressed in the above statements is that which seeks for the cause in the natural turn of events. An examination of Carranza's part in the constitutional convention would seem to absolve him of any intrigue with German authorities.

He submitted to the delegates a complete form of the Constitution of 1857, amended to include his proposed changes. This document reveals an almost complete absence of those provisions of the Constitution of 1917 which have

15 Cong. Record, 65th Cong., 3rd sess., Vol. 57 (appendix), 380
since caused so much controversy. Carranza's Article 27 was drawn on a much narrower scale than that which the convention adopted, lacking many of the features to which the United States was later to take exception. One writer has even gone so far as to say that "whatever is really new in the constitution comes largely from the constitutional convention itself."\(^{17}\)

The Constitution of 1917 was undoubtedly influenced not only by the spirit of revolution within Mexico, but by the fact that it was written in a time of international stress. Governments were everywhere assuming extensive control over the economic organization of their countries. Non-recognition of Mexico during the period of the War forced upon her isolation and national self-consciousness. The combination of these factors led the convention along new paths.\(^{18}\)

On January 22, 1917, Lansing sent a note to Charles Parker, who was representing American interests at Queretaro, instructing him to bring to Carranza's attention several provisions of the proposed Constitution then under consideration. The provisions to which Lansing objected are as follows: 1) the executive's power to expropriate

\(^{17}\) Tannenbaum, op. cit., 174

\(^{18}\) Ibid., 174-175
private property without legislative authority or judicial review being assured the owners; 2) the provision which would give the executive the arbitrary power to determine the appropriate area needed by civil and commercial companies; 3) Article 28, providing that there should be no exemptions from taxation; 4) the first and second paragraphs of Article 33, giving the executive the power to expel foreigners at will, which provision seemed to be inconsistent with the recognized rights of aliens and with the rules of international comity; and finally, the third paragraph of this same article, requiring foreigners to waive their citizenship and the protection of their governments in property matters, in order to acquire real estate. In this connection Lansing referred to his note of January 19, 1917, to Walter Thurston, in which he had stated his Government's stand that it would not concede the right of Mexico to annul its right of intervention in behalf of American citizens. 19

Carranza did not even show the courtesy of replying to this protest. Instead the Constitution was amended to make it more objectionable to foreign interests. 20

20 Ibid., II, 3355
3. Article 27

The new Mexican Constitution was promulgated February 5, 1917, and was to go into operation on May 1, 1917. As revised, the chief provisions to which the United States might object were collected in Article 27.  

The disputed provisions of this article as they concern us here are as follows:

The ownership of lands and waters comprised within the limits of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.

The Nation shall have at all times the right to impose on private property such limitations as the public interest may demand as well as the right to regulate the development of natural resources, which are susceptible of appropriation, in order to conserve them and equitably to distribute the public wealth. For this purpose necessary measures shall be taken to divide large landed estates; to develop small landed holdings; to establish new centers of rural population with such lands and waters as may be indispensable to them; to encourage agriculture and to prevent the destruction of natural resources, and to protect property from damage detrimental to society. Settlements, hamlets situated on private property and communes which lack lands or water or do not possess them in sufficient quantities for their needs shall have the right to be provided with them from the adjoining properties, always having due regard for small landed holdings. Wherefore, all grants of lands made up to the present time under the decree of January 6, 1915, are confirmed. Private property acquired for the said purposes shall be considered as taken for public use.

21 Hackett, op. cit., 346
In the Nation is vested direct ownership of all minerals or substances which in veins, layers, masses or beds constitute deposits whose nature is different from the components of the land, such as... petroleum and all hydrocarbons—solid, liquid or gaseous.

Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines, waters or mineral fuels in the Republic of Mexico. The Nation may grant the same right to foreigners, provided they agree before the Department of Foreign Affairs to be considered Mexicans in respect to such property, and accordingly not to invoke the protection of their Governments in respect to the same, under penalty, in case of breach, of forfeiture to the Nation of property so acquired. Within a zone of 100 kilometers from the sea coast no foreigners shall under any conditions acquire direct ownership of lands and waters.

Commercial stock companies shall not acquire, hold or administer rural properties. Companies of this nature which may be organized to develop any manufacturing, mining, petroleum or other industry, excepting only agricultural industries, may acquire, hold or administer lands only in an area absolutely necessary for their establishments or adequate to serve the purposes indicated, which the Executive of the Union or of the respective state in each case shall determine.

All contracts and concessions made by former governments from and after the year 1876 which shall have resulted in the monopoly of lands, waters and natural resources of the Nation by a single individual or corporation, are declared subject to revision, and the Executive is authorized to declare those null and void which seriously prejudice the public interest.

The Constitution had already been promulgated when Ambassador Henry P. Fletcher arrived in Mexico City.

22 Annals of the American Academy, LXXI, Sup. 15-25
on February 19. Before presenting his credentials to Carranza at Queretaro, he visited the Mexican foreign office at Mexico City, and on February 20 transmitted to the State Department the opinion of the Mexican Minister for Foreign Affairs that property rights would not be prejudiced by legislation emanating from the new Constitution.23

The Mexican Minister also called attention to the fact that foreign property owners would be protected by Article 14 of the new Constitution, which provides that "no law shall be given retroactive effect to the prejudice of any person whatsoever."24

Having now seen the beginnings of the land problem, and having followed the revolution of 1910 as it proceeded under Madero, Zapata, Huerta and Carranza, let us pause for a moment to see how far land distribution had progressed.

24 Annals of the American Academy, LXXI, Sup. 7
4. Land Distribution Since 1915

The division of large estates as begun by the provisional agrarian decree of January 6, 1915, continued without interruption under the Constitution of 1917. Such transfers of lands to villages that had been made previously by the various commissions were given constitutional status.

The changes in land holding that have resulted from the revolution can be measured only approximately, because there is no exact account of pre-revolution conditions. Land distribution since 1915, however, can be quite accurately described.25

The largest, though not the most important change in land ownership since 1915 has been the increase of government-owned lands. The Carranza administration recovered from nine owners over 13,000,000 hectares of national land, which had been ceded for speculative purposes. In 1924 the government regained 7,500,000 hectares from one company. President Calles reported an additional 4,604,573 hectares in 1925. In all there has been an increase of more than 60 per cent. Government-owned lands in 1926 constituted 13.6 per cent of Mexico's total area as com-

25 Tannenbaum, op. cit., 315
pared with 11.6 per cent in 1912.26

More significant than this increase in publicly owned lands has been the distribution of lands to the villages. Up to 1926 approximately 17 per cent of the villages entitled to benefit had received land. Considering all grants made from 1915 to 1926 it has been determined that less than 5 per cent (452,829) of the rural population received less than 3 per cent (5,046,041 hectares) of the total area of Mexico. The benefits of this land distribution have been quite unevenly distributed as is shown by comparing the State of Morelos with the average for the nation. In this state over 25 per cent of the population received nearly 33 per cent of the area of the state.27

An interesting outcome of land distribution has been that most grants have been in the form of donations. The original demand had been for the restitution of lands previously possessed. Because of inadequate titles the emphasis turned to direct donation, which has accounted for 70.9 per cent of the total land distributed to villages, and for over 90 per cent of the number of indiv-

26 Tannenbaum, op. cit., 316-320

27 Ibid., 320-326
The above results of land distribution may not seem impressive. However it must be considered that this process is almost certain to continue in the future, though perhaps on a modified scale. Another tendency which cannot be measured is the division of large holdings through voluntary sale by the owners.

These methods which were used to settle the agrarian problem had the effect of restoring peace in Mexico. In a communication to the American charge d'affaires on March 31, 1923, Mr. Pani, Secretary of Foreign Affairs, justified Mexico's policy on these grounds:

This Administration succeeded in quelling such centers of rebellion and in reestablishing peace throughout the national territory, not so much by military force and bloodshed as by the quick application of agrarian laws. Nobody doubts that, facing such dilemma, the adopted solution was the most humanitarian and economic one—in spite of the inevitable damage to individual national and foreign agricultural interests—because the repression by force, of uncertain and transitory results, would have affected necessarily the agricultural, urban, industrial and moral interests throughout the country, with its eternal trail of evils of every kind.

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28 Tannenbaum, op. cit., 326-328

29 Ibid., 333

30 Proceedings of the United States-Mexican Commission Convened in Mexico City, May 14, 1923, 28
III. THE BASIS OF THE OIL PROBLEM

1. The Development of the Oil Industry in Mexico

The agrarian problem was not the only consideration which threatened to involve Mexico and the United States in a very serious controversy. By nationalizing subsoil deposits, Article 27 laid the basis for the oil controversy. As we follow through the development of the Mexican oil problem, we can realize that international relations are sometimes nothing more than oil relations.

The Mexican peons had long known of the oil seepages in their fields, which to them were only death traps for animals.1 As Mexican officials began to speculate over the value of the oil, many individuals and small companies made rudimentary efforts to exploit it. In 1864 some oil was discovered and put to use in the Vera Cruz region.2 In 1876 a Boston sea captain formed a company and drilled several wells at Tuxpam. After his funds ran out he committed suicide.3 Several large wells were brought in at Tabasco in 1886, and were productive for a

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1 Callahan, American Foreign Policy in Mexican Relations, 518
2 Ibid., 516
3 Howland, ed., Survey of American Foreign Relations, 1931, 124
short time. Two years later an Englishman by the name of Burke got Cecil Rhodes to finance a company, which spent almost a million dollars in unproductive wells.

A new era in the history of Mexican oil development began in May, 1900, when Edward L. Doheny and his associates made a prospecting trip to the San Luis Potosi region west of Tampico. They bought 280,000 acres for $325,000, and later added to this an abandoned hacienda of 150,000 acres. Ambassador Powell Clayton introduced Doheny to President Diaz who welcomed his efforts. Ludwell Denny has declared that the dictator's friendship was secured financially.

Doheny's first well began to produce in May, 1901. In 1904 he brought in a well which yielded 1,700 barrels per day. This so surprised the Mexican geologist, Aguileria, that he made an unsuccessful attempt to nationalize petroleum. By 1906 Dohany's wells produced half a million barrels. He soon started operations farther south in the Tampico-Tuxpam area, where lighter oil was dis-

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4 Callahan, op. cit., 516
5 Howland, op. cit., 124
6 Callahan, op. cit., 517
7 Denny, op. cit., 45
8 Callahan, op. cit., 518
covered. The first well to be drilled in this area by the Mexican Petroleum Company, which he had incorporated in 1907, yielded 15,000 barrels daily, and the next one, 70,000 barrels. In 1916 the famous Cerro Azul gusher was brought in, producing 200,000 barrels daily. By 1922 the oil production of the Doheny interests had risen to over sixty million barrels per year.

President Diaz, watching this monopoly grow by leaps and bounds, decided to check Doheny’s activities and accordingly granted favorable concessions to the British company, Mexican Eagle, which was controlled by the Pearson port and railway interests. In 1906 this company was granted an exclusive concession to drill for oil on public lands in six states. Such favors as this enabled the Pearson interests to rival Doheny by 1910.

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9 Howland, op. cit., 125-126
10 Callahan, op. cit., 519
11 Denny, op. cit., 45
12 Howland, op. cit., 125-126
2. Legal Contentions of Both Parties

The attempt to nationalize all subsoil deposits quite naturally disturbed the foreign investors who believed that when they bought their lands they acquired full rights to the deposits of the subsoil.

Mexican officials do not appear at first to have questioned the stand taken by the oil companies, but later brought forth several reasons to support their changing attitude. In the first place they could turn to the Spanish law of the colonial period and Mexican law after independence in 1821, which had their best expression in the mining code for New Spain issued by Charles III in 1783:

Article I. Mines are the property of my royal crown, both by their nature and origin, and by their re-union provided for by law and title thirteen book six of the Nueva Recopilación.

Article II. Without separating them from my royal patrimony I grant them to my subjects in property and possession.

Article 22 of Title Sixth: Likewise I grant that there may be discovered, applied for, registered and denounced in the manner aforesaid not only mines of gold and silver, but also...bitumens or juices of the earth...

The United States Supreme Court had recognized this policy in 1862, United States v. Castillero, 2 Black (U. S.) 17,167, when it declared that "questions concerning mines

13 Howland, op. cit., 128-129
and mining rights in Mexico depend in a great measure upon the provisions of the Ordinance of the 22nd of May, 1783, which, although ordained long before her independence, by the sovereign of the parent country, is still in force and constitutes the principal code of the Republic upon that subject."

Second, this same principle was retained in the Mining Law of 1884 for many mineral deposits, although the surface owner was authorized to exploit coal and petroleum without concession. Finally, at the Congress of Jurists called by the Mexican Government in 1905, the minority opinion supported this view.

The contentions of the companies rested upon the terms of the Diaz legislation. The first Federal mining law of the Republic of Mexico was promulgated on November 22, 1884, containing the following clause:

Article 10. The following substances are the exclusive property of the owner of the land, who may, therefore, develop and enjoy them without the formality of entry (denuncio) or special adjudication:

IV. Salts found on the surface, fresh and salt water, whether surface or subterranean; petroleum and gaseous springs.

14 Howland, op. cit., note, 128
15 Ibid., 129
16 Ibid., 129
The law of June 4, 1892 contained the following provisions:

Article 4. The owner of the land may freely work without a special concession in any case whatsoever the following mineral substances: Mineral fuels, oils, and mineral waters.

Article 5. All mining property legally acquired and such as hereafter may be acquired in pursuance of this law shall be irrevocable and perpetual.18

At the Congress of Jurists in 1905 resolutions were adopted to the effect that petroleum belonged to the owner of the surface and not to the Government, and that these petroleum rights could not be taken away from the owner by the Mexican Government.19

The final support for the opinion of the oil companies was the mining law of November 25, 1909:

Article 2. The following substances are the exclusive property of the owner of the soil: I. Ore bodies or deposits of mineral fuels of whatever form or variety. II. Ore bodies or deposits of bituminous substances.20

Thus, considering Mexican legislation during the regime of Diaz, the nationalization of subsoil deposits by Article 27 clearly indicated a radical change of policy.

19 Ibid., 3272
20 Ibid., 3272
3. Controversy Over Carranza's Oil Decrees, 1917-1920

By executive decrees Carranza set about to put into operation and interpret Article 27. Correspondence between Alberto J. Pani, the Minister of Industry, Commerce and Labor, and Ambassador Fletcher, reveals an order of June 24, 1917, issued by the department of petroleum of the former's ministry, which prohibited the issuance of permits for the sinking of oil wells on lands leased after February 5, 1917.21

Yet in Fletcher's telegram of August 2, 1917, to the Secretary of State, he told of his interview on that day with President Carranza, during which the latter assured him that American oil and mining interests need have no concern with reference to the nationalization of the industries; and that the Mexican Government did not intend to confiscate properties then being exploited.22

The oil companies were not long to be held in doubt regarding Mexican intentions. Carranza's decree of February 19, 1918, imposed a tax on oil lands and on the annual rentals and royalties derived from their exploitation. Companies owning or leasing oil lands were re-

22 Ibid., 3154.
quired to file manifests on their properties. The decree was couched in such terms as to clearly indicate Carranza's intention of separating the ownership of the surface from that of the subsoil deposits.23

On March 20, 1918, Fletcher forwarded to the Secretary of State an interpretation of Article 27 by Pastor Rouaix, who had introduced it at the Constitutional Convention and had largely been responsible for its adoption. As to subsoil deposits Rouaix held that the Nation possessed "not only absolute and original ownership over them, but also private ownership." He maintained that the article repealed all laws opposed to it, although oil operators might continue to enjoy possession until governing regulations were passed. In conclusion he held that Article 27 was not retroactive because all it did was to "recover and reconstitute the fundamental ownerships of the Nation," which, without any right, one of Mexico's rulers had attempted to cede to private individuals.24

These two official interpretations by President Carranza and Rouaix clearly indicated the intention to annul private rights to petroleum.

23 For an English translation of the decree see Papers Relating to the Foreign Relations of the United States, 1918, 702-704

24 Ibid., 708-711
In a note to the Mexican Foreign Office on April 2, 1918, Fletcher expressed his Government’s opposition to the attempt to separate surface and subsurface rights under the decree of February 19, and declared in strong terms that the United States would not submit to any action "ostensibly or nominally in the form of taxation or the exercise of eminent domain, but really resulting in confiscation of private property and arbitrary deprivation of vested rights." He also called attention to the fact that no provision had been made for compensation, nor for the establishment of a court to decide cases arising under the decree.25

The oil companies also met this decree with great resistance, as President Carranza later mentioned in his annual message to Congress on September 1, 1918.26 From May to July, 1918, James R. Garfield and Nelson O. Rhodes, representatives of some forty-five oil companies held conferences with Pani, the Secretary of Industry, Commerce and Labor, and Rafael Nietro, undersecretary of the Treasury.27 As a result certain modifications were agreed to

25 Foreign Relations, 1918, 713-714
26 Extracts from his message appear in Foreign Relations, 1918, 633-638
27 Ibid., 720, 745
by the Mexican Government, without changing, however, the underlying principle of the decree of February 19. Even Carranza admitted this in his annual message on September 1, 1918.

Secretary Lansing cabled the American embassy at Mexico City August 12, 1918, instructing Fletcher to request Carranza to postpone the date when these decrees were to go into effect (August 15, 1918), in order that the American Government might have more time to consider them. In an interview the next day Carranza told Fletcher that it was impossible to postpone operation of the petroleum decrees further. He justified the decrees as being fiscal and temporary legislation. He even declared that he was prepared to settle the problem by war if it came to that end, but that he would be willing to exhaust every peaceful means of settlement first. He stated that the interested parties should appeal to the Mexican courts.

The oil companies quite generally refused to comply with the terms of the decrees. In this they acted

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28 Foreign Relations, 1918, 747
29 Fletcher to the Sec. of State, Aug. 7, 1918, Ibid., 751.
30 Ibid., 638
31 Ibid., 754-755
upon the advice of Secretary of State Lansing, who also advised them to apply for writs of injunction (amparo) against the application of the decrees. 33

The Mexican Executive Department Report of August 25, 1918, stated Mexico's attitude toward this very plainly. It was really a brief for the defense in reply to the demand by the petroleum companies through the courts. The report claimed that Article 27 was merely a resumption of the ancient right of eminent domain which gave Mexico the perpetual direct ownership of the subsoil. Consequently, any past legislation which made oil deposits the property of individuals must be considered null and void. It declared therefore that it was idle "to hold against the State the existence of contracts...anterior to the Constitution." 34

The companies continued to defy the decrees, thus influencing the petroleum division of the Department of Industry, Commerce and Labor to issue a significant circular on August 1, 1919. Taking a more compromising attitude here, it declared that since those interested in the petroleum industry had failed to present the manifes-

33 The Sec. of State to the Ambassador in Mexico (Fletcher), Foreign Relations, 1918, 755-756
34 Cong. Record, 65th Cong., 3rd sess., Vol. 57 (appendix), 380
tations required by a decree of July 31, 1918, because of their misunderstanding of Mexico's liberal spirit, and as a result had been deprived the right to work their claims by a decree of August 12, the President had seen fit to allow these parties this right on condition that they agree to respect such organic petroleum regulations as Congress might enact.35

Despite Mexico's slightly modified attitude, the protests of American vested interests stirred up serious agitation for intervention.36 Then too, another medium of propaganda was Senator Albert Fall's committee investigation of conditions in Mexico. Hearings lasted from August 8, 1919, until May 28, 1920.37 A majority of the witnesses called before the committee were imperialists, who would quite naturally make an appeal for a more drastic Mexican policy.38

In its report, which filled two ponderous volumes of over thirty-five hundred pages, the committee recommended in part, that as a condition for recognizing De

36 For a good summary of this see Rippy, op. cit., 351-357
37 Stuart, op. cit., 144
38 Rippy, op. cit., 355
la Huerta, "none of the provisions of Article 27 of said constitution with reference to limitations upon rights of property acquired by Americans, or which may hereafter be acquired, shall apply to Americans except where the limitation is written into the deed, lease, or other instrument of title..." 39

IV. NON-RECOGNITION, 1920-1923

1. De la Huerta and Obregon Relieve the Tension

Adolfo de la Huerta's provisional presidency following Carranza's overthrow and assassination in May, 1920, did much to relieve this tension between the two countries. In an outline of policy, President de la Huerta and General Obregon announced their intention to be fair with foreign capital and to give a liberal interpretation to the petroleum regulations.

In a tradition-breaking entertainment of American newspaper correspondents in June, 1920, De la Huerta expressed a willingness to go half way in settling existing difficulties. He stated that although the administration would adhere to the Constitution of 1917, people then owning property would be allowed to improve their holdings and would be given preference over others. The new government continued to give evidence of its desire to establish cordial relations when Fernando Iglesias Calderon was sent to Washington as its representative. Calderon gave repeated assurances to the Americans that

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1 Hackett, op. cit., 351
2 Current History, XII, 588
3 Ibid., XII, 816
Mexico would protect life and property. 4

Roberto Pesqueira, Mexican financial agent in New York, arrived in Washington in October, 1920, as De la Huerta's confidential agent. On October 26 he wrote to Secretary of State Bainbridge Colby, asking for recognition. Among other things he declared that Mexican laws were neither retroactive nor confiscatory. Secretary Colby's reply of October 29 expressed confidence that Pesqueira's assurances would lead to recognition and that "the Mexican question will soon cease to be a question at all." 5

The Wilson administration, however, did not recognize De la Huerta's provisional government, and Pesqueira returned to Mexico. 6 Obregón was inaugurated president on December 1, 1920. The question of recognition was left to the incoming Harding administration. 7

4 Current History, XII, 816
5 Ibid., XIII, 460
6 Guy Stevens, Current Controversies With Mexico, 325.
7 Stuart, op. cit., 148
2. Diplomatic Exchanges, 1921-1923

On May 27, 1921, George T. Summerlin, Charge d'Affaires of the American Embassy at Mexico City, presented a memorandum to President Obregon proposing a treaty of amity and commerce. Articles 1 and 2 of this draft contained the following significant provisions: (1) reciprocal assurances that nationals of one country living in the other would enjoy the privileges of native citizens; 2) reciprocal guarantees against confiscation and expropriation, except for public purposes and after just compensation; (3) Mexican assurances that the Constitution of 1917, Carranza's decree of January 6, 1915, and any other orders and decrees should not apply retroactively to American citizens; and (4) restitution to Americans of rights of which they had been deprived since 1910 and compensation for their losses.

Obregon's informal reply was received in Washington on June 3 and was not considered satisfactory because he stood out for his original contention that all negotiations must be conducted on a basis of equality. Since the

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8 Current History, XIV, 712
9 J. Fred Rippy, "The United States and Mexico, 1910-1927," (Rippy, Vasconcelos, and Stevens, Mexico), 69-70
10 Current History, XIV, 712
United States Government was not disposed to abandon the upper hand, it was suggested in some quarters that we intervene in Mexico to coerce Obregon into adopting our view. It was even stated that England, France, and Holland would not object to anything that the United States might choose to do to Mexico, because of the similar interests of their own nationals.\textsuperscript{11}

Secretary of State Hughes outlined our policy in this formal announcement made on June 7, 1921:

The fundamental question which confronts the Government of the United States in considering its relations with Mexico is the safeguarding of property rights against confiscation. Mexico is free to adopt any policy which she pleases with respect to her public lands, but she is not free to destroy without compensation valid titles which have been obtained by American citizens under Mexican laws. A confiscatory policy strikes not only at the interests of particular individuals, but at the foundations of international intercourse....

If these provisions [in Constitution of 1917] are to be put into effect retroactively, the properties of American citizens will be confiscated on a great scale. This would constitute an international wrong of the gravest character, and this Government could not submit to its accomplishment. If it be said that this wrong is not intended,... then it is important that this should be made clear by guarantees in proper form.... Accordingly this Government has proposed a treaty of amity and commerce with Mexico, in which Mexico will agree to safeguard the rights of property which attached before the Constitution of 1917 was promulgated.... The question of recognition is a subordinate one, but there will be no difficulty as to this, for, if

\textsuperscript{11} \textit{Current History}, XIV, 712
General Obregon is ready to negotiate a proper treaty and it is drawn so as to be negotiated with him, the making of the treaty in proper form will accomplish the recognition of the Government that makes it.\textsuperscript{12}

This was a serious stand to take, considering that President Obregon had repeatedly stated that he would sign no formal treaty as a condition of recognition. On May 20, 1921, he had said that "the acceptance and signing of a convention to obtain recognition by the United States would be equal to placing in doubt the rights that Mexico has to all the privileges international law establishes."\textsuperscript{13}

On June 9 the Mexican foreign minister announced the willingness of Mexico to agree to some of Summerlin's proposals after certain changes had been made. President Obregon also sent a note asking for our forbearance until the suggestions could be carried out in a legal manner.\textsuperscript{14}

The Mexican Government made no formal reply concerning the proposed treaty until November 19, 1921, when Summerlin received a note from Foreign Minister Pani, who made the following counter-proposals: (1) a commission should be created to decide the claims of American cit-

\textsuperscript{12} Current History, XIV, 711
\textsuperscript{13} Ibid., 711-712
\textsuperscript{14} Ibid., 712
izens arising from the revolution; (2) this to be followed by the implicit recognition of Mexico by the United States; and (3) the signing of a general claims convention to decide such claims as were not covered by the special claims commission.\(^\text{15}\)

In a reply of February 6, 1922, Summerlin refused to consider these proposals unless the rights of American citizens were safeguarded, and asked the Mexican Government to indicate specific objections to the proposed treaty of amity and commerce.\(^\text{16}\)

In Minister Pani's reply of February 9 he maintained that the desire of the United States to obtain assurances that American property rights would be respected was entirely satisfied by President Obregon's policy. He also specified as Mexico's objections to the treaty of amity and commerce that certain of its provisions were contrary to the Mexican Constitution or were not in the president's power to include within a treaty.\(^\text{17}\)

\(\text{15} \) "Undated memorandum received by Mr. Summerlin from Senor Pani on November 19, 1921," in United States Daily, May 15, 1926. (cited by Hackett, op. cit., 353-354)

\(\text{16} \) "Note from Mr. Summerlin to Senor Pani, dated February 6, 1922," in United States Daily, May 17, 1926. (cited by Hackett, op. cit., 355)

\(\text{17} \) "Note from Senor Pani to Mr. Summerlin, dated February 9, 1922," in United States Daily, May 17, 1926. (cited by Hackett, op. cit., 356)
On April 20, 1922, Chargé Summerlin, assuming that the question was merely as to the kind of a treaty to be signed, conceded that his Government would be satisfied to have the claims convention signed first, provided it be understood that a treaty of amity and commerce with its provisions previously determined, should be signed immediately following. He justified his Department's insistence that the Mexican Government bind itself to protect valid titles by referring to Carranza's failure to keep his personal promises.18

Minister Pani shattered Summerlin's hopes of so simply settling the matter, in his reply on May 4, 1922, by stating that he was at a loss to explain how his note of February 9 could be so misinterpreted. He argued at length to establish the following points: (1) to require certain pledges before granting recognition was an insult to the dignity of the Mexican nation; (2) the proposed treaty of amity and commerce contained violations of Mexico's Constitution; (3) President Obregon's program was already in agreement with American demands; (4) one object of proposing the claims conventions was to more adequately protect American rights and to develop closer

18 "Note from Mr. Summerlin to Senor Pani, dated April 20, 1922," in United States Daily, May 17, 1922. (cited by Hackett, op. cit., 357)
diplomatic relations.\textsuperscript{19} Summerlin's reply of May 16, 1922, has not been made public.\textsuperscript{20} In answering it on May 24 Minister Pani reasserted that a general claims convention might take the place of a treaty of amity and commerce. He then considered questions which Summerlin had asked regarding Obregon's attitude toward foreign interests and as to how his intentions had been carried out. Pani cited Obregon's public statements and the recent decisions of the Mexican Supreme Court\textsuperscript{21} which defined the non-retroactive character of Article 27.\textsuperscript{22} He declared, therefore, that to determine the status of foreign rights, the Mexican Congress need only enact an organic law in accord with the principle of non-retroactivity. He also declared the intention of the Mexican Government to redeem the outstanding agrarian bonds,\textsuperscript{23} which had been issued according to the decree of January 10, 1920.\textsuperscript{23}

\begin{footnotes}
\item[19] "Note from Senor Pani to Mr. Summerlin, dated May 4, 1922," in United States Daily, May 18, 1926. (cited by Hackett, \textit{op. cit.}, 357-358)
\item[20] Hackett, \textit{op. cit.}, 359
\item[21] The first of these was the Texas Company decision on August 30, 1921.
\item[22] "Note from Senor Pani to Mr. Summerlin, dated May 24, 1922," in United States Daily, May 18, 1926, and \textit{ibid.}, May 19. (cited by Hackett, \textit{op. cit.}, 359-360)
\item[23] In accordance with the provisions of this decree and its regulations of January 26, 1922, bonds were issued in payment for lands expropriated for ejidos. \textit{Proceedings of the United States-Mexican Commission...}, 1923, 32
\end{footnotes}
The series of notes culminated with Secretary Hughes' note of instruction dated July 28, 1922, and Minister Pani's reply of March 31, 1923. On August 3, 1922, Summerlin sent Pani a copy of the instruction from the Secretary of State. In this note Hughes, after summing up the entire question, concluded that President Obregon's program had not progressed far enough to be a substitute for the binding provisions of a treaty. Despite this uncompromising assertion, his instruction contained one statement which offered possibilities for relieving the tension between the two Governments. He stated that if the Mexican authorities were not willing to sign a treaty binding Mexico to respect valid titles, then the question remained as to how such assurances should be given.24

On March 31, 1923, Minister Pani made a lengthy reply, claiming that the accomplished acts of the Obregon Government were of such importance that they must affect favorably the solution of the problems between the United States and Mexico. He mentioned the ratification by the Mexican Congress and President of the Lamont-De la Huerta agreement for the adjustment of the Mexican debt; the negotiations which had been begun between the oil companies

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24 "Note from Mr. Summerlin to Senor Pani, dated August 3, 1922," in United States Daily, May 19, 1926. (cited by Hackett, op. cit., 360-362)
and the Secretary of the Treasury; the five injunction
decisions by the Mexican Supreme Court, which had guar-
anteed the non-retroactivity of Article 27; and the agrar-
ian program of the Obregon Government, which had been
responsible for reestablishing peace in Mexico.25

25 "Note from Senor Pani, dated March 31, 1923,
addressed to Mr. Summerlin," in United States Daily, May 19,
1926, and ibid., May 20. (cited by Hackett, op. cit., 362-
364)
3. The United States-Mexican Commission of 1923

This analysis must have influenced the United States Government to try another plan of action, for on May 2, 1923, President Harding appointed Charles Beecher Warren, former ambassador to Japan, and John Barton Payne, former Secretary of the Interior, as American commissioners to meet two Mexican commissioners at Mexico City. The commissioners named by Obregon were Senors Ramón Ross and Fernando González Roa.

According to Secretary of State Hughes, in the Department's instructions given to the commissioners when they left for Mexico, it was pointed out that the fundamental issue between the United States and Mexico was the safeguarding of American property rights in Mexico, especially as against a confiscatory application of the provisions of the Mexican Constitution of 1917, and that the principal questions arising from this issue related:

First. To the restoration or proper reparation for the taking of lands owned by American citizens prior to May 1, 1917.
Second. To the obtaining of satisfactory assurances against confiscation of the subsoil interests in lands owned by American citizens prior to May 1, 1917.
Third. To the making of appropriate claims.

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26 Proceedings of the United States-Mexican Commission Convened in Mexico City, May 14, 1923, iii
27 Ibid., 1
The conference convened on May 14, 1923, and lasted till August 15, of the same year. From May 15 through May 31 the subsoil problem was discussed "for the purpose of determining whether some solution could be reached," and on June 1 the agrarian problem was taken up. The American commissioners made it clear that the United States Government was not opposed to the policy of providing villages with ejidos. They contended, however, that the Mexican Government "did not have the right to take lands for ejidos for villages and towns without indemnification, that is compensation in cash having been made." Mr. Warren charged that the provisions of the Agrarian Regulation of April 10, 1922 (a supplement to Carranza's decree of January 6, 1915) were being violated in the expropriation of lands. He also asserted that excesses were being committed in the taking of the property and cited cases to prove his point.

After he had submitted this case against Mexico,


29 Proceedings of the United States-Mexican Com-

mission. . .1923, iii

30 Ibid., 24

31 Ibid., 25-28
Mr. Warren then stated the position of his Government on the agrarian problem as it then stood. He declared that the United States maintains that "under the rules of international law there can be no taking of lands, water rights or other property of American citizens, in whatever form their interest may be held, legally acquired prior to May 1, 1917, ... without indemnification in cash at the time of the taking for the just value thereof."

He further said that the United States Government would not recognize Mexico's right to compensate owners of land in bonds and at prices not regarded as "their just value in cash at the time of taking." 32

The Mexican commissioners made their reply to this stand at the formal meeting on June 4. They began by stating that the Constitution of 1857 and the alien laws gave authority for treating foreigners on the same basis as Mexicans. They justified Mexico's agrarian program on the ground that it had been instrumental in restoring peace, and that some excesses were the natural result of the emergency legislation. The Mexican commissioners then stated that in order to pay for the lands taken for ejidos, the Government had issued the decree of January 10, 1920,

32 Proceedings of the United States-Mexican Commission. 1923, 29
and its regulations on January 26, 1922. These provided that 20 year bonds bearing five per cent interest were to be issued for the payment of these lands. To show Mexico's good intention they further stated that a special loan was being negotiated and that as soon as it was arranged, the Government would proceed to redeem in cash all the outstanding bonds. In case these negotiations were not successful, they declared that the Government intended to shorten the period of payment of the bonds and to accept the matured bonds in payment for taxes. Considering the basis for establishing the value of expropriated lands, they said that it would be based chiefly on the declarations of the owners themselves. Because the Government since 1914 had given the owners a number of chances to rectify the fiscal value of their property, the commissioners asserted that it was the owners' fault if they had not taken advantage of them.33

From June 5 through June 29 the commissioners met and exchanged views regarding the various aspects of the agrarian problem as relating to the rights claimed by American citizens.34 From July 2 through July 18 they met

33 Proceedings of the United States-Mexican Commission. 1923, 31-34
34 Ibid., 35
informally from time to time while Mr. Warren and Mr. Roa were drawing up the general and special claims conventions.35

On July 19 the American commissioners, because of Mexico's emergency, agreed that if the Mexican Government would make a statement that its claims to expropriate lands of American citizens for ejidos did not constitute a precedent for expropriating any other kind of property, except upon cash indemnification, the United States Government would "take under consideration the question whether under the circumstances it will be willing to accept for its citizens who are owners of lands and claimants, in whatever form their interest may be held, federal bonds of Mexico...in payment for land at the just value thereof at the time of the taking." Mr. Warren then stated that this action depended upon the terms of the bonds; the conclusion of a general claims convention; and the understanding that bonds would be accepted only for lands not exceeding 1755 hectares (4,335 acres), unless the excess be paid for in cash.36

Regarding the method for ascertaining the value of expropriated lands and improvements, Mr. Warren stated

35 Proceedings of the United States-Mexican Commission. . 1923, 36
36 Ibid., 37-38
that his Government "did not consider it fair, just or legal," for the Mexican Government to expropriate lands "on the basis of payment of the assessed valuation," but would have to maintain the stand that the owner should be paid for the just value at the time of the taking. The American commissioners asserted that the United States reserved the right "to make claims for any losses or damages to its citizens by reason of any injustice by the Mexican Government or by any State government; and in general reserves...all the rights of whatever nature of its citizens under international law, equity and justice," except as they might be limited by any later arrangements.37

The next day, July 20, the Mexican commissioners recognized the right of the United States Government to reserve the full rights of its citizens to present claims to a general claims convention "if this exchange of views and statements results in the resumption of diplomatic relations." They also insisted that their Government did not maintain that the acceptance of bonds for lands not exceeding 4,335 acres would be regarded as an acceptance of the principle that payment could be made in bonds.

for any other expropriations. They informed the Americans that Mexico intended to negotiate a loan in order to pay in cash for as much of the land as possible, and had "ordered the restitution of all property and rights confiscated or wrongfully taken from their owners during the revolution." 38

Regarding the problem of subsoil deposits Mr. Warren contended that rights acquired before May 1, 1917, under the laws of 1884, 1892 and 1909, were not subject to confiscation. To support this contention he read portions of the Texas Oil Company decision (August 30, 1921) and some official Mexican executive statements, which declared the non-retroactive character of Article 27. He concluded that "there was only lacking in order to solve definitely the question that Congress should issue the organic law regulating the application of Article 27 of the Mexican Constitution in accordance with the accepted principle of non-retroactivity in order that the three branches of the Government might be in entire accord." 39

On May 18 the Mexicans answered the position taken by the American commissioners by stating that the

38 Proceedings of the United States-Mexican Commission. 1922, 41-44
39 Ibid., 9-14
decision in the Texas Company case, and other similar ones, could not be understood to apply except where a positive act had been performed prior to the Constitution, thus indicating the intention to exploit petroleum. The next day they took up the problem of the owners who had not performed positive acts. They argued that these owners had forfeited their rights to the subsoil, since under Mexico's civil code there could be no possession "except through some act indicating that there is the desire to possess." Decisions of January 17, 1920, and January 8, 1921, were cited, however, to show that such people were still being permitted to petition for the use of the subsoil to the exclusion of any others.

The final conference on the oil problem was held on August 2, resulting in a compromise understanding. The Mexicans conceded that owners who had performed some positive act before May 1, 1917 would be granted drilling permits.

40 Proceedings of the United States-Mexican Commission, 1923, 16-19
41 Ibid., 20-23
42 "Positive acts" were defined as "drilling, leasing, entering into any contract relative to the subsoil, making investments of capital in lands for the purpose of obtaining the oil in the subsoil, carrying out works of exploitation and exploration of the subsoil and in cases where from the contract relative to the subsoil it appears that the grantors fixed and received a price higher than would have been paid for the surface of the land because
Those who had not performed such an act were given preferential rights to the subsoil as against third parties. Because of the insistence of the American commissioners, the Mexicans, without forsaking their established principles, recognized the right of the United States Government to make reservations in behalf of its citizens. 43

Meanwhile, on July 27, the final draft of the special and general claims conventions had been accepted by the commissioners. 44 With these understandings approved by the presidents of the two countries, Obregon's government was formally recognized by the United States on August 31, 1923. The general claims convention, signed at Washington on September 8, 1923, covered claims arising since 1868. The special convention, signed at Mexico City on September 10, 1923, covered claims resulting from losses during the revolution from November 20, 1910, to May 31, 1920. 45

it was purchased for the purpose of looking for oil and exploiting same if found; and in general, performing or doing any other positive act, or manifesting an intention of a character similar to those heretofore described."

Proceedings of the United States-Mexican Commission...1923, 47.

43 Ibid., 47-49
44 Ibid., 46
45 Stuart, op. cit., 152
V. THE CONTROVERSY OVER THE ALIEN LAND
AND PETROLEUM LAWS

1. Relations, 1923-1925

Following the signing of the claims conventions and the recognition of Obregon in 1923, relations between the two countries seemed to be smoother than they had been at any time since the beginning of the revolution in 1910. In February, 1924, President Coolidge appointed as ambassador to Mexico Charles Beecher Warren, who had been instrumental in reaching an understanding. After his resignation he was succeeded by James Rockwell Sheffield the following September. When he presented his credentials to President Obregon, Sheffield said that the United States sought no rights and privileges which it was not willing to grant freely.1 In the fall of 1924 President-Elect Calles was given a hearty reception during his visit to the United States.2

Unfortunately for the continuation of cordial relations, Secretary Hughes retired in March, 1925, and was succeeded by Frank B. Kellogg. On June 12, 1925, Secretary Kellogg indiscreetly gave a startling statement to the

1 Callahan, op. cit., 595
2 Hackett, op. cit., 375
press. He declared that his Government would continue to support the Calles administration "only so long as it protects American lives and American rights and complies with its international engagements and obligations." Mexico, he declared, was "on trial before the world."

Bitterly resenting this, President Calles at once retorted that Mexico "does not accord to any foreign country the right to intervene in any form in her domestic affairs, nor is she disposed to subordinate her international relations to the exigencies of another country." After declaring that the Government of the United States was on trial before the world just as was Mexico, Calles declared that his Government energetically rejected the imputation that Mexico was on trial "in the guise of a defendant."

The American press, in overwhelming majority, took Kellogg to task for his attitude; this helped to reduce the strain between the two Governments.

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3 The text of this statement may be found in Gruening, op. cit., 600-601
4 Cited by ibid., 601-602
5 Ibid., 602-603
2. Basis for a New Controversy

The alien land provision of Article 27 of the Constitution reads as follows:

Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines, waters or mineral fuels in the Republic of Mexico. The Nation may grant the same right to foreigners, provided they agree before the Department of Foreign Affairs to be considered Mexicans in respect to such property, and accordingly not to invoke the protection of their Governments in respect to the same, under penalty, in case of breach, of forfeiture to the Nation of property so acquired. Within a zone of 100 kilometers from the frontiers, and of 50 kilometers from the sea coast no foreigners shall under any conditions acquire direct ownership of lands and waters.6

With this section as a constitutional sanction, President Calles, at the opening session of the Mexican Congress on September 1, 1925, recommended the enactment of legislation restricting the issuance to foreigners and foreign corporations of permits to own land, water, and property in Mexico, and requiring corporations organized under the Mexican Constitution, whether foreign or native, to be managed by Mexicans, with Mexican capital preponderant in them.7

During October, an alien land bill sponsored by

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6 See page 22.

7 Current History, XXIII, 109
the Calles government was considered by both houses of the Mexican Congress. The first reading of this bill was passed by the Senate on October 21, and the measure in its general form was passed, with certain amendments, on November 13 by the Chamber of Deputies. On December 18, the Mexican Senate passed it in a form only slightly different from that passed by the Chamber of Deputies. On December 23, the latter body sanctioned the Senate amendments. Eight days later (December 31) President Calles signed the bill, and on January 21, 1926, it was officially promulgated.

As finally adopted the chief provisions of the law were as follows: Article 1 prohibited all aliens from acquiring direct ownership of lands and waters within 100 kilometers of the frontiers and 50 kilometers of the seacoasts, or being shareholders in Mexican companies in this same territory. Article 2 permitted an alien to become a shareholder in a Mexican company owning property outside the prohibited area, if he would agree to consider himself a Mexican in this respect, and, under penalty of forfeiture, agree not to invoke the protection of his Government. Article 3 authorized aliens to be minority

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8 Current History, XXIII, 411
9 Hackett, op. cit., 376
stockholders in Mexican companies owning property for agricultural purposes. Article 4 permitted aliens who were majority stockholders in companies owning property for agricultural purposes when the law went into effect, to retain their stock until their death; corporations might retain their shares for ten years. Article 5 provided that aliens' rights which were not included in Article 4 and were legally acquired before the law went into effect, might be kept until their owners' death. Article 6 provided for conditional inheritance of property rights by aliens. Article 7 declared that aliens who had acquired any rights before the law went into effect, must declare this before the Department of Foreign Relations within one year, under the penalty of having it considered that his acquisition was made after the law went into effect.10

Article 27 vests in the nation the "direct ownership of all mineral or substances which in veins, masses, or beds constitute deposits whose nature is different from the components of the land, such as...petroleum and all hydrocarbons---solid, liquid, or gaseous.11

10 For a translation of the law see Hackett, op. cit., 414-417
11 See page 22.
To put into effect the above constitutional power, the Mexican Congress, on December 18, 1925, passed the petroleum bill, which was promulgated on December 31 of the same year.\textsuperscript{12

The first three articles of the law unconditionally nationalized all hydrocarbons found in their natural deposits; and the petroleum industry was declared to be a public utility, therefore enjoying "preference as to any utilization of the surface of the land," which might be expropriated should the occasion demand. Article 4, as the alien land law, required foreigners, in addition to fulfilling the provisions of this law, to comply beforehand with what was provided in Article 27 of the Constitution. Article 5 forbade the transfer of concessions granted in conformity with this law to foreign Governments or rulers, and denied their admittance as associates or co-partners. Article 6 declared that all matters relating to the petroleum industry should be of exclusive Federal jurisdiction. Article 14 required that all holdings be confirmed by concessions to be granted for not more than fifty years; and Article 15 declared that unless concessions were applied for within a year after the law went into effect, their rights should be considered as renounced.\textsuperscript{13

\textsuperscript{12} Hackett, \textit{op. cit.}, 382

\textsuperscript{13} For a translation see \textit{ibid.}, 425-431
3. Correspondence, 1925-1926

The consideration of the alien land and petroleum laws by the Mexican Congress and their passage by that body, occasioned a very serious diplomatic controversy. On October 16, 1925, before actual communication between the two countries was commenced, Saenz, Mexican Minister of Foreign Relations, made a significant formal statement to the effect that in enacting legislation putting into effect Article 27, Mexico was as much within her rights as was the United States in enacting the Volstead Act.14

Correspondence between the two Governments with reference to the alien land and petroleum laws began on October 29, 1925, when inquiries were submitted to the Mexican foreign office concerning the meaning and interpretation of the alien land bill as it then stood before the Mexican Congress. On November 4 the American ambassador reported responses from the Mexican Government.15

The formal exchanges began on November 17, 1925, when Secretary Kellogg sent an aide memoire to the Mexican Minister for Foreign Affairs. He stated his desire to "avoid any criticism of prospective legislation of

14 Current History, XXIII, 410-411
15 Sen. Doc., 69th Cong., 1st sess., No. 96, 2-3
a neighboring friendly and sovereign State," pointing out, however, that there were certain considerations which were of immediate concern. The United States Government was bound to do its utmost in behalf of Americans with acquired rights. He expressed the hope that the spirit and letter of the 1923 proceedings would be borne in mind, and that a new treaty of amity and commerce might be negotiated.\textsuperscript{16}

This was the first of fourteen diplomatic exchanges which ended exactly one year later. These notes centered around four fundamental principles, which were discussed, but not stated until Secretary Kellogg's note of July 31, 1926. He enumerated them as follows:

First. Lawfully vested rights of property of every description are to be respected and preserved in conformity with the recognized principles of international law and of equity.

Second. The general understanding reached by the commissioners of the two countries in 1923, and approved by both Governments at the time of resumption of diplomatic relations between them, stands unmodified and its binding force is recognized.

Third. The principle of international law that it is both the right and the duty of a government to protect its citizens against any invasion of their rights of person or property by a foreign government, and that this right may not be contracted away by the individual is conceded.

Fourth. The principle that vested rights may not be

\textsuperscript{16} "Aide memoire of personal message from the Secretary of State to the Mexican Minister for Foreign Affairs, presented by the American ambassador on November 17, 1925," Sen. Doc., 69th Cong., 1st sess., No. 96, 3.
impaired by legislation retroactive in character or confiscatory in effect is not disputed.\(^\text{17}\)

On the first point, the alleged retroactivity and confiscatory character of the alien land law, Secre­
tary Kellogg repeatedly contended that the law was man­ifestly retroactive, since it deprived the "alien owner of many rural properties legally acquired under the laws of Mexico and requires him to divest himself of the ownership, control, and management of his property."\(^\text{18}\) This was held to be especially the case in the provision re­quiring corporations to dispose of their stock in excess of fifty per cent within ten years of the date of promul­gation of the law, and allowing individuals to keep such stock till their death.\(^\text{19}\)

In reply Minister Saenz maintained that the pro­vision was not confiscatory, "because the right is recog­nized, and it is merely its transformation which is re­quired." He declared that it was not retroactive either, because it did not "harm acquired rights since...the form

\(^{17}\) American Property Rights in Mexico, 1


\(^{19}\) "Aide-memoire, handed by the American ambassador to the Mexican Minister for Foreign Affairs by instruction from the Secretary of State on November 27, 1925," Ibid., 6
in which a foreigner holds a right may be changed by a
sovereign nation as long as the right in its essence is
respected." Regarding the provision allowing individual
owners to retain their stock until death, Saenz insisted
that the "only thing that might be adduced is that the
law puts a limitation upon the right of inheritance, which
is in strict conformity with international law, since in
such cases there are no acquired rights, but merely an
expectation of acquiring them."20

Regarding the requirement that a corporation dis­
pose of its excess stock in ten years, Saenz maintained
that "in all legislation it is admitted that the law is
free to amplify, modify, or restrict the capacity of that
class of persons," and that since the article referred to
future rights, "its effects can not be regarded as retro­
active, since there was no acquired right but merely ex­
pectation of a right."21 He did give the assurance that
his Government intended to do nothing but what was "just,
fair, and allowable under international law."22

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20 "Memorandum of Mexican Minister for Foreign Af­
fairs in reply, dated December 5, 1925, delivered to the
American ambassador on December 7, 1925," Sen. Doc., 69th
Cong., 1st sess., No. 96, 11-12

21 "Note in reply of the Mexican Minister of Foreign
Affairs, dated February 12, 1926," Ibid., 30

22 Ibid., 12
The second fundamental principle concerned the nature of the understandings reached in 1923. President Calles insisted that the conferences were confined to an "exchange of views" and "did not result in any formal agreement other than of the claims conventions which were signed after the resumption of the diplomatic relations." 23

Although recognizing the declarations made by Mexico's commissioners, Minister Saenz maintained that the 1923 conferences "were not a condition for the recognition of the Government of Mexico, and consequently can never be given that character." 24 25 Finally, he declared that the Mexican Government could not "recognize binding force equivalent to a treaty or a constitutional precept," in the outlines of policy presented at the conferences, since the declarations of neither side took the character of "synallagmatic agreement." 25

On the other hand Secretary Kellogg insisted that the understandings, subsequently ratified by an exchange of notes, were regarded by his Government as "solemm and binding undertakings." 26 He declared that the outstanding

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23 Sen.Doc., 69th Cong., 1st sess., No. 96, 5
24 Ibid., 34
25 American Property Rights in Mexico, 11-12
26 Ibid., 26
issue was that of recognition. "Without the assurances received in the course of that negotiation recognition could not, and would not, have been extended." He regarded the proceedings as "of the highest importance upon which two sovereign states may engage." 27

Some of the force of Kellogg's argument is taken away when it is considered that the appointment of the two American commissioners was not approved by the Senate, nor was the agreement submitted for its approval. Furthermore, in the minutes of the 1923 conference it was stated that "the policy of the present Executive is not intended to constitute an obligation for an unlimited time on the part of the Mexican Government to grant preferential rights to such owners of the surface or persons entitled to exercise their rights to the oil in the subsoil." 28

The third issue grew out of the provision that foreign property owners agree to renounce their right to appeal to their Governments for diplomatic protection, in respect to their holdings. A complete statement of the American contention follows:

This conception of the rights of a nation under

27 American Property Rights in Mexico, 10

28 Proceedings of the United States-Mexican Com- mission. .1923, 49
the rules of international law has never been accepted by this Government, and in the past this Government has frequently notified the Mexican Government that it does not admit that one of its citizens can contract by declaration or otherwise to bind his own government not to invoke its rights under the rules of international law. Under the rules applicable to intercourse between states, an injury done by one state to a citizen of another state through a denial of justice is an injury done to the state whose national is injured. The right of his state to extend what is known as diplomatic protection can not be waived by the individual. If states by their unilateral acts or citizens by their individual acts were permitted to modify or withhold the application of the principles of international law, the body of rules established by the custom of nations as legally binding upon states would manifestly be gradually broken down. The right of diplomatic protection is not a personal right, but exists in favor of one state against another.29

Minister Saenz' note of October 7, 1926, seems to have resulted in a compromise on this point. He declared that the Mexican Government did not deny that the United States might intervene for its nationals, but that did "not stand in the way of carrying out an agreement under which the alien agrees not to be the party asking for the diplomatic protection of his Government." In case of a denial of justice or some similar infringement, the right of the American Government to take appropriate action to seek atonement for the injury would still exist. "Under those conditions neither would the American Government

29 Sen. Doc., 69th Cong., 1st sess., No. 96, 22-23
have failed to protect its nationals nor the Mexican Government to comply with its laws."

The final point centered around the alleged retroactivity of the petroleum law. We have seen that in the 1923 conferences, the Mexican executive agreed that Article 27 was not retroactive in respect to owners who had performed some positive act prior to May 1, 1917, and that he would give preferential rights to those who had not performed a positive act. The new petroleum law changed these vested titles into fifty-year concessions and made no provision to give preferential rights to owners who had not performed some positive act.

Secretary Kellogg announced that the United States would not accept this conception of the nature of vested rights. "The operation would be nothing but a forced exchange of a greater for a lesser estate. That a statute so construed and enforced is retroactive and confiscatory, because it converts exclusive ownership under positive Mexican law into a mere authorization to exercise rights for a limited period of time, is in the opinion of my Government not open to any doubt whatever." 

Minister Saenz justified the petroleum law by

30 American Property Rights in Mexico, 14-15
31 Ibid., 4
arguing that although the giving of a fifty-year concession seemed to be a lessening of a right, that was not the case in practice, because a "system independent of the ownership of the subsoil founded on a concession is as strong and more secure than the system of private ownership." Then, too, he declared that the oil in the lands in question would surely be exhausted before the end of the fifty-year period, and if not, an extension could be granted. In concluding his argument, Saenz declared that it would be more useful and profitable for the United States Government to point out concrete cases of violation, and if the Mexican Government should fail to correct such violations, "it is and will be disposed to accept in justice the resulting claims of the American Government." 32

This year of correspondence, although useful in clarifying the issues in the controversy, was closed without arriving at any basis of settlement. 33

The alien land and petroleum laws went into effect on January 1, 1927. On February 16, 1927, Secretary Kellogg reported that out of a total of 58 corporations or individuals, only four had applied for confirmatory concessions. He declared that the corporations which had

32 American Property Rights in Mexico, 21-25
33 Callahan, op. cit., 597
refused or failed to comply with the new petroleum law controlled about 90 per cent of the oil-producing lands and about 70 per cent of the total oil production.\textsuperscript{34}

This statement was in direct conflict with that of Luis Morones, the Mexican Minister of Industry, Commerce and Labor, who on February 18 declared that before January 1, 1927, 125 out of a total of 147 oil companies operating in Mexico, had accepted the regulations. He also stated that corporations failing to comply controlled 4.6 per cent of the oil-producing lands and that the oil production from such lands had amounted to only 52.7 per cent of the total in 1926 and was much less then.\textsuperscript{35}

\textsuperscript{34} Current History, XXVI, 136-137

\textsuperscript{35} Ibid., XXVI, 137
VI. DWIGHT MORROW AND THE PRACTICAL
CONCLUSION OF DIFFICULTIES

1. New Methods of Approach

Meanwhile there had been a growing sentiment in
favor of arbitration. In an informal statement on Janu­
ary 9, 1927, President Calles had declared that he was
willing to submit their differences to the Hague Tribunal. 1
On January 25 the United States Senate unanimously passed
the Robinson resolution in favor of arbitration. 2 The
attempt was dropped, however, when President Coolidge
declared that nothing would be gained by submitting the
dispute to arbitration. 3

In a speech at New Haven, Connecticut, on March
20, 1927, Senator Borah, chairman of the Senate Foreign
Relations Committee, made a plea for sympathy and toler­
cance. With reference to Mexico's land policy, he said:

I believe Mexico is acting in good faith. I
have examined the laws of more than one country
where the attempt has been made to break up
large estates, and in none of these countries
do the laws more thoroughly respect the vested
rights of foreigners. For myself I do not fear
to say that I sympathize with Mexico in her task.

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1 Gruening, op. cit., 614
2 Callahan, op. cit., 606
3 Stuart, op. cit., 162
She may fail in this great national effort, but I do not propose to commit the crime of wishing her to fail....God has made us neighbors—let justice make us friends. The first step toward justice is to stop making false and unfair statements about Mexico.4

In his annual message to Congress on September 1, 1927, President Calles expressed confidence that a "spirit of good-will and cordial understanding of our problems" would lead to a settlement.5

This new spirit soon began to radiate in official American circles. On September 21, 1927, President Coolidge appointed Dwight W. Morrow as United States Ambassador to Mexico,6 succeeding Sheffield who had resigned in July.7 Morrow arrived at Mexico City on October 23, 1927, and was received with great demonstrations.8 His informal breakfasts with President Calles helped to dispel suspicion and misunderstanding; and his refusal to present trivial or unreasonable claims to the Mexican Government placed him in the confidence of Mexican officials. Morrow's task was made easier by the effect of

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4 Current History, XXVI, 278
5 Ibid., XXVII, 124
6 Callahan, op. cit., 609
7 Ibid., 607-608
8 Current History, XXVII, 417
the visit of Will Rogers and Charles A. Lindbergh;\textsuperscript{9} the latter made a non-stop flight from Washington to Mexico City in December, 1927, at the request of President Calles.\textsuperscript{10}

\textsuperscript{9} Callahan, \textit{op. cit.}, 611

\textsuperscript{10} \textit{Current History}, XXVII, 727
2. The Oil Settlement

At the conferences on the oil question, Ambassador Morrow was ably assisted by J. Reuben Clark, Jr. Dropping the old, deadlocked legal controversies, they made it clear that the United States respected Mexico's sovereign rights, that they had faith in Mexico's desire to deal fairly with us, and that no special privileges were asked for American nationals.\textsuperscript{11}

A decision which was to lead to the settlement, was handed down on November 17, 1927, by the Mexican Supreme Court in favor of the Mexican Petroleum Company, an American corporation. This decision declared unconstitutional, in so far as they applied in this case, Articles 14 and 15 of the petroleum law,\textsuperscript{12} and the Supreme Court issued an injunction restraining the Department of Industry, Commerce and Labor from enforcing their provisions. This did not declare in general terms that Articles 14 and 15 of the law were unconstitutional, because for this five consecutive similar decisions by the Mexican Supreme Court are required.\textsuperscript{13} Its effect, however, was the same.

On December 26, 1927, after many conferences

\textsuperscript{11} Callahan, \textit{op. cit.}, 611

\textsuperscript{12} See page 64

\textsuperscript{13} \textit{Current History}, XXVII, 578-579
with Morrow, President Calles recommended the amendment of the petroleum law to comply with the decision of November 17. The Mexican Congress followed out this suggestion the next day and the following amendments were passed, which became effective on January 11, 1928:

Art. 14. There shall be confirmed without any expense and by means of concessions the following rights: (1) Those derived from lands on which petroleum exploitation work commenced before May 1, 1917; (2) those derived from contracts closed before May 1, 1917, by owners of surface rights or parties under contract to them for the express purpose of oil exploitation, and (3) to those constructing pipe lines and refineries under concessions or authorizations issued by the Department of Commerce.

Art. 15. Confirmation of rights referred to in the preceding article must be sought within one year from publication of this law if such rights have not already been the subject of confirmation petitions. After one year these rights (rights for which confirmation has not been sought under the amended law) will be renounced and will be without effect against the Mexican Government. Oil rights acquired by owners of surface lands (before 1917) will be confirmed without time limit. Rights acquired by contracts with owners of surface lands will be confirmed for the period of those contracts.

This was a compromise; although abolishing the fifty-year concession on lands worked before 1917, Article 14 created a stricter interpretation of pre-1917 rights for which confirmation was required within a year.

14 Callahan, op. cit., 612-613.
15 Current History, XXVII, 882
16 Callahan, op. cit., 613
Concerning the probable effect of these amendments, on January 9, 1928, Secretary Morones said that he believed that petitions for confirmatory concessions as still required by law did not imply the renunciation of rights acquired before May 1, 1917, such concessions being merely the recognition of rights which will continue in force subject only to police regulations. Thus Mexico recognized the principle that fee simple titles to oil lands, acquired prior to the adoption of the Constitution, could not be limited or modified.\textsuperscript{17}

It remained for the petroleum regulations to be amended in harmony with the law. In February a committee representing the oil companies submitted a draft of proposed amendments to the Department of Industry, Commerce and Labor.\textsuperscript{18} After several weeks of negotiation between Ambassador Morrow and Minister Morones, they succeeded in framing some acceptable amendments.\textsuperscript{19} A draft concession, to show the oil companies what they might expect, was attached to the regulations. It did not contain a clause requiring them to renounce the protection of their Govern-

\textsuperscript{17} \textit{Current History}, XXVII, 382
\textsuperscript{18} J. Reuben Clark, Jr., "The Oil Settlement With Mexico," \textit{Foreign Affairs}, VI, 611
\textsuperscript{19} \textit{Ibid.}, 612
On March 27, 1928, President Calles signed these executive regulations governing the amended law. These made clear, as Ambassador Morrow said the same day, that "those taking confirmatory concessions under the amended law get confirmation of their old rights rather than a grant of new rights." They also defined more liberally than had the law of 1925 and its regulations, the term "positive acts." For this, the new regulations adopted the exact language of the understanding of the 1923 commission.

On March 28, 1928, the Department of State issued the following statement, showing that it accepted the compromise:

The Petroleum Regulations just promulgated by President Calles constitute executive action which completes the process beginning with the decision made by the judicial branch of the Mexican Government on November 17, 1927, and followed by the enactment of the new Petroleum Law by the legislative branch on December 26th last. Together, these steps, voluntarily taken by the Mexican Government, would appear to bring to a practical conclusion discussions which began ten years ago with reference to the effect of the Mexican Constitution and laws upon foreign oil companies. The Department feels, as does Ambassador Morrow, that such questions,

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20 Clark, loc. cit., 612
21 Current History, XXVIII, 294
22 Ibid., XXVIII, 295
23 See page 57.
if any, as may hereafter arise can be settled through the due operation of the Mexican administrative departments and the Mexican courts.24

During April, 1928, the Huasteca Petroleum Company, the largest foreign oil company operating in Mexico, and several other large foreign companies advised the Mexican Government of their acceptance of the petroleum regulations.25

Reciprocal executive messages by the presidents of the two countries gave further evidence that motives for friction had ceased to exist. On November 30, 1928, Portes Gil was inaugurated president of Mexico. In his inaugural address he pledged to maintain the revolutionary aims attained by Obregon and Calles and to fulfill the provisions of Article 27. Concerning relations with the United States, President Gil said:

Fortunately, the friendship and patriotism with which President Calles and Ambassador Morrow have served their countries have been the means of noticeably eliminating suspicions, and have resulted in the two nations reaching that desirable understanding which exists today and which I hope with all my heart may continue.26

In his annual message to Congress on December 4, 1928, President Coolidge referred to Mexico as follows:

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24 Cited by Clark, loc. cit., 614
25 Current History, XXVIII, 479
26 Ibid., XXIX, 679
Our relations with Mexico are on a more satisfactory basis than at any time since their revolution. Many misunderstandings have been resolved and the most frank and friendly negotiations promise a final adjustment of all unsettled questions. It is exceedingly gratifying that Ambassador Morrow has been able to bring our two neighboring countries, which have so many interests in common, to a position of confidence in each other and of respect for mutual sovereign rights.27

The new petroleum legislation formally went into operation on January 11, 1929. The Department of Industry, Commerce and Labor reported that practically all the companies had complied with the terms, a few of the smaller companies failing to do so.28 Some later data showing the degree with which the petroleum law was accepted by the petroleum companies was revealed in a statement issued on May 17, 1930 by the Department. Since the law became operative in 1928, a total of 3,484 petitions for confirmatory concessions and for new ones had been filed. 180,000,000 acres of land were involved in these petitions. There has been a great deal of delay in acting upon them because of having to validate titles. By May, 1930, petitions for one-third of the area involved had been analyzed; and not more than one-tenth of the applications for new concessions had been acted on. By the

27 Current History, XXIX, 679
28 Ibid., XXIX, 1016
same date confirmatory concessions for lands totalling
18,500,000 acres had been granted, and new concessions
for 3,500,000 acres. Minister Leon stated that 250 con­
cessions had been applied for by the larger companies.29

Dwight Morrow's diplomacy was not the only reason
for the settlement. Another was the declining oil pro­
duction of Mexico, which revealed to both Mexico and the
United States that there was not quite as much at stake
as they had imagined.

Production in 1921 was over 193,000,000 barrels. This gradually declined until it was only a little over
90,000,000 barrels in 1926.30 According to a study made
by the Minerals Division of the Department of Commerce,
which was made public in Washington on October 18, 1927,
petroleum activities in Mexico had declined at least 50
per cent since January 1 of that year; and during July
production dropped to under 5,500,000 barrels. The in­
cursion of salt water was largely responsible for this.31
During 1928 Mexico produced only 50,000,000 barrels of
petroleum, thus dropping to fourth place among the nations

29 Current History, XXXII, 769
30 Howland, op. cit., 163
31 Current History, XXVII, 418-419
of the world, following the United States, Venezuela, and Russia.32 Production in 1930 was down to 39,500,000 barrels.33

32 Current History, XXX, 144
33 Howland, op.cit., 163
3. Present Status of the Land Problem

Ambassador Morrow next turned his attention to the adjustment of the land problem. By March, 1928, he had mapped out a program with the idea of handling the dispute gradually, case by case. He took these steps with the expectation that Mexico would either stop expropriating land, or that she would organize the procedure and fully compensate the land owners.34

After once conceding the inevitability of the revolution and its principles, as we should have done ten or twelve years before, the land controversy ceased to be a serious one. In his negotiations Morrow was willing to go more than halfway, realizing how profitable it is for a large country to deal fairly with a small neighbor. With this approach, the Mexican Government began to do its part by gradually modifying its agrarian program.35

The first step was to set up a procedure for settling individual cases as they might appear. An expert in Mexican land problems was transferred from the consular system in Mexico to the Embassy staff; his task

34 Callahan, op. cit., 614-615
35 Howland, op. cit., 89
is to act as mediator between the Government and the American landholders. Treating each case individually, he advises the landholder as to what evidence to submit to the Agrarian Commissioners and what remedies are open to him, and also makes representations to the Mexican officials. This has proved to be a most satisfactory procedure, nineteen cases being so settled in 1929.36

President-elect Ortiz Rubio made a good-will tour of the United States starting in December, 1929. While on the tour he declared that he intended to continue the grants of communal lands to villages lacking them. He gave assurances that the land appropriation problem had been settled, and that the government had paid in bonds for the lands which had been taken.37

In an address to a convention of agricultural workers in Mexico City on February 18, 1930, Minister Luis Leon of the Department of Industry, Commerce and Labor, said that the government would continue to grant communal lands until every agricultural worker had a plot of his own. Concerning the payment of her agrarian debt, Leon declared that Mexico must face it over a number of years. President Rubio repeatedly stated that all communal lands

36 Howland, op. cit., 89

37 Current History, XXXI, 996
President Rubio enlarged his agrarian program by issuing two important decrees. The first, issued on April 27, 1930, empowered the executive to issue twenty-year bonds on the agrarian debt to the extent of approximately $25,000,000, in series as necessity arises, and bearing 5 per cent interest. The executive might, according to the government's financial condition, redeem part or all of the agrarian debt. In his second decree on May 8, 1930, Rubio authorized the leasing of the national domain to Mexicans over eighteen years of age, who had a capital of $2,500. This did not involve the rights of foreigners.

As the public agrarian debt began to grow, Mexican leaders began to break away from a thorough program of agrarian reform. Another significant development which helped to deter Mexico from such rapid expropriation of land, was the increasing doubt as to the success of the policy. In an interview on June 23, 1930, former President Calles declared that Mexico's agrarian program, as they had practiced it thus far, was a failure, and that a remedy must be found. Referring to President Rubio's recent

38 Current History, XXXII, 143
39 Ibid., XXXII, 768
40 Howland, op. cit., 92
intention to give more land he said: "It is folly to consider giving the agrarian a second parcel of land if time has shown that he is unable to produce on the first piece....We must admit, although much land has been given out, conditions have not improved and the land is not producing as it should."41

The Indian had neither the capital nor the training to be thrown on his own resources. The change resulted in an alarming decline in agricultural production. According to figures compiled by the Statistical Bureau of the Mexican Government, Mexico imported seven times as much wheat in 1926 as in 1923 and seventy-five times as much corn, despite an actual reduction in population. All over Mexico expropriated land has been allowed to stand idle.42

Morrow left Mexico in September, 1930, to run for United States Senator from New Jersey. J. Reuben Clark was appointed to succeed him in October.43 He presented his credentials to President Ortiz Rubio on November 28, 1930, and a mutual spirit of cooperation and good-will was expressed.44

41 Current History, XXXII, 987
42 Howland, op. cit., 90-91
43 Current History, XXXIII, 273
44 Ibid., XXXIII, 596
The definite trend toward conservatism of the Mexican agrarian program was evident in the amendments to the agrarian law which were approved by the Chamber of Deputies on December 12, 1930, and by the Senate on December 18. These amendments, which were requested by President Rubio as a means of giving guarantees to foreign capital in Mexico, provided, first, that additions to village communal land assignments might be made only when lands taken over from private owners for that purpose be paid for in cash at that time; and second, that large haciendas, such as sugar plantations and dairy and fruit ranches, should be immune from seizure and division for communal purposes. Until the passage of these amendments, communal lands might legally be expropriated through payment in bonds which had a face value below par.45

The Mexican National Economic Congress, which met in January, 1931, made recommendations to the Mexican Government for the settlement of the agrarian problem. The government was urged to take steps toward discontinuing the distribution of land to small holders; to study the effect on the national credit of the agrarian indebtedness; to hasten the settlement of this debt; to pay cash, instead of depreciated bonds, for any land which might be exprop-

45 Current History, XXXIII, 753-754
riated for agrarian purposes in the future; and to return to former owners expropriated lands that had been abandoned by the workers.46

These more conservative undertakings would seem to indicate that the Mexican agrarian problem, at least in its international aspects, is well on its way toward settlement.

46 Current History, XXXIV, 121
BIBLIOGRAPHY
I. Primary Materials

1. Government Publications

American Property Rights in Mexico, further correspondence between the Governments of the United States and Mexico in relation to the so-called land and petroleum laws of Mexico, supplementing correspondence heretofore published as Senate Document, No. 96, 69th Congress, 1st session, Washington, 1926.

Congressional Record, 65th Congress, 3rd session.

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Congressional Record, 68th Congress, 1st session.


Critical Remarks Concerning Primary Materials

Senate Document, 66th Congress, 2nd session, No. 285, Investigation of Mexican Affairs, offers a mine of valuable material covering the years 1910 to 1919. However, it has a distinct ant-Mexican attitude, due to the prejudices of Senator Albert Fall, who was chairman of the Senate Committee in charge of investigating Mexican affairs. Papers Relating to the Foreign Relations of the United States, 1918, is of great value for the diplomatic correspondence over Carranza's oil decrees and the interpretation of Article 27 of Mexico's Constitution of 1917. A full record of the 1923 conferences, the understandings reached, and the text of the General and Special claims conventions may be found in the Proceedings of the United States-Mexican Commission Convened in Mexico City, May 14, 1923. The official correspondence exchanged between the United States and Mexico regarding the alien land and petroleum laws has been published in Senate Document, 69th Congress, 1st session, No. 96, and American Property Rights in Mexico, further correspondence between the Governments of the United States and Mexico in relation to the so-called land and petroleum laws of Mexico, supplementing correspondence heretofore published as Senate Document No. 96, 69th Congress, 1st session.
II. Secondary Materials

1. Books


Phipps, Helen, *Some Aspects of the Agrarian Question in Mexico*. (University of Texas Bulletin, Studies in History No. 2, Austin, 1925)


Stevens, Guy, *Current Controversies With Mexico, Addresses and Writings*. Association of Producers of Petroleum in Mexico, New York,[1929?]


2. Periodicals


Clark, J. Reuben, Jr., "The Oil Settlement With Mexico," *Foreign Affairs*, VI (July, 1928)

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Critical Remarks Concerning Secondary Materials

A valuable interpretation of Mexico's problems in the light of her historical development is Ernest Gruening, *Mexico and its Heritage*. This contains a vast amount of sociological data of value in appreciating Mexican interpretations. It is a fair treatment, although in our immediate subject it is easy to detect his pro-American sympathies. A recent work of great value is James Morton Callahan, *American Foreign Policy in Mexican Relations*. This is an excellent objective review and is especially valuable for the period covered in this paper. The entry of American capital in Mexico, the development of the oil industry, Mexican land legislation, and the oil controversy up through the settlement are fairly well covered in the *Survey of American Foreign Relations, 1931*, edited by Charles P. Howland. A well balanced general background for the period is found in Herbert I. Priestley, *The Mexican Nation, A History*. J. Fred Rippy, *The United States and Mexico*, is a good general survey of the diplomatic relations between the United States and Mexico from 1821 to 1924, and contains copious references to primary materials. Rippy is good for the attitude of the press toward the question. J. Fred Rippy, Jose Vasconcellos, and Guy Stevens, *Mexico*, attacks our problem from three distinct points of view, and leaves
the reader to form his own opinion. Rippy gives the historical treatment; Vasconcelos, former Mexican Secretary of Education, gives the attitude of a liberal and intelligent Mexican; and Stevens presents a rather sober analysis similar to the one in his book, *Current Controversies with Mexico*, in which he represents the attitude of the American oil investor. Charles W. Hackett, in *World Peace Foundation Pamphlets*, Vol. IX, No. 5, traces the Mexican-American relations from the revolution in 1910 down to 1926. Ludwell Denny, *We Fight for Oil*, is a rather sensational account of the great oil companies and the support which they are supposed to have received from their governments; it is colored with his own inferences.

The agrarian problem and its background is well covered in Helen Phipps, *Some Aspects of the Agrarian Question in Mexico*; George M. McBride, *The Land Systems of Mexico*; and Frank Tannenbaum, *The Mexican Agrarian Revolution*. Phipps and McBride give excellent accounts of the history of Mexican land-tenure and the socio-economic phases of the revolution of 1910. In his broad and detailed account, Tannenbaum carries the story down to 1928. An interesting study in this connection is Robert Redfield, *Tepoztlan, A Mexican Village, A Study of Folk Life*, which gives an excellent picture of a typical Mexican community,
its communal organization, land-tenure, and the customs of its people.

In the field of periodical literature the most valuable material is found in Charles W. Hackett's articles which appear in *Current History* through our period. J. Reuben Clark's article on "The Oil Settlement with Mexico", in *Foreign Affairs*, VI (July, 1928) is extremely valuable because the author was Ambassador Morrow's assistant at the time of the settlement and later ambassador to Mexico.