

INTRODUCTION TO THE MEXICAN REAL ESTATE SYSTEM

William D. Signet

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PREFACE

This book was written to help Americans and other foreigners understand the ways in which Mexican real estate is acquired, mortgaged, developed, and sold. As an American professional working in this area for the last 18 years, as a lawyer, then as head of an American title insurance subsidiary in that country, I have witnessed steady and significant progress in my and my fellow countrymen's ability to operate in that beckoning and mysterious country.

That there has been any progress at all is a cultural and historical accomplishment we should spend a few moments to savor. Until recent times, Mexico occupied a place in the American mind akin to the attic in a great Victorian home: Bypassed by immediate events, the hands of its clock swept along in much slower arcs of time; in its dusky alcoves reposed the forgotten memorabilia, and some of the inner terrors, of the happy family living below. If we learned about Mexico at all, it was through the distorting lens of the returning wanderer, surfer, rancher, or desperado.

And when it came to meeting Americans who might have done business there, well, those were not the kind of people one might ever meet at a cocktail party, and with good reason. Mexico had turned inward since the Revolution that started 100 years ago. As a law graduate eager to explore the legal frontier between the two countries, I remember spending several hours in a Mexico City cab, searching for the one legal textbook publisher (Editorial Porrua) offering materials on commercial law. Upon my return to Houston, the terrible price I paid for wading through two thousand pages of monotonous prose was not rewarded by the attainment of any practically useful knowledge. I could not see why any American investor would be interested in turning over its business, and all proprietary knowledge, to the Mexican state as the price of doing business. If it was the goal of Mexicans of that era to protect local industrialists and merchants from competition, and to hold the imperialist menace at bay, then their laws were among the most effective I've ever seen. It would be a long time before I scoured the streets of Mexico City again in a quest for information, but by then Mexico, and most of the world, were far different.

In that interval of 12 years, several developments, some intended but most unexpected, had conspired to override decades of mutual mistrust and neglect. The development of Gulf oil fields would change the calculus of public finance; Mexico would feast and then quickly choke on a sea of international liquidity; foreign trade would rise from a negligible to respectable quantity; and a large piece of America's industrial capacity would "make a run to the border," to quote Taco Bell, as would perhaps up to 15% of Mexico's population, although in the opposite direction.

To try to understand why this happened, one might go back to the year 1960, when Mexico had just completed what may have been the two most stable and prosperous decades of its national life, a time Mexicans still call the Golden Age. In politics, success was measured by the total political power that one party, the PRI (Partido Revolucionario Institucional), had accumulated, much of it in exchange for its ability to co-opt and placate—sometimes in a corrupt way, but always successfully—the other significant centers of power in the country, like labor unions, peasant farmers, and consumer-oriented industries. By 1960, a huge swath of the nation's territory lay in the hand of communal ejidos—a development that will be discussed in several chapters—peacefully fulfilling a major plank of the Revolutionary platform. In the decade of the 1940s, industrial production grew each year at a very impressive eight percent, and by seven percent per year in the 1950s.¹ Culturally, Mexico could claim artists like Diego Rivera, David Siqueiros, and Ruffino Tamayo, attractions like the National Anthropology Museum, architecture by Luis Barragan, and huge public universities like UNAM. Mexican cinema was also quite interesting; and great popular composers like Agustin Lara wrote the songs that brought people together.

Yet close observation in that same year of 1960 might have revealed other developments with the potential to change the established order. Some of these involved the frequencies with which Mexicans were born, lived, and died.²

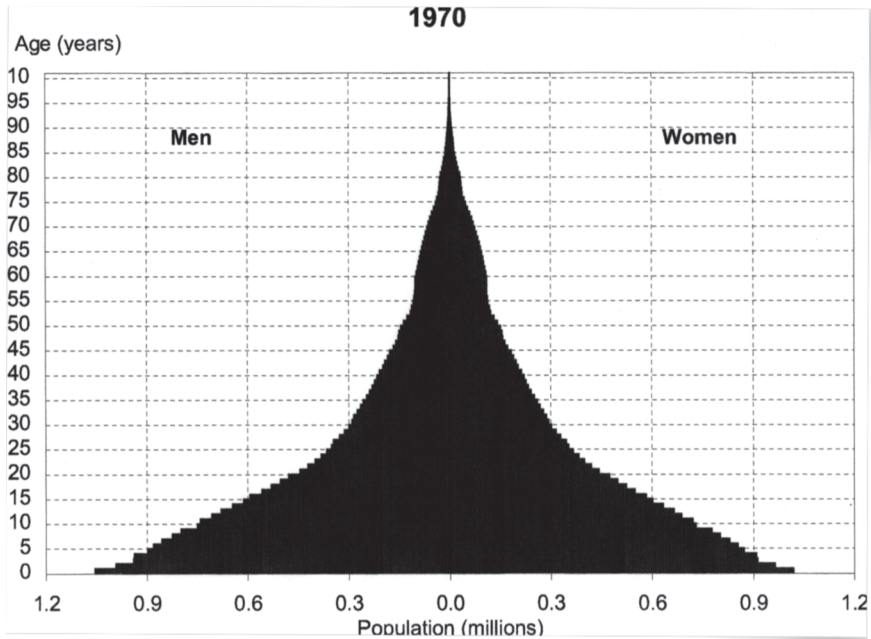
First, dying. In 1900, 35 Mexicans died for every 1,000. Sixty years later, only 13 of every 1,000 were cooperating in this manner—clear evidence of 20th century improvements in infant mortality, and in prolonging the lives of us all. However, the technocrats of the 20th century were not equally adept at changing human nature, which tends to require several decades of proof before deciding to procreate less. In the same 60 years in which the Mexican

1. Clark Winston Reynolds, *The Mexican Economy: Twentieth Century Structure and Growth* (Yale University Press, 1970), 166.

2. United Nations, Department of Economic and Social Affairs, Population Division, Expert Group Meeting, http://www.un.org/esa/population/meetings/EGMPopAge/Partida_Figures.pdf.

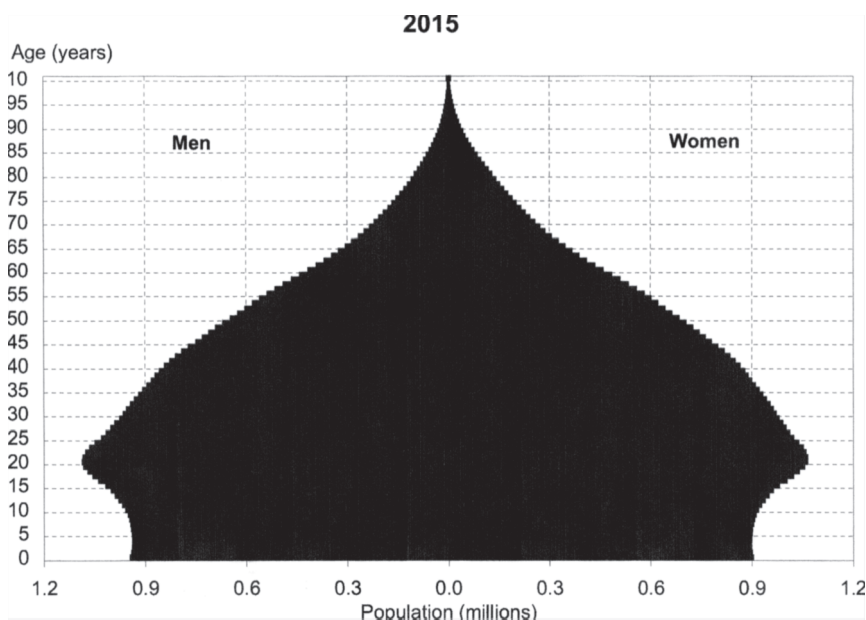
death rate plummeted, the Mexican *birth* rate actually increased. The same stability and prosperity that gave Mexicans peace of mind during the 1940–1960 golden age apparently triggered increased fecundity: The fertility rate of Mexican women increased by a whopping 20% in this same two-decade period, from 6 children per woman to 7.2 (ouch!).

Based on a 1960 population of roughly 35 million people, and not counting other factors like migration, if 4.7% of that number was being added to the populace, and only 1.3% was leaving, the population was growing by about 3.4% each year. After 1960, the fertility rate plummeted, but the demographics at play in 1960 still meant that Mexico's population 20 years later would double. By the year 2000, it would triple. It is no wonder that ten years later, in 1970, a histogram³ of the Mexican population distributed by age and gender would look like it does in Figure 1.



Some acquaintances to whom this Rorschach was shown said it resembled an overview of the Concorde. Others said it looked like Mothra in the mid-Pacific Ocean, in full extension, grabbing for speed. Better put, it is a flying nursery. It depicts a country that in 1970 could not have been getting much sleep.

3. *Ibid.*



The histogram in Figure 2 shows how the generation of 1970 will look in just a few years.⁴ This might be called the Very Pregnant Mothra, ready to drop her eggs on the West Coast of California, before she comes ashore to destroy Sunset Boulevard and incinerate the former Grauman's Chinese Theatre.

Two points leap out. The first is that the generation of 1970 significantly reduced its fertility rate. In fact, the absolute number (not just rate) of new-borns promises to decline, a rather startling statistic when one considers that the total population of the country tripled during the same period. That may augur well for the stability of North America when our grandchildren are living, assuming a static population is beneficial.

The second observation is even more significant: The cohort between the ages of 15 and 25 projected to the year 2015—that is, the age range of people who will expect new jobs, who will expect to start new families, and who may be willing to accelerate the already high rate of net emigration to reach those goals—is only growing.

But going back to the 1960s, the immense gap between the birth and death rates meant that, in the coming decades, the two essential assumptions of the

4. *Ibid.*

new economic accomplishments of Mexico's golden decades would be laid bare, examined, and found inadequate.

The first was an industrial policy that promoted Mexican industries behind a wall of high tariffs and restrictive foreign investment laws. Behind the stellar news that industrial production more than tripled⁵ in the preceding 20 years lay the more disturbing but not surprising reality that such progress had come with very little gain in productivity.⁶

The second concerned agricultural production in the farms in Mexico's south and middle districts. As will be discussed in a later chapter, the massive transfer of Mexican farmland to communally owned ejidos in the 1930s and 1960s, and the specific laws that were created to insulate ejidos from the perceived dangers of the private sector, perpetuated 19th century farming techniques, and accounted for the average *campesino* having only 12 acres of land he could call his own. While commercial farms in the northern states continued to prosper, it became evident that the more concentrated ejido farms of the lower two-thirds of the country were falling behind.

The cracks in these two pillars became evident in the 1970s. To placate the social pressures arising from a skyrocketing population, the government appeared to sanction the illegal seizure of land, which generated a backlash from the moneyed classes and contributed to their sending their money to foreign havens. Discoveries of significant oil deposits in the Gulf of Mexico in the mid-1970s, and the simultaneous ascent of oil prices, caused Mexico to indebt itself to foreign lenders in order to build infrastructure. The collapse of oil prices in the early 1980s meant that revenues would decline; the debt, unfortunately, remained. Agricultural yields fell behind population increase, and Mexico became a net importer of food by the early 1980s. The peso seriously overvalued, causing exports to decline. In 1976, Mexico was forced to abandon its system of a fixed exchange rate that had been in place for 20 years, and the peso's value immediately diminished by 58%.

By the end of the 1980s, it became clear to Mexican policy leaders that the old policies based on state support of local industry would no longer work, and so they, like many of their counterparts in Latin America, adopted what has become known as the "neo-liberal model." What this meant for Mexico included:

- In the area of trade policy, government policy shifted from protection of local industrialists, and high tariffs, to international competition and

5. Hector Aguilar Camín and Lorenzo Meyer, *In the Shadow of the Mexican Revolution: Contemporary Mexican History, 1910–1986* (University of Texas Press, 1993), 162.

6. Reynolds, *The Mexican Economy*, 168.

openness. In the late 1980s, the country joined the General Agreement on Tariffs and Trade (GATT). It joined the OECD, and in 1994, joined the U.S. and Canada in the NAFTA. Bilateral commerce between Mexico and the U.S. increased by over 400% in the last 15 years.

- Beginning in 1992, Mexico opened its doors to foreign investment. The previous foreign investment statute that had prohibited foreigners from investing in any business, unless specifically approved by law, was changed to the opposite: Foreigners could now invest in any business, unless specifically prohibited. Foreigners became the predominant owners in banks and railroads, and held significant ownership positions in telecommunications and transportation. Foreign-owned companies in the maquila⁷ sector alone accounted for one out of every five manufacturing jobs in the country.
- In agriculture, Mexico's 28,000 separately organized ejidos became able, for the first time, to sell (in essence, privatize) landholdings, and even mortgage them to obtain credit.

Twenty years later, what has this change accomplished, in terms of the rising expectations and numbers of its population?

The numbers are not encouraging. While the liberalization of Mexico's trade and foreign investment policy has produced interesting headline numbers, the evidence that it has substantially increased Mexican employment, and real wages, is missing. Some studies have shown that the percentage of the total economy occupied by the formal economy⁸ under NAFTA has shrunk from roughly 60% of the population, pre-NAFTA, to only 50% today.⁹ In absolute numbers, manufacturing employment has decreased, if employment in maquiladoras is not counted. But the most telling evidence of failure must be the decline in real wages over the last 15 years.¹⁰

7. Also known as the "twin-plant" system, under which components from the U.S., Asia, or Europe are shipped to Mexican factories, assembled, and re-exported under reduced duties.

8. The term "formal economy" refers to persons who own or who work for companies that pay taxes, withhold social security, income tax, and other items from their workers' salaries; collect and pay value-added taxes; and obtain licenses for doing business and other purposes. Consequently, their workers are entitled to public medical services and other social protections.

9. Lee Hudson Teslik, "NAFTA's Economic Impact," updated July 7, 2009, U.S. Council on Foreign Relations, <http://www.cfr.org/publication/15790/>.

10. Sandra Polaski, "Mexican Employment, Productivity and Income a Decade after NAFTA," brief submitted to the Canadian Standing Committee on Foreign Affairs, Febru-

Neither has the outlook significantly improved on the Mexican farm. The radical changes to Mexico's agrarian laws in 1992, allowing ejido land to be privatized and mortgaged, has not contributed in any meaningful way to improved agricultural output. Mexico's agricultural statistics over the last 15 years are bad: a drop of 1.6 million persons in farm employment, and trade deficits with the U.S. in all but one year when, as a result of the massive devaluation of the peso in 1994, Mexican consumers could not afford to pay for imported foodstuffs.

The purpose of outlining the demographic and economic challenges facing Mexico is not, I hope, to discourage those interested in Mexican real estate or, especially, from reading a book like this one. Rather, it is to affirm the basis—although in melancholy tones—on which Mexico and the U.S. may be drawn even closer together in the coming decades, and why therefore the ability to effectively operate within the other's economy may become more important than it already is, not less.

At the present, there are far more Mexicans with an operational understanding of the American culture and economy than their American counterparts. We have lived so far in an American age, and in an English-speaking age, from which consequences both good and bad arise. Certainly our relative inability to speak and read foreign languages is due, in part, to the fact that so many people speak English the world over, making the "total immersion" formula for language-learning extremely difficult to implement. Similarly, the very transparencies and technological triumphs we have woven into the fabric of everyday living—the Internet, Google, Wikipedia—have rendered us, perhaps, less adept when we try to operate in cultures in which the basic functions of the economy are intentionally obscured.

If the goal of reaching out into the world is a worthy one for Americans, understanding the topics covered here, in the country under consideration, may be worthwhile.

One reason is that, for the reasons discussed above, the U.S. cannot afford a Mexico that fails. As the above portrait of our Very Pregnant Mothra depicts, the demographic bubble that contains the largest cohorts of Mexicans coming into employment age has not happened *yet*, in contradiction to what our eyes and ears would tell us. For Mexico not to fail, it needs substantial investment, and the right kind. It is also in our direct, pecuniary interest that 100 million Mexicans, in a Mexico of real jobs and real incomes, becomes a greater

source of consumption for U.S. products than it already is, especially if American consumers actually begin to start saving more of their disposable incomes, as the latest statistics would suggest.

Another reason relates to the U.S.'s own, looming demographics. When this book was started, Mexico was touted as a natural retirement paradise for Americans with a historically high level of personal wealth. As this book is finished, Mexico can still be touted as a low-cost service country for Americans whose own medical and property tax systems are on life support. In the long term, Americans will still need to know about Mexican real estate.

The first step in this process is to try to forget every pre-conception one may have about Mexico, not that there isn't at least one grain of truth in any of them, but, overall, they don't help. The usual nostrums one hears about Mexico begin with the more general and crude statement about Mexico's corruption, the absence of the rule of law, that it is "who you know and not what you know," that the law requires a Mexican partner to own a business, that Americans can't own property, and so on. But the same mistakes go up the ladder of sophistication. One hears, from people who should know better, for example, that the Mexican notary public certifies good title in land; or that good title is similarly guaranteed by certificates issued by the local public registry of property.

And, yet, the most enduring and mysterious roadblock to the penetration of Mexico may lie within the airspace of the American mind, itself. The people likely to read this book—people like you, by definition—have probably done well in their country of origin. Were they buying property in their own backyard, no doubt they would sign an earnest money contract with the seller, deliver their deposit to a trusted third party, do their "due diligence"; and not give anything of value to the seller until good title is delivered. Too often, they do none of the above in Mexico. Ironically, the suspicion that Mexico is exotic, outside the rule of law, and rife with corruption, makes Americans more likely to accept what they are told at face value; less likely to seek out and use established legal procedures; more likely to ignore obvious and transparent facts; and less likely to use simple common sense.

This is not to say that Mexico does not have its serious problems. It may or may not be flattering to describe Mexico as a country that has never been able to solve its biggest problems, but has found ways to live with them. Nevertheless, it is in general a country where property rights are respected, and people, especially the foreigner, are treated well. It is one of the few countries of the hemisphere that has benefited from political stability for most of the last century. It is a people intelligent enough to understand the benefits of tourism and foreign investment.

And, yes, there is one other reason for better understanding. He could be called Jose Luis, or Arturo, or she could be called Maria, or even “Jenny,” as is now becoming the fashion. Ten months ago that nameless person may have stood against the chill of a July morning to board one of the hundred buses that carry their passengers northward to set them down onto the baking asphalt of a parking lot, where they would stop long enough to eat a ham sandwich, look at the dry mountains on the horizon, and consider their chances, one last time. Those mountains once belonged to Mexico, but not now.

These people, in a way, contributed to the need for a book like this, because their stories, repeated millions of times, have, and will, establish our history, our community, as Mexicans, Americans, and Canadians on this continent, and place that history beyond the remove of economic pundits, political demagogues, and policy wonks, whether they speak English, Spanish, or French. For the last 30 years, we have assigned names to the mileposts of that history—the Washington accords, NAFTA, GATT—but such mileposts were only that: names given to commemorate facts already moving on the ground, highways already worked by quiet footprints intercepting long and ancient fault lines.

One may well debate whether the Americanization of Mexico is better or worse than the Mexicanization of the United States, but there is no longer any question of the direction in which history is moving. The Mexico of today is a place whose *telenovelas* are filmed in Miami, whose music idols record in Burbank, whose ancient landscape is dotted with cell towers, and where Americans, on a climatically perfect Sunday, will read their English newspapers, sip a latte in the town plaza, and shop at the local Costco. And the America of today, even in the farm country of Iowa, or the tobacco country of North Carolina, is one of *carnicerias*, international calling cards, and storefront bus stops.

It is hoped that this book will help inform one aspect of this process in its own small way, by making Mexican real estate better understood by American investors, lawyers, bankers, and real estate professionals, at least enough to deal intelligently with their counterparts in Mexico, avoid disasters, make money, and have some fun.

It is, therefore, written for all such wayfarers, whatever their form of coming.

NOTES

Translations

The problem with understanding and translating many of the words used in Mexican real estate practice is that they are either too old, and, therefore, require knowledge of 17th century mercantilist history to be understood, or have been made up in the last 20 years as Mexico has modernized its economy and, hence, its legal system. Two examples of the former are *ejido* and *maquila*, not easily translatable but so ubiquitous that no translation is necessary—people don't even bother putting them in italics any more—and the Spanish words will be used throughout this book. A more difficult example is *afectar* (noun form is *afectación*), which is a condition that makes property subject to legal seizure or encumbrance (as in the case with large estates after the Mexican Revolution that may have been legally susceptible to expropriation and distribution to *ejidos*). The parallel meaning in its English cognate, “to affect,” and especially in the noun form, “affection,” passed into history by the year 1950, leaving no really terse substitute. The best I have been able to do is decide on a convention—in the case of *afectar*, it is “to make expropriable.” My apologies to Mexican attorneys who know the word means more than that.

It is actually the more recent words invented to mimic legal concepts in the countries with whom Mexico has begun to do business in the last 20 years that present the greatest opportunity for misinformation. This is because the Mexican word is often formed from the English cognate whose meaning is not quite accurate, or does not exist. Thus, *lotificación*, though derived from the English word “lot,” has no counterpart in English: American developers do not “lotify” or build “lotifications.” They do, however, build “subdivisions,” which is the word the Mexican ear dwelt upon when it wished to convey the concept of a “partition” of property. We seem to toil on under conditions of mutual confusion, as when a Mexican attorney speaking to his American client translates the Spanish *compromiso* (firm agreement) as “compromise,” a term that

in contemporary English connotes the opposite.¹ American clients mistakenly begin to feel that their lawyers are becoming too flexible. (If you are a Mexican attorney reading this book, please compromise that you will stop doing that!)

There is also no adequate English translation for some key terms in the Mexican legal system, such as *amparo* or *comisario*. In these cases, certain thought leaders, like transnational law firms, have decided upon certain naming conventions, like “constitutional protection lawsuit,” or “statutory examiner,” in the case of the two examples given, respectively. But these have not generally won widespread, exclusive, acceptance. I feel that foreigners are just better off learning what the Spanish concept means and, in the process, learn to say the Spanish word.

In addition, Mexican legal Spanish employs many formal terms that, while translatable, come out as too stilted for an American audience. For example, I have had to translate the Mexican term *declaracion unilateral de voluntad* as “unilateral declaration of will,” but it sounds like something Nietzsche would say.

Unless otherwise noted, all translations of Mexican legal texts are my own.

Legal Citations and Abbreviations

The basic law of Mexican real estate is found in the *Codigo Civil*, or Civil Code, which, as the reader will soon learn, is adopted in each of the 31 Mexican states and in the Federal District. The 32 versions are not identical, but do resemble each other enough, so that all my references, unless otherwise noted, will be to the Civil Code of the Federal District of Mexico, or the Federal Civil Code. It bears repeating that the law of real estate in Mexico is generally a state affair, so the law of the state in which the real estate is located should always be consulted.

I think the reader already appreciates that law is constantly changing, and so will accept the fact that, in a book like this, the law referred to here represents only loosely the state of Mexican law around the years 2008 and early 2009.

All federal law in Mexico is promulgated (published) in the *Diario Oficial de la Federacion*, a daily gazette published by the *Secretaria de Gobernacion*. The accepted citation style, used in this book, is to use the initials “D.O.” followed by the date of publication.

1. The Mexican attorney would be correct, of course, were he or she speaking to Americans of the 19th century.

Finally, the reader will notice the absence of diacritical marks (accents) in the Spanish. Especially with the advent of the Internet, this practice is becoming more acceptable when the Spanish words occur in an English-language work, and it is a practice that I, with my English keyboard, am happy to promote.