

# ARTICLES

## DUAL NATIONALITY FOR MEXICANS?

### A COMPARATIVE LEGAL ANALYSIS OF THE DUAL NATIONALITY PROPOSAL AND ITS EVENTUAL POLITICAL AND SOCIO-ECONOMIC IMPLICATIONS

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#### INTRODUCTION

Recently, the government of Mexico has been pondering whether to amend its Constitution so its nationals will not be legally allowed to voluntarily abandon their nationality, even when they become naturalized citizens of another country. Contrary to the policy followed by Mexico since it became politically independent in 1821,<sup>1</sup> pursuing this proposal would mean that the

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1. After ten years of war, the entering to Mexico City of the Army of the Three Guarantees led by Agustín de Iturbide on Sept. 27, 1821, symbolizes the consummation of the Mexican independence. For the text of the Act of Independence signed in Mexico City on Sept. 28, 1821, see FELIPE TENA RAMÍREZ, *LEYES FUNDAMENTALES DE MEXICO* 122-123 (1991).

Federal Executive is to submit to the Mexican Congress a legislative bill to amend Articles 30, 37, and 38 of the Mexican Constitution.<sup>2</sup> If the amendment passes, after it has been approved by the majority of the thirty one State legislatures,<sup>3</sup> Congress will have to then introduce the corresponding changes to the pertinent secondary legislation, in particular, the recently enacted Nationality Act of 1993.<sup>4</sup>

Unlike some forty countries who make it legally impossible today for their nationals to willingly renounce their nationality of origin, thus allowing a dual nationality in certain cases, Mexico has been recognized in the international arena, both historically and legally, as the epitome of a nation that strongly favors a single nationality. The long and rich history of that nation; the *grandeur* of its pre-Columbian civilizations; the originality and quality of its art, music and other manifestations of its old culture; its multi-ethnic composition; and its sense of modern accomplishments have given Mexicans a unique sense of pride and satisfaction as nationals of that nation. Being a Mexican national had a special cultural ring anywhere in the world. So, what happened? Why is Mexico contemplating changing this traditional and almost venerable single nationality policy now?

The mere idea of adopting this change is already producing profound repercussions in Mexico, and in the United States. Until now, the proposal of dual nationality has been well received in Mexico. However, in the United States, some alarming opinions are beginning to appear in the press.<sup>5</sup> In the advent of a most controversial U.S. presidential election in 1996, it is easy to anticipate that this Mexican proposal is likely to attract a growing number of increasingly deleterious attacks.

This idea has created such an immediate and intense reaction principally because it was recently announced in Dallas, Texas, by the President of Mexico himself, Dr. Ernesto Zedillo

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2. These articles refer to the modes of acquisition of the Mexican nationality, the loss of it, and the rights and privileges of Mexican citizens, respectively. For a discussion of these questions, see *infra* notes 93-145 and the corresponding text.

3. Patterned after Art. V of the U.S. Constitution, Art. 135 of the Constitution of Mexico provides that a two third favorable vote of the Mexican Congress, and a simple majority vote of the 31 State legislatures, is required for amending the Constitution. See CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS. Ed. Delma, México, 1995 at 144. MEXICO CONST. art. 135 [*hereinafter* CONSTITUCION].

4. *Ley de Nacionalidad*, published in the *Diario Oficial de la Federación* (Mexico's federal official daily, *hereinafter* D.O.) of June 21, 1993. Basically, this brief federal statute details the content of Arts. 30 and 37 of the Mexican Constitution.

5. See Don Feder, *Why Take Insults from Mexico?*, THE BOSTON HERALD, May 24, 1995, at 033. See also Georgie Ann Geyer, *Mexico's Cynical Push for Adoption of Dual Nationality*, THE CHICAGO TRIBUNE, June 2, 1995. See also Samuel Francis, *Maybe Mexico Just Wants a Couple of Old Provinces Back*, THE WASHINGTON TIMES, June 20, 1995, at A19.

Ponce de León. In a private meeting with U.S. Latino leaders, Zedillo said that his goal was "to develop a close relationship between his [the Mexican] government and Mexican Americans, one in which they could be called upon to lobby U.S. policy-makers on economic and political issues involving the United States and Mexico."<sup>6</sup> Meeting with a group of high-ranking Latinos, he said:

*[H]e will consider allowing Mexicans in the United States dual citizenship . . . . This means that Mexicans living in the United States who want to become U.S. citizens would no longer lose their Mexican citizenship, as now required by the Mexican Constitution. Dual citizenship could encourage millions of homesick Mexicans to pursue U.S. citizenship, thus increasing the political clout of Mexican-Americans.<sup>7</sup>*

Among other consequences, the passing of a constitutional change of this nature would result in Mexican nationals having dual nationality when they become, for example, U.S. citizens by naturalization. In these cases, however, retaining the Mexican nationality would appear to be contrary to the immigration and nationality laws of the United States. The Immigration and Nationality Act of 1990 (INA) stipulates that before being admitted to citizenship, an alien must "*renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the applicant was before a subject or citizen.*"<sup>8</sup>

Mexicans with dual nationality would raise an array of novel and delicate legal questions in the United States. Such questions may address international law in general, and specific areas of the domestic legislations of these two countries. Taxation, labor issues, acquisition of real estate and other business transactions, inheritance, extradition, domicile, military service, family law and minor's rights, deportation and other immigration law aspects, political rights, and diplomatic protection may be among the long list of technical legal questions directly affected by this contemplated legal change.

On May 31, 1995, in his "National Development Plan for 1995-2000," before the Mexican Federal Congress, President Zedillo stated:

*The Mexican nation goes beyond the territory contained by its borders. Therefore, an essential element of the 'Mexican Nation Program' will be to promote the constitutional and legal*

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6. Alfredo Corchado, *Zedillo Seeking Closer Ties with Mexican-Americans*, THE DALLAS MORNING NEWS, Apr. 8, 1995, at 11A.

7. *Id.* at 11A (emphasis added).

8. Immigration and Nationality Act of 1990 § 337(a)(2), 8 U.S.C.A. § 1448 [hereinafter INA] (emphasis added).

*amendments designed for Mexicans to retain their nationality, independently of the citizenship or residence they may have adopted.*<sup>9</sup>

This stated intention by the President of Mexico has recently triggered a variety of official and private reactions in both Mexico and the United States. For example, at the official level, the Mexican Congress debated the idea of allowing Mexicans who live in the United States to maintain their Mexican nationality if they become U.S. citizens by naturalization.<sup>10</sup> The three major political parties represented in Congress — the official party PRI (*Partido Revolucionario Institucional*), the traditional opposition party PAN (*Partido Acción Nacional*) and the recently created PRD (*Partido Revolucionario Democrático*) — are all in favor of this novel concept.<sup>11</sup> They already advanced specific proposals to be considered when the corresponding legislative bill reaches Congress, possibly next year.<sup>12</sup>

In Mexico, the idea is received with great interest. Politicians, entrepreneurs, journalists, and academicians, among others, strongly support this proposal.<sup>13</sup> In this country, the prospect of dual nationality for Mexican immigrants is the object of a direct promotional campaign launched by politicians and government officials to lobby for the acquisition of U.S. citizenship by naturalization. Last May, Dr. Alejandro Carrillo Castro, the then PRI's official in charge of international relations, visited Chicago over the weekend "to promote the idea of dual nationality,"<sup>14</sup> a legal concept already adopted by England, France, and

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9. Decree approving the National Development Plan, 1995-2000. See *D.O.* of May 31, 1995, *supra* note 4, at 16 (emphasis added). This Plan proposes "the national objectives, the general strategies and the priorities for the integral development of the country." *Id.*

10. James E. Garcia, *Mexico Attempts to Strengthen its Standing in the U.S.*, THE AUSTIN AMERICAN STATESMAN, June 11, 1995, at D1.

11. See *Political Parties and Double Nationality*, LA PALOMA, No. 23, Mar.-Apr., 1995, at 1-4.

12. On September 1, 1995, President Zedillo delivered his First State of the Union Address at the opening session of the Mexican Congress, pursuant to Art. 65 of the Mexican Constitution. Although President Zedillo enumerated seven specific legislative bills that he is planning to submit to the Mexican Congress during this session, the "Double Nationality" bill was not mentioned in this group.

13. See Jorge G. Castañeda, *Immigration: Mexicans are Seeking U.S. Citizenship in Record Numbers. Now the Motherland is Mulling Dual Citizenship for Them*, THE L.A. TIMES Aug. 28, 1995, at 5. See also Arthur Golden, *Mexico Encourages U.S. Citizenship. Constitutional Change would let its People Keep Nationality*, THE SAN DIEGO UNION-TRIBUNE July 1, 1995, at A-1. See also Mark Fineman, *Mexican Citizens may Gain Right to Dual Nationality*, THE L.A. TIMES, May 21, 1995, at A-1.

14. Teresa Puente, *Mexicans Here Back Dual Nationality Plan: Increased Political Voice is the Goal*, THE CHICAGO TRIBUNE, May 15, 1995, at D-2. Dr. Carrillo estimated that 300,000 to 400,000 Mexicans in Chicago, and 3.5 million to 5 million Mexicans throughout the U.S., could be eligible for dual nationality. About 14,000 Mexican nationals became U.S. citizens in 1993 in Chicago, and about 20,000 were naturalized in 1994. *Id.*

Israel. "All this means is you never lose your (Mexican) nationality,' by becoming a U.S. citizen, he said."<sup>15</sup> Dr. Roger Díaz de Cossío, the Undersecretary of the Secretariat of Foreign Affairs in charge of the Program of Mexican Communities Abroad, visited Dallas, Texas, to discuss "his country's continued support for outreach programs to Mexicans abroad."<sup>16</sup> During his stay, Dr. Díaz recognized that Mexican immigrants live in this country for decades and become "eligible for [U.S.] citizenship but never take the last step."<sup>17</sup>

Mexican Consulates in this country have been engaged in similar promotional activities. For example, the bilingual (Spanish-English) newsletter "La Paloma," published by the Instituto Cultural Mexicano in San Antonio, Texas, and widely distributed throughout the United States, has provided information on the position adopted on the dual nationality proposal by the three major political parties.<sup>18</sup> In part, the article read:

However, some surveys have shown that many of them have rejected such possibility, fearing to lose inheritance and property rights, both individual and collective, if they become foreigners in their country of origin. Others attach great simbiolic (sic) value to nationality as a tie to their cultural, ethnic or familiar (sic) roots.<sup>19</sup>

The possibility of retaining the Mexican nationality even after becoming a U.S. citizen is prompting Mexican immigrants to file for U.S. naturalization in record numbers. Throughout the United States, community organizations are beginning to provide Mexican immigrants with the legal and other support needed for them to start filing their applications to become U.S. citizens. These organizations are readily located in urban centers where Mexican residents tend to congregate.<sup>20</sup> However, as of today, there is no accurate figure as to how many Mexican residents will apply for naturalization. The estimates range from "more than five million Mexicans," according to a PRI legislator, to 1.5 million to two million Mexicans, based on the figures produced by *El Colegio de la Frontera Norte* (College of the Northern Frontier or COLEF), a Mexican think-tank which is government fi-

15. *Id.*

16. Frank Trejo, *Mexican Immigrants Lobby for 'Dual Citizenship'*, THE DALLAS MORNING NEWS, Feb. 27, 1995, at 16-A.

17. *Id.*

18. Whereas the Spanish heading in the March-April 1995 issue of "La Paloma" read: *Será Irrenunciable la Nacionalidad Mexicana* (Mexican Nationality Cannot be Renounced), taking for granted that the constitutional change will be adopted, the corresponding heading in English read: The Idea of Double Nationality Gains Strength. See LA PALOMA, *supra* note 11, at 1 & 24.

19. *Id.* at 24.

20. For example, the United Neighborhood Organization of Chicago, the National Immigration Law Center of Los Angeles, Legal Aid Society of San Diego.

nanced and specializes in immigration questions between Mexico and the U.S. According to Dr. Jorge A. Bustamante, President of COLEF, "more than half of [those who could be affected] live in California, . . . and 70% of [those] live in Los Angeles. Another quarter live in Texas, 8% in the Chicago area and most of the rest in New Mexico and Colorado."<sup>21</sup>

The Immigration and Naturalization Service (INS) disputes these figures. United States officials say that "the number of Mexican U.S. residents affected by the proposed law could exceed even the PRI estimate of five million."<sup>22</sup> If this proposed change to the Mexican Constitution passes and is fully implemented by the enactment of the corresponding legislation, it is difficult to dispute that the INS will be swamped by Mexican applicants seeking U.S. citizenship by naturalization.

This Article is the first to appear in the United States to address this intriguing and novel proposition. The Article is divided into five parts. Part one explores the rationales that the government of Mexico is contemplating in deciding whether to introduce such an important change in its Constitution, making it legally impossible for Mexicans to abandon their nationality of origin, even when they become naturalized nationals of another State. Part two explores the timing of this proposal. Why is this issue being raised now? Part three analyzes the current nationality and citizenship provisions under Mexican law. Part four contains a description of the basic legal contours of the proposal. The last part examines the Mexican proposal under international law, foreign law and U.S. immigration law.

## I. RATIONALES OF THE PROPOSED CHANGE

The interest of the Mexican government to make the nationality of its citizens impossible to renounce should be analyzed within a dual context. First, this proposal should be analyzed from the viewpoint of the plurality of reasons Mexico has been carefully weighing to reach a decision on this matter. Such decision would have broad domestic and international implications, in particular *vis a vis* the United States. Second, it should be analyzed from the viewpoint of its timing. Why is this proposal generating such public and widespread reaction in this country now, deliberately directed at targeting Mexican immigrants?

It is not difficult to detect that reasons of a political and economic nature are at the forefront of this proposal. Other reasons may be associated with more subtle, although equally important

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21. Fineman, *supra* note 13, at A-1.

22. *Id.*

issues, which derive from historical, sociological, and legal arguments.

A. *Traditional Attitude of Mexico Towards "Mexican Americans"*

For decades Mexico, adopted a somewhat cool and distant attitude, indifferent at best, towards Mexican Americans in this country.<sup>23</sup> Politically, Mexico did not even appear interested in officially acknowledging the presence of growing communities of Mexican immigrants in specific parts of the United States, principally in the southwest.

It is difficult to advance an explanation for this prolonged official disdain. It may be argued that Mexican government officials simply reflected the popular sentiment shared by most Mexicans that those co-nationals who emigrated to the United States turned their backs on their mother country, renouncing its rich history, values and admirable culture. Simply put, they were "*Chaqueteros*," in Mexican terms. Something akin to being a traitor.<sup>24</sup> They were no longer considered Mexicans, and were living in a foreign and wealthy nation anyway. Accordingly, it was not worth maintaining contact with them.

Mexican Americans had their own explanation for this official abandonment. They probably reasoned that Mexico as a country, was too weak to confront the United States. It was not prudent for Mexico to create additional friction with the U.S. government, knowing that the bilateral relations between them had been traditionally peppered not only with conflict but with serious and constant problems. Mexican Americans tended to bitterly complain (with futile results) about the arbitrary and illegal exactions — known as "*Mordidas*," or bribes — demanded by "*Celadores*" (*i.e.* Customs agents) and then by traffic agents and policemen later, when entering Mexico to visit relatives. Emotionally, Mexican Americans felt abused and discriminated against by Mexican authorities.

This situation began to gradually change during the administration of President Luis Echeverría, in the early 70's. For the first time in the political history of Mexico, President Echeverría

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23. In a recent interview, Raul Izaguirre, President of the National Council of La Raza, said: "For many years, there was an aversion by Mexico to deal with our community. Now they realize we represent a long-term interest." See Alfredo Corchado, *Mexicans Study Dual Citizenship. Implications of Idea Intriguing to Many*, THE DALLAS MORNING NEWS, July 5, 1995, at 1A.

24. Some of these feelings affect the Mexican immigrants in the United States even today. Describing her emotions when applying for her U.S. citizenship, a Mexican immigrant in Dallas, Texas, said: "You feel your heart tearing apart. . . . [Y]ou feel as though you are spitting at the mother-land and stepping on the flag." *Id.*

invited to "Los Pinos" (the Mexican presidential house), a number of Mexican American groups to discuss their problems and interests as a special community of Mexican immigrants in the United States. Later on, while directing the Center of Economic and Social Studies of the Third World (CEESTEM) in San Jerónimo-Lídice, Echeverría organized the first exhibit of Chicano Art, including a film festival and a number of special publications authored by Mexican Americans.<sup>25</sup> This creative initiative was followed by subsequent administrations, notably the one led by Miguel de la Madrid, President of Mexico from 1982 to 1988.<sup>26</sup> The political and economic power of Mexican Americans was beginning to be recognized by the Mexican officialdom.

The official relations between the Mexican government and the different groups of Mexican Americans in the United States changed dramatically during the presidential régime of Carlos Salinas de Gortari. During his six-year term (1988-1994), he created a special and politically important program,<sup>27</sup> the Secretariat of Foreign Affairs (*Secretaría de Relaciones Exteriores* or SRE), to maintain contact with and cultivate a relationship with the communities of Mexican Americans in the United States. This Program identified the following three official objectives:

- a) To improve the links with the Mexican population and with [the population] of Mexican origin that resides in the United States, through the development of specific programs of interest and mutual benefit;
- b) To promote in Mexico an improved image of Mexican Americans through an adequate dissemination of their struggles and accomplishments, and to foster the awareness and respect for their cultural manifestations; and
- c) To foster among Mexican communities abroad a better understanding of the national reality [of Mexico].<sup>28</sup>

An aggressive policy was designed to contact and maintain communication "with these important groups of Mexicans

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25. See A TRAVES DE LA FRONTERA. CEESTEM-Instituto de Investigaciones Estéticas, UNAM. México, D.F., Aug. 1983. This book contains 24 contributions by Mexican and Mexican-American authors on U.S.-Mexico binational cultural, socio-economic and historic questions.

26. In his National Development Plan, President De la Madrid underlined his desire in taking care of the "natural interest of the population of Mexican origin that resides in the United States in maintaining their identity and cultural links with our country." See MIGUEL DE LA MADRID, MANDATO POPULAR Y MI COMPROMISO CONSTITUCIONAL, 1983-1988 (*Plan Nacional de Desarrollo*). Secretaría de Programación y Presupuesto, México, 1983, at 77 (Translation by the author).

27. *Programa para las Comunidades Mexicanas en el Extranjero* (Program for the Mexican Communities Abroad). See ANDRÉS ROZENTAL, LA POLITICA EXTERIOR DE MEXICO EN LA ERA DE LA MODERNIDAD 124-131 (1993).

28. *Id.* at 127.

abroad.” This strategy was coupled with the creation and proliferation of sixteen Mexican Cultural Institutes and Centers;<sup>29</sup> a promotional campaign in favor of the North American Free Trade Agreement (NAFTA);<sup>30</sup> a considerable increase in the number of Mexican Consulates;<sup>31</sup> the development of a special program to provide legal and diplomatic protection to Mexican migratory workers, both documented and undocumented; and the publication of the bilingual newsletter “La Paloma.”<sup>32</sup> The political compass of the Mexican government had thus completed a most drastic 180 degree change.

The government of Mexico is investing in Mexican Americans now, with the plan to collect tomorrow. Recognizing their political and economic power in the United States, but aware of their familial and spiritual links they continue to maintain with Mexico, the country of their ancestors, the Mexican government is hoping to contribute to the development of a powerful and effective lobby ready to represent and defend the interests of Mexico in this country.<sup>33</sup> Ideally, Mexico would love to see the Mexican American community in the United States become a lobby group with the unity, effectiveness, and power displayed by, for example, Cuban Americans and Jewish Americans regarding U.S. policy towards Cuba and Israel, respectively.<sup>34</sup>

Whether this goal is to be accomplished is impossible to predict. What is easy to anticipate, however, is a vigorous policy by the Mexican government to maintain even closer and friendlier relations with the Mexican American community in the United States in the years to come.

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29. Headed by a Mexican Consul, who serves as the Honorary President of the Board of Directors, these institutes and centers operate in Atlanta, Brownsville, Chicago, Dallas, Denver, El Paso, Houston, Los Angeles, Miami, New York, Phoenix, San Francisco, Sacramento and Washington, D.C. *Id.* at 128.

30. Undoubtedly, NAFTA is among the major accomplishments of President Salinas' foreign affairs. For a most laudatory review of this PRI-accomplishment, see *Id.* at 58-66.

31. Currently, there are 40 Mexican Consulates in the United States. See Andrew J. Glass, *The Bill and Ernesto Show*, LEDGER, Oct. 2, 1995, at 9A.

32. LA PALOMA newsletter serves as the disseminating organ for the Program of Mexican Communities Abroad.

33. Some Mexican Americans are beginning to have reservations to serve as lobbyists for the Mexican government. For example, a Texas legislator that attended President Zedillo's meeting with Hispanics in Dallas last April, said: “As *de facto* lobbyists for the Mexican government, Mexican-Americans will be asked to ‘defend a corrupt Mexican system that is resulting in the impoverization of millions of Mexicans, many of whom had to flee to the United States.’” See Corchado, *supra* note 6, at 11-A.

34. See Puente, *supra* note 14.

## B. *Sociological Arguments*

Mexicans are very proud of their culture. In principle, any Mexican is a true nationalist. They love their history, culture and traditions and, especially, they love their beautiful country. Accordingly, Mexicans remain Mexican anywhere they are.

### 1. *The English Language*

It has been suggested that learning the English language poses a difficult challenge to Mexican nationals.<sup>35</sup> Apparently, this incorrect notion is based on the fact that Mexican immigrants tend to prefer using Spanish at home and as the common language to communicate with relatives and other Mexican immigrants. The mother tongue of these immigrants' children is usually Spanish. As a result, some experience difficulties with the English speaking language in their elementary education, especially in comparison with monolingual English speaking children. However, this initial handicap tends to gradually disappear and is virtually non-existent by junior year in high school. There is no scientific basis that suggests that Mexican immigrants have any problems learning or mastering the English language. Obviously, this question has nothing to do with ethnicity but with education.

At the same time, because of the racial discrimination Mexican immigrants are exposed to in this country, they tend to be quite determined to have their children be fluent in English, even if this may be to the detriment of the Spanish language. Fluency in English is considered to be among the most important accomplishments they are expected to obtain, culturally and even legally.<sup>36</sup> From a cultural perspective, mastering the English language constitutes an indispensable tool in assimilating to the United States, to embrace — in the words of Barbara Jordan — “the common core of American civic culture.”<sup>37</sup> From a legal viewpoint, fluency in English is an indispensable requirement for

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35. See P. Schuck, *Membership in the Liberal Polity: The Devaluation of American Citizenship* in W. BRUBAKER (Ed.) *IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA* 63 (1989). This author writes: “Only the cultural danger —the risk posed by the failure of many Hispanics to master English and thus to gain the access to the society that only competency in the common language affords— arguably threatens the stability and well-being of American society.” *Id.* (emphasis added).

36. For a most interesting study on these questions, see Zai Liang, *Naturalization Process Among Six-Ethnic Groups: A Comprehensive Perspective*. Paper presented at the American Sociological Association Meeting, Washington, D.C., Aug. 23-27, 1991.

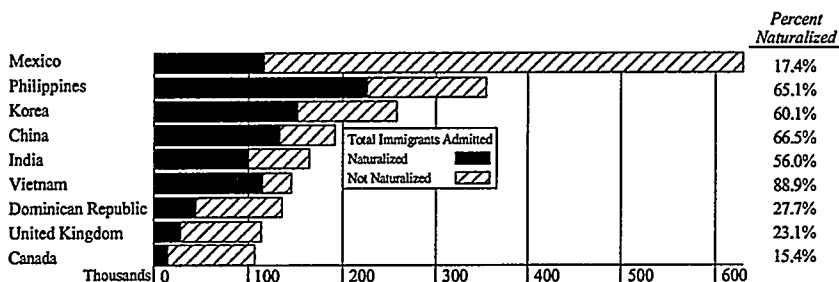
37. Barbara Jordan, *Immigration Reform is Necessary*, THE SAN DIEGO UNION-TRIBUNE, Sept. 12, 1995, at B-7.

passing the naturalization exam to become a U.S. citizen by naturalization.<sup>38</sup>

## 2. Sentimental Reasons

This category embraces the many psychological, emotional or spiritual attachments Mexican immigrants may have with respect to Mexico. It is known that lawful immigrants from different countries show, in general, markedly different inclinations to naturalize. For example, Asians appear to be the most willing to naturalize, as soon as they become eligible (*i.e.*, generally a five-year minimum residence under current law, in addition to other legal requirements, *see* INA, Section 316 (a)), whereas Mexicans and Canadians are at the opposite end of this spectrum. Compare the data compiled by the INS<sup>39</sup> of aliens who were admitted as immigrants from 1970 to 1979:

IMMIGRANTS ADMITTED, CALENDAR YEARS 1970-79 BY  
SELECTED COUNTRY OF BIRTH AND  
NATURALIZATIONS OF THOSE IMMIGRANTS:  
FISCAL YEARS 1970-93



Source: 1993 Statistical Yearbook of Immigration and Naturalization Service, Chart R, Page 132

It is suggested that Mexicans are not as willing to naturalize because they are very proud people who love their country. In recent interviews with Mexican immigrants exploring whether they would consider applying for U.S. citizenship, in light of

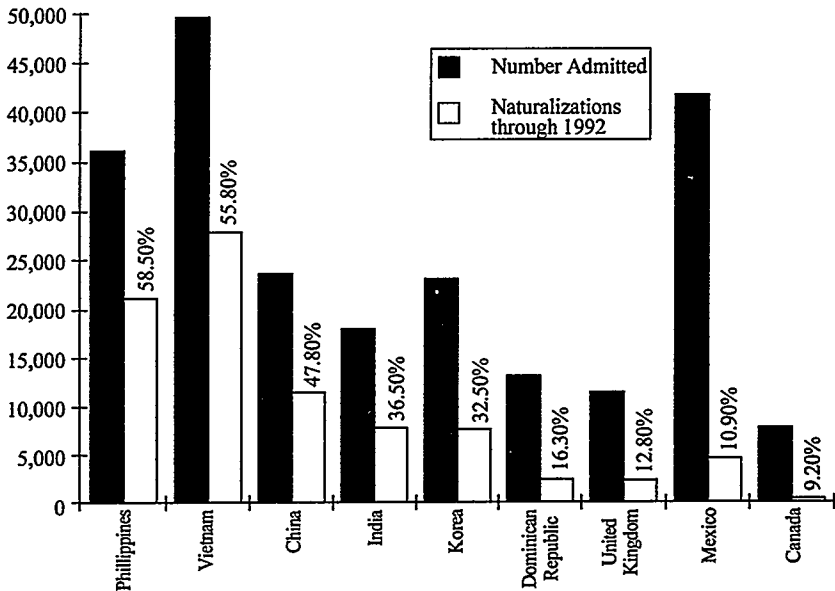
38. According to § 312(a)(1) of the INA, the applicant must demonstrate, among other requirements, "an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language." *See* INA, *supra* note 8, at § 312(a)(1).

39. *See* the 1989 INS STATISTICAL YEARBOOK (1990), Chart L at xl.

Proposition 187, some of the answers were: 1) "Never. . . I was born in Mexico, raised in Mexico and I want to die in Mexico;" 2) "[G]iving up my Mexican citizenship is like giving up a child of mine. It's not easy;" and 3) "It's as though I'm betraying my country, my people and my culture."<sup>40</sup>

However, nationals of any given country are likely to be proud and emotionally attached to that country, regardless of that country's place in history, or in contemporary affairs. For instance, nationals of countries whose history and cultural accomplishments have gained universal recognition and admiration, e.g. nationals from China and India, are quite ready to become U.S. citizens by naturalization. Rather than cultural or universal prominence, geographical contiguity may be a more decisive factor in deciding to obtain citizenship for certain countries such as Canada and Mexico.

NATURALIZATION RATES THROUGH FISCAL YEAR 1992 OF  
IMMIGRANTS ADMITTED IN FISCAL YEAR 1982 BY  
SELECTED COUNTRY OF BIRTH



Source: 1993 Statistical Yearbook of Immigration and Naturalization Service, Table M, Page 131

40. A. Corchado & K. Anderson, *Mexicans' Interest in Citizenship up Proposition 187 Prompts Increase, INS Officials Say*, THE DALLAS MORNING NEWS, Dec. 1, 1994, at 27-A.

Geographically situated in a nation which is immediately adjacent to the United States, it is relatively easy for Mexican immigrants, as well as for Canadians, to move back and forth between their country of origin and their country of residence. The sentimental reasons may be there, but practical considerations tend to ameliorate them. If, from time to time, there is an uncontrollable urge for a direct emotional contact with the country of their origin, the solution may simply consist of a short visit, carefully planned so as not to lose their lawful permanent residence privileges.

Moreover, given the large numbers of Mexican immigrants that reside in certain areas of the United States, what may have been an emotional need in years past to listen to *Mariachi* music, eat *tacos con guacamole*, watch a Mexican *telenovela*, or simply speak Spanish, may no longer be a problem. The large Mexican and Mexican American population in the United States aids in reducing much of the emotional need of these immigrants. According to a recent report of the U.S. Census Bureau:

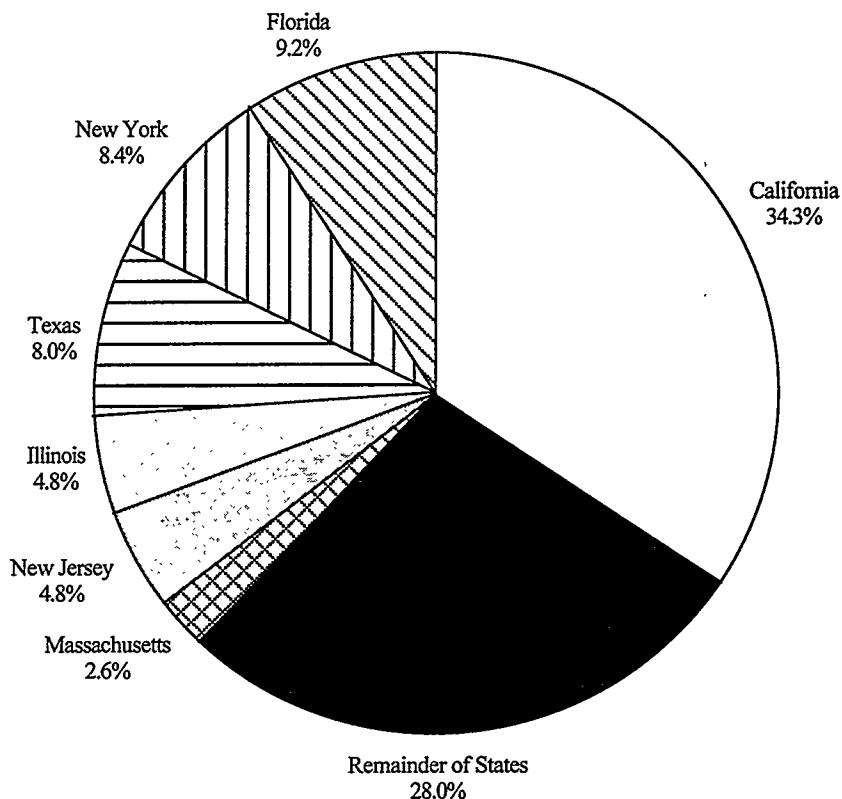
Of the 22,568,000 foreign-born persons living in the United States in March of 1994, 6.2 million came from Mexico. Mexico was by far the country of origin with the largest number of immigrants. The next largest group was from the Philippines . . . . Of the 4.5 million most recent immigrants, over a quarter (1.3 million) came from Mexico and an additional 243,000 came from Russia . . . . During the 1980's, the largest numbers of immigrants came from Mexico (2,671,000) and the Philippines (424,000) . . . . Prior to 1970, Mexico was still the most frequent country of origin (768,000) . . . . About 31 percent of foreign-born population in the United States are naturalized citizens . . . . Although 38.5 percent of the persons of Hispanic origin in this country are foreign-born and most have lived in the U.S. long enough to qualify for naturalization, only 18.3 percent are naturalized citizens. . . . Foreign-born persons who are not citizens have the highest unemployment rate (10.7 percent) . . . . Recent immigrants are more likely to receive public assistance income than natives (5.7 percent versus 2.9 percent) . . . . The foreign-born are 1.6 times more likely to be in poverty than natives (22.9 versus 14.4 percent). And recent immigrants are over twice as likely to be in poverty (37.1 percent).<sup>41</sup>

In essence, immigration law specialists agree that the legal differences between permanent residents and U.S. citizens are not that drastic, except for political rights and for holding certain jobs. Therefore, unless there is an imperative reason effectively

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41. See KRISTIN A. HANSEN & AMARA BACHU, THE FOREIGN-BORN POPULATION, 1994. U.S. Bureau of the Census, Current Population Reports. U.S. Department of Commerce (P20-486), Washington, D.C. Aug. 1995, at 1-3 (emphasis added).

## FOREIGN-BORN POPULATION BY STATE OF RESIDENCE



Source: Census Bureau, P20-486, August 1995

pushing Mexican immigrants to naturalize, their current status as lawful permanent residents of the United States, able to freely travel to Mexico when needed or desired, may be indeed the best of both worlds. According to the INS, foreign nationals who are lawful permanent residents in the United States are not legally obligated to become U.S. citizens by naturalization.

Citizenship is a legal and political notion difficult to be contained in a simple definition, especially when perceived from a sentimental dimension. Professor Legomsky has written that the strength and meaning of those bonds between the national and a country "vary with the values and experiences of the individual and with the history and culture of the particular nation. For some, citizenship represents a heritage that is as fundamental to personal identity as are family and ethnicity; for others, citizenship has a less profound personal meaning."<sup>42</sup>

42. See STEPHEN H. LEGOMSKY, IMMIGRATION LAW AND POLICY 1012 (1992).

For Mexican immigrants in this country, citizenship appears to be a somewhat paradoxical notion they prefer to treasure for sentimental reasons. This notion of sentimental citizenship may be described as a genuine telluric feeling of attachment to Mexico for historic and cultural considerations, and clearly not for economic, political or legal reasons. Lawful permanent residence in the United States has generally taken care of these more pragmatic necessities. Only when these pragmatic necessities are at stake in the United States, is the sentimental notion of citizenship to be substituted by a more pragmatic one: namely, to become a naturalized U.S. citizen. This may constitute a transition for permanent residence from sentiment to reality.

### 3. *Legal Questions*

Mexican supporters of the Dual Nationality Proposal have been advancing arguments in both Mexico and the United States supporting the idea that its passage would eliminate some legal deprivations Mexican immigrants could suffer when they become U.S. citizens by naturalization. This has been the position taken by the three major political parties in Mexico who, more than supporting or defending the interests of Mexican immigrants in the United States, so far appear to be attempting to draft legislation principally designed to gain electoral votes. For example, the PRI representative has stated:

The fear to be considered as foreigners if they wished to buy properties, has caused that up to now many Mexicans living abroad do not adopt the citizenship of the State in question, and therefore lose the opportunity to exercise rights that benefit them and their relatives in economic, political and social matters.<sup>43</sup>

The opposition party PAN is giving a different emphasis to this question, suggesting that:

[W]e are proposing that the adoption of a foreign nationality would grant the adoption of a citizenship, and would, therefore, *enable the participation of Mexican legal immigrants in electoral processes* to decide on the persons that conduct public affairs, and to decide on the election of government programs that reply to the respect and guarantee of their rights.

The practice of these universal rights on the part of *Mexicans living abroad would lead them to have access to the conduction of the politics of their country of adoption by naturalization*, and will help to ensure a dignified treatment of the human person, a legislation that safeguards the application of justice without discrimination, access to social security medical serv-

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43. See La Paloma, *supra* note 11, at 2.

ices, equal opportunities to qualified work and higher education, full freedom of expression, right to own properties and a respect for the right to live.<sup>44</sup>

On behalf of the PRD, the emphasis was placed on these aspects:

One of the advantages represented for those who naturalize themselves, would be that *our fellow Mexicans could vote and be voted for public office in the United States elections, as well as acquiring other rights now denied to them*, such as finding employment in government offices and certain jobs in private industries, as well as the right to immigrate close relatives without waiting periods. A related matter is the one concerning Mexicans voting abroad. Up to now, *the anti-democratic [Mexican] electoral law prevents millions of Mexicans living abroad, mainly in the U.S., from voting in Mexican elections, which constitutes a clear violation of their civil and human rights.*<sup>45</sup>

A possible dual nationality granted to Mexican immigrants who reside in the United States will produce immediate legal consequences in Mexico. The precise legal contour of these legal effects would largely depend upon these two considerations: First, the legal substance or content of the kind of "Nationality" to be formulated or designed by the Mexican government. It should be evident that a person who has dual nationality cannot legally exercise both nationalities simultaneously to their fullest extent. One nationality tends to prevail over the other. Second, the waivers or legal exceptions granted in the pertinent domestic legislation to the beneficiaries of this change of policy, *i.e.* the Mexican immigrants in the U.S. who are to become naturalized U.S. citizens without having to lose their Mexican nationality.

From a general Mexican law viewpoint, the major legal consequences affecting Mexican immigrants who have become U.S. citizens by naturalization, may be grouped into three categories: a) Property rights; b) Political rights; and c) Special occupational rights.

#### a. *Property Rights in Mexico and U.S. Citizens*

The Consul General of Mexico in Los Angeles, José Angel Pescador, attributed the reluctance of Mexican immigrants to naturalize to the fact that:

[A]t least 25 percent of Mexicans eligible for U.S. citizenship own real estate within 60 miles of Mexico's land borders and 30 miles of its coasts. The problem for those Mexicans . . . is that the constitution restricts outright ownership of land in the

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44. *Id.* at 4 (emphasis added).

45. *Id.* at 3 (emphasis added).

border and coastal regions to Mexican nationals . . . . 'They worry that they will forfeit their property' in those regions if they become U.S. citizens.<sup>46</sup>

Further, Article 27 of the Mexican Constitution prohibits foreigners, i.e. U.S. citizens, from owning real estate property in the so-called "Restricted Zone."<sup>47</sup> However, since 1973 foreigners have been utilizing a trust contract known in Mexico as *Fideicomiso* to acquire not the direct ownership, but the beneficiary use of real estate property located in this zone for a period of thirty years. Although a banking institution legally holds the title of this immovable asset, the beneficiary of the trust (i.e. the foreign national) has the right to lease it, sell it, or transfer it through inheritance.

Moreover, given the liberal approach the government of Mexico has pursued with regard to the legal régime applicable to foreign investment since 1993, with the enactment of its new Foreign Investment Act, foreigners who enter into a *Fideicomiso* for residential purposes may enjoy the beneficiary use of this property for fifty years. Furthermore, this fifty year period is also renewable for another fifty years by complying with certain requirements.<sup>48</sup> According to the new Foreign Investment Act, foreigners and foreign corporations, for the first time in the legislative history of Mexico, have the right to directly own property in the Restricted Zone for industrial and commercial purposes.<sup>49</sup> In this kind of investment, there appears to be no legal distinction between Mexican nationals and foreigners.

Hypothetically, what would happen to Mexican immigrants in the United States who own property in the Mexican Restricted Zone, and then become U.S. citizens by naturalization today? On this precise question, Article 24 of the 1993 Nationality Act provides, "The assets in the [Mexican] national territory owned by Mexicans by birth who lose their Mexican nationality, *should suffer no adverse effects for such a loss [of nationality]*."<sup>50</sup>

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46. Golden, *supra* note 13. The Consul General did not provide the source of his assertions that "at least 25 % of Mexicans eligible for U.S. citizenship" own real estate in the Restricted Zone; and that "at least two million Mexicans, most living in Southern California, are eligible for U.S. citizenship, but have not applied for it." *Id.*

47. The "Restricted Zone" is the strip of Mexican territory of one hundred kilometers along its borders and fifty kilometers along the coasts, as defined by Art. 1, para. XIII of the Regulations to the Act to Promote Mexican Investment and Regulate Foreign Investment. See D.O., *supra* note 4, of May 16, 1989.

48. See Jorge A. Vargas, *Mexico's Foreign Investment Act of 1993*, 16 *LOV. L.A. INT'L & COMP. L. J.* 907 (1994).

49. See 1993 Foreign Investment Act, arts. 11-14. However, these provisions seem to be contrary to art. 27, para. I of the Constitution. Vargas, *supra* note 48, at 942-945.

50. See D.O. of June 21, 1993, *supra* note 4, art. 24 at 11. See also *infra* note 132.

Pursuant to this provision of the current Nationality Act of 1993, no legal deprivations are intended for those Mexican immigrants who lawfully reside in this country and who finally decide to take the step of becoming U.S. citizens by naturalization. It is rather strange that the content of this provision has not been addressed by the PRI politicians or by other government officials holding diplomatic or consular posts in the United States when they comment on the dual nationality proposal. On the contrary, instead of advancing the content of the current Mexican law on this question which legally protects the economic rights of former Mexicans after they have changed their nationality by voluntary naturalization, these politicians chose to play on the mistaken "fears" of these immigrants by implying that the government of Mexico is not only entitled to, but is ready and willing to forfeit their assets and other economic rights in Mexico if they become U.S. naturalized citizens.<sup>51</sup> An official act of this nature would be in flagrant violation of Articles 14 and 16 of the Mexican Constitution, and of well recognized principles of international law on nationalization or expropriation.<sup>52</sup>

The idea that the Mexican government is going to confiscate the property in question is a false notion. The new U.S. citizen (of a former Mexican nationality) must undertake the necessary legal adjustments, if any, in order to allow for the proper application of Mexican law in relation with the property in question.

Furthermore, applicable Mexican law provides several legal avenues these new U.S. citizens may contemplate to change the legal status of the property in question without resulting in any economic detriment to them. For instance, they may consider the following: 1) entering into a *Fideicomiso contract* if the property in Mexico is for residential use and within the Restricted Zone; 2) doing nothing if the property is devoted to a commercial or industrial use, or outside the Restricted Zone; 3) transferring it to a Mexican relative; 4) selling it to a Mexican national.

Another concern that has detained Mexican immigrants from becoming naturalized U.S. citizens is the "fear" of losing the "collective property rights" that some of them might have in a rural "ejido." With the recent amendment of Article 27 of the

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51. See the statements made by the Mexican Consul General in Los Angeles, as quoted in *supra* note 46.

52. Under Mexican law no expropriation can take place without proper, opportune, and adequate compensation, as provided by Article 27 of the Mexican Constitution. To act contrary to this provision would be in flagrant violation of the constitutional rights enunciated in Articles 14 and 16 of same Constitution in favor of both Mexican nationals and foreigners, including U.S. citizens.

Constitution by President Salinas,<sup>53</sup> the legal tenets of the "ejido" has been drastically changed.<sup>54</sup> Today, ejidatarios may have specific individual, as well as collective, property rights. Moreover, they may enter into any kind of contract of association or production, even with foreign investors, for a duration of thirty years, with a renewable period of an additional thirty years.<sup>55</sup>

b) *Political Rights in Mexico*

As implied by the representatives of the PAN and the PRD,<sup>56</sup> a U.S. citizen by naturalization is not allowed to vote in Mexico, just as it is prohibited for a Mexican citizen to vote in the United States. The full panoply of political rights of a U.S. citizen (by birth or by naturalization) are to be exercised only in the United States. This is a right that corresponds exclusively to the citizens of a given country, and is closely associated with nationality, residence, domicile, age, and other considerations reflected in the pertinent domestic legislation.<sup>57</sup>

c) *Special Occupational Rights*

Security considerations, or historical reasons, have imposed limitations on certain kinds of occupations that can be held by Mexican citizens only, and not foreigners. For example, only Mexicans by birth (and not by naturalization) may belong to the Mexican Army, Navy, Air Force (Art. 32, para. II of the Constitution), or be federal representatives (Art. 55, para. I of the Constitution), or Senators (Art. 58 of the Constitution), President of the Republic (Art. 55, para. I of the Constitution), or Justices of the Supreme Court of the Nation (Art. 95, para. I of the Constitution), or State governors (Art. 115, para. III, b), of the Constitution).<sup>58</sup> Similar limitations apply to Mexican nationals in this country.

It is virtually impossible to accurately determine to what extent, if any, these or other legal considerations have adversely

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53. See D.O. of Jan. 3, 1992, *supra* note 4. The new paragraph IV of Article 27 provides that: "Commercial corporations [with foreign participation] may own in property rural lands."

54. For a legal analysis of this constitutional change, see Jorge A. Vargas, *A Closer Look into Mexico's Legal Revolution. A Description and Appraisal of the Most Recent Changes to the Mexican Constitution*, 25 GA. J. INT'L & COMP. L. 497, 528-538 (1996).

55. See *Ley Agraria*, D.O. of Feb. 26, 1992, *supra* note 4.

56. See *supra* notes 44 and 45.

57. See U.S. CONST. amend. XXVI, and MEXICAN CONST. Art. 35, paras. I and

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58. DR. LEONEL PEREZNIETO CASTRO, *DERECHO INTERNACIONAL PRIVADO* 43 (1995) [*hereinafter* PEREZNIETO CASTRO].

influenced the decision of eligible Mexican immigrants in the United States to become U.S. citizens by naturalization. On the one hand, taking into account that the vast majority of Mexican nationals who become lawful residents in this country have historically been poor and uneducated, it is not difficult to surmise that they may not be interested in deciphering the legal intricacies of Mexican law. On the other hand, those who are wealthy and educated are likely to know how to handle their investments and other business interests not only in Mexico but in the United States as well. The wealthy and educated will generally hire competent counsel to deal with any legal questions or implications that may arise. Accordingly, in both cases, legal questions may seem to be of relatively little importance.

#### 4. *Mexico's Political Interest*

According to the latest report released by the U.S. Census Bureau on the Foreign Born Population in this country,<sup>59</sup> as of March 1994, the Hispanic or Latino population comprised the third largest population in the U.S at 16.3 million. The largest population consisted of Whites at 199.7 million. The second largest population were Blacks at 31.4 million. The total U.S. population consists of 237.1 million. Out of this 16.3 million Latinos, approximately 10,270,000 were foreign born in a Spanish speaking country.<sup>60</sup> It is important to note that of these 10.2 million Latino individuals, only 1,879,000 are reported to have become naturalized U.S. citizens (18.4%), whereas 8,391,000 million (81.6%) continue to maintain their nationality of origin.<sup>61</sup>

In general terms, this means that in the United States today there are 8.3 million Latinos, who permanently reside in the United States, who work and pay taxes, and whose children were born in the United States. Most of these Latinos, especially Mexican immigrants, are concentrated in a few major urban centers in the states of California, Texas, Illinois, New Mexico, and Colorado. These immigrants have a higher birth rate than other populations at these locations. Also, due to their close family ties and their legal status as lawful permanent residents, these immigrants are likely to help their closest relatives, such as unmarried sons and daughters, immigrate to the United States. However, these Latino foreign-born immigrants cannot vote. This is in spite of having lived in this country for many years and having developed clear and strong vested interests in the U.S.

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59. See HANSEN & BACHU, *supra* note 41, at 5.

60. This report informs that "Persons of Hispanic origin may be of any race."  
*Id.*

61. *Id.*

As a consequence of not having the right to vote, these permanently resident Latino immigrant communities, which have formed an integral part of our country for decades, tend to become "invisible communities" for political considerations. Their specific needs and interests, their concerns and problems tend to be neglected by politicians who are not familiar with them and who appear to be more interested in responding to the specific lobbyist interests of U.S. voters. It is not at all unusual to see that these Hispanic communities seldom have a Latino politician representing them, or a Latino person involved in the management and in the decision-making process of a city council. In sum, Latinos who do not have the right to vote carry little or no political clout in the United States today. Currently, they simply do not constitute a real political force having the power to shape the content of important political decisions or compromises that affect the Latino community.

However, if and when more Latinos become U.S. citizens, the traditional political landscape of the United States will be radically altered by the voting power of the emerging Latino communities. True, until now these communities have been politically dormant, but this is changing as you read this Article.

No sophisticated analysis is required to predict the political consequences that would result when most of these 8.3 million Latinos decide to become U.S. naturalized citizens. Simply think the likely impact upon Los Angeles, Chicago, San Antonio, San Diego, Houston, Denver, Tucson, El Paso and Albuquerque. The trend is irreversible.

By becoming U.S. citizens, these Latino immigrants will be able to vote and influence the political system in the United States. Whereas lawful permanent residents are subject to deportation, regardless of the duration of their residence in our nation, U.S. citizens cannot ever be legally expelled from the U.S. From an immigration law viewpoint, U.S. citizens have more power to sponsor foreign relatives and even non-relatives to immigrate to the United States, contrary to the legal limitations that the Immigration and Nationality Act imposes upon lawful permanent residents. Finally, with regard to any social or economic benefits, U.S. citizens have preference, especially *vis a vis* foreign residents or undocumented immigrants.

The government of Mexico has been promoting the idea of the "Dual Nationality" to induce all those millions of lawful permanent residents in this country to become naturalized U.S. citizens. This policy appears to be a win-win situation. From the international dimension of Mexico, it is evident that the Mexican government is attempting to broaden the political base of Mexi-

can immigrants in the United States in order to enhance their growing political power.<sup>62</sup> Recent U.S. naturalized citizens of a Mexican origin may probably take a few years to become "politically immersed" in U.S. politics at the local, state, and national levels. However, once they have sharpened their political skills, and have realized their political force when acting as a specific ethnic group, they are bound to become a formidable political contender. When this becomes a reality, the Mexican government can look to them as the strongest lobbyist group within the United States to promote, support, and defend certain Mexican policies or concerns in the United States. This is likely to happen in the early years after the year 2000.

## II. THE TIMING OF THE DUAL NATIONALITY Proposal

Mexican officials have acknowledged that the "Dual Nationality Proposal" did not originate in Mexico, but rather recognized in the United States. It has been reported that, starting in the late 1970s, interested groups of Mexican American politicians and business people permanently residing in the United States approached the Mexican government to propose a dual nationality policy.

So, why did Mexico wait until now to express its support of this proposal, as it was officially done by President Zedillo on April of 1995 in his visit to Dallas?<sup>63</sup> Basically, three major considerations influenced the Mexican government's decision to launch its promotional campaign in favor of this proposal in 1995: A) the passage of Proposition 187 in California; B) NAFTA; and C) the legal repercussions of the Immigration Reform and Control Act of 1986.

### A. *The Passage of Proposition 187 in California*

The passage of this California legislation should be placed within the larger context of an increasing anti-immigrant sentiment throughout the United States. A clear reflection of this mood may be associated with the fact that, as of this writing, 107 legislative bills have been submitted to the U.S. Congress on an array of immigration law questions.<sup>64</sup>

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62. See José Angel Pescador Osuna, *Doble Nacionalidad y la Relación Bilateral México-Estados Unidos*, Coloquio del Instituto de Investigaciones Legislativas de la Cámara de Diputados. México, D.F., June 9, 1995.

63. Corchado, *supra* note 6, at 11-A. The article reads in part: "Mr Zedillo told Hispanic leaders that *he will consider allowing Mexicans in the United States dual citizenship.*" (emphasis added).

64. The content of these 107 bills range from English as the official language; moratorium on immigration by aliens; the use of Department of Defense personnel to assist the INS and the U.S. Customs Service; to amend the Immigration and Na-

Proposition 187,<sup>65</sup> as approved by the California electorate in November of 1994, may be characterized as the latest legal formulation of this trend.<sup>66</sup>

This proposition added numerous sections to several California Codes, including the Penal Code,<sup>67</sup> the Welfare and Institutions Code,<sup>68</sup> the Health and Safety Code,<sup>69</sup> the Education Code,<sup>70</sup> and the Government Code.<sup>71</sup> In general, the main objective of this legislation is to deny public social services, including health and medical, economic, and educational services to applicants and existing recipients suspected of being unlawfully present in the United States.<sup>72</sup>

Other provisions include severe penalties to undocumented immigrants for using false citizenship or immigration documents with punishments up to \$25,000 and imprisonment in a state prison for five years.<sup>73</sup> It also requires that every public entity in California do the following with respect to each person who applies for public social services and "determined or reasonably suspected" of being unlawfully present in the United States: (1) not provide the person with benefits or services; (2) instruct the person to "obtain legal status or leave the United States"; and (3) notify the Attorney General of California and the INS of the suspected person, and provide information obtained about each such person to "any other public entity" requesting it.<sup>74</sup>

The section added to the California Health and Safety Code prohibits all publicly funded health care facilities in California from providing any health care services to any suspected person

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tionality Act; to streamlining deportation of criminal aliens; membership of the U.S. Commission on Immigration Reform; increased enforcement of the employer sanctions; modification or elimination of Federal reporting requirements.

65. Proposition 187 was enacted as an initiative statute on November 8, 1994. Its purpose is to regulate immigration into the United States and "to establish a system of required notification . . . to prevent illegal aliens in the United States from receiving benefits or public services in the State of California." Pursuant to the Constitution of California, Art. II, Section 8, the people of California exercise legislative power when enacting initiative statutes. Upon passage, Proposition 187 became an official act of the State of California. Because of a number of constitutional challenges in a federal court, Proposition 187 has not been implemented.

66. For an analysis of this legislation, see Minty Siu Chung, *Proposition 187: A Beginner's Tour Through A Recurring Nightmare*, 1 U.C. DAVIS J. INT'L L. & POL'Y 267 (1995); and Barbara Nesbet & Sherilyn K. Sellgren, *California's Proposition 187: A Painful History Repeats Itself*, 1 U.C. DAVIS J. INT'L L. & POL'Y, 153 (1995).

67. CAL. PENAL CODE, §§ 113, 114, 834b (West 1996).

68. CAL. WELF. & INST. CODE, § 10001.5 (West 1996).

69. CAL. HEALTH AND SAFETY CODE, § 130 (West 1996).

70. CAL. EDUC. CODE §§ 48215 and 66010.8 (West 1996).

71. CAL. GOV'T CODE, § 53069.65 (West 1996).

72. For a discussion of the impact on education, health care and social services, see Chung, *supra* note 66, at 285-293.

73. *Supra* note 67. See also *supra* note 66, at 293.

74. *Supra* note 68.

“until the legal status of that person has been verified,” in the manner provided by this new legislation.<sup>75</sup> The sections added to the Education Code prohibit public elementary and secondary schools, as well as public post-secondary educational institutions, from admitting children, or enrolling or permitting the attendance of suspected persons, who do not meet the state’s citizenship and immigration standards as provided by the new legislation.<sup>76</sup>

Clearly, the perception of the Mexican government was that the enforcement of this legislation would impose, more likely than not, severe hardships on many Mexican nationals in California, whether they were undocumented immigrants or not. The Mexican government thought that such severe hardship to the target group would be translated into *de facto* violations of the target groups’ rights in the areas of constitutional law, civil law, immigration law and human rights. Furthermore, the Mexican government believed it was likely that this kind of anti-immigrant legislation would be followed by other states in the United States. However, the constitutionality of Proposition 187 was successfully challenged and the U.S. District Court for the Central District of California imposed a restraining order.<sup>77</sup>

The devastating implications of this legislation become more evident when it is considered that, according to the report of the Census Bureau,<sup>78</sup> California is the home of 7.7 million foreign born persons — more than one-third of all immigrants to the United States and nearly one-quarter of all California residents. New York ranks second with 2.9 million, and Florida has about 2.1 million foreign-born. Texas, Illinois, and New Jersey each have more than 1 million foreign-born residents.<sup>79</sup> The 1995 U.S. Census Bureau Report made no distinction between legal and illegal immigrants. However, the INS estimates that about 4 million illegal immigrants reside permanently in the United States.<sup>80</sup>

U.S. Senator Dianne Feinstein was among those who introduced legislation to address the problem of illegal immigration.<sup>81</sup> In an accompanying statement, she said:

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75. CAL. HEALTH AND SAFETY CODE, § 130 (West 1996). A possible exception to this prohibition may be federally-mandated emergency care. The section reads: “. . . other than emergency medical services as required by federal law.”

76. CAL. EDUC. CODE §§ 48215 and 66010.8 (West 1996).

77. *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755.

78. See HANSEN & BACHU, *supra* note 41, at 1.

79. *Id.*

80. *20-Year Surge Puts U.S. Foreign-Born at Postwar High*, THE INTERNATIONAL HERALD TRIBUNE, Aug. 30, 1995, at 3. Some sources place the illegal entrants to the United States at 5.4 million. See *Immigrants Residents Set Record*, THE CHARLESTON GAZETTE, Aug. 29, 1995, at 7.

81. Imm. Reg. Control Act, 42 U.S.C.A. §1436a (1995) [*hereinafter* IRCA].

The crisis of illegal immigration continues in California and in the nation. Too many people still are able to illegally cross our borders. And too few states, most notable California, carry the burden of having to support, educate and sometimes incarcerate the hundreds of thousands who enter the United States illegally each year. Despite its major flaws and probable unconstitutionality, Proposition 187 was overwhelmingly approved by voters in California last November. *The message was clear: stop illegal immigration. If Congress does not heed this warning, I fear an even more serious backlash nationwide against all immigrants, including those who want to come here legally.*<sup>82</sup>

The government of Mexico has acknowledged that the current nationwide trend in the United States is strongly directed against *illegal* immigration, not against Mexicans *per se*, or against Mexico as a nation, as it has been wrongly suggested.<sup>83</sup> Americans are becoming most upset with *illegal* immigrants crossing the border into this country. Mass media reports consistently document cases of illegal immigrants draining state funds in medical, educational and welfare services, not for years but for decades. Prisons in the United States are used to incarcerate criminals who are illegal entrants from Mexico, both adults and an increasing number of juvenile offenders. Alien smuggling is a most profitable business in Mexican cities along the U.S. border; however, as of October of 1996, notwithstanding that the illegal and criminal traffic of Mexican nationals into the United States has recently become an expanding business,<sup>84</sup> the Mexican government has never enacted legislation to sanction these Mexican smugglers, known as "Polleros,"

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82. News from. . . Sen. Dianne Feinstein of California. March 21, 1995 at 1.

83. See Victor Carlos García Moreno, *La Propuesta sobre Doble Nacionalidad* (Original document on file with the author). Dr. García Moreno writes: ". . . in the next months, and until November of 1996, when the presidential elections take place in that country, the attacks will be directed against anything which is not 'American' and which will embrace, unquestionably, everything which is Mexican and all the Mexicans, including those who possess legal documentation as permanent residents in that country, but who have not yet acquired the U.S. nationality. The consequence is going to be, necessarily, an enormous deterioration in their rights, to be left in a complete state of unprotection and indefension." *Id.* at 2-3 (translation by the author).

84. See Rojas Molina et al, *Trafico de Indocumentados a E.U.A., Negocio en Expansion* (Traffic of Undocumented Persons to the USA, an Expanding Business), *EL FINANCIERO*, July 1, 1996, at 52; Javier Dragustinovis, *Indocumentados, Botin de Bandas Mundiales. Negocio Tan Lucrativo Como el Contrabando, Denuncia el INM* (Undocumented Persons, a Booty in the Hands of Global Gangs. A Business as Lucrative as Smuggling, Denounces Mexico's National Institute of Migration.), *EL FINANCIERO*, July 29, 1996, at 48.

"Pateros," and "Coyotes," who for decades have engaged in these criminal activities.<sup>85</sup>

Accordingly, an increasing number of the American public feels abused by these illegal Mexican immigrants. This group of Americans believe they have been tolerant and understanding for decades, but this human flow appears to have no end in sight. A rise in the rate of illegal immigration to the United States appears to be cyclical: Every six years, for example, with every peso devaluation and the collapse of the Mexican economy, many illegal immigrants pour into the United States. Hence, these cyclic phenomena have led Americans to question what kind of governmental apparatus is in place in Mexico. Is the Mexican government sincerely interested in their own people? In their education and welfare? In their progress and legal rights? In providing them with democracy and justice, including their own Indigenous peoples? Why, then, have they been fleeing Mexico by the millions?

Considering the delicate nature of questions like these, the U.S. Commission on Immigration Reform, headed by Barbara Jordan, wrote:

The United States must have a more credible immigration policy that deters unlawful immigration while supporting our national interest in legal immigration. We believe that it is possible to reduce unlawful immigration in a manner that is consistent with our traditions, civil rights, and civil liberties.<sup>86</sup>

### B. *North American Free Trade Agreement*

The North American Free Trade Agreement (NAFTA) in force among Canada, Mexico, and the United States since 1994,<sup>87</sup> probably offers the most viable and permanent trilateral mechanism to elevate and gradually strengthen the debilitated Mexican economy today. International investors are needed in Mexico to assist in the process of economic recovery. Considering that U.S. investments represent over 60% of the total foreign investment in Mexico, perhaps Mexico decided to promote the idea of "Dual Nationality," to persuade Mexican-Americans to finance joint ventures with their Mexican counterparts in Mexico.

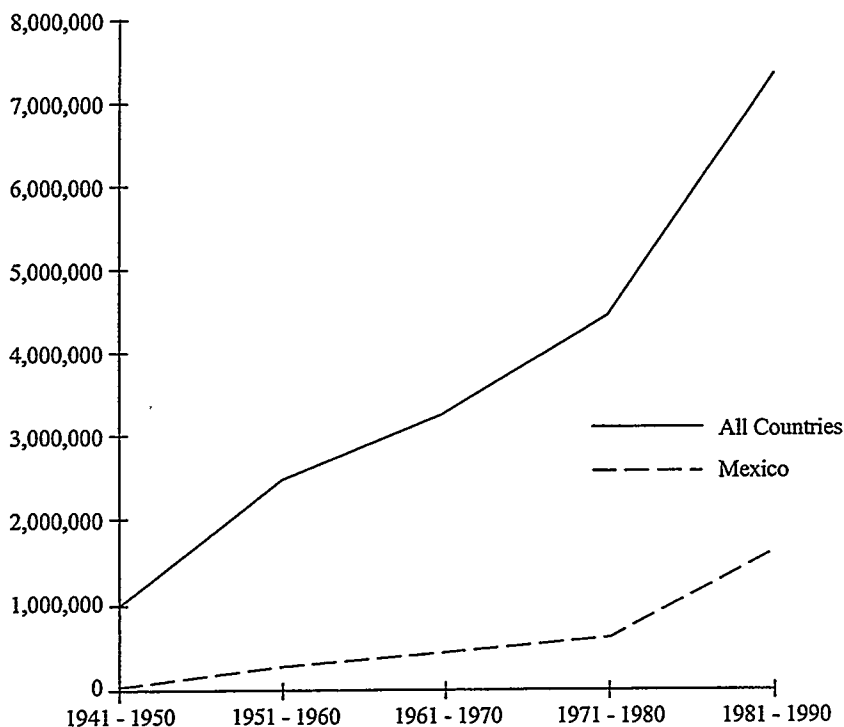
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85. Victor Batta, "*Ley Antipolleros*", en *la Congeladora. Todavía no hay "Antiproyecto"*, *Reconocen Autoridades* (The Anti-Smugglers Act, in the Freezer. There is no Legislative Draft Yet, Authorities Recognize.), *EL FINANCIERO*, July 22, 1996, at 42.

86. U.S. Immigration Policy: Restoring Credibility, 140 *CONG. REC.* §15063-02 (1994).

87. See Jorge A. Vargas, *NAFTA, The Chiapas Rebellion and the Emergence of Mexican Ethnic Law*, 25 *CAL. W. INT'L. L. REV.* 1 (1994).

## U.S. IMMIGRANTS 1941-1990



Source: 1993 Statistical Yearbook of Immigration and Naturalization Service

The new Foreign Investment Act of 1993 allows foreign investors, contrary to the legal tradition of Mexico since the enactment of its Constitution in 1917, to have the direct ownership of real estate properties in Mexico's "Restricted Zone" when used for commercial or industrial purpose, as seen earlier.<sup>88</sup> This legal provision should appear to be incentive enough to Mexican immigrants in the United States to induce them to invest in these kind of projects, with, the added benefit of having no adverse legal consequences should they become, in the future, U.S. citizens by naturalization.

Mexican immigrants in the United States, and U.S. naturalized citizens of a Mexican origin, may also be able to take advantage of the visa privileges NAFTA created in favor of business people or investors.

88. See Vargas, *supra* note 48.

C. *Legal repercussions of the Immigration Reform and Control Act (IRCA) of 1986*

The Immigration Reform and Control Act (IRCA) of 1986 was enacted to provide a legal avenue to illegal immigrants physically present in this country to become lawful permanent residents by complying with a number of specific statutory requirements. Legally, this was known as the "Legalization Program,"<sup>89</sup> also referred to as the "Amnesty Program." As a result of it, approximately 1.8 million illegal immigrants applied for temporary resident alien status under the general legalization program.<sup>90</sup> The INS ended up approving 97.5% of those applications.<sup>91</sup> Out of this total, some 82% of the submitted applications, equivalent to one million, corresponded to Mexican nationals.<sup>92</sup>

According to IRCA, immigrants who received "Temporary resident status" (TRS) had to apply for "Permanent resident status" (PRS) during the two year period that began approximately one and a half years after he or she had attained TRS,<sup>93</sup> in conformance with the second stage of the legalization program. To change from TRS to PRS, IRCA provided that "the applicant demonstrate basic citizenship skills," contained in Section 312 of the INA. The applicant was required to demonstrate an understanding of ordinary English and knowledge and understanding of the history and government of the United States.<sup>94</sup>

Taking into account that the last day to apply for TRS was May 4, 1988, and since the INS adjudicated most applications promptly, the last immigrants to receive TRS generally had to apply for PRS between November 1989 and November 1991. Accordingly, by January 1991, at the latest, a maximum of one million Mexican nationals became lawful permanent residents of the United States.

The INA provides that lawful permanent residents become eligible for U.S. naturalization by petition if they can prove that "immediately preceding the date of filing the application for naturalization the immigrant has resided continuously, as a legal

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89. See IRCA, *supra* note 81, at Pub. L. No. 99-603, 100 stat. 3359.

90. See the 1993 INS Fact Book (1993), Table I. Selected INS Statistical Fiscal Years 1991 & 1992.

91. See Francisco Isgro, *Administrative and Judicial Review of Denials of Temporary Resident Status*, 2 GEO. IMMIG. L. J. 473 (1988).

92. See the 1993 INS Fact Book (1993), Table I. Selected INS Statistical Fiscal Years 1991 & 1992.

93. See INA § 245A(b)(1)(A), governing the second phase of the program. The statute originally provided only a one-year window in which to file second-phase applications. INA § 703(a)(1), extended the deadline by another year.

94. See STANLEY MAILMAN (ED.), *THE NEW SIMPSON-RODINO IMMIGRATION LAW OF 1986* (1986).

permanent resident, for at least five years within the United States."<sup>95</sup> Between November of 1994 and November of 1996 a large number of lawful permanent residents of Mexican origin will complete the five year residence requirement for naturalization.

When IRCA was enacted in 1986, this statute made no provision to extend its immigration benefits to the families of legalized immigrants. This omission was corrected a few years later in the INA of 1990 which supplemented the "Family fairness program"<sup>96</sup> to allow up to 55,000 spouses and children of TRSs and LPRs to be admitted as LPRs in each of the fiscal years 1992, 1993, and 1994. Obviously, the spouses and children of Mexican immigrants under this program would eventually become eligible for naturalization.

### III. NATIONALITY AND CITIZENSHIP UNDER MEXICAN LAW

Nationality and citizenship questions under Mexican law are regulated by Articles 30, 37 and 38 of Mexico's 1917 Constitution, and by the recently enacted Nationality Act (*Ley de Nacionalidad*) of 1993.<sup>97</sup>

From the viewpoint of its legislative history, Mexico has enacted three federal statutes governing these questions prior to its current 1993 Act: 1) an official decree on Alienship and Nationality (*Extranjería y Nacionalidad*), of January 30, 1854; 2) the Act of Alienship and Naturalization (*Ley de Extranjería y Naturalización*), of May 28, 1886; and 3) the Act of Nationality and Naturalization (*Ley de Nacionalidad y Naturalización*), of January 5, 1934.<sup>98</sup>

Unlike the current statute, which is relatively brief,<sup>99</sup> the 1934 Act was more detailed and varied in its content. Composed of 58 articles, it addressed questions pertaining to "Ordinary naturalization," "Privileged naturalization," "Rights and obligations of foreigners," "Penal provisions," and "General

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95. INA § 316 (a).

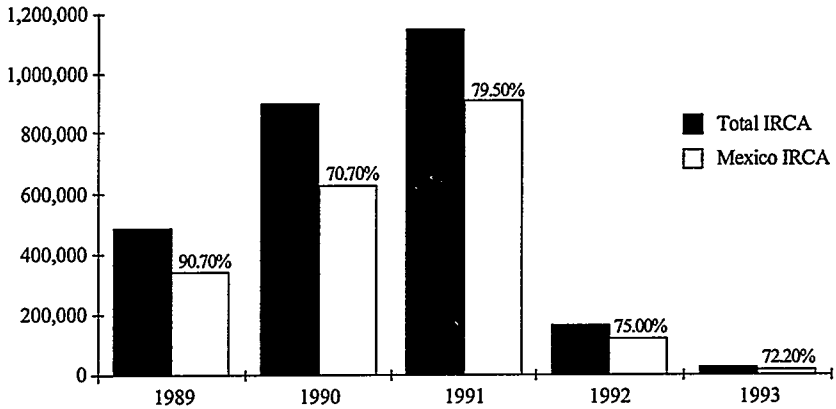
96. The "Family fairness program" granted temporary relief to spouses and unmarried children (under 18) of legalized aliens to carry them over until second preference petitions filed by the legalized aliens could be approved. See Memorandum from the INS Commissioner Gene McNary to the Regional Commissioners, No. C-1588 (Feb. 2, 1990).

97. *Ley de Nacionalidad*, *supra* note 4.

98. See PEREZNIETO CASTRO, *supra* note 58, at 34.

99. The current Nationality Act contains 32 articles divided into the following chapters: I) General provisions (arts. 1-5); II) Nationality (arts. 6-13); III) Naturalization (arts. 14-21); IV) Loss of Nationality (arts. 22-27); V) Recovery of Nationality (arts. 28-29); and VI) Administrative sanctions (arts. 30-32).

IRCA LEGALIZATIONS  
1989-1993



Source: 1989 through 1993 Statistical Yearbooks of Immigration and Naturalization Service

provisions."<sup>100</sup> Although the current 1993 Act repealed any provisions of the 1934 statute contrary to it,<sup>101</sup> a number of the old provisions continue in force today given the limited legal scope of the 1993 Act. As of this date, the Mexican legislation has not enacted the necessary regulations (*Reglamento*) to the 1993 Act.

#### A. Mexican Nationality

Mexican nationality is acquired by birth or by naturalization, as provided by Article 30 of its 1917 Constitution:

A) Mexicans by birth are:

- I. Those who are born in the territory of the Republic whatever the nationality of their parents;
- II. Those who are born abroad of Mexican parents; or of Mexican father or Mexican mother;
- III. Those who are born aboard Mexican vessels or aircraft, whether they are military or commercial.

B) Mexicans by naturalization are:

100. For the text of the 1934 Nationality and Naturalization Act, see LEONEL PEREZNIETO CASTRO & MARÍA ELENA MANSILLA Y MEJÍA, *MANUAL PRACTICO DEL EXTRANJERO EN MEXICO 19-48* (1991) [*hereinafter* PEREZNIETO & MANSILLA].

101. See D.O., *supra* note 4, the Second Transitory Article (*Artículo Segundo Transitorio*) of the 1993 Act, June 21, 1993, at 12.

- I. Foreigners who obtain from the Secretariat of Foreign Affairs (*Secretaría de Relaciones Exteriores*) a letter of naturalization; and
- II. The foreign woman or man that contracts marriage with a Mexican man or woman who has established his or her domicile within the national territory.<sup>102</sup>

The acquisition of the Mexican nationality by birth presupposes two situations: birth within the territory of Mexico, or outside of it. Article 42 of the Constitution enumerates the components of the [Mexican] "National territory," which consists of 31 States; islands (including reefs and cays); the internal waters, a 12 nautical mile territorial sea and the continental shelf; and the above-adjacent air space in the extension and modalities established by international law.<sup>103</sup>

Those who are born in the Mexican national territory (including Mexican vessels and aircraft) immediately acquire the Mexican nationality by virtue of the ancient legal notion of *Jus soli*, that "the soil transmits the nationality to the person,"<sup>104</sup> regardless of the nationality of the parents. A more literal interpretation would be the right that derives from the soil (i.e. *soli*, in Latin).

Article 30, Section A, paragraph I appears to have its counterpart in Section 301 (a) of the 1990 INA.<sup>105</sup> Whereas the simple act of being born in Mexico is legally sufficient to acquire the Mexican nationality, in the United States, the policy has been that the physical act of birth, by itself, is not legally sufficient to confer the U.S. nationality. The birth must be accompanied by other requirements, such as a physical residence in this country for a certain length of time.<sup>106</sup> Unlike the United States, Mexico does not have the peculiar legal category of "Nationals but not Citizens of the United States at Birth."<sup>107</sup>

A person may acquire the Mexican nationality when born outside Mexico provided the father and the mother are Mexican nationals, or of Mexican father or Mexican mother, pursuant to

102. Art. 30, CONSTITUCION, *supra* note 3, at 34-35 (Translation by the author). Sections A and B of this article correspond to arts. 6 and 7 of the Nationality Act, respectively.

103. Art. 42, CONSTITUCION, *Id.* at 44.

104. See, e.g., THOMAS A. ALENIKOFF & DAVID A. MARTIN, IMMIGRATION PROCESS AND POLICY 944-947 (2nd Ed. 1991); CARLOS ARELLANO GARCÍA, DERECHO INTERNACIONAL PRIVADO 192-193 (1984).

105. INA § 301 reads: "The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof;" See *supra* note 8.

106. See INA § 301(b)-(h), *supra* note 8. Mexico temporarily adopted the residency requirement in the amendment made to this article in 1934, probably inspired by the United States legislation. For the amended text, see D.O. of Jan. 18, 1934.

107. See INA § 308, *supra* note 8.

the traditional notion of *Jus sanguinis* (i.e. the right that derives from the blood). The original Article 30, A, paragraph II of the Constitution included the case of those born abroad of Mexican parents, or of a Mexican father, and "of a Mexican mother and unknown father."<sup>108</sup> Section A, paragraph II of this Article was amended in 1969 to read as it does today.<sup>109</sup>

Recently, Dr. Leonel Pereznieto Castro has been critical of the Mexican criterion of nationality which, in his opinion, is "extremely narrow and chauvinist." He alleges that Mexico has been copying its foreign nationality model, rather than developing its own, in response to its current domestic and international interests. Dr. Pereznieto appears to be the first individual to have formally proposed that the Mexican government contemplate adopting the "Dual citizenship" notion in light of the "several million Mexicans living in the United States."<sup>110</sup>

The adoption of Mexican nationality by naturalization may be categorized into four different legal avenues, namely: 1) Ordinary; 2) Special; 3) Automatic; and 4) By means of recovering it. These avenues are not enunciated under these names by the current Nationality Act. However, they are expressly enumerated in the prior Act of Nationality and Naturalization of 1934,<sup>111</sup> and in its corresponding Regulations.<sup>112</sup>

### 1. *Ordinary Naturalization*

Ordinary Naturalization takes place, pursuant to Article 14 of the Nationality Act, when the foreigner receives the corresponding "*Carta de Naturalización*" (Letter of Naturalization) from the Secretariat of Foreign Affairs (SRE).<sup>113</sup> In essence, the foreigner must comply with the following requirements:

- 1) Produce a statement that the petitioner formally renounces his/her current nationality (*Renuncia*), expressing his/her intention to acquire the Mexican nationality (*Protesta*);

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108. For the original text of Art. 30, see TENA RAMÍREZ, *supra* note 1, at 835 (1991).

109. See D.O. of Dec. 26, 1969. The amendment entered into force three days after it was published in the Official Daily (D.O.).

110. See PEREZNIETO CASTRO, *supra* note 58, at 35.

111. arts. 7-19 of the 1934 Act refer to Ordinary Naturalization; arts. 20-23, to Special Naturalization; art. 24 to Automatic Naturalization; and art. 27, To Recover the Mexican nationality. See PEREZNIETO & MANSILLA, *supra* note 100, at 25-32. The editors point out several substantive legal mistakes contained in this section of the 1934 Act.

112. The Regulations (*Reglamento*) of the 1934 Act, relative to the Certificates of Mexican Nationality (*Certificados de Nacionalidad Mexicana*), appeared in the D.O. of Oct. 18, 1972. For the text, see RAFAEL DE PINA VARA, *ESTATUTO LEGAL DE LOS EXTRANJEROS* 33-37 (1991).

113. Art. 2, para. III, defines this document: "*Letter of Naturalization*: the legal document attesting to the granting of the Mexican nationality to a foreigner."

- 2) Prove that he/she can speak Spanish and is "assimilated to the national culture;" and
- 3) Prove that he/she has lived in Mexico legally (*Residencia legal*) for a minimum of five years immediately preceding the date of application, and that he/she has not "interrupted" said legal residency.

With regard to the third requirement of ordinary naturalization, the current statute adds that the foreigner must prove that his/her legal stay in Mexico "was not for recreational or educational purposes."<sup>114</sup> The foreigner's legal residence in Mexico is deemed not "interrupted" for purposes of naturalization when the physical absence from Mexico "does not exceed six months in total duration during the preceding period of two years" from the date of the corresponding application.<sup>115</sup>

With respect to the "*Renuncia*" and "*Protesta*," the statute considers an "Administrative infraction" when the foreigner makes such renunciation and takes such oath "in a fraudulent manner or without the true intent to be definitely and permanently obligated by them." This leads to the imposition of a monetary fine, ranging between 100 and 200 times the amount of the minimum wage in Mexico City at the time of the offense.<sup>116</sup> Unfortunately, there are no legal definitions of what the Mexican authorities consider "a fraudulent manner" or what may qualify as "the true intent" in these cases. In the absence of precedents and more detailed statutory provisions, foreigners must exclusively depend upon the absolute discretionary powers of the Mexican authorities.

## 2. *Special Naturalization*

This legal avenue may be divided into four categories.<sup>117</sup> The first category is contemplated in Article 30, Section B, paragraph II of the Constitution,<sup>118</sup> which corresponds to Article 16 of the 1993 Act. It applies to a married couple (*i.e.* Mexican spouse and foreign spouse) that already has or is establishing its

114. art. 19 of the 1993 Act.

115. art. 20 of the 1993 Act.

116. art. 30, para. I of the 1993 Act. Under the current U.S. dollar/Mexican peso conversion rate, and considering that today's minimum wage in Mexico City is equivalent to \$5.00 U.S. dollars, approximately, the amount of this fine would range between \$500 and \$1,000 in U.S. dollars. For the imposition of this fine, the SRE must grant a hearing to the foreigner, in conformity with the Regulations; for the imposition of any sanction, SRE has to take into account a) the seriousness of the offense; b) the damages and injuries caused; and, c) the personal circumstances, and the socioeconomic condition of the offender. See art. 31 of the 1993 Act.

117. See PEREZNIETO CASTRO, *supra* note 58, at 36-37.

118. See *supra* note 102 and accompanying text.

"conjugal domicile" in Mexico.<sup>119</sup> Under Mexican law, the foreigner who is married to a Mexican national must take the initiative to petition the SRE if interested in acquiring the Mexican nationality by naturalization. The administrative procedure in this case is much simpler, based on a policy that would foster family reunification. The foreign spouse that acquires the Mexican nationality in this manner preserves it even after the marriage in question is legally dissolved.<sup>120</sup>

The same family reunification policy applies to the second category. It involves lawful foreigners residing in Mexico who have children born in Mexico. In this case, a two-year legal residence (rather than the ordinary five years) suffices for the foreign parent or parents to qualify for special naturalization. This provision facilitates the process of naturalization based on the fact that one or both of the foreign born parents have one or more children who are Mexicans by birth.<sup>121</sup>

Until now, no Mexican statute contemplates the legal implications of a child or children who have been born in Mexico from foreign parents who are in that country unlawfully. For example, this has happened to nationals from Guatemala, or other countries in Central America, who flee their countries and enter Mexico illegally seeking to obtain an asylum or refugee status. It has been declared by a Mexican official from *Secretaría de Gobernación* (i.e. Mexico's federal agency whose functions embrace immigration questions, similar to the INS in some respects) that:

[I]t is Mexican policy that the children of refugees born in Mexico not be given birth certificates. The reason is that under Mexican law, the parents then might obtain an FM-2 visa (which could lead to permanent residency) or could obtain *Naturalización privilegiada* (Privileged naturalization), which is an expedited form of naturalization. *The Mexican government wishes to avoid this. Some refugees report difficulty in registering children for Mexican birth certificates . . .* Others report being told they could not register their children unless they agreed to be relocated to Campeche or Quintana Roo.<sup>122</sup>

This third category derives from Article 15, paragraph II of the 1993 Act. It benefits foreigners who are from any country in

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119. For naturalization purposes, Art. 2, para. V of the 1993 Act defines "Conjugal domicile" in these terms: "[T]he [domicile] legally established by the spouses in the national territory, where they live consensually for more than two years."

120. Art. 16 of the 1993 Act.

121. Art. 15, para. I of the 1993 Act reads: "Tenga hijos mexicanos por nacimiento," in the plural (emphasis added).

122. See JOAN FRIEDLAND & JESÚS RODRÍGUEZ Y. RODRÍGUEZ, SEEKING SAFE GROUND. THE LEGAL SITUATION OF CENTRAL AMERICAN REFUGEES IN MEXICO 30-31(1987). Mexico-U.S. Law Institute, University of San Diego School of Law and Instituto de Investigaciones Jurídicas, UNAM.

Latin America, or from the Iberian peninsula, where Spain and Portugal are located. Again, they qualify for naturalization after two years of lawful residence in Mexico. It is assumed that because they come from a Latin country it may be easier for them to assimilate to Mexico which shares the same language, religion, and culture.

The fourth and final category of Special Naturalization benefits those foreigners who have provided services or conducted renown works of a cultural, scientific, technical, artistic, sports or managerial nature, for the benefit of Mexico.<sup>123</sup> In this case, the lawful residency requirement has been reduced to only two years. The 1934 Nationality and Naturalization Act refers to these sub-categories of naturalization as "Privileged" (*Privilegiada*).<sup>124</sup>

### 3. Automatic Naturalization

This type of naturalization derives from Article 17 of the 1993 Act. This provision intends to benefit (a) children who are adopted or descendants to the second generation subject to the custody (i.e. *Patria potestad*) of a foreign person who has become a naturalized Mexican, and (b) foreign minors who have been adopted by Mexicans residing in Mexico.<sup>125</sup> In these cases, the SRE issues the respective Letter of Naturalization based on the petition filed by those who have the minors' legal custody. This is done irrespective of the eventual right of these minors to choose in favor of their nationality of origin when they reach their legal citizenship age as adults.<sup>126</sup>

### 4. Naturalization by Recovery of Mexican Nationality

This is regulated by Articles 28 and 29 of the 1993 Act. Mexicans by birth who have lost their Mexican nationality "may regain it with the same character" by simply requesting it before the SRE, in compliance with a few simple requirements.<sup>127</sup> In the case of Mexicans by naturalization who lost said nationality due to residence in their country of origin during five consecutive

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123. art. 15, para. III of the 1993 Act.

124. See arts. 20-29 (Chap. III) of the 1934 Act.

125. For a valid critical analysis of the poor legislative technique displayed by the Mexican legislature regarding the requirements needed to acquire this naturalization, see PEREZNIETO CASTRO, *supra* note 58, at 37.

126. art. 17 of the 1993 Act. In Mexico, this election of nationality when reaching the legal age of adulthood is known as "*Opción*" (Option or *Jus Optandi*). See art. 12 of the 1993 act.

127. According to Art. 28 of the 1993 Act, these requirements are: a) the clear intention to recover the Mexican nationality; b) to make the necessary renouncing of the current nationality and the formal oath; and c) to satisfy the requirements established by the Regulations.

years,<sup>128</sup> they have to follow the procedure established by Article 15 of the Act involving the Special Naturalization.<sup>129</sup>

According to some Mexican jurists,<sup>130</sup> this type of naturalization appears to be unconstitutional since it is not contemplated by the constitutional text. Furthermore, any Mexican national who happens to lose the Mexican nationality is, legally, a foreigner.<sup>131</sup> Therefore, he or she must follow the applicable procedures in order to regain the lost Mexican nationality. Possibly, a different but more favorable legal avenue should have been created by the Mexican legislator to handle this type of case.<sup>132</sup>

### B. *Loss of Nationality*

Article 37, Section A, of the Constitution of Mexico enumerates four cases which lead to the loss of Mexican nationality:

- I. Voluntarily acquiring a foreign nationality;
- II. Accepting or using nobility titles that imply submission to a foreign state;
- III. Residing, being Mexican by naturalization, during five consecutive years in the country of origin; and
- IV. For pretending to be a foreigner, while being Mexican by naturalization, in any public document, or for obtaining and using a foreign passport.<sup>133</sup>

The first paragraph of Article 37, Section A simply recognizes the universally accepted right of any individual to willingly change his or her nationality. The 1993 Nationality Act clarifies that the acquisition of a foreign nationality based on the automatic application of a domestic law, simple residency or as an indispensable condition to get or keep a job, are not considered as "voluntary."<sup>134</sup>

Historically, the situation contemplated in paragraph II appears to date back to the Federal Constitution of 1857, when there was a drastic separation between State and Church and all nobility titles were abolished. Some authors have suggested that

128. Art. 29 of the 1993 Act.

129. See *supra* notes 117-124.

130. See PEREZNIETO CASTRO, *supra* note 58, at 37.

131. Art. 33 of the Mexican Constitution provides, in part: "Foreigners are those who do not possess the qualities established by Article 30 [of the Constitution]."

132. INA § 324 *Former U.S. Citizens Regaining Citizenship* (8 U.S.C.A. § 1435), may be of some interest to Mexico.

133. CONSTITUCION, Art. 37, Section A, *supra* note 3, at 38 (Translated by the author). This section of Art. 37 is comparable to INA §349: Loss of Nationality by Native-born or Naturalized Citizen; Voluntary Action; Burden of Proof; Presumptions. See INA, *supra* note 8 at 338-340.

134. Art. 22, para. I of the 1993 Act. See INA § 349(a)(1).

this provision should be repealed.<sup>135</sup> This paragraph contrasts with the Immigration and Nationality Act that simply requires that a person applying for U.S. naturalization should renounce any hereditary titles or orders of nobility.<sup>136</sup>

Apparently, the intention of the Mexican legislature in relation with paragraph III, Section A of Article 37 of Mexico's Constitution was to prevent Mexicans by naturalization from acquiring this nationality with the purpose of residing in their country of origin. Dr. Pereznieto Castro argues that this provision should be repealed for practical reasons since it cannot be effectively enforced by Mexican authorities.<sup>137</sup>

The final paragraph of this section poses serious problems for its effective enforcement in Mexico. It is rather common for former Mexican nationals who have become U.S. citizens by naturalization, for example, to have both a Mexican and a U.S. passport. As seen earlier, until recently Mexican law imposed severe limitations on foreigners, in particularly in relation with the exercise of direct ownership of real estate in the Restricted Zone.<sup>138</sup> For a former Mexican business person who has acquired the U.S. citizenship by naturalization it results relatively simple to use a Mexican passport while buying beach front property in Mexico, to then return to his or her home in, for example, La Jolla, California, where he or she permanently lives, using his or her U.S. passport to enter the United States.

Whereas this type of behavior, independent of its ethical implications, does not appear to be contrary to the immigration laws of the United States, it is in clear violation of Mexico's Constitution, and its Nationality Act of 1993. Given the apparent lack of interest, or resources, on the part of the Mexican authorities to properly enforce this constitutional mandate, it may be more practical to consider its deletion in order to do away with a chronic and embarrassing illegal practice.

The loss of Mexican nationality, according to the 1993 Act, is considered to be "*Personalísima*," in the sense that it only affects the person in question.<sup>139</sup> The same statute provides that "*any assets located in Mexico owned by Mexicans by birth who lost their Mexican nationality, should not be adversely affected by said loss.*"<sup>140</sup> Possibly because of its recent enactment in 1993, it seems that this provision is not generally known by Mexican immigrants in the United States who continue to hold the wrong

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135. See PEREZNIETO CASTRO, *supra* note 58, at 46.

136. See INA § 337 (b).

137. See PEREZNIETO CASTRO, *supra* note 58, at 46.

138. See *supra* notes 43-49.

139. art. 24 of the 1993 Act.

140. *Id.* (emphasis added).

opinion that, if they become naturalized U.S. citizens, "the Mexican government is *to forfeit* their properties in Mexico."<sup>141</sup>

Unlike the United States, which has a special legal procedure for declaring the loss of nationality, Mexico lacks such a procedure as part of its legal system.<sup>142</sup> The only legal avenue is an administrative procedure delineated by the Regulations of Articles 47 and 48 of the Nationality and Naturalization Act of 1934.<sup>143</sup> These Regulations establish a procedure to declare the revocation or cancellation of the Letters of Naturalization (certificates of naturalization) when issued in violation of the statute. Except for this specific procedure, in any other cases involving nationality questions, the Secretariat of Foreign Affairs exercises absolute authority and virtually unlimited discretionary powers.<sup>144</sup>

There is no area of Mexico's legal system where the existence of vast discretionary powers of the Mexican's federal government are more evident than in the field of immigration law. Legally, Mexico continues to strongly adhere to the antiquated notion of the "absolute and unlimited power" exercised by the federal government on immigration questions in general, but especially in these five substantive areas: 1) entry; 2) deportation; 3) lawful residence; 4) naturalization; and 5) refugees.

This old official policy stems directly from Article 33 of Mexico's Constitution, which has been at the core of the Mexican legal philosophy towards foreigners:

Foreigners are those who do not possess the qualities determined by Article 30. They are entitled to the [constitutional] guarantees enumerated in Chapter I, First Title, of this Constitution. However, *the [Federal] Executive shall have the exclusive power to make abandon the national territory, immediately and without the need of a previous trial, of any foreigner whose presence it deems inconvenient.* Foreigners may not engage, in any manner whatsoever, in the political affairs of the country.<sup>145</sup>

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141. See discussion regarding "Property rights in Mexico and U.S. citizens," *supra* notes 43-49 and accompanying text (emphasis added).

142. See PEREZNIETO CASTRO, *supra* note 58, at 47. Regarding this question, Pereznieto writes: "En el sistema jurídico mexicano no existe un procedimiento de carácter general con base en el cual pueda declararse la pérdida de nacionalidad mexicana." *Id.*

143. See *Reglamento de los Artículos 47 y 48 de la Ley de Nacionalidad y Naturalización*, D.O. of Sept. 6, 1940. For the text of these regulations, see PEREZNIETO & MANSILLA, *supra* note 100, at 49-55.

144. Pereznieto asserts: "[L]a Secretaría de Relaciones Exteriores. . . tiene amplias facultades para pronunciarse a este respecto. El recurso de reconsideración, y aún el juicio de amparo, no disminuyen los riesgos de esta *discrecionalidad amplísima.*" *Id.* (emphasis added).

145. CONSTITUCIÓN, Art. 33, *supra* note 3, at 36 (translation by author) (emphasis added).

This explains why in Mexico, unlike other more constitutionally advanced nations, there is no recognition of any due process rights in favor of undocumented immigrants, even when this seems contrary to the most progressive trends in international law and human rights. Mexico's legal provisions on immigration law matters are completely devoid of any hearing designed to provide foreigners with a legal forum to address and adjudicate challenges to the constitutionality of the decisions taken by the Mexican authorities on immigration matters. Decisions of an official nature by the Secretariat of the Interior, carry profound consequences upon the undocumented immigrants in question, and are taken solely on the basis of the absolute discretionary powers granted to the authorities by the Constitution.

There is no doubt that NAFTA has already produced a direct impact upon business and commercial areas of Mexico's legal system, including immigration law. It is hoped that this progressive trend will continue to influence some legal developments in Mexico, especially in updating and modernizing its ineffective and arbitrary immigration law system. Mexico clearly requires a system which is responsive to the effective recognition of the constitutional rights of undocumented immigrants; the acknowledgment and respect of the human rights of international migratory workers and refugees who enter Mexico, such as Guatemalans; and the rendering of legal decisions by a court of law based on the fairness and equality of the applicable domestic and international legal principles, and not on the absolute and unrestricted power of the State.

### C. *Loss of Citizenship*

Under Mexican Constitutional Law, Mexican citizenship is obtained by a Mexican national that complies with these two requirements: a) Must be 18 years old and b) Must have an honest way of living.<sup>146</sup> The acquisition of Mexican citizenship results in a number of rights and obligations.

The rights of Mexican citizens enumerated by the Constitution are to: 1) vote in popular elections; 2) be voted to electoral posts or be appointed to any other employment or commission when the requirements established by the law are met; 3) freely and peacefully associate and take part in the political affairs of the country; 4) enlist in the Army or National Guard to defend the Republic and its institutions, in the terms provided by the law; and 5) have the right to receive answers or information

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146. CONSTITUCION, Art. 34 *supra* note 3, at 37.

when requested from any public authorities.<sup>147</sup> These rights are eminently political, save the right to serve in the Army or National Guard.

The obligations of Mexican citizens include: 1) registering in the local registry of property, and declaring his or her occupation in the National Registry of Citizens; 2) enlisting in the National Guard; 3) voting in popular elections; 4) serving in electoral posts at the federal and state levels; and 5) serving in posts at the municipal level, including electoral and jury duties.<sup>148</sup>

Article 37, Section B of Mexico's Constitution enumerates six situations resulting in the loss of Mexican citizenship:

- I. Accepting or using nobility titles which do not imply submission to a foreign government;
- II. Voluntarily performing official services to a foreign government without permission from the Federal Congress or the Permanent Commission;
- III. Accepting or using foreign decorations without permission of the Federal Congress or the Permanent Commission;
- IV. Accepting from the government of another country titles or assignments without the previous authorization from the Federal Congress or the Permanent Commission, except for literary, scientific or humanitarian titles that may be freely accepted;
- V. Assisting a foreigner or a foreign government, against the interests of Mexico, in any diplomatic claim or before an international court; and
- VI. In the other cases established by the law.<sup>149</sup>

This article is to become the center of attention should the Mexican government proceed with the contemplated change of allowing Dual Nationality.

#### IV. POSSIBLE LEGAL CONTOURS OF THE MEXICAN PROPOSAL

As of this writing,<sup>150</sup> no legislative initiative to amend the Constitution has been received by Mexico's Federal Congress on this matter. Article 71 of the Mexican Constitution confers to: a) the President of the Republic; b) federal deputies and senators; and c) the state legislatures, the right to initiate legislative bills

147. These rights or privileges (i.e. *Prerrogativas del Ciudadano*) are enumerated in Art. 35 of the Constitution. The right to petition authorities (*Derecho de Petición*) is considered an individual guarantee, as established by art. 8 of the Constitution. It has to be exercised "in writing, in a peaceful and respectful manner; but, in political matters, only citizens of the Republic may use this right." See CONSTITUCION, *supra* note 3, at 37 and 7, respectively.

148. *Id.* Art. 36, at 37-38.

149. CONSTITUCION, art. 37 § B, *supra* note 3, at 38-39.

150. October 1996.

before Congress.<sup>151</sup> Given the importance of this change, and in symmetry with the idea advanced in Mexico's National Development Plan, 1995-2000,<sup>152</sup> it is expected that the corresponding bill will be formally submitted to Congress by President Zedillo.

However, today's general consensus in official and diplomatic circles in Mexico suggest that the submission of the legislative bill in question may not be as imminent as certain politicians originally contemplated.<sup>153</sup> In light of the official visit by President Zedillo to President Clinton in Washington, D.C., in October of 1995,<sup>154</sup> this proposal was subjected to a "cooling off" period. Political strategists were of the opinion that it was more favorable for President Zedillo to postpone the submission of the "Dual nationality" to the Mexican Congress until late 1996 or early 1997.

Based on the information contained in an official brochure published by the SRE entitled, *Recuperación de la Nacionalidad*,<sup>155</sup> and on media reports produced on this proposal by Mexican newspapers<sup>156</sup> and periodicals<sup>157</sup> derived from SRE information, the dual nationality proposal may entail: (A) constitutional amendments; (B) secondary changes; and (C) additional legal refinements by a group of experts.

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151. CONSTITUCION, art. 71, *supra* note 3, at 55.

152. *See supra* note 9. *See also* D.O. *National Development Plan, 1995-2000*, *supra* note 4, May 31, 1995, at 12.

153. In Mar. and Apr. of 1995 there was an intense display of publicity in favor of this proposal both in Mexico and in certain parts of the U.S. Mexican politicians engaged in these efforts indicated that they had prepared already draft legislative bills on this question, which they were planning to submit as soon as Mexico's Congress opened its sessions on Sept. 1, 1995, pursuant to Art. 65 of the Constitution. *See, Mexicanos con Doble Nacionalidad No Podrán Votar ni Ser Votados*, EXCELSIOR, Apr. 11, 1995, at 5; *PRD Presentará Iniciativa para Permitir Doble Nacionalidad*, EL MEXICANO, April 1, 1995, at 5; and, *El PRI se Reúne con Líderes de Mexicanos en EU para Recoger Demandas sobre su Nacionalidad*, EXCELSIOR, Mar. 28, 1995, at 1.

154. Paul Richter, *Clinton, Zedillo to Meet as Immigration Tension Grows; Mexico, U.S. President Has Drifted Toward Limits as Restrictions Gain Support in Congress and Nation*, L.A. TIMES, Oct. 10, 1995.

155. *Recuperación de la Nacionalidad* (Regaining of the Mexican Nationality), D.O. June 21, 1993.

156. *See* David Aponte, *Elabora Relaciones Exteriores un Proyecto sobre Doble Nacionalidad*, LA JORNADA, May 10, 1995, at 5. This article reports that SRE is preparing amendments to Arts. 27, 30, 37 and 38 of the Constitution. These proposed changes have been sent, for their analysis, to the 40 Mexican Consulates in the United States. *See also* D. Aponte, *SRE: No Podrían Obtener la Doble Nacionalidad Militares y Policías*, LA JORNADA, July 7, 1995, at 12.

157. *México y la No Pérdida de la Nacionalidad*, IMPACTO. Aug. 8, 1995, at 22.

### A. *Constitutional Amendments*

Article 37 of the Mexican Constitution would have to be amended to provide in Section A, that Mexican nationals by birth cannot legally renounce said nationality.

In the SRE brochure, this notion is presented in the most emphatic terms, "The Mexican nationality *is never lost*."<sup>158</sup> Legally, this would mean that the Mexican nationality of origin is going to accompany that Mexican individual throughout his or her lifespan, even when said person *voluntarily* acquires a foreign nationality by naturalization. Conversely, Section B of Article 37 would also have to be amended to read, "The Mexican *citizenship* is lost by the voluntary acquisition of a foreign citizenship or nationality."<sup>159</sup>

Specifically, the legal effects of these contemplated changes should be analyzed from the hypothetical case of Mr. Juan Pérez, a lawful permanent resident who is a Mexican national by birth and became a U.S. citizen by naturalization. Mr. Pérez is from Tijuana, Baja California, Mexico. He came to Los Angeles, California, in 1980, as an undocumented worker when he was twenty years old. He started working as a busboy and a dish washer and then as a waiter at the Mexican restaurant "Aztlán," located in a populous barrio in East Los Angeles. He studied English and accounting at night in a community college. Today, Mr. Pérez is the owner of two "taquerías" in Los Angeles, is happily married to a Chicana (Maria) who is a U.S. citizen and has three children, two born in the U.S. (Lupita and Lisa) and one in Mexico (Luis). A couple of years ago he acquired an ocean front condominium in Rosarito, B.C., where he is planning to retire.

Pursuant to the suggested constitutional changes, Mr. Pérez is now an American citizen. He lives, works, votes, pays taxes, and participates in many community activities, as any other U.S. citizen. However, notwithstanding that he decided to become a U.S. citizen by naturalization, he has a "latent" Mexican nationality under Mexico's constitutional mandate. True, in the United States, this "latent or dormant" nationality is of little or no legal, economic, or political value. It is an unquantifiable idea. However, it helps Mr. Pérez emotionally or sentimentally to know that he still has some Mexican nationality within him.

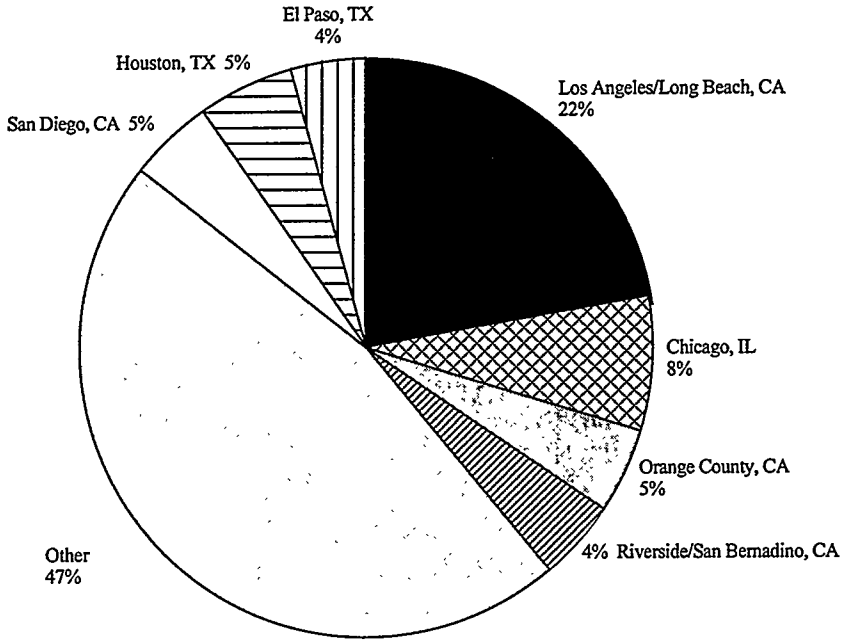
Mr. Pérez knows that when he retires in Rosarito, his Mexican "clock" is going to start ticking again, gaining and accumulating time as a consequence of his physical and permanent residence in Mexico. After a number of years, he will be able to

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158. See *Recuperación*, *supra* note 155 (emphasis added).

159. *Id.* (emphasis added).

IMMIGRANTS FROM MEXICO AND SELECTED METROPOLITAN  
STATISTICAL AREA OF INTENDED RESIDENCE FISCAL  
YEAR 1993



Source: 1993 Statistical Yearbook of the Immigration and Naturalization Service, Table 19, Page 66

regain his "citizenship rights" as a Mexican citizen, and even engage in "La grilla."<sup>160</sup> He will be able to participate in political activities, vote in political elections and finally serve in those jobs exclusively reserved for Mexicans by birth. Maybe he might become the "Presidente Municipal" (mayor) of Rosarito.

Being a U.S. citizen by naturalization, Mr. Pérez knows that "citizenship" appears to be a more useful and practical notion than "nationality." While all this is happening, he also knows that his U.S. citizenship is gradually moving to a peripheral place. Losing a citizenship, or a given nationality, inherently carries a

160. "Grilla" is the colloquial expression utilized in Mexico to refer to political activities. In this sense, a Mexican politician is a "grillo."

number of risks. In the long run, the reality of personal circumstances are likely to dictate which of the two choices is to become the final and most valuable citizenship. In most cases, this struggle normally ends with the choosing of only one citizenship.

The "Permanent Constitutional Mexican Legislator" may consider introducing an amendment to paragraph I of Article 27 of the Constitution to hopefully follow the legal philosophy currently enshrined in Mexico's 1993 Foreign Investment Act. This paragraph of the Constitution contains an outright prohibition for foreigners to exercise direct ownership rights over immovable assets located within the Restricted Zone.<sup>161</sup> Although this question does not relate directly to the "Retention of Mexican Nationality Proposal," as it stands today, Articles 11-14 of said 1993 Act allow Mexican corporations with an Exclusion of Foreigners Clause to have direct ownership in that Zone when those assets are used for non-residential activities such as industrial, commercial, and tourism purposes; thus, circumventing the use of the traditional but cumbersome Fideicomiso.<sup>162</sup>

The same policy should benefit individual foreign investors who, under the Constitution and the recent 1993 Foreign Investment Act, must continue to use the Fideicomiso when interested in acquiring real property in the Restricted Zone for residential purposes. This change would certainly be welcomed by the numerous Mexicans by birth who are now U.S. citizens by naturalization and would be the direct beneficiaries of Mexico's "Retention of Nationality Proposal."

### B. *Secondary Changes*

Any eventual constitutional amendments have to be reflected in the pertinent secondary legislation. Accordingly, these changes will have to affect the Nationality Act of 1993, and the corresponding Regulations. In particular, Article 6 of this statute, which reads, "The Mexican nationality must be one," will have to be eliminated.<sup>163</sup>

If foreign investors are legally allowed to have direct ownership over immovable assets in the Restricted Zone for residential purposes, this policy change would require amending the pertinent articles of the 1993 Foreign Investment Act, and the corresponding Regulations which are to be published.

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161. See *supra* notes 46-53.

162. See Vargas, *supra* note 48, at 944-945.

163. Other changes in the Nationality Act of 1993 will have to include Chapter IV: The Loss of Mexican Nationality, and probably Chapter V: The Regaining of Nationality.

### C. *Additional Legal Refinements by a Group of Experts*

In order to analyze the legal implications of the contemplated substantial change in Mexico's immigration policy, and to suggest adequate language for the necessary constitutional and statutory changes, the SRE called together a selected group of Mexican legal experts.<sup>164</sup> This group enhanced the basic proposal discussed above, adding some legal refinements.

First, in relation with Article 30 of the Constitution, it was considered that those born outside Mexico of Mexican parents, Mexican father or Mexican mother (paragraph II), would acquire the Mexican nationality limited to the first generation of descendants only.

In the hypothetical case of Juan Pérez, this would mean that his children born in the United States, Lupita and Lisa, would have the Mexican nationality. However, if they were to bear any children in the United States, they would only have the U.S. nationality (i.e. first generation of descendants). Since Lupita and Lisa were born in the U.S., they would become U.S. citizens by birth. Considering that both Lupita and Lisa grew up in the U.S., and have always lived here, their "dominant nationality/citizenship" would be American, whereas the "dormant or latent nationality" (please notice nationality only, and not citizenship) would be the Mexican "nationality."

This situation would result in the virtual elimination of the need to "choose" between two nationalities that currently apply to a person legally possessing dual nationality, when he or she becomes 18 years of age. Today, this legal practice is followed in both Mexico<sup>165</sup> and the United States.<sup>166</sup> This occurs when the legal principles of *Jus soli* and *Jus sanguinis* apply simultaneously to a given person. For example, in the hypothetical case of Juan Pérez, this would be the case of Luis, who was born in Mexico (*Jus soli*) from a U.S. citizen (María, *Jus sanguinis*). Under the current Mexican "option system," once Luis turns 18 years old he must decide whether he wants to become *either* a Mexican citizen or a U.S. citizen, but not both. This would no longer be necessary should Mexico proceed with the contemplated legal amendments.

Second, in his brief note, Professor García Moreno recognizes that:

[T]he dual nationality [sic] cannot be taken to its ultimate consequences . . . a person with dual nationality will have to see suspended, necessarily, the exercise of some rights of the pre-

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164. See García Moreno, *supra* note 83.

165. Art. 12 of Mexico's Nationality Act of 1993.

166. See INA §§ 320, 321 & 322, *supra* note 8.

vious nationality. Those who receive the benefit of multiple nationalities must be subject to the laws and courts of the latest nationality, but in no manner to those of both countries. *Political-electoral rights* are among those which will be undoubtedly suspended. [However], said rights may be regained when the Mexican residing abroad develops once more his habitual domicile [sic] in the Mexican territory.<sup>167</sup>

Accordingly, Article 38 of the Constitution should be amended, to provide that the Mexican nationality shall be suspended while exercising a foreign citizenship in another country and while that residence is taking place. However, Mexicans who establish their domicile in Mexico, and comply with other legal requirements, shall automatically regain the totality of their citizenship rights.<sup>168</sup>

Third, the group of experts suggested that probably "more than fifty five statutes may be eventually affected by the constitutional amendments on dual nationality."<sup>169</sup> These provisions of Mexican Law may be divided into the following three large categories.

The first category is that of official positions and activities requiring licenses that may be performed by persons holding "dual nationality." For example becoming a broker, justice of the peace, or notary public or performing activities such as the acquisition of lands and waters in the "Prohibited Zone" and the use of "Ejidos."

The second category includes other official posts and political and technical activities, since these positions demand specific nationality requirements. For example, president of the republic, federal deputy, senator, supreme court justice, state governor, and electoral magistrate.<sup>170</sup>

The final category entails certain posts and activities considered strategic or affecting the national security. These posts and activities are to be performed exclusively by persons of Mexican nationality only and not by those with dual nationality. Such posts include membership in the Mexican military forces, vessel or aircraft pilots, port captain, federal judicial police agent, and customs officer.<sup>171</sup>

## V. THE MEXICAN PROPOSAL AND U.S. IMMIGRATION LAW

Dual nationality is by no means an unusual legal phenomenon in U.S. immigration law. Historically, it has been reported in

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167. García Moreno, *supra* note 83, at 7 (emphasis added).

168. *Id.*

169. *Id.* at 180.

170. *Id.*

171. *Id.* at 180-81.

a well known U.S. Supreme Court case that, "in 1795 and 1797, many members of Congress still adhere to the *English doctrine of perpetual allegiance* and doubted whether a citizen could even voluntarily renounce his citizenship."<sup>172</sup>

Contrary to the early days of the Republic of Mexico after it became independent in 1821,<sup>173</sup> when only one nationality was recognized,<sup>174</sup> during the first century of our nation, U.S. law closely followed the then current English doctrine of "indelible allegiance."<sup>175</sup> Accordingly, it may be asserted that the United States emerged to the international political arena standing on the notion of dual nationality.

As a result of this, the decades following the independent life of the United States, original British subjects who considered themselves Americans were placed in the peculiar situation of having dual U.S. and British nationality. It was not until 1868, with the "Declaration of the Right of Expatriation,"<sup>176</sup> that the United States recognized for the first time in its legislative history the right of immigrants and Americans to voluntarily renounce allegiance to their former sovereign state. This marked the formal recognition of the principle of expatriation in this country.

In light of the contemplated change of policy by the Mexican government, it may be recalled that the 1868 Act, whose principal objective was to protect immigrants coming to the United States provided, *inter alia*, that: 1) a change of nationality was not dependent upon the consent of the former sovereign state; 2) naturalization in the United States dissolved any ties the national individual had with the former state; and 3) "by such process the individual acquired a new national character entitled to recognition upon his return to the country of origin."<sup>177</sup>

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172. *Afroyim v. Rusk*, 387 U.S. 253, 258 (1967).

173. See *supra* note 1 and accompanying text.

174. Mexico's "Constitution of the Seven Acts" (*Constitución de las Siete Leyes*), a conservative Constitution enacted during the Presidency of Antonio López de Santa Ana, contains in its *Primera Ley Constitucional*, enacted on December 15, 1835, the very first legal definition of "Mexican nationals" (art.1), recognizing one nationality only. This definition parallels the content of Art. 30 of the Mexican Constitution. For the text of Art. 1 of the First Constitutional Act, see TENA RAMÍREZ, LEYES, *supra* note 1, at 205.

175. Therese Keelaghan-Silvestre, *Dual Nationality and the Problem of Expatriation*, 16 U.S.F. L. REV. 291, 296 (1982).

176. The Act of 1868 declared that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness." Act of July 27, 1868, Chap. 249, 15 Stat. 223. See also Schwartz, *American Citizenship after Afroyim and Bellei: Continuing Controversy*, 2 HAST. CONST. L.Q. 1003, 1004 (1975).

177. *Id.* See *Some Problems of Dual Nationality*, 28 ST. JOHN'S L. REV. 63, 65 (1953).

Dual nationality is a legal status long recognized by American courts. In *Perkins v. Elg*,<sup>178</sup> the Supreme Court traced the existence and recognition of dual nationality to the instructions that the U.S. State Department issued to U.S. diplomatic and consular officers on November 23, 1923.<sup>179</sup> In the more recent case, *Kawakita v. United States*,<sup>180</sup> the United States Supreme Court wrote:

The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. *The mere fact that he asserts the right of one citizenship does not without more mean that he renounces the other.*<sup>181</sup>

Until now, the official policy of the U.S. government is designed to discourage the incidence of dual nationality.<sup>182</sup> This may be due to the fact that, as international observers explain,<sup>183</sup> possession of dual nationality may result in competing or conflicting claims from both countries on questions such as military service, health programs, extradition, taxation, inheritance, education, and diplomatic protection of nationals abroad.<sup>184</sup> However, this traditional attitude on the part of most nations may be ready to take a turn toward a more modern and flexible policy.

In the United States, the citizen of dual nationality is governed by three different sets of very distinct laws: 1) international law; 2) foreign law; and 3) U.S. domestic law.<sup>185</sup>

### 1. *International Law*

The right of the sovereign state to determine who are its "nationals," or who belongs to a given sovereign state, is a fundamental principle which is globally recognized by international law today. This exclusive right derives from the sovereign state's claim to exercise comprehensive and continuing control over people as bases of power.

Under this legal philosophy, people are considered as "resources" and the State makes numerous claims over these people, including: 1) claims to characterize people, and thereby include them in, or exclude them from, the rights and duties of

178. *Perkins v. Elg*, 307 U.S. 325 (1939).

179. *Id.* at 344.

180. *Kawakita v. United States*, 343 U.S. 717 (1952).

181. *Id.* at 723-724 (emphasis added).

182. *Savorgnan v. United States*, 338 U.S. 491, 500 (1950).

183. MYRES S. MCDUGAL & W. MICHAEL REISMAN, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE. THE PUBLIC ORDER OF THE WORLD COMMUNITY* 900-920 (1981) (Claims regarding Multiple Nationality).

184. For an analysis of this kind of conflicting claims, see Orfield, *The Legal Effects of Dual Nationality*, 17 *Geo. Wash. L. Rev.* 427, 429 (1949).

185. *Id.* at 303.

membership in the elites' areas of control; 2) claims to ascribe nationality or membership status by exclusively chosen criteria; 3) claims to protect people; 4) claims to withdraw or terminate nationality; 5) claims regarding multiple nationality; 6) claims regarding statelessness (absence of nationality) etc.<sup>186</sup>

Traditionally, this claim over people has been couched in terms of "nationality." This is the nexus between an individual and a nation.<sup>187</sup> This notion is generally described as a reciprocal relationship: The sovereign state gives protection to the individual and the individual in turn gives his or her allegiance or legal bondship to the sovereign state.<sup>188</sup>

It is important to distinguish between nationality and citizenship. These terms are not synonymous and tend to be confused. Hackworth provides the following clarifying concepts:

The term citizen, in its general acceptance, is applicable only to a person who is endowed with full political and civil rights in the body politic of a state. The term national includes a citizen as well as a person who, though not a citizen, owes permanent allegiance to the state and is entitled to its protection, as, for example, natives of certain of the outlying possessions of the United States. It also includes legal entities such as corporations.<sup>189</sup>

Unlike other areas of international law which have been codified, there is no systematic legal *corpus* containing the international law of nationality.<sup>190</sup> Basically, questions arising in this field have been subject to the application of both multilateral and bilateral conventions; namely The Hague Convention Concerning Certain Questions Relating to the Conflict of Nationality Laws of 1930<sup>191</sup> and the Protocol Relating to Military Obligations in Certain Cases of Double Nationality,<sup>192</sup> and more recently the Universal Declaration of Human Rights<sup>193</sup> and the

186. See McDUGAL & REISMAN, *supra* note 183, at 789.

187. L. Oppenheim, 1 INTERNATIONAL LAW, § 255 (H. Lauterpacht, 8th ed., 1995).

188. Hackworth, Digest of International Law, 3 DIGEST § 255, at 352.

189. *Id.* at § 220.

190. See generally, RUTH DONNER, THE REGULATION OF NATIONALITY IN INTERNATIONAL LAW (Transnational Legal Publishers 2d ed.) (1994).

191. Opened for signature on Apr. 12, 1930, 179 L.N.T.S. 89, reprinted in INTERNATIONAL LEGISLATION: A COLLECTION OF THE TEXTS OF MULTIPARTITE INTERNATIONAL INSTRUMENTS OF GENERAL INTEREST 359 (M. Hudson, ed. 1971). Although the U.S. is not a party to this convention, it tends to follow similar principles to those contained in said convention, including the notion of "Dominant nationality." See P. WEISS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 182 (1956). See also *Sadat v. Mertes*, 615 F.2d 1176 (7th Cir. 1980).

192. G. VON GLAHN, LAW AMONG NATIONS 201 (4th ed. 1981). In general this protocol provided that dual nationals of habitual residence in one country would be excused from military service in the other.

193. G.A. Res. 217, U.N. GAOR, 3rd Sess., at 135 U.N. Doc. A/810 (1948).

1961 U.N. Convention on the Reduction of Statelessness.<sup>194</sup> At the bilateral level, the U.S. has entered into a number of treaties to regulate specific questions arising out of dual nationality. It has been claimed that the international practice of the United States on dual nationality problems has been "equivocal."<sup>195</sup> Regarding these questions, the U.S. has relied on special international tribunals and has profited from their adjudication.<sup>196</sup>

The notion to have dual nationality as a human right is among the most recent and progressive trends in international law.<sup>197</sup>

## 2. *Dual Nationality in Foreign Law*

There are about thirty seven countries in the world today that allow their respective nationals to possess dual nationality.<sup>198</sup> Since each country is sovereign under international law to determine its own nationality questions, the existence and modalities of dual nationality depends directly upon the domestic legislation of each country.<sup>199</sup>

A few examples should suffice. A foreign national who naturalizes in Great Britain does not have to renounce to his or her former nationality.<sup>200</sup> Conversely, an English national may freely adopt a second nationality without loosing the original British nationality. Moreover, unlike the contemplated change by Mexico to limit the application of *Jus sanguinis* only to the first generation of Mexicans born abroad, British citizenship acquired by *Jus sanguinis* may be perpetuated through generations of foreign-born children by simply registering them at the U.K. Consulate and declaring where the birth took place.<sup>201</sup>

A Swiss citizen does not lose citizenship by voluntarily acquiring a second nationality and is allowed to have voluntary

194. See 989 U.N.T.S. 175.

195. See Keelaghan-Silvestre, *supra* note 175, at 314.

196. See, for example, the Salem Case (U.S. v. Egypt, 2 U.N. Reports 1161 (1932) and the Flegenheimer Case before the Italian-U.S. Conciliation Commission. See also Weis, *supra* note 191, at 174-175.

197. See Myres S. McDougal, et al. *Nationality and Human Rights: The Protection of the Individual in External Arenas*, 83 YALE L. J. 900 (1974).

198. In Latin America, for example, this is the case of 1) Argentina; 2) Costa Rica; 3) Chile; 4) Dominican Republic; 5) Ecuador; 6) El Salvador; 7) Guatemala; 8) Nicaragua; 9) Panama; 10) Paraguay; 11) Peru; and, 12) Uruguay. In Europe: 13) France; 14) Germany; 15) Italy; 16) Spain; 17) Switzerland, 18) United Kingdom and Northern Ireland, etc.

199. See Richard W. Fluornoy, Jr. & Manley O. Hudson (Eds.) *A COLLECTION OF NATIONALITY LAWS OF VARIOUS COUNTRIES AS CONTAINED IN CONSTITUTIONS, STATUTES AND TREATIES* (1983).

200. *British Nationality and Status of Aliens Act of 1943*, 6 & 7 Geo. VI, Chap. 14; see also N. Bar-Yaacov, *DUAL NATIONALITY* 15 (1961).

201. Keelaghan-Silvestre, *supra* note 175, at 312.

dual nationality.<sup>202</sup> The French approach is slightly different. French law does not oppose the voluntary acquisition of a second nationality by French citizens.<sup>203</sup> Canadian legislation adopts a similar approach to the British and Swiss statutes, allowing a Canadian national to remain a dual national or to renounce Canadian citizenship upon acquisition of a second nationality.<sup>204</sup>

Notwithstanding the prolific and varied legal literature on dual nationality that currently exists at the global level,<sup>205</sup> the eventual adoption of a similar type of legislative enactment by Mexico constitutes an intriguing development. Such a change is especially intriguing in light of the traditional and unwavering policy sustained by Mexico for more than a century of disallowing dual nationality.

### 3. *Dual Nationality Under U.S. Immigration Law*

In *Sadat v. Mertes*,<sup>206</sup> the U.S. government was clear in asserting that it accepts dual nationality only "as a result of separate conflicting laws of other countries." In a letter from the U.S. State Department, the Secretary said:

*The United States does not recognize officially, or approve of dual nationality. However, it does accept the fact that some United States citizens may possess another nationality as the result of separate conflicting laws of other countries. Each sovereign state has the right inherent in its sovereignty to determine who shall be its citizens and what laws will govern them.*<sup>207</sup>

Thus, based on this decision, the U.S. policy appears to ignore the existence of dual nationality when it occurs as a consequence of an involuntary acquisition of a second nationality, thereby allowing U.S. citizens possessing dual nationality to remain Americans.<sup>208</sup> However, the flip side of this policy is for the U.S. government to declare such an action an expatriation when the dual nationality is the product of a voluntary acquisition.<sup>209</sup>

Therefore, under this U.S. policy, a Mexican immigrant who becomes a U.S. citizen by a *voluntary* act of naturalization should

202. *Id.* See also C. Hyde, 2 INTERNATIONAL LAW 1148 (2d rev. ed. 1947).

203. Art. 91, French Nationality Code; see Bar-Yacov, *supra* note 200, at 36.

204. *Citizenship Act of Canada of 1976*, 23-25 Eliz. II, Chap. 108; see also A. Mutharika 2 THE REGULATION OF STATELESSNESS UNDER INTERNATIONAL AND NATIONAL LAW, sections 3, 19 and 27 (1980).

205. See the work of Claudia Arminio de Aponte, "Estudio Sobre La Doble Nacionalidad", Legal Department, Mexican Embassy, Washington, D.C. (no date) (on file with author).

206. 615 F.2d 1176 (7th Cir. 1980).

207. *Id.* at 1184 (emphasis added).

208. See Lester B. Orfield, *The Legal Effects of Dual Nationality*, 17 GEO. WASH. L. R. 427, 427-445.

209. See David S. Gordon, *Dual Nationality and the United States Citizen*, 102 MIL. L. REV. 181, 181-190 (1983).

not be affected at all by Mexican legislation declaring that he or she continues to possess the Mexican nationality, despite said naturalization. The rationale for this outcome would be based on the fact that *the attribution of the Mexican nationality constitutes an involuntary act*, separate and independent of the voluntary intention of the Mexican immigrant to become an American citizen by naturalization.

As of now, the importance of this policy should remain high priority. There is no need to engage in any further academic discussion until the Mexican government decides to take action regarding its domestic legislation on this matter. To continue would be pure speculation.

### CONCLUSION

Since 1821, when Mexico became an independent nation, it has strongly adhered to an official legal policy favoring single nationality for Mexican nationals. This traditional legal notion continues to be followed by most countries in today's international global arena. However, Mexico's traditional policy may change in the near future. Dr. Ernesto Zedillo Ponce de León, President of Mexico, in his "National Development Plan, 1995-2000," expressed that he will "promote the constitutional and legal amendments designed for Mexicans to retain their nationality, independently of the citizenship or residence they may have adopted."<sup>210</sup>

This announced change of policy must be construed as an unprecedented and clever initiative on the part of the Mexican government. The eventual change is designed to provide its nationals abroad with a more modern and flexible "nationality armor" and would give them not only a stronger sense of cultural confidence but, what is probably more important, an avenue to obtain two important privileges which have been absent until this day; political power and effective legal protection against extreme anti-immigrant trends in the country where they reside.

Although this "new legal dress" is being carefully tailored by the Mexican Congress in the Legislative Palace of San Lázaro in Mexico City, their intended beneficiaries are those Mexican immigrants who have lived and worked in the United States for year, as lawful permanent residents but who have not taken the final step of becoming U.S. naturalized citizens.

One of the clearest responsibilities international law places upon the shoulders of modern states is their duty to protect their nationals. In ordinary circumstances, this obligation is dis-

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210. National Development Plan for 1995-2000, *supra* note 9, at 16.

charged when the nationals are located within the national territory of the state in question. However, nationals of a given state enjoy the same protection when located outside the boundaries of their country. For certain countries, providing protection to its nationals is readily achievable both domestically and internationally. This is not the case for the majority of nations. In today's political arena, reality suggests that this obligation centers principally in relation with those nationals located within the political boundaries of the state. Those located abroad tend to suffer deprivations precisely because of a lack of protection provided by their respective countries.

Dual citizenship offers a creative approach to this predicament. Rather than having a single nationality, which is the customary practice, an individual simply chooses to have, or is involuntarily endowed with two (or more) nationalities. This legal strategy is not new. Its principal objective is to provide the recipient of dual citizenship the advantages offered by each of these sovereign states rather than focusing on the duties or obligations derived therefrom. Its goal may be said to be utilitarian. Within certain legal parameters, for example, a British subject may choose to be "British" in certain situations, while opting to use the U.S. citizenship in others, since he or she enjoys dual citizenship. The same approach is followed by Austria, Canada, Germany, France, Israel, Italy, and Spain, to name a few.

Traditionally, countries favor a single nationality and discourage a dual citizenship. In essence, this policy is reflected in The Hague Convention concerning Certain Questions Relating to the Conflict of Nationality Laws of 1930.<sup>211</sup> However, despite this old convention and the individual national efforts of countries to discourage dual citizenship, this legal notion continues to be enforced today. Considering the economic asymmetries between sovereign states, dual citizenship may offer a creative legal strategy for certain disadvantaged countries.

Sovereign states affected by a high rate of emigration would, in principle, tend to favor a dual citizenship policy. This policy would become even more attractive when associated with certain ideological constructs. For example, if nationals of a people-exporting country believe their cheaply paid labor clearly contributed to expanding the economy of the host country, this ideology would enhance their perception of having the right to remain in the host country. From their perspective, it would only be fair to share in the wealth they helped to create.

Some of these concepts may possibly apply both to nationals of countries who have been traditionally known for their migra-

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211. See *supra* note 191.

tory workers, or to those nations that created a large colonial base. Whereas, for example, Yugoslavia, Turkey, Greece, Spain, India, Nigeria, Gambia, Ivory Coast, Cameroon, and Morocco would be in the first category, Great Britain, France, Belgium, Germany, and The Netherlands would be a few to qualify for the second category. Following this train of thought, it may not be at all surprising if in the future some of these people-exporting nations favor a dual citizenship in symmetry with the host country. In this scenario, nationals of the Ivory Coast, Morocco or Cameroon, for instance, may be encouraged by their respective governments to acquire the citizenship of France without losing their own nationality.

The U.S. policy "*does not recognize officially, or approve of dual nationality.*"<sup>212</sup> However, it is forced to accept the unavoidable result that some U.S. citizens may possess another nationality "as a result of separate conflicting laws of other countries."<sup>213</sup> This is precisely what would happen should Mexico proceed with its new policy. Furthermore, under U.S. law, pursuant to the Immigration and Nationality Act of 1990, the simultaneous operation of the principles of *Jus soli* and *Jus sanguinis* inevitably leads to the occurrence of dual citizenship in a number of cases.<sup>214</sup>

As Western European countries (as well as former Socialist nations in recent years) have found legal means to accommodate their nationals in seeking a second nationality while residing abroad, Mexico is finally contemplating adopting similar means. This approach breaks away from the decades of official myopia towards a growing population of Mexican immigrants and Mexican-Americans that have lived in the United States for a long time.

The Bracero Program had a definite impact on the demography of the United States. This binational program constitutes the largest, legally ordained, entry of Mexican temporary agricultural workers to the United States. At the same time, it served as an indirect, cyclic avenue for immigration. However, this program did little to convey to official circles in Mexico the growing importance that the population of Mexican origin was beginning to receive in the United States. Despite their considerable concentration and growth in certain U.S. cities, Mexicans outside Mexico did not have a place in the political or diplomatic agenda of Mexico. Unquestionably, Mexico had more urgent and pressing needs to tackle within its own boundaries and could not take the

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212. Sadat, *supra* note 206, at 1184.

213. *Id.*

214. See INA § 301, *supra* note 8.

time or effort to provide protection to Mexicans in the United States.

Not unexpectedly, this official attitude of indifference moved Mexican immigrants in the United States to adopt a reserved attitude towards Mexican authorities. Mexican-Americans followed a cautious similar approach, especially when they perceived the Mexican government was chronically uncommitted and distant to their needs and interests. The Mexican-American community finds it difficult to believe that the Mexican government is willing to officially acknowledge their existence in the U.S. after decades of indifference. There are many doubts and questions. Is this a sincere effort by Mexico? Are there any ulterior motives? Why are they doing it now?

Some Mexican-Americans may think that this dual nationality policy clearly appears to be premised upon the benefits they are expected to contribute to Mexico, which no one doubts should be quite considerable in the economic, political and cultural fronts. The prospects for Mexican immigrants in the U.S. today are slightly different. It is unknown precisely how many lawful permanent Mexican residents are in this country today, or how many are legally eligible to become U.S. citizens by naturalization. Thus, it remains unclear how many are going to take the decision to finally become U.S. citizens by naturalization.

## MEXICAN IMMIGRANTS AND SELECTED METROPOLITAN STATISTICAL AREA OF INTENDED RESIDENCE

Top Fifteen Areas  
Fiscal Years 1988-1993

Metropolitan Area	1988	1989	1990	1991	1992	1993
Los Angeles-Long Beach, CA	31,914	149,827	231,267	153,918	48,466	25,132
Chicago, Ill	4,809	32,541	41,848	30,960	7,998	8,568
Houston, TX	3,158	18,382	34,973	34,388	8,931	5,997
Anaheim-Santa Ana, CA	3,044	19,763	44,414	40,778	11,478	5,657
San Diego, CA	4,339	13,794	25,540	47,035	12,867	5,425
Riverside-San Bernardino, CA	2,496	14,668	27,159	42,150	10,388	4,771
El Paso, TX	3,778	8,123	14,009	15,977	5,549	4,953
McAllen-Mission, TX	2,527	6,787	9,719	14,217	4,029	4,150
Dallas, TX	2,202	9,499	19,391	28,783	4,832	3,140
Fresno, CA	839	5,013	8,066	28,198	5,001	2,781
Phoenix-Mesa, AZ	1,716	3,961	10,726	17,184	5,268	2,254
Ventura, CA	916	3,602	7,251	14,961	3,642	2,070
San Antonio, TX	2,338	5,344	7,304	7,535	2,232	2,005
Salinas, CA	*	2,429	5,570	13,306	2,948	1,853
San Jose, CA	1,311	7,333	10,766	12,233	3,045	1,514
TOTAL IMMIGRANTS:	95,039	405,172	679,068	946,167	213,802	126,561

Source: 1988-1993 Statistical Yearbooks of the Immigration and Naturalization Service

\* Information not available

Presumably, the intention of the Mexican government in adopting the new policy is both legally assertive and promotional. It is assertive, because Mexican immigrants may become U.S. citizens by naturalization while involuntarily preserving their nationality of origin. This is going to be a constitutional mandate. It is promotional because there are thousands of Mexican immigrants who have lived in this country for many years, clearly eligible to take the final step of naturalization, but have not taken it yet. As a consequence, they live in the U.S., work here, and pay taxes here without having any say in the democratic process of where they live. They cannot vote, they cannot occupy electoral posts, they cannot figure as a political group in any elections. Politically, they are simply an invisible group. They do not exist here in the U.S. just as they did not exist for the Mexican government over the last five decades. They have not been citizens here, nor nationals there. They have only been "*bi-national political ghosts*."

The Mexican initiative is directed to put an end to this situation. It encourages Mexican immigrants to become U.S. citizens by naturalization by offering them the involuntary incentive of not losing their nationality of origin. The new Mexican policy appears to be even more "indelible" than the British "*Doctrine of Indelible Allegiance*." Under this doctrine, the sovereign's permission is needed for expatriation, so individual acts of expatriation are ineffective to sever a relationship with a state unless followed by denationalization.<sup>215</sup>

Recently, there has been a rising anti-immigrant climate in this country. Numerous legislative bills have been introduced at the state and federal levels intending to sanction immigrants who have not become U.S. citizens by naturalization, causing them deprivations in the educational, social, legal and political arenas. If this situation is exacerbated, as it may in light of the presidential election in 1996 since the candidates will attempt to rally votes from all voters including supporters of such legislative bills, lawful permanent residents are likely to be at a disadvantage from a political and legal viewpoint *vis a vis* U.S. born and naturalized citizens. The Mexican proposal anticipates this situation will take place. Accordingly, it encourages Mexican immigrants to become U.S. citizens by naturalization, without the fear of losing their Mexican nationality. If the anti-immigrant climate becomes polarized, Mexican immigrants

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215. This doctrine has been formally expressed as: "*Nemo potest patriam exudere*," which translates as "No one can shed his nationality." See Franklin F. Russell, *Dual Nationality in Practice — Some Bizarre Results*, 4 INT'L LAWYER 756 (1970).

turned U.S. naturalized citizens would not be adversely affected by this anti-immigrant climate.

The United States is currently going through a demographic revolution. Immigrants, particularly from Latin America and Asia are reshaping the profile of the United States. The constant and considerable immigration influx is affecting the United States' culture, economy, and political system. The southwest states, and in particular California, are soon likely to be demographically controlled by Latinos. The more Latinos become eligible to vote, the better for Mexico, considering that many Latinos in this country come from Mexico. Therefore, the Mexican dream of having a powerful lobby led by Latinos to advance and support the interests of Mexico in the United States, like the Irish in Boston, the Jewish in New York, and the Cubans in Florida, may not be a fantasy, but simply a matter of time. And, history has proven that Mexicans have learned to be patient.

#### RECENT DEVELOPMENTS

On December 5, 1996, the Mexican Federal Congress amended Articles 30, 32, and 37 of the Mexican Constitution to establish an indelible Mexican nationality for Mexicans by birth. Thus, Mexican nationals by birth will not be able to legally renounce their Mexican nationality, even if they adopt a foreign (i.e. U.S.) citizenship by naturalization. The constitutional amendments to Articles 30, 32, and 37 are in the process of being approved by a majority of Mexico's 31 state legislatures, pursuant to Article 135 of the Mexican Constitution. The amendments will enter into force in early 1998, approximately one year after they are published in Mexico's Federal Official Daily. As a result of the constitutional changes, the one year effective date delay is necessary to amend over 65 pieces of secondary legislation.