Introduction

THIS BOOK IS A HISTORY of the development of labor law in Mexico from 1875 to 1931. Contemporaries from the late nineteenth century through the 1930s considered labor law progressive, reformist, or a threat to private property and capitalism. Arguably, labor law sometimes manifested these characteristics. It did, from almost any viewpoint, matter in the constitution of the state after 1917, as well as for workers and businesses negotiating conditions of employment and production both before and after the 1910 revolution. That labor law was important politically, socially, and economically in Mexico, however, may seem peculiar for two reasons. Since the country was predominantly agricultural throughout the period in which labor law largely evolved—1875 to 1931—it is counterintuitive that a field of law normally associated with industrial relations should have been so significant for the nation's polity and economy. Moreover, in view of the reality that "the rule of law," or *estado de derecho*, did not typify the nation's social and political systems in this period, it appears contradictory that legal institutions and discourses became central elements of industrial relations. Yet as peasants' lands were divided and then concentrated in large landholdings in the second half of the nineteenth century, more agricultural production was organized with wage labor.[1] By the turn of the century, Mexico had a substantial agricultural proletariat; and a large fraction of the peasantry performed wage labor at least part of the year.[2] And the country began to industrialize in the 1880s and 1890s, which led to the constitution of a working class. Although this working class remained a minority of the total population productively engaged, it was situated in the more dynamic sectors of the economy and, accordingly, could affect the nation's development.[3] Furthermore, liberal ideologies dominant after 1867 among political elites and other social actors were grounded in constitutional and legal vocabularies. Political and social leaders, even revolutionaries in some instances,

frequently expressed their positions in legal terms. Even if the rule of law remained an unrealized ideal, law was normally referenced in the political and social worlds ruled by men.[4]

Nineteenth-century liberal legal principles and institutions, however, were inadequate to accommodate fully workers' interests by the first years of the twentieth century. A new legal field was necessary if legal discourse was to be relevant in the modern world. The "social (or labor) question," as it came to be called, demanded an answer. That phrase had been used since at least the mid-1800s, and it circulated throughout the Atlantic world by the end of the nineteenth century, including Latin America.[5] By then, it normally referred to the problematic social consequences of industrialization. These encompassed the general indigence of workers, urban conditions of unhygienic overcrowding, crime—and industrial conflict, especially militant labor movements and strikes. In Mexico, intellectuals, including lawyers, perceived especially threatening to the economic and political order the strikes of 1906–8. And as legalistic liberalism proved incapable of addressing convincingly such conflict, an alternative response to the labor question short of revolution developed from principles of social legislation current among legal reformers in France in the early twentieth century. Among the social reform projects inspired by French legal thought that attracted interest in Mexico was labor legislation.[6]

Labor law like workers' movements in this country became interrelated with the events, political contests, and social struggles of 1910–20 and thereafter: the Mexican Revolution. Labor reform certainly was one item of the social agendas or pronouncements of the revolutionary factions who fought one another; still, the relationship among workers, other classes, revolutionary leaders, and social reform was complex. The insurrection and civil wars of 1910–17, insofar as they were not primarily political contests, largely had an agrarian social basis.[7] The role of industrial labor in the armed conflict was less extensive, in comparison. *Campesinos* and other rural people more than urban workers joined the armies to fight against the ancien régime.[8] The 1917 constitution nevertheless dedicated an entire chapter, Article 123, to stating the rights of workers, while in the ensuing years state governments passed labor stat-

utes; and the federal government enacted comprehensive labor legislation in 1931. At the same time, federal and several state government leaders formed alliances with labor organizations, preeminently the CROM (Confederación Regional Obrera Mexicana or Mexican Regional Labor Confederation). The constitution of 1917, of course, also contained a provision authorizing land reform and the nationalization of property, Article 27; agrarian property relations remained the nation's great problem through the period of this study.[9] But as scholars have noted repeatedly, labor law, along with workers' movements, came to play a central role in the organization of the new state and its corresponding revolutionary ideology.[10] This book suggests further that given the importance of labor law for the new state and workers' organizations, the federal judiciary's adjudication of labor disputes and interpretation of new legal principles were also significant in the evolution of the nation's political and social contours after 1917.

As the following chapters show, social and political actors paid attention to the rulings of Supreme Court justices in labor cases. Judge-made law sometimes could preoccupy contemporaries, notwithstanding the nation's civil law tradition, weak judiciary, authoritarian government, and pervasive corruption. Indeed, probably because of such presumptions or observations (not restricted to Mexico), the legal history of modern Latin America as a discipline has less scholarly production to its name than many other historical specialties.[11] But for Mexicans, that the judiciary was relatively weak, dependent on the executive power, or corrupt did not detract from the point that it mattered politically or in industrial relations. In his revealing parting message, on the cusp of a new generation of Supreme Court justices taking office in December 1928, the president of the Court, Jesús Guzmán Vaca, acknowledged many of the faults of the federal judiciary as well as the difficult circumstances confronting the justices.[12] The federal courts had faced armed revolt and powerful and defiant local bosses who disregarded judicial orders and legal norms. No other era had witnessed such corruption of judges as "these dangerous and ill-fated days." Yet Guzmán Vaca insisted that the Court for the most part had operated ably, dealing with backlogs of cases, applying the law assiduously. The editors of *El Universal*, a major Mexico City daily,

queried the high court's efforts to ameliorate corruption or hold government officials accountable for their failure to implement or obey judgments; but its editorial criticizing the departing justice's message recognized that most of the high court judges were not venal and that the social and political situation of the country had been abnormal.[13]

Consistent with these statements, while presenting a personal glimpse of Mexico's judicial system, is Ernest Gruening's *Mexico and Its Heritage*. Around 1927, this American writer and later senator interviewed numerous lawyers of the Mexico City bar about their perceptions of judicial corruption and judges' weaknesses or vulnerability to political pressures, especially from the presidency. His conclusion, derived from the interviews, was that corruption existed in the federal judiciary, was overstated, and was most extensive in cases involving petroleum companies. A couple of the justices whose terms ended in 1928 had been open to subornation, but the rest were honest. Historians have noted the notorious external pressure exerted on the federal judiciary in oil cases, some of which implicated the nation's security.[14] In most labor cases, however, it is apparent that the justices reacted to changing circumstances, ideologies, and constant litigation more than to direct pressure from the president.[15]

MEXICO'S LEGAL SYSTEM

Mexico's legal system partly resembles both continental Europe's civil law tradition and aspects of American constitutionalism. As in other Latin American countries with an Iberian legacy, Roman legal concepts, codified in the early nineteenth century by France and subsequently by Spain and other continental European states, influenced Mexican legal education and practice. In Europe, Roman-based law consisted mostly of judicial procedure and a set of categories of rules addressing relations between individuals—that is, private law, including contract and property law.[16] In the civil law tradition, clear distinctions have been drawn between private and public law and among the three branches of government (the separation of powers). Legal scholars theorized that the main source of written law should be the legislature. Judicial opinions have been accorded less weight as legal statements, frequently resulting in the absence of a rule of

stare decisis or controlling precedent. Thus, following the paradigm of the French civil code of 1804, legal experts drafted under legislative auspices detailed, statutory codes; in Mexico, the government codified the principal areas of private law with the promulgation of the civil code in 1870 for the federal district.[17]

Mexico's legal system also shares aspects of its American counterpart. The U.S. constitution impressed the drafters of the 1857 constitution, on which the 1917 constitution was modeled. Both the 1857 and 1917 texts outlined a federal system of government. Each state has a governor, legislature, and courts. The federal government similarly has three branches or powers: the presidency, a bicameral congress, and judiciary. The latter has consisted of federal district courts located throughout the republic, sometimes an intermediate level of appellate courts, and a supreme court that, among other tasks, regularly reviews appeals directly from district courts.[18]

If litigation has not been as pervasive in Mexican society as in the United States, courts still have been involved substantially since the colonial era in the resolution of individual and group conflict. And since the restoration of the liberal republic in 1867, the most important institution for challenging state action or seeking relief from its effects has been the *juicio de amparo*. In connection with the development of labor law, this has been a lawsuit initiated in federal court by an individual who seeks the judiciary's protection against an action of a public authority, including its application of a law, which violates the constitutional rights of the individual.[19] The remedy of the *amparo* (literally, support or protection) is essentially injunctive: the federal judge orders the public authority to carry out an action or refrain from doing so, on the grounds that otherwise the authority would infringe the petitioner's rights. Encompassed within such injunctive relief can be a federal judge's declaration that since a state court's decision, or that of an administrative agency, infringes the petitioning individual's rights, it is legally unenforceable.[20]

The distinctive characteristic of the *amparo* has been its "Otero formula." In the period of this study, the federal judiciary's order could protect only the individual petitioner granted the amparo. That is, the judicial ruling did not have general applicability, even if the court found a law,

widespread policy, or governmental practice unconstitutional. The judiciary could not derogate a law in general or enjoin an entire policy or practice of another branch of government except to the extent necessary to obtain relief for the individual in the particular case before it.[21] In actuality, after 1917, the Supreme Court's amparos declaring that a law or practice contravened an individual's rights, especially if more than one individual filed an action at the same time, had the practical effect of undermining the law in question.[22]

In the types of amparo cases examined in this book, the litigant filed a complaint in a federal district court, normally located in the state where the public authority's challenged action had occurred, while the Supreme Court, located in Mexico City, ruled as the final court of appeal.[23] These amparo actions normally had two basic, remedial stages: the judge's suspension order and the amparo judgment.[24] The individual petitioning for an amparo could request of the federal judge an order suspending execution of the offending state action at the time the complaint was filed. The judge might enter a provisional suspension order on the basis of whether the petitioner risked irreparable harm, balanced against the public interest, pending further review of the substantive merits of the amparo petition. Litigants could appeal the suspension order, as they could an amparo order of the federal judge. In the cases relevant to this study, during the Porfirian era (1876–1911), the Supreme Court issued the final decision. Since 1917, the policy of the Court's final review of amparo (and suspension) proceedings continued, although the volume of amparo cases pending before it increased through the 1920s.[25]

Under the post-1917 governments, as well as intermittently before then, the federal judiciary adhered to a narrow policy of *stare decisis*. In general, five consistent, consecutive rulings by the Supreme Court on a legal point (*tesis*) established a controlling precedent, *jurisprudencia*, on lower federal courts and on its own subsequent decision making, which only it could overrule if it did so explicitly.[26] A *tesis* typically is stated in a few sentences, phrased abstractly, and collected in the Supreme Court's reporter and other publications.[27] *Jurisprudencia*, the Court's interpretation of constitutional provisions, statutes, or other legal sources, in connection with cases before it, and as articulated in *tesis*, is a form of judge-

made law, or case law. Even in instances where the opinion of a Supreme Court ruling is not binding in subsequent cases (because it does not comprise one of five consistent rulings), it may have some persuasive effect. More broadly if inexactly, written and published opinions of the high court might be deemed a part of judicial doctrine on a legal issue, hence *jurisprudencia,* too, although such opinions technically would not be applicable as law in the same sense as a controlling decision.

The Porfirian Supreme Court ceased its operation in August 1914, following the defeat of Victoriano Huerta in the revolutionary civil war.[28] The victorious Constitutionalists reestablished the Court under the 1917 constitution. The Court with different justices began to operate again in June 1917. The constitution of 1917 conserved the amparo action, outlined in Articles 103 and 107, and directed that the Court would decide amparo appeals as one body: all eleven justices voting jointly, if present, in public conferences.[29]

The drafters of the 1917 constitution sought to ensure greater independence for the federal judiciary than it had under the authoritarian rule of Porfirio Díaz by gradually introducing between 1917 and 1923 lifetime tenure for justices and by placing the nomination of justices and judges outside of the control of the federal executive.[30] In 1928, amendments to the constitution modified the structure of the Supreme Court, increasing the number of justices from eleven to sixteen and dividing the tribunal into three chambers or *salas*, each of which would decide amparo appeals separately and specialize in specific legal areas. The second, administrative, chamber was to review most amparos involving labor matters, as they normally resulted from the determinations of administrative agencies. The amendments also changed the procedure for selecting justices. Henceforward the president nominated them, with the Senate ratifying the choices.[31]

LAW, POLITICS, AND IDEOLOGY

Liberal belief has distinguished law from politics at least since the nineteenth century.[32] To a degree, the constitutional separation of powers and the distinction between public and private law have the function of delegating political decision making to the sovereign (in modern republics

normally the legislature) and application of the laws to the judge. Jurisprudential theories have defined law variously and in turn have envisioned the social function of law and adjudication differently.[33] Advocates of social legislation in the early twentieth century engaged in a critique of what law was, who made it, and what its purposes were. In Mexico, justices opined about these issues, too, as concepts of law changed with the advent of labor legislation. At the same time, the belief persisted that judicial decision making differed substantially—and should—from politicking or legislating. In the editorials of major newspapers, politics had a pejorative connotation, and editors leaned toward tagging politics and politicians with corruption. Ideally, the judge or justice should be independent of such politics, knowledgeable in the science of law, and honorable. Such overarching values transcended the legal community, implicating political discourse—even revolution.

The formal separation of powers within the state that the drafters of the 1917 constitution designed did not result, as contemporaries and scholars since then have observed, in complete judicial independence. In the mid-1920s, Vicente Lombardo Toledano, an early scholar of labor law as well as then a CROM leader and lawyer, remarked that Mexico's federal government centered on executive power: it was a presidential system.[34] Scholars have used the word *presidencialismo* to describe an all-powerful presidential system, which, however, was not consolidated until the mid-1930s.[35] Given such appraisals, one can readily conclude that the judiciary was a dependent adjunct of the executive branch and law epiphenomenal of other political processes. But it is also evident that the state's chief executives from 1917 to 1935 presided over inherently weak administrations. Nor was the national legislature a strong, unified, law-making body during most of the 1920s; throughout much of the decade, successive presidents failed to control it.[36] The federal government barely maintained its authority over the nation between 1917 and the early 1930s. Each president during his administration confronted rural violence, army revolts, challenges from the Catholic Church and U.S. interests, or persistent regional opposition—as well as perennial labor conflict.

In such a political and social context, the federal judiciary is more accurately perceived as one among several weak but not insignificant

governmental actors. Contemporaries certainly realized this; more recently scholars have argued that the Supreme Court, which the federal executive efficiently subordinated with the 1934 constitutional reforms adopted by Lázaro Cárdenas, maintained a degree of autonomy in the 1920s, partly due not only to the weaknesses of the presidencies but also to the selection process of justices. A review of their nominations in 1917, 1919, and 1923 suggests that it was a political process, but not one completely determined by the president.[37]

The very nature of the amparo action, structured pursuant to the Otero formula so as not to implicate political issues, has an inherent political element. Until Díaz's first presidency, the Supreme Court had frequently played an independent and substantial role in the nation's politics.[38] Many of the justices sided with the president of the Court in his defiance of President Sebastián Lerdo de Tejada's attempt to orchestrate his reelection in the three-way struggle that resulted in Díaz's military overthrow of Tejada in late 1876. One early Díaz ally, the renowned justice Ignacio Vallarta, advocated for a more politically restrained judiciary while promoting judicial review and the value of jurisprudencia in amparo cases. By the early 1880s, Díaz regarded Vallarta a rival. Vallarta resigned, and soon the Court posed less of a challenge to Díaz.[39] The amparo action, however, continued to allow the Court to voice an independent position; but this occurred partly because the impact of its judgments was legally constrained—which was an initial political choice and premise about the amparo institution.[40]

Political factors external to the deliberative process of judicial decision making certainly have continued to influence it. But legal positions and judicial language are political acts, too, insofar as they are actions by state officers that imply a relationship between the state and individuals or relations between individuals and groups that the state attempts to govern. And as the judiciary operated in a context of social and political conflict, it could not have been immune to it. The recurring aspiration to segregate law from politics was perhaps utopian and was, in any event, unachievable in practice. In particular, the discourses around labor law tended toward acknowledging by the mid-1920s that the new legal field and its application were connected with the public interest. Justices

couched their opinions implicitly or explicitly in language referring to the consequences of their decisions and extant social realities: judgments were policy oriented, not simple applications of legal text. Employers avoided pro-labor determinations of administrative agencies by asserting their constitutional rights in federal courts when they petitioned for amparo orders, thereby raising fundamental questions implying state conduct and federal-state relations as well as industrial relations. The legislating of labor rights, meanwhile, made explicit references to the constitutional rights of labor and capital, as the labor movement invoked the evolving rhetoric of the triumph of the revolution, embodied in Article 123.[41] As the politicization of law was more explicitly pronounced, the politics of industrial relations came to be expressed in legal terms.[42]

METHODOLOGY

The Supreme Court began to publish regularly its legal opinions in 1871, in the *Semanario Judicial de la Federación*. There are a few lacunae, from 1875 to 1880 and from 1914 to 1917; still, the continuity of published decisions is impressive. In both a narrow and expansive sense, the Court's published opinions form a body of judge-made law and include doctrines of labor law, a point noted by Mexican legal scholars like Lombardo Toledano.[43] As John Dawson argued in his study of the evolution of judge-made law throughout Western Europe since the Middle Ages, even in the absence of a rule of controlling precedent, decisions and their corresponding rationales tend to become normative in the resolution of subsequent disputes brought before judges when they are organized and made accessible to litigants and their lawyers.[44] This book relies on Dawson's observation to demonstrate how adjudication has been an integral part of the making of law in Mexico during a period when the Supreme Court was able to play an important role (and more than at some other times in the nation's history). More generally, the arguments in this book are influenced by legal realist conclusions (derived from study of the common law system dominant in the United States) that the law is the consequence of what judges and other government officials do.[45] In Mexico, within the civil law tradition where judges' actions have been limited, such a definition of law should be qualified. It is notewor-

thy, nonetheless, that by 1930 Lombardo Toledano, for one, apparently independently of American legal realist thought, approached holding a similar viewpoint that law, in part, was the result of the decisions and actions of officials, including judges. By then, another major legal and public intellectual, Narciso Bassols, had also concluded that the Supreme Court's *jurisprudencia* on labor issues was crucially important for labor law, perhaps more so than in any other legal area at the time.[46]

The published opinions of the *Semanario Judicial* over the period of this study vary in length and detail. They are collected in five series (*épocas*) of volumes, the fifth covering the post-revolutionary years after 1917. Under the Porfirian regime, the Supreme Court published relatively few cases about servitude and the constitutional right to work or pursue an occupation, which was the extent of its explicit adjudication of labor matters. By the late 1920s, labor cases were numerous and encompassed a wide scope of employment-related issues. Many volumes of the *Semanario Judicial* have several indices, including typically a subject index and one for cited constitutional provisions. From them it was possible to identify cases that dealt with labor. The *Semanario Judicial* also collects *tesis* in some volumes and appendices, as have independent treatises edited by legal scholars. After identifying labor cases by perusing indices of the *Semanario*, I compared findings with the tesis grouped in the *Semanario* and in other treatises. In view of the evident changes in publication over decades, it is doubtful that this method yielded every relevant labor case, but the approach did produce a fairly reasonable and accurate sense of the case law as it evolved over time.[47] Since this study is concerned with detailing the development of the doctrinal content of labor law, the legal, political, and social reasons for this evolution, and some of the political and legal implications of it, quantification of the cases was not necessary. Quantification, of course, would be important for several arguments about the actual effects of Supreme Court opinions on both the parties to a case and for the populations that were surely interested in the issues the Court reviewed.[48] But by identifying the trajectory of judicial decisions and legislative enactments, and their content, with reference to their discussion in contemporaneous periodicals and other records, it at least should be clear that labor law and its adjudication were at times

important elements in the political discourses of the period 1875–1931 and significant for postrevolutionary industrial relations.[49]

A schematic outline that is helpful for the analysis of institutions classifies related phenomena as to whether they are the specification or articulation of a norm, the application or execution of it, or the response by interested actors to the application or administration of the specified norm.[50] This study is concerned with the articulation and application of legal norms through specifically recognized governmental branches, legislatures and federal courts, which in the Western legal and liberal tradition ideally enact and apply law.[51] It argues that in the application of the law, further law is frequently made: specification and application are often closely related even when they are ideally distinguished (in view of the perception of a separation of powers).[52] Indeed, it is suggested that the conduct of social actors—for example, their turning to the courts for adjudication—further shapes the law in that it provides courts the basis for their decisions and their rationales: thus, if businesses had not sought injunctive orders against administrative organs regularly after 1917, the federal judiciary would not have developed a body of law about their nature.

Mexican legal scholars and government officials, educated primarily in the civil law tradition, came to envision that systematic codification of labor law would eventually follow the drafting of the 1917 constitution. Fourteen years transpired before the promulgation of comprehensive national legislation. Because this was both manifestly a political and a legal process, this book discusses the text and earlier draft bills and narrates the events that led to passage of the federal labor law. It relies on the reported legislative history, as well as on extensive correspondence of the American embassy, which was keenly interested in the matter. The result is a piecing together of the formulation of the legislation by close readings of legal text and U.S. State Department records. Private archives were also examined, as were published memoirs. To the extent that such an approach was possible in the case of the drafting of Article 123 and its antecedents, this was also done. Lastly, law and policy journal articles published between the 1880s and 1934 were reviewed, as these often in-

fluenced or foreshadowed the contours that legislation and judicial decisions assumed.

Translating terms embedded in Mexico's legal system and culture has been problematic.[53] Many legal concepts have been part of a distinct institutional and discursive history that might be analogous to that of the United States, or share much in common with it; nonetheless, the vocabulary is also historically specific and sometimes not directly equatable. To the extent that there is an English equivalent to the Spanish term, this has been used; one example is the word *jurisprudencia*, or case law, or judge-made law; but the word also can be mistakenly translated as jurisprudence. Where the term has comparable English elements but is unique to Mexico or Latin America, the Spanish sometimes has been kept and initially italicized: the outstanding instance is that of the *juicio de amparo*, which if translated as a writ, as has been done, could be misleading, in that the connotation for English readers would be the common-law writ system.[54]

HISTORICAL BACKGROUND AND SUMMARY OF CHAPTERS

Chapter 1 presents an overview of liberal principles that informed workers' rights in the nineteenth century. These were not negligible: the right to work or freedom of labor, the right to organize and strike. In 1875 liberal intellectuals construed the 1857 constitution to guarantee these rights. They also utilized political economic ideas in their recommendations for better and less exploitive relations between capital and labor. Generally underlying such principles was the liberal belief that the state should let economic actors, including employers and employees, enter into contracts voluntarily. To a marked extent, the nation's Supreme Court during the Porfirian era concurred with these liberal tenets. Chapter 2 observes how the high court between 1875 and 1910 repeatedly upheld the right of free labor of mostly poor agricultural laborers petitioning the federal judiciary for relief against their employers and local authorities. While the same justices apparently avoided involvement in industrial disputes, it is still noteworthy that the Supreme Court applied

the 1857 constitution on behalf of those laborers who were able to reach a federal court.

Chapter 3 describes the labor policies of Díaz's regime in the first decade of the twentieth century. Porfirio Díaz was a dictator, but his dictatorship maintained constitutional and legal forms of rule. Díaz, moreover, came to power in 1876 as a liberal as well as a military leader, subscribing to the political ideology consolidated after 1867 first under Benito Juárez and then Lerdo de Tejada. Díaz's very legitimacy as president relied on the maintenance of liberal, legal, and constitutional forms of governance. And like Lerdo de Tejada before him, Díaz cultivated popular, urban groups, including artisanal and labor associations, for their support. But as the country industrialized, strike activity increased and risked affecting economic progress. Facing substantial labor unrest, government officials, including Díaz, personally responded in an ad hoc manner, to some extent continuing the strategy of encouraging and then coopting some labor organization, a strategy that had proven relatively successful in earlier decades, but which failed in 1906–7. By then, it is evident that Díaz's closest circle of advisers, the *científicos*, was considering labor legislation, mostly repressive. In contrast, by the first decade of the twentieth century, major law and policy journals had published articles or excerpts of books by European legal scholars that sympathetically portrayed the new social legislation. This is the subject of Chapter 4, which reviews such articles published in Mexico, thereby pointing to how European legal concepts were disseminated under the Porfirian regime and comprised one of the early sources of labor law.

Díaz failed to implement any substantial social reforms in the last years of his administration or hold fair elections when Francisco Madero contested his reelection in 1910. After the suppression of his electoral campaign, Madero called for an insurrection to begin on November 20, in the Plan of San Luis Potosí. The Plan denounced the regime for, among other things, violating the constitution, subordinating the judicial and legislative branches to executive power, and maintaining a judicial system that legalized the depredations of powerful interest groups.[55] It was a critique echoing Luis Cabrera's, which had reviled the *científico* law-

yers and the Porfirian courts for cronyism and corruption.[56] The Plan did not speak directly to the social question, but Madero had promised to recognize labor's constitutional rights. If his earlier campaign rhetoric did not transcend the parameters of the 1857 constitution, Madero's defiance of Díaz resonated with labor, in contrast to the mixed overtures of Porfirian politicians to workers, which were belied by their moderation or by recent memories of repression of strike movements.

Madero's presidency (1911–13) represented a shift in the state's approach to industrial relations, and one to which labor had contributed. Workers, observing the oscillation in official positions, beginning with Díaz's resignation, launched unionizing movements—and strikes.[57] Madero generally tolerated the surge in labor mobilization, although government officers repressed some strikes.[58] Notably, Madero's administration coordinated negotiations in the textile industry between labor and capital, with a newly created labor department playing an active role, in order to end disruptions in this economic sector by reaching an industry-wide collective agreement. The textile conventions that resulted from the negotiations ultimately failed on both counts. But they marked the beginning of a formal institutionalization of industrial relations with the state's routine participation. Similarly, draft legislation sponsored by liberal members of the Twenty-Sixth Congress, the *renovadores* or renovators, was an early sign of positive labor law in the country, even if it was not passed.[59]

Victoriano Huerta overthrew Madero in February 1913. In March, Venustiano Carranza, governor of the northern state of Coahuila, initiated the Constitutionalist revolution against Huerta's usurpation of legitimate authority. Carranza would lead the Constitutionalist revolution as *primer jefe*, or first chief, pursuant to the Plan of Guadalupe, proclaimed on March 26. It accused Huerta of treason and the Congress and Supreme Court with violation of the nation's laws and constitutional precepts for its support of Huerta.[60] But the plan omitted any allusion to social rights. Although Carranza eschewed a social orientation for the struggle against Huerta, many leaders of the armed bands that coalesced in northern Mexico and loosely formed the Constitutionalist armies differed from

him in this respect.[61] Meanwhile, Zapatistas—peasants in southern Mexico—sustained their social struggle for land; and workers in Mexico City and elsewhere continued to defend, if not advance, their interests. Huerta recognized the advantages of state mediation of industrial conflict and moderate social reform; now under his rule, the labor department continued to operate. Only belatedly, Huerta repressed the anarchist-leaning Casa del Obrero Mundial (COM, the House of the World Worker) that had formed in 1912 in Mexico City.[62]

Carranza remained ambivalent toward independent workers' movements, even as many of his generals sought alliances with labor leaders. After Huerta's defeat, when civil war ensued between the major revolutionary armies (Conventionists against Constitutionalists or rather Villistas and Zapatistas against Carrancistas), Carranza and his closest advisers did redefine the Constitutionalist revolution as one for social transformation. In December 1914, the first chief amended the Plan of Guadalupe to allow for labor reform. Constitutionalist generals decreed reforms to end servitude and other forms of excessive exploitation in territories they controlled. In February, the Constitutionalists entered into an agreement with the COM, with the encouragement of Carranza's leading general, Álvaro Obregón, and some of his sympathizers. This agreement enabled the COM to undertake propaganda campaigns under the aegis of Constitutionalist military commanders and to organize workers, albeit sometimes in competition with the labor department, particularly in the state of Veracruz. In return, the Constitutionalists gained some labor support, skilled munitions workers, and more soldiers for their struggle against the Villistas and Zapatistas.[63] Following major victories against Pancho Villa, however, Carranza demobilized the COM and hardened his position against organized labor. It was a stance not fully shared by many Constitutionalists, including powerful military commanders.

When Carranza convened a constitutional congress in late 1916, ostensibly to reestablish legal and constitutional rule reflective of the changes that had occurred in the preceding years of revolutionary civil war, the Constitutionalists were divided amongst themselves as to the extent that social reforms should be incorporated into the new constitution. Ulti-

mately, of course, the revised charter did include provisions for land—and labor—reform. More important for the first chief, the 1917 constitution also legitimized his subsequent presidency and augmented the strength of the executive.

On May 1, Carranza became Mexico's constitutional president. He nearly completed his term, which would have run to November 30, 1920. Carranza ostensibly tried to govern as a civilian, but most of the governors and regional powers in the country were military leaders, a few of them allied with mobilized popular groups to varying degrees, such as in Veracruz, or committed to social reform, such as in Yucatán. Carranza's hold on power was actually tenuous, and it deteriorated over the next few years. His attempt to co-opt labor through the indirect sponsorship of the founding convention of the CROM in March 1918 failed. The CROM was disposed to collaborate with politicians but not with Carranza. The president was able to designate a pliable civilian successor, but this too backfired: Carranza could not check Obregón's plan to run for the presidency; his awkward attempts to thwart Obregón led to a political-military revolt, seconded by a broad range of popular groups. Carranza's government collapsed in the spring of 1920. The president evacuated Mexico City, with much of the apparatus of civilian government, including Supreme Court justices. Anti-Carrancistas foiled his attempt to retreat to Veracruz and killed him.[64]

Obregón succeeded to the presidency after the interim government of Adolfo de la Huerta promptly held elections. Obregón would complete his presidential term, but he, too, faced a major military revolt in late 1923, as well as constant regional challenges to federal and presidential power. Obregón, unlike Carranza, countered the revolt and political rivalries from state governors in part by successfully collaborating with labor and agrarian groups. His relationship with the CROM in particular was significant. The CROM and Obregón, while a presidential candidate, had entered into a secret pact in 1919, which would have consolidated a close relationship between the CROM and the president, in return for the federation's assistance.[65] To a modest degree, Obregón tried to honor the stipulations of the pact; the CROM, too, crucially aided his presidency during the 1923–24 military rebellion.

Chapter 5 reviews these events of the revolution and postrevolutionary years (through 1924) in relation to the development of labor law, including the establishment of the federal labor department in 1911, and the formulation of Article 123. Labor's social and political importance grew in this period. By 1924, labor federations or unions were crucial partners of governors or other regional political bosses in a number of states, and the CROM had become a pivotal constituent of the executive power. Significantly, Obregón, who had to compromise substantially with American interests and regional strongmen when he assumed the presidency, was pushing for comprehensive federal labor legislation by 1924.[66] The president had realized that the federal government needed to regulate labor relations, in view of the alternative: states doing so in a way that antagonized industrial interests, undermined the national economy, and jeopardized the very viability of a central state.

The nation's reestablished Supreme Court quickly began in 1917–18 to adjudicate labor disputes that were related to major political and social conflicts then unfolding in several states. This is historically significant: during the Porfirian era the Court's judgments in labor matters had limited applicability and, as noted, were unrelated to major industrial conflicts. The Court now became involved in the organization of industrial relations. At a time when the presidency was not legally or constitutionally enabled (and at times politically unable) to address routine and recurring industrial conflict in different states, the Court's amparo orders functioned to counter state governments' policies or laws.

Among the more important institutions for the development of industrial relations and labor law in Mexico were the boards of conciliation and arbitration.[67] These administrative organs constituted a mechanism for the states to regulate labor relations and, in doing so, were also a novel innovation in the development of the postrevolutionary state. Composed of business, labor, and government representatives, they tended to rule against employers, cementing labor-governmental blocs at the local or state level and providing additional leverage to unions against employers. Supreme Court decisions in amparo cases frequently interpreted the enforceability of the awards of labor boards; the decisional law that evolved was thus consequential both for the development of labor law

and the formation of an industrial relations system. Additionally, the Court dealt with constitutional questions related to the legality of the federal executive's promulgation of decrees that attempted to establish the latter's jurisdiction in labor matters. Again, the stakes were high.

Chapters 6 and 7 analyze, as a legal, historical process, the Court's case law fashioned in response to labor disputes arising between the effective date of the 1917 constitution and passage of the federal labor law in 1931. The analyses are fairly detailed for three reasons. First, outlining the sequential order of the judge-made law suggests how the Court's decision-making process constrained its discretion to adjudicate labor cases and contributed to the structure of its legal doctrine. Second, explaining the opinions that justified the Court's decisions illustrates how underlying labor conflicts about which the Court deliberated were conceptualized in legal terms. Third, the combination of analysis and narration demonstrates how the Court helped shape labor law in the social and political context of the 1920s. This focus on legal decision making, however, is not meant to deny that political factors contributed to the outcomes of judicial decisions and in some instances were presumably decisive. The argument, rather, is that the Court's case-by-case decision making, which required a rationale in each case, should not be imputed solely to external, political determinants.

Not only Obregón (1920–24), but also Plutarco Elías Calles (1924–28), as president, tried to pass labor legislation, with the expectation that it would institutionalize the federal government's role in industrial relations, thereby stabilizing them. Neither succeeded. It was Calles's near puppet (and politically feeble) president who finally promulgated a comprehensive labor statute. Despite the CROM's desire for national labor legislation, along with that of two presidents, passage of it was actually not feasible before 1931. The political context was extremely difficult for national legislation that required endorsement by adversarial parties. Chapter 8 recounts the attempts to enact federal labor legislation, which culminated in August 1931 with the promulgation of the federal labor law (Ley Federal del Trabajo).[68]

The CROM had already formed a strong relationship with Calles before he became president in 1924. He appointed the CROM leader

Luis N. Morones as minister of the Secretariat of Industry, Commerce, and Labor (Secretaría de Industria, Comercio y Trabajo, or SICT). Morones became the most powerful minister in the president's cabinet. Even while the CROM continued to utilize racketeering tactics against its adversaries, Morones and Calles also adopted a more conciliatory approach to employers, emphasizing cooperation between the factors of production over class war. Morones, both as government minister and the head of the CROM, discouraged strikes. The SICT endeavored to arbitrate strike activity, declaring some concerted actions illegal and a few legal (and hence meriting state support). Meanwhile, Morones attempted to extend CROM influence among unions and workers and to marginalize independent labor organizations, some of which were more militant than the CROM. The General Confederation of Workers (Confederación General de Trabajadores or CGT), nominally anarchist, was anti-statist and anti-CROM. It also was influential in textile factories in parts of the country. The railroad unions especially were independent of Calles, strategically important for the national economy, and also anti-CROM.

Between 1925 and 1928, Morones promoted union campaigns and government policies to replace these and other unions with CROM organizations that would collaborate more harmoniously with employers and government and contribute to the nation's economic growth. Until the economic crises of the late 1920s, such policies and CROM campaigns were relatively successful. In the first year of Calles's administration, amidst a depressed textile industry torn by labor conflict, Morones sponsored a convention that brought together hundreds of employer and (mostly CROM) union delegates for a series of meetings to negotiate an industry-wide collective contract. Between 1925 and 1927, labor and capital representatives met, reaching a comprehensive agreement, which aimed to rationalize wages across the industry; it also conceded to unions control over hiring. A system of mixed factory commissions, then district and regional committees, would resolve labor disputes, with the SICT as final arbiter (or, once created, the federal labor boards of conciliation and arbitration). This was an impressive system of industrial relations, surpassing Madero's earlier efforts to establish an industry-wide convention and, indeed, Díaz's notorious arbitral award of January 1907. In contrast

to earlier agreements, the 1925–27 convention had included the full participation of unions.[69] Interestingly, the Supreme Court was ambivalent about the legal implications of the federal government's effort to regulate a national industry; in several decisions it enjoined aspects of it, as noted in Chapter 7.

In the transport sector, Morones and Calles tried to eliminate the independence of rail unions and downsize the labor force of the largest rail company, in which the government had a majority interest and whose ballooning debt was held by foreign creditors. The consequences of Morones's strategy were more disruptive than in the textile manufacturing: a widespread strike occurred in early 1927, which led to Morones declaring it illegal, the Supreme Court finding Morones's declaration unconstitutional, and Calles decreeing the creation of the federal labor boards to resolve such strikes. Again, as detailed in Chapter 7, the Supreme Court's decisions influenced the development of labor law, pinpointing some of the issues that Calles as president had to address to ground federal, executive authority more firmly on a legal base.

This legal imperative was not trivial. Calles exercised substantial power informally; the reliance on the CROM during elections in any number of instances attested to this.[70] At the same time, the legitimacy of Calles's rule was disputed: major military revolts occurred in 1927 and 1929; American oil interests had challenged his and Morones's attempts to regulate them more closely; and, in 1927, Calles confronted a large-scale rural insurrection of Catholic militants opposed to the anti-clerical policies of the federal government—and of Morones. Meanwhile, Obregón's campaign for the presidency (which necessitated a constitutional amendment) accelerated; arguably, by 1927, the general and ex-president also wielded extensive political influence.[71] This presaged the decline of the CROM. Obregón had strengthened his ties with the CROM's popular and political enemies since 1924 and indicated he would not compromise with the labor federation. Calles's stance toward the duel between Obregón and Morones has been difficult to decipher.[72] In May 1928, Obregón, who did not hold a state office, persuaded the national Congress to amend the constitution on two points. The first derogated the independent status of the federal district's government (the

CROM had controlled it). The second, as mentioned, restructured the Supreme Court; and the incoming president, presumably Obregón, would nominate new justices to begin serving their terms on December 20, 1928. Clearly, Obregón wanted a Supreme Court he could control more completely. The constitutional reform suggests that whatever the prior susceptibility of the Court to executive pressure was, it had not been sufficient to satisfy Obregón; at the time, he justified the need for reform by asserting that the Court had enjoined agrarian reform decisions—prejudicing his new agrarian allies. The reform prompted accusations of imminent executive subordination of the judiciary.[73]

The assassination of Obregón immediately after he won the presidential elections in July 1928, meant, among other things, that the interim president, Emilio Portes Gil, who was educated in law, nominated the new justices. The political implications of Obregón's death, however, remained inimical for the CROM. Portes Gil, inaugurated at the end of 1928, was not only an Obregonista but also an enemy of the CROM; as governor of Tamaulipas, he had sponsored rival organizations and had passed comprehensive labor legislation.[74] Even before Portes Gil's inauguration, Obregón's followers accused Morones of masterminding the assassination. He resigned from the SICT and other CROM leaders in the government soon followed. To appease further the Obregonistas, Calles sacrificed his ties with the CROM, tilted his government to include more of Obregón's partisans, and, in September 1928, announced he would not seek the presidency again. In his address to the national Congress, the president said that Mexico would move from "a country ruled by one man" to a "nation of institutions and laws." Henceforth, a government of institutions would replace rule by caudillos (that is, military leaders, like Obregón, for one).[75] In early 1929, Calles founded a party, the PNR (National Revolutionary Party), to preside over national and state elections and channel military commanders' rivalries.

This political and legal context framed the legislative efforts described in Chapter 8. Through the late 1920s, presidential control of the legislature remained problematic;[76] and Obregón practically countered Calles's executive power by April 1926.[77] Different actors in the 1920s favored federal legislation to varying degrees. Industrialists wished to avoid the

reach of popular, quasi-radical state governments that sometimes had supported unions over them in industrial conflicts; but they also feared federalization insofar as it might incorporate provisions or arrangements that would strengthen a militant labor movement. Organized labor (the CROM, but also the railroad workers' confederation and other groups) generally desired federal legislation, but by 1931 union leaders were anxious that a federal statute would undermine what they had achieved until then. Notions of social legislation and liberal doctrine informed the political process of passing the legislation, as did the labor conflicts of the 1920s and their judicial manifestation. The conclusion reiterates these points, as the main themes of this study are reviewed: how liberal and then social legal norms and doctrines contributed to the shaping of an industrial relations system with an essential legal component by 1931; and how judge-made law developed and variously influenced labor legislation and industrial relations under Porfirian and postrevolutionary regimes.