

CHAPTER XII.

CONSTITUTIONS AND LAWS.

VARIOUS CHANGES OF THE MEXICAN CONSTITUTION. — PRESENT ORGANIZATION OF THE NATIONAL AND STATE GOVERNMENTS. — CONSTITUTION OF 1847. — LEGISLATIVE AND JUDICIARY — NATIONAL AND STATE. — JUDICIARY — ADMINISTRATION OF JUSTICE — CIVIL AND CRIMINAL PROCESS — MAL-ADMINISTRATION OF JUSTICE. — PRISONS — CRIME — ACCORDADA. — CONDITION OF PRISONS. — STATISTICS OF CRIME IN THE CAPITAL — GARROTTE. — MEXICAN OPINIONS.

SINCE the downfall of Iturbide the body politic of Mexico has passed through many stages of revolutionary and factious disease. Four constitutions have been formed and adopted by the people or their temporary rulers independently of the Bases de Tacubaya, under which Santa Anna ruled despotically until the month of June, 1843. These are the Federal Constitution of 1824; the Bases y Leyes Constitucionales, or, Central Constitution of 1836; the Bases Organicas de la Republica Mejicana of 1843, and the restored Federal Constitution, with amendments by an *acta de reformas*, in 1847. Five great organic changes, in twenty-six years, have thus continually swayed the people between Federation and Centralism; and we may hope that, after all these vital alterations, besides all the minor military *pronunciamientos* or *gritos*, which, in the intervals have vexed the public tranquillity, the country has, at length settled down firmly upon the reliable basis of a great but balanced confederacy.

The Constitution of 1847 creates a Federal Republic; and, with the exception of the intolerant articles in regard to religion upon which we have commented in the preceding chapter, it is a document worthy of freemen who desire to avoid consolidation and are anxious to preserve the distinct, responsible activity of their states. This instrument, after indicating the subdivision of the whole territory into the states heretofore enumerated in Chapter 1st, deposes the national legislative power in a Congress formed of a house of representatives and a senate, the representatives being chosen every two years by the citizens of the states, in the ratio of one for every fifty thousand souls or for any fraction beyond twenty-five

thousand, while the senate is composed of two members from each state, elected by the legislatures, one-third of that body being renewable every two years. There are now one hundred and forty deputies, each of whom receives a salary of three thousand dollars; and sixty-three senators, whose yearly pay is three thousand five hundred each.

The executive power resides in a president, who is eligible every four years, and cannot be re-elected except after an interval of four years. There is no vice president; and, in case of the death or perpetual incompetency of the president, congress, or in its recess the council of government, shall call upon the state legislatures to fill his place by election. The ordinary and regular election of the chief magistrate, of deputies, senators and ministers of the supreme court of justice, is to be regulated by general laws, and may be either by the people directly or by electoral colleges; but in these indirect elections no one can be named, either as a primary or secondary elector, who holds a political office or exercises civil, ecclesiastical, or military jurisdiction in the district he represents. The salary of the president is thirty-six thousand dollars a year. During the recess of the general congress a council of government is to be constantly in existence, composed of one half of the senate, one member being retained from each state. The duties of this council are confined chiefly to a salutary vigilance over the constitution and laws, and to the convocation of extraordinary sessions of the national legislature, either in conjunction with the president or by its sole act. The cabinet consists of a minister of foreign and domestic affairs; a minister of justice; a minister of finance; a minister of war and marine, each of whom receive an annual salary of six thousand dollars.

Each state government is independent within its local jurisdiction, and, like the federal government has, executive, legislative and judicial powers. The law making power of each of these governments resides in a legislature composed of the number of members which may be determined by its separate constituency, all of whom shall be elected by the people and removable at the time and in the manner they may think proper to decree. The persons to whom the sovereign states confide their executive power, can only exercise it for a time fixed by each respective state constitution. The power and jurisdiction of the national judiciary are amply defined so as to avoid conflict. The state judicial power is to be exercised by the tribunals created or appointed by the state constitutions, and all civil or criminal causes recognized by

those courts shall be conducted in them to a final hearing and to the execution of the sentence. Every male person either born in the republic or naturalized, who attains the age of twenty years, possesses the means of honest livelihood, and has not been sentenced by legal process for any infamous crime, is declared to be a citizen of Mexico, and enjoys the right to vote, to petition, to meet others in the discussion of public affairs and to belong to the national guard. The exercise of these rights of citizenship may however be suspended in consequence of confirmed intemperance, professional gambling, a vagabond life, the assumption of religious orders, by legal interdict, in virtue of crimes which cause loss of citizenship, and by inexcusable refusal to serve in public employment when appointed by the people.

ADMINISTRATION OF JUSTICE.

The federal constitution of 1824, introduced into Mexico, as we have seen, two general orders of tribunals; those of a *federal* or *national* character, and those of the *states*. The power of these judiciaries was deposited in a supreme court, and in circuit and district courts; and causes were taken from one to the other, by appeals, or in other words, passed by grades from the lowest to the highest, according to the nature of the transactions they involved. The jurisdiction of these courts was of course very extensive; yet it was not paramount or universal over all classes of Mexican society, inasmuch as large numbers of Mexicans were exempted by *fueros* or special privileged jurisdictions, from the control of the constitutional courts. The *fueros* were chiefly those of the military and ecclesiastics. There was a common military *fuego* in civil and criminal matters, which authorized the parties to have their causes tried before the commanding generals, and, on appeals, before the supreme tribunal of War and Marine, whilst there was another right of trial, or jurisdiction for military misdemeanors, before the council of war of general officers. There were, besides these, three special *fueros* of war; — one of artillery, one of engineers, and another of the active militia. The ecclesiastical *fuego*, gave an appeal from the bishop to the metropolitan, or from the archbishop to the nearest prelate; — if the metropolitan commenced a cause, an appeal lay to the bishop who was his nearest neighbor; and, on a third trial, to another neighboring episcopate. Notwithstanding these military and ecclesiastical *fueros* were permitted to exist by special favoritism after the republic was formed, the Mexicans suppressed, after 1824, the *fueros* of the

consulados and of the minería, or the mercantile and mining tribunals, both of which were sanctioned by experience or convenience, and whose foundations had been laid in the best principles of jurisprudence. To compensate, however, for the destruction of such useful institutions, it was determined that, in the federal districts and territories, suits growing out of mercantile transactions should be decided, in the first instance, by the "Alcaldes" or judges *de letras*, with whom were associated two colleagues proposed by the parties, and from whom an appeal might be taken to the supreme court. No special tribunal was created for the mining interests. In the federal districts and territories a primary tribunal was constituted for the trial of culprits, before an *Alcalde* and two *Regidores*; from whom an appeal lay to another *Alcalde* or *Regidor* and two associates, one of whom was named by the *Syndic*, and the other by the criminal. This correctional police, which has since been somewhat modified, disposed summarily of the greater part of malefactors in Mexico, and was empowered to sentence to the extent of six years imprisonment. The central constitution of 1836 modified this judicial system, and constituted judges *de partido*, — *Jueces Departamentales*, and a supreme court. The federal jurisdiction was confined to admiralty cases, fiscal transactions, and causes which concerned the public functionaries, while the military and ecclesiastical tribunals were left untouched.

Santa Anna during his last administration suppressed the district and circuit judiciary, and extended the jurisdiction of the common tribunals. But he restored the mercantile and mining "*fueros*" which were loudly demanded by public opinion. One of the few really good and useful provisions of the Spanish constitution has always been preserved in all the changes of Mexican legislation. This is the *judgment of conciliation*, by which litigant parties were prohibited from originating an action until they procured a certificate from an *Alcalde*, — who was not a lawyer, — that a judgment by arbitration or conciliation had failed before him on trial. This is an admirable device and terminates multitudes of law suits in Mexico when men fear to encounter the costs and procrastination of the courts. It might be successfully grafted on our own system of tribunals, where it would doubtless benefit the clients though it might impair the professional revenue of the counsellors.

By the re-adoption of the federal constitution of 1824, in the year 1847, the judicial system was brought back from the changes of 1836 and 1843 to its former condition. The laws of Mexico, founded upon the old Spanish colonial legislation, and improved,

in some measure, by the modification of state and national legislatures under the republic, constitute a vast and chaotic mass of principles, commentaries and decisions, which require a life time of studious toil to master and expound. The mixture of constitutional tribunals and specially privileged jurisdictions, under the system of *fueros*,—created a complication of judicial functions, which greatly narrowed the chances of a pure administration of law. The Mexican advocates, among whom many are distinguished for their learning and studious habits, are not, when considered as a professional body, comparable, either in information or ability, to their British, French, German or American brethren. The cumbersome formalities of Spanish law form a prolific hot-bed of special pleading, chicanery, and delay. A Mexican law suit is a proverb of procrastination. There are cases in Mexico in which the first paper was filed more than a hundred years ago. The suitor is not only impeded by every device that cunning and exaction can throw in his way, but there is cause to believe that the path of justice is sometimes impeded by the barrier of a bribe. If a Mexican lawyer is unable to force his cause to a final verdict, he is at least always prepared to assign plausible reasons for the tedious delay with which it halts and lingers in the forums. Nor is the value of legal costs unknown in Mexico, either by judges, notaries, or clerks. In proportion as the litigants are wealthy, or as it is necessary that their cause should be speedily decided, so are the greedy officials slow in preparing it for a final hearing and decree. The maxim in Mexico is—“*mas vale una mala composicion que un buen pleito*,”—a bad compromise is better than a good law suit. “There are men,”—said a member of the Mexican cabinet to congress, in 1830,—“who exercise the right of life and death over their equals, whom the arm of justice does not venture to reach; and, thus, as the bonds of society are effectually dissolved, individuals owe security, rather to their personal power, than to the protection they have a right to expect from the laws.” There are many criminals throughout the republic who have long offended with impunity while every species of chicanery has been taken advantage of to secure their life and liberty. Witnesses are sometimes intimidated, false oaths sworn, and terrible menaces whispered in the ears of the timid; nor are these base threats always left unexecuted if the victim is finally condemned and punished.

In the space of six months, during the end of 1841 and beginning of 1842, several horrible assassinations were perpetrated in

Mexico. An old Spanish porter was slain and cruelly mutilated in his dwelling, in the capital. So scandalous a deed excited universal indignation. The judicial authorities of the capital ordered rigorous proceedings against the culprit, but, after the case had been tried, and the murderer condemned to lose his life, he was pardoned in consequence of a threat that he would make important or disagreeable revelations if the sentence were executed. Another Spaniard,—a planter of standing in his district,—was murdered by the servants of a neighboring *haciendado*, with whom he had a dispute in regard to water-rights. The cause was tried, and the instigator and his tools were imprisoned. Yet the arm of justice was withheld by intrigue and corruption. Another Spanish planter, in the south,—a physician by profession, and a man incapable of injuring any one,—was foully killed by a band of Indians, nine of whom were shot for the crime. These miserable wretches had been but the instruments of higher criminals who were well known to the public, nevertheless they were too powerful to be made responsible for their shameful crime. At Tacubaya, in 1842, an English gentleman and his wife, whilst indulging in an evening walk were assassinated and brutally mutilated. But justice was for a long time foiled in its retributive efforts. Nor is it likely that the culprits would ever have expiated their guilt on the scaffold had not the foreign population loudly demanded, and liberally paid for their conviction. In 1839, the Mexican judges gave a striking example of firmness in the execution of a capital sentence, decreed in a case which lasted four years against a colonel of the army and his companions. It was proved that this scoundrel whilst residing in the national palace as one of the aid-de-camps of the president, had been the chief of a band of robbers who committed their offences not only on the highway, but in the metropolis itself. The honorable result in this case was chiefly owing to the firmness of the attorney general, who resisted the threats and the bribes of the criminal's powerful friends. Yet he, probably, paid for his firmness with his life, for he died shortly after the execution, and there is reason to believe, that he perished by foul means. During the administration of Santa Anna in 1842 and 1843, the most energetic efforts were made to free the country and the public roads, from the hordes of robbers that thronged them. The highway from Vera Cruz to Mexico was filled with thieves, whose favorite haunts were in the neighborhoods of Perote and Puebla, within the hearing of whose sentinels they almost daily exercised their vocation upon travellers in the diligence. Santa Anna placed large bodies of

cavalry on the route as soon as he came to power, and numerous arrests were made which were followed by the prompt conviction and execution of the bandits. No mercy was shown. The robbers were *garroted*, in pairs, in the towns along the road and in the capital; and thousands turned out morning after morning to witness the tragic end of these merciless wretches. For a short time the road was free; but, in a few months, new bands replaced the executed robbers, and, since the war with the United States, the main highway of Mexico has become as insecure as of old.

PRISONS — CRIME.

The prisons of the city of Mexico are in a wretched condition, and, although it has often been proposed to introduce some of the modern penitentiary systems of Europe and the United States, we are not aware that any thing has been done to effect this desirable end. The ACCORDADA is the common prison of Mexico. In front of one of its wings, at a low window protected by stout iron bars, are laid, every morning, the dead bodies that have been found throughout the city during the night. Every day these frightful evidences of murder or violent death are exposed to the gaze of citizens as they pass onward towards the western limits of the city. Sometimes five dead bodies have been seen at one time in this Morgue of Mexico;—and, on days succeeding festivals, the number is sometimes largely augmented. These unfortunate wretches are the victims of quarrels, or sudden fights;—and the front of the deadly window is commonly crowded with women and children—the relatives of the victims who come thither to seek after or to gaze their last on friend, father or husband.

Loathsome as is this exhibition on the exterior of the Accordada, the interior of this edifice is scarcely less frightful. Like all large Spanish edifices it is quadrangular. A strong military guard watches the gate, and a gloomy stairway leads to the second story, whose entrance is guarded by a massive portal. Inside of this, a lofty room is filled with the prison officers and a crowd of subalterns engaged in writing, talking, smoking and walking, whilst the clank of chains, the shouts of prisoners and the constant din of a disorderly establishment, add to the disgusting sounds and demeanor within.

Passing through several iron and wood barred gates, you enter a lofty corridor, running around a quadrangular court-yard, in the centre of which, below, is a fountain of troubled water. The whole of this area is filled with human beings,—the great congress

of Mexican crime,—mixed and mingling, like a hill of busy ants swarming from their sandy caverns. Some are stripped and bathing in the fountain;—some are fighting in a corner;—some making baskets in another. In one place a crowd is gathered around a witty story-teller, relating the adventures of his rascally life. In another, a group is engaged in weaving with a handloom. Robbers, murderers, thieves, ravishers, felons of every description, and vagabonds of every grade or aspect, are crammed within this dismal court-yard; and, almost free from discipline or moral restraint, form, perhaps, the most splendid school of misdemeanor and villany on the American continent.

Below,—within the corridor of the second story,—another class of criminals is kept; and yet, even here, men under sentence of death, are pointed out who are still permitted to go about without restraint.

In one corner of the quadrangle is the chapel, where convicts for capital offences are condemned to solitude and penance, during the *three* last days of their miserable life; and, at a certain hour, it is usual for all the prisoners to gather in front of the door and chant a hymn for the victim of the laws. It is a solemn service of crime for crime.

The women are not generally seen in the Accordada, but their condition is but little better than that of the males. About one hundred of the men, chained in pairs like galley slaves, are driven daily, under a strong guard, into the streets as scavengers; and it seems to be the chief idea of the utility of prisons in Mexico, to support this class of coerced laborers.

There can be no apology, at this period of general enlightenment in the world, for such disgraceful exhibitions of the congregated vice of a country or capital. Punishments, or rather incarceration or labor on the streets, is in reality no sacrifice, because public exhibition deadens the felon's shame, inasmuch as such inflictions cannot become punishments, under any circumstances of a *lepero's* life. Indeed, what *object* in existence can the Mexican *lepero* propose to himself? His day is one of precarious labor and income;—he thieves;—he has no regular home, or if he has, it is some miserable hovel of earth and mud, where his wife and children crawl about with scarce the instinct of beavers. His food and clothing are scant and miserable. He is without education or prospect of social improvement. He belongs to a class that does not rise, for his class is ostracised by hereditary public opinion. He dulls his sense of present misery by intoxicating drinks. His

quick temper stimulates him to quarrel. His sleep, after a debauch, is unrefreshing, and he only wakes to encounter another day of uncertainty and wickedness. What, then, is the value of life to him, or one like him? Why toil? Why not steal? What shame has he? Is the prison, *with certainty of food*, a greater punishment than the free air with *uncertainty*? On the contrary, he regards it as a lighter punishment, whilst he is altogether insensible to its moral degradation.

Mexico will thus continue to be infested with felons, as long as its prison is a house of refuge, and a comparatively happy home to so large a portion of its outcasts.¹

STATISTICS OF CRIME IN THE CAPITAL, 1826 — 1836 — 1842.

The following table exhibits the condition of the public prisons of Mexico in 1826.

	Inmates on the 31st Dec., 1825,	553	
Entered in 1826.	{ For Homicides and their accomplices,	151	} 4,750
	{ " Robbery, " " "	1,090	
	{ " Rioting and bearing arms,	2,011	
	{ " Incontinence (incontinencia,)	543	
	{ " Various crimes,	955	
	Total number of persons,	5,303	
	Of these there were		
	Released,	4,155	
	Sentenced to death by garrotte,	7	} 4,628
	" to prison for terms,	67	
	" to public works,	159	
	" to house of correction,	3	
	" to service of the prison,	229	
	" chained at various places,	8	
	Remaining on the 31st December, 1826,	675	

MILITARY TRIALS AND JUDGMENTS IN 1826.

Entered prison, to be judged by military tribunals,	462	
Sentenced to punishment,	8	} 362
" to prison,	48	
" to military service,	5	
" to public works,	55	
" to house of correction,	6	
Liberated,	212	
Escaped,	12	
Died,	2	
Delivered to the ordinary tribunals,	14	
Remaining at end of 1826,	100	

¹ Mexico as it was and as it is, p. 269.

A Mexican statistical bulletin, presents the following picture of the criminal condition of the federal district, for the 8 first months of the year 1836. During this period there were 255 arrests; 53 were immediately released and 202 remained in prison. These were divided as follows:

Homicide,	5	Counterfeiting money,	15
Wounding severely,	30	Forgery of documents,	1
Robbery,	8	Drunkeness,	17
Attempt to rob,	12	Quarreling,	41
Suspected of robbery,	30	Resistance of authority,	2
Rioting,	37		
Incontinence,	4	Total,	202

which would give for the whole twelve months, at the same rate, 269 for the number retained.

In this statement, fifteen individuals are reported as being imprisoned for counterfeiting coin, yet it is notorious that, at this epoch, all Mexico was converted into a manufactory of false money, for the country was deluged with copper. It is boldly alleged that deputies, generals, and merchants, participated in this scandalous and bold speculation. Santa Anna, in order to check this national evil, decreed that counterfeiting should be considered a *military crime*, and the offenders made liable to the summary and severe trials which usually take place when soldiers are both judges and jurymen.

The subjoined statistics bring these statements nearer our own period, and afford means of comparison with antecedent dates:

IMPRISONMENTS IN THE CITY OF MEXICO FOR 1842.

In the first 6 months of 1842, there were imprisoned in	
the city of Mexico,	3,197 men.
In the first 6 months of 1842, " " "	1,427 women.
In the second 6 months of 1842, " " "	2,858 men.
In the second 6 months of 1842, " " "	1,379 women.
Imprisonment of both sexes this year,	8,861

We will not swell these tables by specifying each of the crimes for which these 8861 individuals were incarcerated; but will merely note the chief violations of law and the number of the respective offenders:

	Men.	Women.	Total.
Robbery,	1,500	470	1970
Prostitution, adultery, bigamy, sodomy and incest,	312	179	491
Quarreling, wounding,	2,129	1,140	3,233
Rioting and bearing arms,	612	444	1,056
Homicide and attempt at ditto, and robbery and homicide,	70	17	87
Rape and incontinence,	65	21	86
Forgery,	7	1	8
Gambling,	3	0	3
Total,			6934
High grades of crime,	6934		
Misdemeanors,	1927		
Total,			8861

\$4,121 were expended for salaries in the Acordada; and \$30,232 for the maintenance of the prisoners. It should be stated, moreover that a large number of the above criminals were committed and punished for throwing vitriol on the dress and faces of persons in the street; — that 113 dead bodies were found; — 894 individuals sent to hospitals; and 17 executed by the *garrotte*. The culprit who is sentenced to this mode of expiating his crime is seated in a chair on the scaffold, whilst his neck is embraced by an iron collar which may be contracted by a screw. A sudden and rapid turn of the lever drives a sharp point through the spinal marrow at the moment that the band closes around the throat and strangles the victim.

NOTE. — In confirmation of all we have said in this chapter in regard to the administration and condition of law in Mexico, and in relation to the army, we refer to an able pamphlet published in that country, in 1848, entitled "*Consideraciones sobre la Situación Política y Social de la República Mexicana en el año 1847*," written, we understand, by Don Francisco Lerdo. It presents a dark picture of the country at that epoch; but the author's purpose was to unmask the social and political diseases of his country, and his patriotic task was the more needed because that country was on the brink of ruin from war.

It is to be especially noted with commendation that the Mexicans have recently become the severest critics not only of their institutions but of themselves. The miserable, boasting spirit, — the taste for grandiloquent proclamations, — the indiscriminate laudation of Mexican virtue, talent, science, honor, valor, and justice, which filled the papers and pamphlets of the nation, but which were never sustained when the Mexicans came in contact either with highly cultivated foreigners or were opposed by foreign arms, have all been greatly qualified since the war. The combined lessons of her unsparing but truthful satirists and of her invading enemies, will not be lost on a people really sensible and sensitive, though bewildered for more than a quarter of a century during which bombast served for glory or consolation when anarchy was not altogether triumphant. In confirmation of this growing spirit of self-examination with a view to national reform, we would also refer to the discreet and able memoir of Don Luis G. Cuevas, minister of foreign and domestic relations, read by him before the Chamber of Deputies, on the 5th of January, 1849.

CHAPTER XIII.

REFLECTIONS UPON THE REPUBLIC.

WHAT MEXICO HAS DONE — REVIEW OF HER CONDUCT AND CHARACTER. — MEXICAN OPINIONS — CLASSES — INDIANS — MESTIZOS — WHITES — ARMY — CHURCH. — DIVISIONS OF WHITES — WANT OF HOMOGENEOUSNESS. — WANT OF NATIONALITY AND OF A PEOPLE — REMEDIES — EMIGRATION — RELIGIOUS LIBERTY — POLITICAL ORDER — LABOR.

EVERY reader who has accompanied us thus far in studying the history, geography, resources, and character of Mexico, will scarcely require to be told why it is that the nation has continued disorganized and become impoverished in the midst of such abundance as has been lavished upon it by the beneficence of God. At the conclusion of our chapter upon the commerce of Mexico we described the remarkable geographical position of the territory, and have shown that, by the laws of nature, it ought to enjoy a controlling influence in the affairs of the world. And yet almost three centuries and a half have rolled over since Cortéz planted the Spanish banner on the palaces of Tenochtitlan, and still the question may be asked whether the region is more progressive under republican and royal rule than under Aztec sway? The world has advanced in commerce, manufactures, science, literature and arts, but Mexico has remained comparatively fixed in the midst of a stagnant semi-civilization. She has not exhibited a true warlike character either in her domestic broils or in her opposition to a foreign invader, though her soil has been converted into a camp for nearly forty years. She has confessed her manifold errors by her indemnities and her diplomacy, though she has contrived to invite quarrels, discussions and affronts by an aggressive demeanor towards sojourners in her territory. A religious country by the protective sanction of all her constitutions, still she denies the right of conscientious worship to all who come within her borders. With a military police, and an immense array of judicial officers, her cities and highways are thronged with felons while the disputes of her citizens linger undecided for years in her courts. Her domestic markets are dear, and she has but little to spare for foreign commerce, though her soil is extraordinarily fertile and her climate yields