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I. Introduction

On January 1, 1994, one of the most controversial international cooperative efforts was initiated.[1] The countries of Canada, Mexico and the United States created a subhemispheric free trade region, generated through the signing of the North American Free Trade Agreement (NAFTA).[2] The ramifications of this agreement have been vigorously scrutinized ever since, with issues ranging from the economy to the environment.[3] As there are many different opinions about the NAFTA Treaty, this area has lent itself to significant international law scholarship and speculation.

One issue that has received considerable attention is the adequacy of the environmental protection provisions of the NAFTA

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1. *See* BARRY BOSWORTH, SUSAN M. COLLINS & NORA CLAUDIA LUSTIG, COMING TOGETHER? MEXICO-UNITED STATES RELATIONS 91 (1997).
2. *See id.*
3. *See id.* at 93.

Treaty itself, as well as the subsidiary Environmental Side Agreement.[4] Many environmentalists and economists believe that, because the agreements allow Mexico to perpetuate a weaker enforcement regime, U.S. industry will migrate south of the border, where compliance costs are lower.[5] They fear that this will cause irreparable damage to the U.S. economy and create a pollution haven in Mexico that will damage the common environments of both countries.[6]

These concerns have prompted legal scholars to study the differences in the environmental enforcement mechanisms in place in the two countries. These scholars are attempting to quantify the disparity in enforcement effectiveness and assess the impact on the newly created NAFTA regime.[7] The results have overwhelmingly demonstrated that the Mexican environmental enforcement mechanism is not producing an adequate level of effectiveness.[8]

Most attribute Mexico's deficiencies to the limited funding devoted to enforcement efforts.[9] This theory is buttressed by evaluating the spending statistics and enforcement data for each year since 1988.[10] The comparison shows that Mexico has steadily improved its overall performance as more money has been devoted to enforcement endeavors.[11]

Some of the more adventurous scholars, however, attribute the disparity to irreconcilable enforcement mechanisms which are the product of the different legal traditions from which the systems have evolved. Hanna attributes the difference to judicially created precedent which he says plays a vital role in the environmental dispute-resolution in the United States but not in Mexico.[12] Hardberger contends that in the U.S. enforcement regime the

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4. The inadequacy of NAFTA's environmental agreements has become a hot topic amongst environmental law scholars. *See* Nicholas Kublicki, *The Greening of Free Trade:* NAFTA, *Mexican Environmental Law and Debt,* 19 COLUM. J. ENVTL. L. 59 (1994); *see also* Alicia A. Samios, *NAFTA's Supplemental Agreement: In Need of Reform,* 9 N.Y. INT'L. L. REV. 49 (1996).

5. *See* BOSWORTH, *supra* note 1, at 93.

6. *See id.*

7. *See* David L. Hanna, *Third World Texas: NAFTA, State Law, and Environmental Problems Facing,* 27 ST. MARY'S L.J. 871 (1996); *see also* Phillip D. Hardberger, *Industrialization in the Borderlands and the NAFTA Treaty,* 24 ST. MARY'S L.J. 669 (1993); Kublicki, *supra* note 4; Samios, *supra* note 4.

8. *See id.*

9. *See* Hanna, *supra* note 7, at 890, *see also* Kublicki, *supra* note 4, at 138.

10. *See* Kublicki, *supra* note 4, at 93-95 (funding); *see also* THE PRESIDENT'S NAFTA REPORT ON ENVIRONMENTAL ISSUES 38-41 (February 26, 1993).

11. *See id.*

12. *See* Hanna, *supra* note 7, at 889.

judiciary holds the primary responsibility of interpreting the laws and resolving disputes, unlike its Mexican counterpart which strictly minimizes the role of the judiciary.[13] It has also been argued that the enforcement mechanisms differ because the U.S. relies on judicial institutions and litigation to resolve its disputes, while Mexico utilizes purely administrative processes.[14] All of these assessments are attempts to legitimize the theory that the active role of the judiciary in the U.S. system creates a disparity in the application of the two mechanisms which precludes comparable effectiveness.

This idea was developed from the imposition of the classic civil and common law models onto the enforcement facet of these legal systems. This reflects a limited understanding of the practical function of the individual components of these mechanisms and produces this erroneous hypothesis. An in-depth look at the environmental enforcement processes in these two countries will show that they are very similar, and the differing legal traditions have little impact on their respective enforcement effectiveness.

The purpose of this article is to show that Mexico and the U.S. can achieve uniformity in the practical operation of their environmental enforcement systems despite the differences in their legal systems. To this end, it will be necessary to compare the common and civil law traditions as they were manifested in the early legal systems. This will generate the classic models traditionally used to compare all civil and common law countries. These models can then be compared to the current environmental enforcement mechanisms in the U.S. and Mexico, showing that the contemporary systems are quite disparate from what is expected from the early models.

A study of the current legal systems of the United States and Mexico will show how they have evolved with regards to sources of law and role of the judiciary as a law-making body. It will show the inadequacies of comparing current systems using the classic comparative models and specifically demonstrate the irrelevance of such factors in the area of environmental law.

An in-depth evaluation and comparison of the individual facets of the environmental enforcement mechanisms will show that these systems are sufficiently similar in structure and practice to produce practical uniformity. The term practical uniformity refers to the

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13. *See* Hardberger, *supra* note 7, at 706.

14. *See Mexico's Environmental Laws and Enforcement*, 2 No. 3 MEX. TRADE & L. RPTR. 9 (1992).

nearly identical operation and effectiveness of the systems despite the differences in the role of the judiciary in the opposing legal traditions. This uniformity is possible because the judiciary does not function in environmental law enforcement as one would expect from the classic common and civil law models. Although it is intended to have an active role in the common law dispute-resolution process, in practice it is quite inconsequential in both countries. It is these variances from the traditions which are often overlooked by scholars who base their comparative assessments solely on the stereotypical models.

When conducting international legal comparisons, it is imperative to consider the practical function of the individual components of each legal system as opposed to drawing conclusions based on an understanding of the classic models. This allows the comparatist to accurately assess what level of uniformity can be achieved in differing regimes and gives the policy-makers a better understanding of what may be accomplished through reform. This becomes very important when considering issues that have multinational ramifications, such as the environment.

II. The Development of the Early Civil and Common Law Systems

A legal "tradition" has been described as "a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of the legal system, and about the way law is or should be made, applied, studied, perfected, and taught"[15]. The legal tradition relates the legal system to the culture of which it is a partial expression, and puts it into cultural perspective.[16] John Henry Merryman used this concept to catagorize the majority of the legal systems of the contemporary world into three families: the civil, common, and socialist law families.[17] This

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15. JOHN HENRY MERRYMAN, THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA 2 (1969).

16. *See id.*

17. A legal family consists of legal systems which have characteristics, uniquely shared by them, that distinguish them, as a group, from other systems. The oldest and most widely distributed is the civil law. It can be found in most Western European countries, all of central and south America, and many parts of Asia and Africa. The common law family includes the legal systems of England, Ireland, the United States, Canada, Australia, New Zealand, and many nations in Asia and Africa. *See id.*

study concentrates on the law enforcement systems of Mexico, a country included in the civil law family, and the United States, a member of the common law family. This analysis will be limited to the evolution of these two traditions and their influence upon their contemporary descendants in the U.S. and Mexico.

The foundations of the civil law tradition can be traced to the Italian universities during the Renaissance period.[18] Scholars developed this system based on the assumption that the most appropriate way to formulate laws was through a rational, intellectual process.[19] They created a set of codes which could be applied to any situation so as to minimize active interpretation by the judiciary.[20] This concept became the cornerstone of the early civil law tradition.

The Civil Law first came to use in the age of European Reformation, when feudalism was abandoned and replaced by modern nation-states.[21] Through an ever-growing attitude toward state sovereignty, the acceptance of the widely held Roman-Canonic *jus commune* (the common law of feudal Europe) was subordinated, and the state emerged as the primary source of law.[22]

A strict separation of powers developed within the governments and the power to enact laws was bestowed upon the legislatures.[23] The role of the judiciary was greatly limited. Judges simply selected the proper statutes to apply to specific situations.[24] Judges did not interpret incomplete, conflicting, or unclear legislation.[25] They referred ambiguities back to the legislature for interpretation.[26] This prevented the creation of laws through judicial decisions, causing the principle of binding precedent and *stare decisis* to have no effect on these systems.[27]

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18. *See* FRANCESCO A. AVELOS, THE MEXICAN LEGAL SYSTEM 13 (1992).
19. *See id.* at 15.
20. *See id.*
21. *See id.* at 21.
22. The content of early national law was largely drawn from the *jus commune*, but its authority came from the state. *See id.*
23. According to the separation of powers doctrine, the branches of government are sharply separated to prevent abuse of power. As the legislature was the only branch elected by the people, it was believed that they alone could respond to the will of the people in carrying out the law-making process. *See* AVELOS, *supra* note 18, at 21.
24. *See id.*
25. *See id.*
26. *See id.*
27. *See id.*

As the civil law evolved in Western Europe, it became evident that the orthodox tradition could not function precisely as the Italian scholars had formulated. Legislatures could not enact code provisions that would ideally apply to all situations.[28] Judges often found it necessary to resort to the prior reasoning of their colleagues in order to formulate appropriate decisions in difficult areas.[29] Lawyers began citing previous decisions in their arguments, in an attempt to buttress their position and influence the judges.[30] These practices developed into a limited form of precedent which was integrated into the early civil law systems, despite the fact that the civil law tradition does not officially recognize them.[31]

The English Common Law Tradition evolved much differently than its civil law counterpart. It originated nearly nine hundred years ago as an attempt by the King of England to consolidate his power through the application of uniform laws.[32] Royal courts, staffed by the King's closest advisors, traveled about the Kingdom settling disputes by applying customs and laws purported to be commonly accepted throughout the country.[33] This allowed these decisions to be applied similarly in all parts of England.[34] Achieving uniformity of law in this manner is the basic premise upon which the common law was founded.[35]

The Common Law Tradition instructs that the best way to administer uniform justice is to keep judicial decisions as consistent as possible.[36] This philosophy precipitated the principles of binding precedent and *stare decisis*.[37] Incorporating former decisions into current adjudications produced a body of principles which reflected a line of similar reasoning in deciding cases.[38] This became accepted as the common law of England.[39]

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28. *See* AVELOS *supra* note 18, at 47.
29. *See id.*
30. *See id.*
31. *See id.*
32. *See* NEW YORK UNIVERSITY SCHOOL OF LAW, FUNDAMENTALS OF AMERICAN LAW 9 (Alan B. Morrison ed., 1996).
33. There were some early royal statutes which served as a source law and also an amalgam of customs that had uniform acceptance throughout the kingdom. *See id.* at 10.
34. *See id.* at 9.
35. *See id.*
36. *See* WILLIAM BURNHAM, INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF THE UNITED STATES 40 (1995).
37. *See id.*
38. *See* NEW YORK UNIVERSITY SCHOOL OF LAW, *supra* note 32, at 10.
39. *See id.*

The early common law included very few statutes.[40] The legislature enacted statutes only to address specific problems thought to be inadequately settled by judicial decisions.[41] It did not contain comprehensive principles because the case law covered the majority of the legal questions, and neither the judges, nor parliament, wished to disturb this.[42]

The first substantial statutory codifications became a part of the common law system in the eighteenth century, when the courts found themselves adjudicating disputes that arose from an increased sophistication in commercial activity.[43] These codes embodied the traditional rules and customs of the merchants and traders.[44] They were simply restatements of the established common law, not attempts by parliament to make laws.[45]

The judicial role in the early common law tradition was quite distinct. The law was developed through reasoning of the court from case to case.[46] This resulted in active judicial participation being paramount to the law-making process, even in situations governed by statutory law.[47] This is substantially different from the limited role played by the judiciary in the civil law tradition.

The models created by comparing the early civil and common law systems emphasize the differences in the sources of law and the role played by the judiciary in the law-making process. When these models are used to compare modern systems, scholars tend to focus only on these features. This generates a method of comparison which minimizes the derived similarities. It can create the illusion that all civil and common law legal systems are grossly disparate and divert attention from the important accomplishments that have promoted practical uniformity.

The following section will demonstrate the evolution of the modern civil and common law legal systems away from the classic models. It will show that, for various practical reasons, the systems have moved toward unification in many areas.

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40. *See* BURNHAM, *supra* note 36, at 51.
41. *See id.*
42. *See id.*
43. *See* NEW YORK UNIVERSITY SCHOOL OF LAW, *supra* note 32, at 11.
44. *See id.*
45. *See id.*
46. *See* MERRYMAN, *supra* note 15, at 35.
47. *See id.*

III. Modern Civil and Common Law Systems: Mexico and the U.S.

The modern Mexican legal system is a direct descendent of the Western European civil law tradition.[48] Spanish rule of Mexico, for three hundred years, left a lasting impression on many facets of the Mexican culture.[49] Spain introduced the European civil codes into Mexico, which have dictated the development of the current legal system and governmental structure.[50]

Much like that of the United States, Mexico's governmental organization and power is separated into three branches (Executive, Legislative, and Judicial).[51] The legislature is empowered to initiate legislation but, as was common in the Western European civil law tradition, this is delegated almost exclusively to the President.[52]

The Judicial Branch is a three-tiered system.[53] Its levels progress from the District Courts (which are the trial courts of first instance), to the intermediate Appellate Courts, to one Supreme Court.[54] The designated role of the Mexican judiciary follows the traditional pattern expected from civil law judiciaries.[55] Judges are intended only to apply legislatively enacted statutes to situations with which they are confronted and are required to follow, as closely as possible, the legislative intent which inspired enactment of the code.[56]

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48. The Spanish Civil law system evolved from Roman Civil Law and was influenced by the French Napoleonic Code. *See* James F. Smith, *Confronting Differences in the United States and Mexican Legal Systems*, 1 U.S.-MEX. L.J. 85, 88 (1993).

49. *See id.*

50. *See* AVALOS, *supra* note 18, at 15.

51. *See id.* at 9.

52. The delegation of primary law-making authority to the President is one of the traceable roots to the influence of the Western European civil law tradition on Mexico's current legal system. *See* MERRYMAN, *supra* note 15, at 23.

53. *See* JAMES E. HERGET & JORGE CAMIL, AN INTRODUCTION TO THE MEXICAN LEGAL SYSTEM 71 (1978).

54. The Supreme Court consists of twenty-one judges, who sit *en banc* for some cases and divide into separate panels for others. The separate panels of the Supreme Court include: Criminal, Civil, Administrative, and Labor. The entire court will hear all cases involving jurisdictional or constitutional questions. *See* AVALOS, *supra* note 18, at 11; *see also* HERGET, *supra* note 53, at 71.

55. *See* AVALOS, *supra* note 18, at 15.

56. *See id.*

In practice, however, it is not possible to apply statutes without any interpretation and filling of gaps.[57] Judges are, therefore, required to do some practical interpretation of the law.[58] Their latitude for interpretation is not nearly as extensive as that of the U.S. judiciary, but does function similarly.[59]

Although the civil law tradition does not recognize the power of the judiciary to review legislative enactments or create precedent, the Mexican Legal System has adopted both of these concepts in a limited form.[60] Judicial Review is provided by Article 107 of the Mexican Constitution.[61] It gives individuals a recourse through *writ of amparo* for constitutional violations by the government.[62] The system of *amparo* has also given rise to the limited form of binding precedent known as "*jurisprudentia.*"[63] Although Mexico continues to strive to exclude the judiciary from the law making process, this has moved their legal system even closer to practical uniformity with its common law counterpart in the United States.

The modern common law system in place in the U.S. is the result of English Colonialism.[64] When the Colonists first settled in America, they brought with them the British Constitution and

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57. *See id.*
58. *See id.*
59. *See id.*
60. *See* Smith, *supra* note 48, at 89.
61. *See* Constitucion Politica De Los Estados Unidos Mexicans, (hereinafter "Mexican Constitution") *reprinted in* DOING BUSINESS IN MEXICO, vol. 3, A.1-3 (Phillip T. von Mehren, ed., 1997).
62. A *writ of amparo* may be used to challenge any administrative or judicial action by the government which is thought to be an infringement on the constitutional rights of an individual. There are five classes of *amparo* proceedings: (1) defense of individual rights, such as life and liberty; (2) against unconstitutional laws; (3) challenges of the legality of judicial decisions; (4) challenges of administrative actions; (5) agrarian matters (designed to protect the rights of the peasants). When an amparo challenge is granted, the challenged law or action becomes inoperative only with respect to the parties of that particular proceeding. For all others, it remains in full force until they succeed in their own *amparo* challenge. *See* HERGET, *supra* note 53, at 28.
63. According to the principle of *jurisprudentia*, if there are five consecutive, consistent decisions on the same *amparo* issue, it becomes binding precedent on the deciding court, all lower courts, and certain administrative tribunals. This principle only applies in constitutional cases involving the government, not in cases between individual litigants. It is much more limited than in the common law system, which recognizes any decision made by a higher court as binding over all subordinate courts in all cases. *See* AVALOS, *supra* note 18, at 16; *see also* Smith, *supra* note 48, at 89.
64. Today, a form of the English common law tradition is in place in Ireland, the United States, Canada, Australia, New Zealand, and has substantial influence in many nations in Asia and Africa. *See* MERRYMAN, *supra* note 15, at 4.

common law.[65] Traces of British law can still be detected in much of the United States common law and codes today.[66] The influence of the substantive law, however, is not nearly as important to the perpetuation of the common law tradition as the adoption of the principles of precedent and *stare decisis.* These have remained through the years and are firmly entrenched in the U.S. legal system.

Although the United States is considered to be a common law country, it is an error to say that "judge-made" law continues to be the prevalent source of law today.[67] Since the beginning of the twentieth century, there has been an influx of statutory enactments in both the federal and state legal systems.[68] Many of the early statutes were codifications of widely accepted common law principles, and replaced the common law in that area.[69] Many others created new areas of law, which emerged from the changing society.[70] They included taxation, social security, the environment, and securities and banking laws.[71]

Although statutory law is now prevalent, and supersedes the common law wherever applicable, it does not have the same purpose as in civil law countries. Common law judges view statutes as specific rules which are to be applied according to their terms, but not beyond.[72] Subject matter which falls outside the specific terms of the statute remain governed by the common law.[73]

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65. English precedents were not strictly followed by the colonists, but most states did include provisions in their constitutions that designated the common law of England as the rule of law until altered by the courts or repealed by the legislature. *See* R. RANDALL KELSO & CHARLES D. KELSO, STUDYING LAWS AN INTRODUCTION 64 (1984); *see also* Harry Jones, *Our Uncommon Law*, 22 TENN. L. REV. 443, 452-454 (1975).

66. *See* E. ALLAN FARNSWORTH, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE UNITED STATES ii (2nd ed., 1983).

67. *See* BURNHAM, *supra* note 36, at 48.

68. The average state in the U.S. has as many statutes as the civil law countries in Europe. *See id.* at 49.

69. Many of the private law areas, such as contracts, torts, and property remained governed primarily by the common law, with only minor statutory modifications. *See id.*

70. States also created many statutes governing such areas as business, consumer rights, and family relations laws. *See id.*

71. *See id.*

72. *See* BURNHAM, *supra* note 36, at 50.

73. U.S. Courts will not interpret statutes broadly because the broad principles they adhere to in resolving matters outside the strict construction of the statute can be found in the common law. When the legislature in a civil law country passes a code, it is intended to be the entire law on the subject addressed. The exception to this is the practical situations where "gap-filling" interpretation is required by

Contrary to the civil law , common law systems do not intend that a code completely abolish all other law in a specific area.[74] It is expected to perfect certain points and be supplemented by the existing case law.[75]

The creation of the common law by the judiciary is a central point of interest when comparing the U.S. legal system to that of civil law countries. In order to fully understand how the U.S. system differs from that of civil law countries, the role of the U.S. judiciary in the law-making process must be carefully considered. The U.S. Constitution, Article I, vests all of the power to create and enact statutory legislation in the legislative branch, and more specifically, Congress.[76] Article III creates the judicial branch.[77] It provides for the creation of one supreme court, and any "inferior courts as Congress may from time to time ordain and establish."[78] Congress has exercised its power to create subordinate federal courts, resulting in a three-tier system similar to that in Mexico.[79]

The most important disparity between the U.S. and Mexican legal systems is the role that the judiciary plays in the law-making process. Through the extensive system of precedent, a decision

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the judiciary to resolve problematic situations not adequately covered by statute. *See id.*

74. *See* MERRYMAN, *supra* note 15, at 32.

75. *Id.*

76. Unlike his counterparts in civil law countries, the President of the United States is not delegated primary power to create legislation. Under Article II § 3 of the Constitution, the primary duty of the executive branch is "to take care that the laws are faithfully executed". Since the enactment of this article, the law making power of the executive branch has grown substantially. Today, the President has a role in proposing a legislative agenda to congress, which results in much of the current legislation. His law-making power is further subsidized by his ability to create administrative agencies, which can promulgate and enforce regulations that have the same consequence as legislatively enacted laws. *See* U.S. CONST. art. I, §1; *see also* U.S. CONST. art. II, § 3; *see also* BURNHAM, *supra* note 36, at 4.

77. *See* U.S. CONST. art. III, §1.

78. *See id.*

79. This three-tier system consists of district courts of first instance, intermediate appellate courts, and one Supreme Court. The final appellate jurisdiction of the U.S. Supreme Court gives it the checking power over the other branches of government and creates a system of judicial review similar to that in Mexico. Laws and administrative actions initiated by the other branches can be challenged in the federal court system, on a constitutional basis. If the Supreme Court finds an action to be unconstitutional, it will void it through its decision. This is similar to the amparo challenges in Mexico, except that when the U.S. Supreme Court finds a law or action to be unconstitutional, it is void with regards to all subsequent litigants, not just the current parties as with an amparo challenge. *See* HERGET, *supra* note 53, at 71; *see also* BURNHAM, *supra* note 36, at 183.

made by a U.S. court will be followed by that court, and all lower courts in that jurisdiction.[80] A decision made by the United States Supreme Court is absolutely binding over all courts throughout the land.[81] Unlike the Mexican system, precedent is created by a single decision which becomes substantive law in that area.[82] Judicial decisions, therefore, are of much greater importance as a source of substantive law in the U.S. common law system than in the Mexican civil law system.

After exploring the practical application of the legal systems of these countries, several important comparative conclusions can be drawn. First, these systems have evolved from very different legal traditions but, over the past century, have significantly moved towards a unified system that commingles characteristics of the two traditions. The United States has transformed from a system comprised almost entirely of judicially created law to one whose primary source of law is statutory. This has resulted in a shifting of law-making powers throughout the branches of government and a softening of the separation of powers.

Mexico has evolved from recognizing only statutes as a source of law to incorporating limited precedent and judicial review into their system. This has buffered the strict separation of power, characteristic of civil law countries, and redistributed the law-making authority throughout the branches of government. These changes bring the Mexican legal system much closer to that of its common law counterparts.

Second, the classic templates of civil and common law systems cannot be applied to modern legal systems with the expectation of producing accurate assessments. Many modern systems have taken too many steps toward unification to be evaluated simply using the classic models. Although there is much to be learned about the evolution of these systems by comparing them with the classic models, equal attention must be given to the individual facets which have achieved practical uniformity through evolution, if a true understanding of the systems is to be had.

The following section embarks on an in-depth exploration of the specific components of the environmental enforcement mechanisms of the United States and Mexico. The comparisons will show that, although they are the products of disparate legal

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80. *See* HAROLD J. GRILLIOT, INTRODUCTION TO LAW AND THE LEGAL SYSTEM 131 (2nd ed., 1979).

81. *See id.*

82. *See id.*

traditions, these mechanisms have achieved an exceptionally high degree of practical uniformity. This will help to buttress the theory that differing legal traditions can produce similarly functioning systems. It will also help to redirect attention to the true cause of the disparity in enforcement effectiveness between the two regimes (funding).

IV. Environmental Enforcement Systems in Mexico and the U.S.

A. The Environmental Laws

In January, 1988, Mexico's President, Carlos Salinas, joined forces with the legislature to enact the General Law of Ecological Equilibrium and Protection of the Environment (hereinafter "Ecology Law"), which was designed to satisfy the environmental concerns of the constitutional draftsmen.[83] This is Mexico's first strong comprehensive environmental law, encompassing both protection of the environment and penalties for non-compliant polluters.[84]

The ecology law is a single statute which governs air pollution, water pollution, soil degradation, toxic and hazardous wastes, and conservation.[85] It provides Mexico with an environmental statute, which exhibits strictness equal to U.S. environmental laws.[86] It has many similarities to U.S. statutes, which served as a closely followed template for its construction.[87]

Unlike its Mexican counterpart, United States environmental law is embodied in many individual federal statutes.[88] Most of these statutes delegate to the administrative enforcement agency the authority to make the pertinent regulations.[89] Together, the

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83. Prior to the enactment of the Ecology Law, the Mexican government had enacted several ineffective environmental statutes. *See* Kublicki, *supra* note 4, at 82.

84. *See id.*

85. This single statute includes provisions for inspections and supervision of pollution-generating facilities, administrative penalties, appeals from actions or decisions, and criminal prosecution of felonious violators. LaLey General Del Equilibrio Ecologico Y La Protection Al Ambiente Title VI, Chapters II-VI, (Published Jan. 28, 1988, effective Mar. 1, 1988), (hereinafter "Ecology Law") *reprinted in* DOING BUSINESS IN MEXICO, vol. 3, 2-3 (Phillip T. von Mehren, ed., 1997).

86. *See* Hanna, *supra* note 7, at 887.

87. *See id.*

88. *See* 42 U.S.C. §§ 7401-7671 (1990); *see also* 33 U.S.C. §§ 1251-1376 (1988); 15 U.S.C. §§ 2601-2629 (1988); 42 U.S.C. §§ 6901-6992 (1988); Samios, *supra* note 4, at 59.

89. *See* BURNHAM, *supra* note 36, at 16.

statutes and regulations adequately provide for pollution discharge standards,[90] administrative, civil, and criminal enforcement,[91] penalties,[92] and appeals.[93]

There is no significant advantage to having one single comprehensive statute as opposed to several individual laws. The important areas of concern are adequately addressed in both systems. Enforcement efforts, therefore, are not encumbered by either situation. The only obvious disparity arising from the incongruent approaches to legal construction is the centralization of Mexican enforcement efforts in the federal government, as opposed to the U.S. dispersal of authority amongst state and local enforcement agencies. As it will be demonstrated in subsequent sections, this does not present a significant obstacle to uniform enforcement effectiveness, but is simply the styles which are most accommodating to the respective systems.

There are many similarities between the environmental laws of these regimes, but there are also several differences. Unlike the U.S., Mexico does not have laws mandating the remediation of abandoned and improperly managed hazardous waste sites.[94] Also, the United States regulates such things as underground storage tanks and the disposal of liquid hazardous waste in landfills.[95] Mexico does not. Mexico does, however, regulate wastes generated from mining operations and petroleum exploration, which the U.S. does not.[96]

Although there are these differences in the substantive law of the two regimes, United States Environmental Protection Agency (EPA) studies have concluded that, in the principle areas, Mexican environmental standards are broadly comparable to those of the United States and, therefore, the two systems are capable of achieving similar levels of environmental protection.[97] An EPA interim report on Mexican environmental law, released in November 1991, states that "the 1988 General Law of Ecological Balance and Environmental Protection ("General Ecology Law") embodies

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90. *See* 40 CFR §§ 425-469
91. *See* 33 U.S.C.A. § 1319
92. *See id.*
93. *See id.*
94. In Mexico, these sites are restored by the owners, on a voluntary basis. *See* Harberger, *supra* note 7, at 707.
95. *See id.* at 708.
96. *See id.*
97. *See* THE PRESIDENT'S NAFTA REPORT ON ENVIRONMENTAL ISSUES, *supra* note 10, at 26.

many principles and approaches similar to ours . . . . The regulations and technical standards implementing the Mexican law are generally comparable to their counterparts in the United States, although each regime includes provisions that the other lacks."[98] Various reports have further determined that Mexican laws are not only comparable to those of the United States but, in some instances, take additional, more stringent regulatory measures.[99]

By comparing the substantive laws of the two regimes, it can be concluded that the environmental statutes are sufficiently similar to provide comparable environmental protection. Even though Mexico has one statute and the United States has many, both are adequately comprehensive in the primary areas effecting the common environment. It can, therefore, be concluded that substantive law is not a significant contributory factor in the disparity of enforcement effectiveness between the two regimes.

B. Enforcement Institutions

With the enactment of Mexico's Ecology Law in 1988, full authority over all facets of environmental protection was vested in The Secretariat of Urban Development and Ecology (SEDUE).[100] In 1992, SEDUE was abolished and replaced by the Secretariat of Social Development (SEDESOL).[101]

Environmental enforcement efforts in Mexico have remained primarily centralized in the federal government through SEDESOL. The Ecology Law provides that local governments may take the initiative to develop their own environmental standards, so long as they are not less stringent than the federally promulgated regula-

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98. *See id.*

99. *See id.* at 27-34.

100. The Ecology law gave SEDUE the power to develop environmental policy, promulgate regulations, review and rule on environmental impact statements, grant licenses, and enforce regulations. *See* Kublicki, *supra* note 4, at 83.

101. SEDESOL was created with the intention of integrating and consolidating urban and regional development, housing, and environmental policies. In order to most effectively administer its environmental protection duties, there are two subdivisions created within SEDESOL: the National Ecology Institute and the Federal Attorney for Environmental Protection. The National Ecology Institute is charged with setting all environmental standards and policies regarding technical matters. The Federal Attorney for Environmental Protection handles the enforcement of all regulations promulgated by the Institute through facility inspections, administrative enforcement actions and the issuance of fines and penalties. *See* BOSWORTH, *supra*, note 1, at 117; *see also* Kublicki, *supra* note 4, at 84; Samios, *supra* note 4, at 53.

tions.[102] This provides an avenue for possible decentralization similar to that which exists in the United States. However, most of the Mexican municipalities lack the resources necessary to implement their own enforcement mechanisms, so they leave it almost entirely to SEDESOL.[103]

The United States counterpart to SEDESOL is the Environmental Protection Agency (EPA). Enforcement efforts in the U.S. are not centralized in the EPA. States and municipal governments play an active and important role in administering environmental justice. The U.S. enforcement mechanism is driven by the philosophy that the states should assume the responsibility for operating all regulatory programs within their territory and report their activities to the EPA.[104] This creation of subsidiary enforcement authorities is a significant structural difference between the U.S. and Mexican systems; however, it only affects the personnel who are charged with enforcement, not the manner in which the enforcement efforts are implemented.

There are advantages and disadvantages to both centralized and decentralized enforcement mechanisms. When a single entity enforces all provisions, a complete assessment of the environmental impact of a pollution generator can be monitored concurrently. This eliminates communication and coordination problems associated with having several different enforcement entities.

Decentralized enforcement does, however, offer some advantages. It allows for specialized personnel to be trained specifically to recognize and respond to certain environmental concerns. As the number of enforcement issues increases in both the U.S. and Mexico, the advantage of having "expert" enforcement agents becomes more evident. An inspector, who is concerned only with one media, can give individual pollution-generating processes a higher degree of attention than an inspector who must assess many processes at once. This minimizes the chances of inspectors becoming overwhelmed by the ever-changing technology of industrial processes, and can more effectively master a single area of concern.

Although both systems have advantages and disadvantages, they can produce similar results, if properly implemented. In

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102. *See* Ecology Law, *supra* note 85, at Chapter I, art. 160.

103. *See* Samios, *supra* note 4, at 55.

104. *See* U.S. Environmental Protection Agency, Office of Regional Operations and State/Local Relations, Joint Policy Statement on State/EPA Relations (July 14, 1994).

Mexico's centralized regime, increasing personnel would permit the comprehensive inspectors more time to carefully assess all pollution-generating processes within a single facility. In the decentralized regime of the U.S., more efficient cooperative efforts between the enforcement authorities would produce effective overall assessment and holistic evaluation of the environmental impact of individual entities.

An important, yet often overemphasized, difference is the virtual exclusion of the judiciary from the Mexican non-criminal environmental dispute resolution system.[105] SEDESOL utilizes only administrative measures for civil actions, reserving the judiciary for the limited purposes of adjudicating *amparo* challenges of Secretariat actions and resolving criminal matters.[106]

In the U.S. enforcement mechanism, the various pollution control regulations specifically provide for judicial review of final administrative actions.[107] Although this review is statutorily furnished, it is actually a Fifth Amendment due process of law challenge to administrative actions.[108] This makes it the practical equivalent of the *amparo* challenges within the Mexican System.

The U.S. enforcement system does, however, go beyond due process challenges and includes the judiciary as a general dispute resolution entity.[109] The U.S. enforcement response plan specifically provides for civil litigation as an enforcement tool.[110] This is the facet of the two enforcement mechanisms which can be traced directly to the differing characteristics of the civil and common law legal traditions.

Although the systems have this conceptual difference with respect to the role of the judiciary, the EPA's continuing efforts to avoid litigation have rendered the judiciary practically inconsequential as an environmental enforcement institution.[111] Their official mandate of the use of negotiated settlements as the primary

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105. *See* THE PRESIDENT'S NAFTA REPORT ON ENVIRONMENTAL ISSUES, *supra* note 10, at 37.

106. *See* Kublicki, *supra* note 4, at 89.

107. These challenges are initially presented in the Federal Court of Appeals, but may be appealed to the U.S. Supreme Court. *See id.; see also* 33 U.S.C.A. § 1319 (q)(8); 40 CFR § 23.12.

108. U.S. CONST. amend. V.

109. *See* OFFICE OF WATER, U.S. ENVTL. PROTECTION AGENCY, GUIDANCE FOR DEVELOPING CONTROL AUTHORITY ENFORCEMENT RESPONSE PLANS 5-4.1 (September 1989).

110. *See id.*

111. *See* THE PRESIDENT'S NAFTA REPORT ON ENVIRONMENTAL ISSUES, *supra* note 10, at 42.

dispute resolution tool has been the single most important factor in negating the effect of the differing legal traditions on the enforcement mechanisms of the two countries, and bringing practical uniformity to the role of the judiciary in the two systems.[112]

C. Enforcement Processes

Administrative enforcement measures are the first line of remedial action, both in the United States and Mexico, when compliance monitoring reveals a violation of the environmental protection laws. The first step in the enforcement process in Mexico is to immediately notify the violator of their non-compliance.[113] The violator must then submit, within ten working days, a written response which details his defenses.[114] He is also given the opportunity to be heard, so as to verbally articulate these defenses and plans for remedial action.[115] SEDESOL considers all pertinent factors and decides, within thirty days, the appropriate administrative resolution.[116]

The United States initiates enforcement in an identical fashion. Upon recognition of a violation, the control authority is required to issue a written "notice of violation" to the non-compliant entity.[117] As in Mexico, the violator is given ten working days to respond to this notice.[118] The response must include an explanation of the cause of the violation, remedial actions, and plans for prevention of future occurrences.[119] After reviewing the response, the enforcement authority may *require* the violator to appear at a "Show Cause hearing" to demonstrate that further enforcement measures need not be pursued.[120] The testimony provided at this hearing is considered, along with all other contributing factors, in determining the enforcement measures to be applied in the particular situation.

The subsequent enforcement tactics used to correct the compliance problems in both the U.S. and Mexico are similar. Mexico uses immediate plant closings, followed by negotiated compliance agreements, imposition of fines, and administrative

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112. *See* U.S. ENVTL. PROTECTION AGENCY, THE ALTERNATIVE DISPUTE-RESOLUTION FACT SHEET (May 1995).
113. Ecology Law, *supra* note 85, at Chapter II, art. 167.
114. *See* Ecology Law, *supra* note 85, at Chapter II, art. 167.
115. *See id.* at Chapter II, art. 168.
116. *See id.*
117. *See* U.S. ENVTL. PROTECTION AGENCY, *supra* note 109, at 3-7.
118. *See id.*
119. *See id.*
120. *See id.*

detention to bring violators into compliance.[121] The U.S. utilizes negotiated compliance agreements, imposition of fines, and eventually plant closings (if necessary), but never administrative detention, to achieve its compliance goals.[122] Civil litigation is also available in the U.S. system, but is rarely used.[123] It is, therefore, more of a structural difference than a procedural one.

As in Mexico, the negotiated settlement has become the predominant enforcement tool in the United States. Nearly 95% of all administrative and civil judicial actions are resolved through consent agreements.[124] Because of the exorbitant cost of pursuing civil litigation, the EPA has determined that it is to be used only as a last resort and has practically abandoned it as a dispute resolution tool.[125]

This commitment by the EPA to minimize the use of litigation became agency policy in 1987.[126] It was first codified in 1990, with the enactment of the Civil Justice Reform Act.[127] This statute authorized Federal District Court Judges to require parties to attempt to reach a mediated solution prior to pursuing litigation.[128] As a companion to this act, the President issued the Executive Order on Civil Justice Reform, which requires *all*

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121. These mechanisms are implemented administratively with SEDESOL serving as both prosecutor and dispute adjudicator. SEDESOL's most frequently utilized enforcement practice is the plant closing. It is used primarily when inspectors discover a violation which poses a significant threat to the environment, the public health, or creates a nuisance to the community. The closings may be temporary or permanent, depending upon the magnitude of the problem. It can encompass all plant operations or only certain problematic processes. SEDESOL prefers to order total, temporary closings and, subsequently, negotiate settlements which will allow the plant to reopen. The cessation of operations is intended to facilitate expedient negotiations between SEDESOL and the noncompliant company. Because the closing occurs prior to the commencement of negotiations, it provides an enormous incentive to the company to seek quick and efficient resolution in order to minimize the nonproductive time. A plant is permitted to reopen only after an acceptable solution has been devised and a compliance agreement, complete with timetable, has been reached between the two parties. *See* THE PRESIDENT'S NAFTA REPORT ON ENVIRONMENTAL ISSUES, *supra* note 10, at 37-42.

122. *See* U.S. Envtl. Protection Agency, *supra* note 109, at 3-7 to 3-12 and 4-8 to 4-12.

123. *See* THE PRESIDENT'S NAFTA REPORT ON ENVIRONMENTAL ISSUES, *supra* note 10, at 42.

124. *See id.* at 37-41.

125. *See* U.S. ENVTL. PROTECTION AGENCY, *supra* note 109, at 5-4.1.

126. *See* U.S. ENVTL. PROTECTION AGENCY, GUIDANCE ON THE USE OF ADR IN ENFORCEMENT ACTIONS (August 1987).

127. 28 U.S.C.A. § 471.

128. *See id.*

enforcement agencies to attempt settlement before initiating suit.[129] These actions affirmatively show the government's commitment to minimizing the role of the judiciary in its environmental enforcement mechanism and to replace it with administrative measures.

The overwhelming dominance of alternative dispute resolution in the U.S. environmental enforcement mechanism has been evidenced by EPA statistics over the past several years. For instance, in 1996, the EPA completed 1,481 enforcement actions against non-compliant polluters.[130] Of these actions, 1,186 were settled administratively through compliance[131] and consent orders.[132] The remaining 295 cases were referred to the Department of Justice (DOJ) for possible litigation.[133] Of these, approximately 220 were resolved through negotiated settlement between the U.S. Attorney's office and the noncompliant company, leaving only about 75 to proceed to litigation.[134]

Similarly, in 1995, the EPA completed 2,043 enforcement actions.[135] Administrative settlement, in the form of compliance and consent orders, accounted for 1,864 of the resolutions.[136] Only 179 were referred to the DOJ, of which approximately 77 resulted in negotiated settlements, leaving 102 to proceed to litigation.[137]

In 1994, 2,026 actions were completed by the EPA[138] 1,596 were settled administratively, through compliance or consent order.[139] The other 430 were referred to the DOJ.[140] Approxi-

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129. *See* Exec. Order No. 12, 778, 56 Fed. Reg. 55, 195 (1991).

130. *See* OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVTL. PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE ASSURANCE ACCOMPLISHMENTS REPORT FY1996 2-2 (May 1997).

131. Compliance orders are administrative orders which are declarations by the enforcement authority of what a noncompliant company must accomplish in a specific period of time. These orders are not negotiated. *See* U.S. ENVTL. PROTECTION AGENCY, *supra* note 109, 3-7.

132. *See* U.S. ENVTL. PROTECTION AGENCY, *supra* note 130, at 2-2.

133. *See id.* at 2-3.

134. This figure was calculated by applying the 95% settlement statistic to the number of cases completed in 1996 (1,498).

135. *See* OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVTL. PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE ASSURANCE ACCOMPLISHMENTS REPORT FY1995 3-4 (May 1996).

136. *See id.*

137. This figure was calculated by applying the 95% settlement statistic to the total number of cases completed in 1995 (2,042).

138. *See* OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVTL. PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE ASSURANCE ACCOMPLISHMENTS REPORT FY1994 2-3 (May 1995).

139. *See id.*

mately 330 were settled by negotiations and 100 proceeded to litigation.[141]

This data demonstrates that over these three years, 4,646 of the 5,550 enforcement cases were settled administratively, through consent agreements. Of the remaining 901 referred to the Department of Justice, 624 were resolved by negotiated settlements between the U.S. Attorneys and the noncompliant entity, leaving only 277 to be litigated.

With relatively few cases being litigated, there is only a small amount of precedent established in this area. The cases that are litigated are rarely effected by prior adjudications because most are matters of first instance for the courts. This has rendered the effect of judge-made common law nearly inconsequential in the civil environmental dispute-resolution process.

Because negotiated settlements have no precedential value, and there are very few cases adjudicated by the courts, it is rare that prior case law has an effect on subsequent dispute-resolutions. The role of the judiciary has been limited, both as a source of law and dispute-resolution institution. Therefore, the effect of the different legal traditions on the practical enforcement mechanisms of the two countries has been virtually neutralized.

D. Appeals

The environmental enforcement mechanisms in the United States and Mexico provide for a similar system of administrative appeals for parties who feel that the government has erred in its actions. In Mexico, if a party wishes to challenge an order or resolution issued by SEDESOL, they must file a "request for dissent."[142] SEDESOL, serving as adjudicator, reviews the appeal and issues a final order within fifteen days of receipt of the request.[143] The final order will confirm, modify, or revoke the challenged resolution and is binding on the appellant.[144]

The United States has a similar administrative appeals process. An action of the EPA may be challenged by filing an appeal with

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140. *See id.*

141. These figures were calculated by applying the 95% settlement statistic to the total number of cases completed in 1994 (2,026).

142. If the request is not filed within fifteen days of issuance of the disputed order, the right to appeal is forfeited. *See* Ecology Law, *supra* note 85, at Chapter V, art. 176.

143. *See id.* at Chapter V, art. 179.

144. *See id.* at Chapter V, art. 181.

its Environmental Appeals Board.[145] This board consists of three members who review each appeal and render a decision by majority vote.[146] They are the final decision maker on administrative appeals and their orders are binding on the parties.[147] As in Mexico, the enforcement authority is both a party to the conflict as well as the adjudicator.

A second important facet of the appeals process, in both regimes, is judicial review of government actions. In Mexico, this is accomplished through the pursuit of a constitutional challenge by writ of Amparo.[148] This challenge is initiated in the federal district court, but may be appealed all the way to the Supreme Court.[149]

In the U.S., environmental statutes specifically provide for judicial review of administrative decisions and orders.[150] Review is initiated in the U.S. Court of Appeals, but may be appealed to the Supreme Court.[151] This type of action, though statutorily provided, is a Fifth Amendment due process challenge of an administrative decision. It is a constitutional determination similar to the *amparo* actions in Mexico.

The appeals process in these two systems is practically identical. Each contains an administrative mechanism and judicial review for constitutional challenges. The troubling aspect of the process is that, for administrative appeals, the agency which issued the disputed order serves as the adjudicator. This provides inherent bias in opposition to the private party, causes a due process of law problem, and promotes constitutional challenges. A neutral arbitrator would provide a more effective and fair way to resolve these administrative disputes.

From this comparison of the environmental laws, enforcement institutions, processes and appeals it is obvious that these two systems are designed to produce similar effectiveness. Although there are some differences in the way each mechanism is administered, these incongruities become inconsequential when assessing the extremely high degree of practical uniformity which these two

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145. *See* 40 CFR § 22.04.

146. *See* U.S. Envtl. Protection Agency, Environmental Appeals Board <http://www.EPA.gov/eab>.

147. *See id.*

148. *See Mexico's Environmental Laws and Enforcement*, *supra*, note 14, at 11.

149. *See* HERGET ET AL, *supra* note 53, at 28.

150. *See* 40 C.F.R. § 23.12; *see also* 33 U.S.C.A. § 1319(g)(8)

151. If an appeal is not commenced within thirty days of issuance of the disputed order, the right of appeal is forfeited. *See* 33 U.S.C.A. § 1319(g)(8)(B).

systems are capable of achieving. This makes the true obstacle to comparable enforcement effectiveness quite evident—the allocation of resources to the implementation of the Mexican mechanism.

V. Funding as the Key to Practical Unification

This comparative study has effectively demonstrated that Mexico and the United States have environmental enforcement systems which are capable of achieving similar effectiveness. The true reason for enforcement disparity can be found in non-structural influences on the system, particularly funding.

When the EPA first came into existence in 1970, limited funding seriously impaired their ability to accomplish effective enforcement.[152] Mexico has experienced similar problems throughout their history.[153]

In early 1988, in response to the passage of the Ecology Law, the Mexican government began to allocate increasingly large amounts of money to environmental endeavors.[154] Their environmental budget went from 95 million dollars in 1988 to 1.8 billion dollars by 1991.[155] The funds specifically earmarked for enforcement efforts increased from 4.2 million dollars in 1988 to 78 million dollars by 1992.[156] The enforcement programs were expected to receive a 25% increase in their budget in 1993, and progress in each of the subsequent years.[157]

As funding to the various enforcement efforts increased, Mexican enforcement effectiveness increased proportionally. From 1985 through 1988, SEDUE conducted only 3,525 inspections, which resulted in the imposition of 179 fines.[158] From 1988 through 1990, there were 5,405 inspections, resulting in three permanent plant closings, 980 partial and temporary closings, and 1,711 compliance agreements.[159]

During the period from June 1992 to September 1993, SEDESOL effectively conducted 16,386 inspections.[160] The result was nearly 1,500 enforcement actions, which included 1,161 partial

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152. *See* Hanna, *supra* note 7, at 887.
153. *See Mexico's Environmental Laws and Enforcement, supra* note 14, at 12.
154. *See* Kublicki, *supra* note 4, at 93.
155. *See Mexico's Environmental Laws and Enforcement, supra* note 14, at 12.
156. *See id.*
157. *See id.*
158. *See id.*
159. *See id.*
160. *See* THE PRESIDENT'S NAFTA REPORT ON ENVIRONMENTAL ISSUES, *supra* note 10, at 40.

plant closings, 216 total closures, and over 100 permanent shut-downs.[161] These efforts were accomplished by a total of 460 inspectors, nation-wide.[162] The Mexican government planned to increase its inspection force to 600 by the end of 1997 which was expected to increase enforcement statistics substantially.[163]

As Mexico channels more money into their enforcement efforts, their effectiveness can be expected to increase in kind. This, along with the fact that the two enforcement systems are structured to achieve comparable results, leads to the conclusion that they will produce similar environmental protection effectiveness.

The positive results exhibited when resources are increased in the Mexican enforcement program offers further evidence that the different legal traditions do not account for the disparity in enforcement effectiveness. If the legal traditions were a significant factor, manipulation of funding would not produce the dramatic progression towards practical uniformity that has been exhibited over the past ten years. This proves that the real issue that must be resolved is a financial one.

The primary problem still remaining is how to provide adequate funding to the Mexican system. Perhaps the answer is to impose an industrial tax, the proceeds from which are specifically allocated to environmental protection and enforcement efforts. This tax could be levied on manufacturing facilities and could be formulated in such a way as to impose a financial burden on the companies in Mexico, which would simulate the environmental compliance costs incurred by companies in other parts of the free-trade zone. This would remove any economic advantage of industrial relocation to areas south of the U.S./Mexican border. It would eliminate geographic competition, while providing the necessary assets to fund Mexican enforcement efforts and produce similar effectiveness throughout the free-trade zone.

VI. Conclusion

Upon completion of this study, several conclusions are evident. First, when conducting a comparative study of civil and common law countries, careful consideration must be given to the practical operation of the individual legal systems. The traditional civil and

161. *See id.*
162. *See id.*
163. *See id.*

common law models, when used as a comparison guide, may produce erroneous conclusions because of the evolution of the contemporary systems away from their original predecessors. In actuality, the contemporary descendants of the original models have developed many similarities, which have resulted in a much higher level of practical uniformity than would be expected.

The role of the judiciary in both the civil and common law systems has also changed substantially. Common law countries have been unable to sustain a legal system based entirely on judicial decisions. The complexity of changing societies has required that statutes dictate much of the law. The judicial role, as to these areas of the law, is interpretation of the legislative intent and application to various situations. This has provided the common law system with a taste of the civil law tradition.

The same societal complexity has had the reverse effect in civil law countries. As legal issues become more complex, it is necessary for these systems to incorporate more judicial interpretation into their statutory scheme. The result has been the incorporation of common law principles into the civil law tradition.

The result of this hybridization of the common and civil law systems is that a practical uniformity has been substantially achieved in many facets of these legal systems. The classic traditions, although still recognized, have given way to modern methods that utilize the most functional aspects of both systems. It is no longer possible to categorize a system as either civil or common law and expect to accurately assess the operation of its mechanism based on the classic models. Evaluation of the contemporary systems requires an in-depth understanding of individual mechanisms in order to fully understand the extent of hybridization and how it compares to other systems.

This is exemplified by the comparison of the environmental enforcement mechanisms in the U.S. and Mexico. The enforcement practices in Mexico were modeled after those in place in the U.S. This precipitated the inclusion of the common law influence into this civil law system and created substantial similarities. This, along with the minimization of the role of the judiciary in the U.S. environmental enforcement system, has resulted in a practical uniformity that has neutralized the disparity expected from the differing legal traditions.

The substantive and practical similarities between the enforcement systems of the U.S. and Mexico will allow for comparable results. If the two systems are implemented with equal resources and dedication, they will be equally effective. The problem is not

the differing legal traditions, but different levels of dedication to accomplishing environmental goals.

With the proper reforms to Mexico's allocation of resources and policy towards the implementation of their enforcement system, the economic and pollution problems associated with disparate environmental regimes will be eliminated. This study demonstrates that this is possible if both countries are dedicated to achieving a safe common environment, or if it is mandated through NAFTA treaty reform.