FEDERAL COURTS IN FOREIGN SYSTEMS*

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An institutional study of the federal courts in the United States may well profit from a survey of such courts in foreign federal systems. While such an undertaking must remain cursory and general, it may nevertheless furnish useful data for a better evaluation of the advantages and shortcomings of the national arrangement and for a clearer differentiation between the intrinsic and the accidental difficulties which have arisen.

The scope of the present investigation is limited to foreign federal governments which are of a comparable civilization and which have not been disrupted as a consequence of the war or political strife. Thus, Germany, Austria, India, and the Ma-

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2Under the Weimar constitution, 1919, before the advent of Hitler, the principal court of the republic was the Reichsgericht. It exercised mainly appellate jurisdiction, but possessed original jurisdiction over the crime of treason. Appeals could be based on any erroneous application of federal or, with certain restrictions, state law. As a result the court was an enormous body, heavily overburdened, and sometimes having more than ninety justices. See Gerichtsverfassungsgesetz, 1877, §123 ff; Zivilprozessordnung, 1933, §54; Simons, Reichsgericht, 5 Handwörterbuch der Rechtswissenschaft I (1928). Affiliated with the Supreme Court were a Supreme Labor Court, organized under the Arbeitsgerichtsgesetz, 1926 (Reichsgesetzblatt I, 507), and a Federal Court for Constitutional Litigations to settle controversies between the states or the states and federal government, and between public officials within a state. Constitution, Art. 108, and Statute of 1921 (Reichsgesetzblatt, 905). In addition there existed separate tax tribunals topped by the Supreme Finance Court, established under the Revenue Act of 1931 (Reichsgesetzblatt I, 161) and several specialized administrative tribunals. At present Germany still exists as an international entity. See R. v. Bottrill, [1946] 1 All Eng. 695 (K.B.D.), Clark v. Allen, 67 Sup. Ct. 1431 (U. S. 1947). Prussia, however, was dismembered. Law No. 46 of the Allied Control Council (Feb. 25, 1947). The ordinary courts of justice, administrative courts and labor courts, have been reestablished in the Länder by Laws Nos. 4, 21, and 36 of the Control Council; the Reichsgericht as a centralized institution, however, has apparently not been restored.

3In Austria under the federal constitutions of 1920 and 1934 the whole administration of justice in the eight Länder was national. Constitution, 1920, Arts. 10(6), 82, 83; Constitution, 1934, Arts. 34(1,6), 98-107.

layan Union will not be considered; the discussion will be confined to the two federal unions within the British Commonwealth of Nations (Australia and Canada), the four foreign federal governments in the Western Hemisphere (Argentina, Brazil, Mexico, and Venezuela), and two other federations, Switzerland and the U. S. S. R.

The true position and function of the federal courts in these countries cannot be understood from a mere summary of the statutory provisions relating to their organization and jurisdiction. In addition, each case requires a brief general discussion of the constitutional framework within which the courts operate, with emphasis on the scope of the legislative powers of the federal government, and also a special consideration of the constitutional provisions concerning the judicial power under which they are established. Not only the political temperaments of the various nations but also the technical variations of the various federal systems produce such differences that separate treatment with greatest care is indicated to avoid the unwarranted generalizations and semi-truths so often found in comparative studies.

I

Federations within the British Commonwealth of Nations

A. The Commonwealth of Australia

1. General features of the constitutional system

The Commonwealth of Australia was established as a federation by the Commonwealth of Australia Constitution Act of July 9, 1900. The Commonwealth is composed of six states. In addition it includes six territories, jurisdiction over which has been acquired since the adoption of the Constitution. The distribution of government under the British protection and provides for their administration and for a court system. Four of these states had, until the Japanese occupation, constituted the Federated Malay States, established in 1895, and possessed a federal court system of general jurisdiction. A new federal constitution was proposed by England in 1946, but has not yet been put in force.

The Malayan Union was established by Order in Council (1946, S. R. and O., No. 463), made under the Foreign Jurisdiction Act, 1890. The order brings the nine Malayan States into a union under British protection and provides for their administration and for a court system. Four of these states had, until the Japanese occupation, constituted the Federated Malay States, established in 1895, and possessed a federal court system of general jurisdiction. A new federal constitution was proposed by England in 1946, but has not yet been put in force.

The Union of South Africa, established by the South Africa Act of 1909, 9 Edw. VII, c. 9, is a unitary government with some federal features. See W. P. M. Kennedy and H. J. Schlosberg, The Law and Custom of the South African Constitution (1935), and Kovalsky, Federal Elements in the Union Constitution, 49 So. Afr. L. J. 479 (1932). The South Africa Act created one supreme court which was formed as a combination of the separate colonial courts for the whole union. See Kennedy and Schlosberg, supra, at 358.


Commonwealth of Australia Constitution Act, covering clause 6. The states are New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia.

The territories are technically not "parts" of the Commonwealth. They are Federal Capital Territory (seat of the government), Ashmore and Cartier Islands, Papua (New Guinea), Norfolk Island,
ernmental powers is patterned largely after that of the United States. The legislative powers of the Commonwealth Parliament are specifically enumerated in Section 51 of the constitution. They include, among numerous others, powers over interstate commerce, bankruptcy, insurance, and the settlement of industrial disputes. With respect to the federal territories the Commonwealth possesses full legislative powers.

In regard to the position of Australia as member of the British Commonwealth of Nations it may be mentioned that the Statute of Westminster of 1931 was adopted pursuant to its terms by the Statute of Westminster Adoption Act of 1942 in order to remove “certain legal difficulties.”

2. Constitutional provisions as to the judicial power

The judicial power of the Commonwealth is regulated by Chapter III of the Commonwealth of Australia Constitution Act. While the influence of the corresponding article of the United States Constitution is obvious, the framers of the Australian instrument nevertheless adopted a scheme which in many respects is quite original and not free from difficulties. There are two essential differences from the United States system: the state courts are “invested” with some of the federal jurisdiction for the purpose of saving the expense of judicial personnel, and the High Court has appellate jurisdiction over non-federal matters decided by the state courts.

The basic provision is contained in Section 71:

The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction.

Subsequent sections specify the scope of the federal jurisdiction and the powers of

Northern Territory, and the Australian Antarctic Territory. For the statutes regulating their administration, see 3 COMMONWEALTH ACTS 1901-1935, 2767ff. The territory of Papua and the mandated territory of New Guinea were temporarily combined as a war measure by the Papua-New Guinea Provisional Administration Act, 1945, Act No. 20. Under Arts. 4 and 5 of the Trusteeship Agreement for the Territory of New Guinea, approved Dec. 13, 1946, Australia is authorized by the United Nations to administer the territory “as if it were an integral part of Australia” and to bring it into union with her other territories. The United States and Non-Self-Governing Territories, 18 UNITED STATES-UNITED NATIONS INFORMATION SERIES 96 (1947).

10 For the legislative powers of the Commonwealth, see, in addition to the works cited supra, note 7, JOHN QUICK, THE LEGISLATIVE POWERS OF THE COMMONWEALTH (1919); WILLIAM A. WYNES, LEGISLATIVE AND EXECUTIVE POWERS IN AUSTRALIA (1936).


13 40 COMMONWEALTH ACTS 181, No. 56 (1942). For the significance of this statute, see Comment, The Adoption of the Statute of Westminster, 16 AUST. L. J. 157 (1942); Harrison, The Statute of Westminster and Dominion Sovereignty, 17 AUST. L. J. 282, 314 (1944). See also the discussions of the Statute of Westminster by the Australian Legal Convention 1936, 10 AUST. L. J. SUPP. 96ff. (1936).

14 In addition to the works mentioned supra, note 7, the judicial power and system of the Commonwealth are discussed in JOHN QUICK AND LITTLETON E. GROOM, THE JUDICIAL POWER OF THE COMMONWEALTH (1904); WYNES, THE JUDICIAL POWERS OF THE COMMONWEALTH, 11 AUST. L. J. 250, 246 (1937-1938), 12 id. at 8 (1938); HORACE E. READ, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE COMMON LAW UNITS OF THE BRITISH COMMONWEALTH (2 HARVARD STUDIES IN THE CONFLICT OF LAWS) 27 ff. (1938); BAILEY, THE FEDERAL JURISDICTION OF THE STATE COURTS, 2 RES JUDICATAS 109, 184 (1940). Also illuminating in this connection are the papers by Justice Dixon, ADDRESS TO THE SECTION OF THE AMERICAN BAR ASSOCIATION FOR INTERNATIONAL AND COMPARATIVE LAW, 17 AUST. L. J. 138 (1943), and THE LAW AND THE CONSTITUTION, 51 L. Q. REV. 590 (1935).
Parliament in relation thereto. The constitution distinguishes between original and appellate jurisdiction.

a. Original jurisdiction is given to the High Court directly by the constitution in five categories of cases, viz., in all matters 1 
(1) arising under any treaty, (2) affecting consuls or other representatives of other countries, (3) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party, (4) between states, or between residents of different states, or between a state and a resident of another state, and (5) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth. 16 In addition the constitution authorizes Parliament to confer original jurisdiction upon the High Court in four other categories of cases, viz., in all matters (1) arising under the Constitution or involving its interpretation, (2) arising under any laws made by the Parliament, (3) of admiralty and maritime jurisdiction, and (4) relating to the same subject matter claimed under the laws of different states. 17

Parliament is also authorized, however, to give federal jurisdiction in these nine types of cases to federal courts other than the High Court or to invest any state court with it and to declare to what extent the jurisdiction given to federal courts shall be exclusive. 18

b. The appellate jurisdiction of the High Court as defined in Section 73 is broader in scope than the original federal jurisdiction. 19 Subject to regulation by Parliament, it extends to three classes of federal matters, viz., judgments and orders (1) of any justice or justices exercising the original jurisdictions of the High Court, 20 (2) of any other court exercising federal jurisdiction, be it state or federal, and (3) as to points of law only, of the Interstate Commission. 21 In addition, however, appeal will also lie from the Supreme Court of any state or from any other court from which an appeal lay to the Privy Council at the establishment of the Commonwealth. 22 Apart from Section 73, the legislature also has the power to confer jurisdiction of appeals from the territorial courts upon the High Court under Section 122. 23

16 The High Court has taken the position that "there can be no matter within the meaning of the section unless there is some immediate right, duty or liability to be established by the determination of the Court." In re Judiciary and Navigation Acts, 29 C. L. R. 257, 265 (1921); but recently it seems to have broadened its concept somewhat in R. v. The Commonwealth Court of Conciliation and Arbitration, 19 Austr. L. J. 169 (1945), holding it a proper judicial function to direct observance of the by-laws of registered employers' or employees' organizations.

17 Commonwealth of Australia Constitution Act, §75.
18 Id., §76.
19 Id., §77.
20 See Moore, op. cit. supra, note 7, at 220ff.
21 "It is thus recognized by implication that the original jurisdiction of the High Court may be exercised by a single justice.
23 In so far as an appeal lay from a state supreme court to the Privy Council at the establishment of the Commonwealth, Parliament cannot divest the High Court of its appellate jurisdiction. §73. The scope of this limitation upon the regulatory power of Parliament is not free from doubt. See William Harrison Moore, THE CONSTITUTION OF THE COMMONWEALTH OF AUSTRALIA 224 (2d ed. 1910).
24 Porter v. The King; Ex parte Yee, 37 C. L. R. 432 (1926). The same power has been held to exist with respect to the mandated territory of New Guinea, but disagreement exists whether it flows from §122 or the foreign relations power, §51 (xxix). Frost v. Stevenson, 58 C. L. R. 528 (1937).
The High Court is thus not only the highest federal court of the Commonwealth but also the highest “national court of appeal of general and unlimited jurisdiction.” No appeal of right lies from the High Court to the Judicial Committee of the Privy Council. However, the Crown may grant leave to appeal in the exercise of its prerogative, except from a decision upon a question, however arising, as to the limits inter se of the constitutional powers of the Commonwealth and those of any state or of any two or more states, in which case a special certificate from the High Court is a prerequisite.

The concept of “federal jurisdiction” according to Australian constitutional law is thus defined by its subjects or, even more accurately, by its source, without regard to whether it is exercised by the federal or the state judiciary. In so far as it is administered in state courts it is termed “invested” federal jurisdiction.

3. Statutory provisions as to the organization of federal courts

Pursuant to the authorization contained in Sections 71 and 122 of the constitution, Parliament has regulated the organization of the federal courts in the Judiciary Act 1903-1946 and a few special statutes.


25 Commonwealth of Australia Constitution Act, §74. The exact scope of the “inter se constitutional questions” (as they are called) is a troublesome and complex problem. The granting of the certificate under §74 is in the discretion of the High Court. As to the considerations which control the exercise of the discretion, see Australian National Airways Pty, Ltd. v. Commonwealth (No. 2), 20 A. L. J. 76 (1946). As to the sequence of obtaining leave from the Privy Council and the certificate from the High Court, see ibid. For a case in which the construction of the constitutional powers came before the Privy Council, see James v. Commonwealth of Australia et al., [1936] A. C. 578, 55 C. L. R. 1.

26 "The phrase 'Federal Jurisdiction' as used in §§71, 73 and 77 of the constitution means jurisdiction derived from the Federal Commonwealth. It does not denote a power to adjudicate in certain matters, though it may connote such a power; ..." Lorenzo v. Carey, 29 C. L. R. 243, 252 (1921). Similarly, Baxter v. Commissioners of Taxation, 4 C. L. R. 1087, 1142 (N. S. W. 1907) ("federal jurisdiction is the authority to adjudicate from the Commonwealth Constitution and Laws"). See also Bailey, The Federal Jurisdiction of State Courts, supra, note 14.

27 Cf. Commonwealth of Australia Act, §77 (iii). The exact scope of the "invested" federal jurisdiction has been particularly troublesome in connection with the question of the validity of §39(2)(a) of the Judiciary Act 1903-1946, which abrogates all appeals to the Privy Council from state supreme courts in matters within their federal jurisdiction, except those by the Crown's prerogative. The Privy Council, in the much criticized case of Webb v. Outrim, [1907] A. C. 81, refused to be bound by this provision. It apparently followed the Supreme Court of Victoria, which granted leave to appeal and considered as within the federal jurisdiction of the state courts only such matters as they could not have passed upon except for a Commonwealth act. This view is, of course, much narrower than that of the High Court in cases cited in note 26, supra. The High Court developed various theories for the application of §39(2)(a) despite Webb v. Outrim. See Bailey, supra, note 14. It may be noted that the additional reason suggested for the invalidity of §39(2)(a), i.e., the Colonial Laws Validity Act of 1865, no longer presents a serious difficulty. The Statute of Westminster, §2(1), repealed this act with respect to all laws passed after its adoption, and the Colonial Laws Validity Act constituted merely an additional (imperial) limitation on the powers of Parliament without limiting the scope of constitutional provisions such as §77(iii); cf. A. G. for Ontario v. A. G. for Canada [1947] A. C. 127. While Lorenzo v. Carey intimated that a state court could exercise either federal or state jurisdiction in the same subject matter, it is apparently the view now that federal jurisdiction supersedes state jurisdiction. Dixon J., in Fjost v. Stevenson, supra note 23, and Jordan, C. J., in Ex parte Coorey, 45 S. R. 289, 301 (N. S. W. 1944).
The High Court, since 1933, consists of the Chief Justice and five other justices. The court holds its hearings at its principal seat (which at present is Melbourne but ultimately will be Canberra), the other state capitals, or any other place where the Governor General has established a district registry. The members of the court sit either as single justices or as a full court. Original jurisdiction may be exercised by a single justice, while appeals must be heard by the full court. The latter requires normally the presence of at least two, and in specified cases of particular importance, of three justices. Decisions involving the constitutional powers of the Commonwealth by a court consisting of less than all justices may be rendered only if at least three justices concur. In addition to the High Court, the Commonwealth Court of Conciliation and Arbitration and a Federal Court of Bankruptcy form a part of the federal judiciary. For the administration of justice in the territories the Supreme Court of the Australian Capital Territory, the Supreme Court of the Northern Territory, the Supreme Court of Papua-New Guinea, and the Court of Norfolk Island have been established. These do not, however, exercise federal jurisdiction in the constitutional sense.

4. Statutory provisions regulating federal jurisdiction

The powers conferred upon Parliament by Sections 73, 76, and 77 of the constitution have been exercised in the Judiciary Act 1903-1946, Part VI, the Commonwealth Conciliation and Arbitration Act 1901-1946, and the Bankruptcy Act 1924-1933.

a. In addition to the original jurisdiction of the High Court directly granted by Section 75, the Judiciary Act confers original jurisdiction pursuant to Section 76 in

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29 Id. §§10, 11, 12.
30 Id. §§15 and 20.
31 Id. $23.
36 Papua Act 1905-1940, §§43, 3 COMMONWEALTH ACTS 1901-1935, 2804, 2815, as amended by 38 COMMONWEALTH ACTS 82 (1940) No. 47, §15. After the recapture of the area a Supreme Court was reestablished by the Papua-New Guinea Provisional Administration Act 1945, No. 20. The government now operates under the Trusteeship Agreement, cited supra note 9.
37 Ordinance to Establish a Court for the Territory of Norfolk Island and for Other Purposes, 1936, No. 15, Commonwealth of Australia Gazette, August 13, 1936.
38 R. v. Bernasconi, 19 C. L. R. 629 (1915); Porter v. King; Ex parte Yee, 37 C. L. R. 432 (1926); cf. note 23, supra.
39 See note 16, supra, and text.
two classes of cases, viz., (1) all matters arising under the Constitution and involving its interpretation, and (2) offenses against federal statutes.41

With the exception of a list of specifically enumerated cases, the original jurisdiction of the High Court is concurrent with that of the state courts. Using the authority granted under Section 77(iii) of the constitution, Parliament has provided:

The several Courts of the States shall within the limits of their several jurisdictions, whether such limits are as to locality, subject-matter, or otherwise, be invested with federal jurisdiction, in all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except as provided in the last two preceding sections.42

These exceptions in which the High Court has been given exclusive original jurisdiction pursuant to Section 77(ii) are matters arising under any treaty, suits between states or persons suing or being sued on behalf of a state, suits between the Commonwealth and a state or persons suing or being sued on behalf of either, and writs against Commonwealth officials.43 In addition it is provided that in the inter se constitutional questions44 the High Court shall have jurisdiction exclusive of the state supreme courts45 and that any cause involving such a question shall be removed ex officio by the Supreme Court to the High Court.46 Any other cause involving a constitutional question may be removed from any state court to the High Court upon the application of either party upon sufficient cause.47

The concurrent federal jurisdiction of the state courts is exercised by them without any change of their constitution and organization, over which the federal government lacks power.48 While Section 39(2) of the Judiciary Act, quoted above, also leaves the territorial limits of their jurisdiction unaltered, the Bankruptcy Act has invested the specified state courts with federal jurisdiction in bankruptcy throughout the Commonwealth.49

The High Court and the state supreme courts also exercise concurrent original jurisdiction in admiralty. This jurisdiction is not based on the Judiciary Act50 but on the British Colonial Courts of Admiralty Act, 1890.51 As to this the jurisdiction of the High Court is not "federal" in the technical sense.52
b. The appellate jurisdiction of the High Court, apart from special statutes, extends (1) to all judgments rendered by single justices of the High Court, and (2) to all judgments of state supreme courts or other state courts which at the time of the adoption of the constitution were appealable to the Privy Council, regardless of whether they are rendered in the exercise of federal, state, or colonial jurisdiction, provided that the value involved amounts to £300. Appeal to the Privy Council from the judgment of a state supreme court rendered in the exercise of its federal jurisdiction lies only as a matter of the Crown's prerogative. In appeals from state courts in non-federal matters the powers of the High Court are circumscribed by state law.

5. Statutory provisions as to the applicable law

The Judiciary Act contains a section which was modeled after the celebrated Section 34 of the United States Judiciary Act of 1789. Section 79 of the Australian statute provides:

The laws of each State, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all courts exercising federal jurisdiction in that State in all cases to which they are applicable.

While the construction of this section has not produced a rule similar to that of Swift v. Tyson, and the whole of the state law has controlled the exercise of the “invested” federal jurisdiction, the applicability of the section to the High Court has produced doubts. In the latest case involving the point, which was tried in New South Wales and which concerned the liability of the Commonwealth for a libel published in Queensland, Chief Justice Latham, sitting as single justice, thought that he was bound by the conflicts rule of New South Wales. On appeal two justices disagreed with the Chief Justice, declaring that the law of Queensland applied directly. One justice refused to commit himself on the question since the law of Queensland would control even under the conflicts rule of New South Wales. The remaining justice agreed with the Chief Justice but suggested as an...
alternative ground that the liability of the Commonwealth was a matter of federal substantive law, which itself predicated the liability on the *lex loci delicti*. In view of this disagreement the question remains open.

6. Diversity jurisdiction in particular

The foregoing discussion shows that in ordinary diversity of citizenship cases the state courts and the High Court have concurrent jurisdiction. Removal can be requested only if constitutional questions are involved. In as much as there are only six states, the existence of the diversity jurisdiction has not created a heavy burden. The word "resident" used in Section 75 of the constitution has been held not to include a corporation. A temporary abode has likewise been declared insufficient to make a person a resident.

B. The Dominion of Canada

1. General features of the constitutional system

The Dominion of Canada was established as a federal union by the British North America Act of 1867. It is composed of nine provinces and two territories. The distribution of legislative powers between the Dominion and the provinces is regulated by Part VI of the British North America Act, the ultimate judicial construction of which has rested until today with the Privy Council.

In contrast to the federal scheme of the United States, the Canadian constitution does not proceed on a theory of "delegated" and "reserved" powers. It defines the legislative powers of both the Dominion Parliament and the provincial legislatures.

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61 Justice Dixon, *id.* at 546.
62 See note 47, *supra*, and text.
67 Yukon Territory and Northwest Territory.
68 The Canadian constitution contains no clause like that of the Australian instrument which withholds constitutional *inter se* questions from the Privy Council except in the exercise of the royal prerogative. Constitutional questions may reach the Privy Council on appeals not only from judgments in contested controversies, but also from advisory opinions of Canadian courts on projected legislation, a practice declared legal in *A. G. for Ontario v. A. G. for Canada* [1912] A. C. 571.
69 See Kennedy, *Nature of Canadian Federalism*, in *Essays in Constitutional Law* 27ff. (1934). Both the federal and the provincial powers are derived from the imperial act and are therefore "devolved" powers. Horace E. Read, *Recognition and Enforcement of Foreign Judgments in the Common Law Units of the British Commonwealth* (2 *Harvard Studies in the Conflict of Laws*) 14 n. 48 (1938). The whole range of legislative powers within the new Dominion is exhausted by this distribution. Canadian constitutional theorists, on the basis of the history of the constitution, claim that the "ultimate residuum" of legislative power was intended to be assigned to the Dominion. Kennedy, *The Interpretation of the B. N. A.*, 8 *Cambr. L. J.* 146, 148 (1943); Tuck, *Canada and the Judicial Committee of the Privy Council*, 4 *U. of Toronto L. J.* 23, 42 (1941); and (semble) Lefroy, *op. cit. supra*, note 65, at 91ff.; but see Clement, *op. cit. supra*, note 64, at 452.
Section 91 enumerates by subjects the legislative powers of the Dominion (among them the regulation of trade and commerce and bankruptcy), but contains in addition a general introductory clause which grants the power "to make laws for peace, order, and good government in Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." Section 92 lists the matters which are thus exclusively assigned to provincial legislation. They likewise include two broad and vaguely defined fields, viz., "property and civil rights in the province" and "generally all matters of a merely local and private nature in the province." In construing these clauses the Privy Council has endeavored to protect the autonomy of the provinces. It has tried to accomplish this by the technique of giving a broad scope to the terms "property and civil rights," by restricting the authority granted by the "general head" of Section 91 to a mere emergency power, and by whittling away the powers under the commerce clause. The case law so developed has been criticized as exhibiting lack of statesmanship and consistency, violating the basic principles of Canadian federalism, and hampering Dominion progress. As a result, a bill for the total abolition of appeals to the Privy Council from Canada has been introduced, but, though the Privy Council has affirmed its validity, it has not been enacted into law as yet.

2. Constitutional provisions as to the judicial power

The Canadian constitution, unlike those of Australia and the United States, does not establish a specific federal jurisdiction. Subject to the restriction that the appointment of the judges is a function of the Governor General, the administration of justice in the provinces is a matter for their legislative regulation. However, the constitution empowers the Dominion to establish a "General Court of Appeal for Canada" and any "additional courts for the better administration of the laws of Canada." There is no provision for ordinary diversity jurisdiction.

3. Statutory provisions as to the organization of federal courts

Pursuant to the constitutional authorization, a number of federal courts have

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Footnotes:


75 British North America Act, 1867, §96.

76 Id. §92(14).

77 Id. §101.
been established. The most important is the Supreme Court of Canada. It consists of the Chief Justice and six puisne judges, and has its seat at Ottawa. In addition there has been created an Exchequer Court of Canada, which is composed of a President, three puisne judges, and an undefined number of "District Judges in Admiralty of the Exchequer" for any of the six existing Admiralty districts.

There are no separate federal bankruptcy courts, but by the Bankruptcy Act certain provincial or territorial courts have been constituted courts of bankruptcy and invested with jurisdiction in bankruptcy effective in the whole Dominion.

In the Yukon Territory a special territorial court has been established, the judge of which may be relieved by stipendiary magistrates, while in the Northwest Territories justice is administered by stipendiary magistrates or the superior courts and probate courts of the neighboring provinces.

4. Statutory provisions regulating federal jurisdiction

Since the bankruptcy courts are state tribunals invested with federal jurisdiction embracing the customary bankruptcy matters, and the territorial courts exercise merely general local jurisdiction, the functions of the two major courts are the only ones of interest.

a. The Exchequer Court. This tribunal is the sole court in the Dominion exercising federal jurisdiction which depends either on the character of the parties or the subject matter. Thus controversies involving the Crown or its officers are within its competence. It has exclusive original jurisdiction in all suits of a civil nature against the Crown, based either on the common law or equity as administered in England, and other specifically enumerated causes. It has concurrent original jurisdiction in civil actions at law or equity by the Crown, in proceedings to enforce Dominion revenue statutes, and in actions against officers of the Crown for acts or omissions in the performance of their official duties.

In addition Parliament has validly conferred upon the Court jurisdiction over certain subject matters which are within the legislative competence of the Dominion. Thus the Exchequer Court has jurisdiction over claims involving the grant, validity,
or infringement of patents, copyrights, trade-marks, or inventions, even between private parties, and over the enforcement of liens and mortgages on the property of railroads engaged in interprovincial commerce. The Exchequer Court, through its "Admiralty Side," adjudicates also all matters of maritime jurisdiction and prize law.

b. The Supreme Court of Canada. The statute distinguishes between appellate and special jurisdiction. The latter covers advisory opinions upon reference either by the Governor in Council or the Senate or the House of Commons. Civil appeals lie as a matter of right from the final judgments of the highest court in a province, provided that the value of the matter in controversy exceeds $2,000 or from a final judgment of the Court of Exchequer, if the amount in controversy exceeds $500. In other non-criminal cases which belong to certain rather narrowly defined categories, appeal may be perfected by leave obtained either from the court of last resort rendering the decision or from the Supreme Court itself. Appeals in criminal matters are regulated by the criminal code. Appeal may even lie from an advisory opinion rendered by a provincial court. The Supreme Court consequently acts as a national or federal court of appeal according to whether the case comes up from a provincial court or the Exchequer Court.

II

THE SOUTH AND CENTRAL AMERICAN FEDERATIONS

A. The Argentine Nation

Of all the South and Central American republics, the federal system of Argentina presents the greatest similarity to that of the United States. It was established in 1853 as the culmination of a series of constitutional experiments. The constitution

87 Rev. Stats. of Canada, 1927, c. 34, §22, as amended by 1928 Stats., c. 28, §3.
88 Id. §27.
89 Admiralty Act, 1934 Stats., c. 31, as amended by 1935 Stats., c. 35; Canada Prize Act, 1945 Stats., c. 12.
90 Supreme Court Act, Rev. Stats. of Canada, 1927, c. 35, §§55, 56.
91 Id. §§56 and 59.
92 Exchequer Court Act, Rev. Stats. of Canada, 1927, c. 34, §82.
93 Supreme Court Act, Rev. Stats. of Canada, 1927, §§37, 41, as amended by 1937 Stats., c. 42.
95 Criminal Code, Rev. Stats. of Canada, 1927, c. 36, §§1023 and 1025. See the criticism by How, supra, note 93, at 580ff.
96 Supreme Court Act, Rev. Stats. of Canada, 1927, c. 35, §43.
97 See Read, op. cit. supra, note 69, at 24-26. The Court may hear appeals from the court of British Columbia which have been decided on appeal from the Yukon Territory. Yukon Act, Rev. Stats. of Canada, 1927, c. 215, §78(9).
98 For the history of the Argentine Constitutions from the Estatuto Provisional of Nov. 22, 1811, to the present charter, see Amadeo, Argentine Constitutional Law (4 Columbia Legal Studies) 3ff. (1943); Antorolletz, Manual teorico y practico de derecho publico constitucional y administrativo 148ff. (1939); Amuchastegui, La constitucion nacional argentina, "su genesis-su alma" (1939);
of that year is technically still in force. It was, however, extensively revised in 1860
when the Province of Buenos Aires joined the Argentine Confederation. Further
amendments were made in 1866 and 1898. The Argentine nation under the present
charter is composed of fourteen sovereign provinces, the federal district of the
capital, and the federal territories.

The constitution defines in its first part the nature of the federation and the
bill of rights, and in its second part the powers of the national government (Title I)
and of the provinces (Title II). The provinces possess all powers not delegated to
the national government. They must, however, under the sanction of interven-
tion, adopt a constitution of a representative republican type which assures the ad-
ministration of justice. The powers of the central government are divided into
the usual three branches. The legislative powers are specifically enumerated in
Article 67. Its most important subdivision for our purpose is Number II, which
grants to the national government the power to

... enact the civil, commercial, penal and mining codes, provided however, that these
codes shall not modify the jurisdiction of the local courts which shall be exercised by either
the federal or the provincial tribunals, according to whether the persons or subject matter
fall within their respective jurisdiction; and especially general laws for the whole nation
on naturalization and citizenship, subject to the principle of natural citizenship; and also
on bankruptcy.

Congress possesses full legislative powers with respect to the federal district and the
territories.

2. Constitutional provisions as to the judicial power

The judicial power of the national government is regulated by Part II, Title I,
Section 3, which was modeled after the corresponding provisions in the Constitution

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1 Gonzales Calderon, Derecho constitucional argentino 1ff. (1923); Seco Villalba, Fuentes de
la Constitución Argentina (1943); Varela, Historia constitucional de la República Argentina

2 They are Buenos Aires, Catamarca, Córdoba, Corrientes, Entre Ríos, Jujuy, La Rioja, Mendoza,
Salta, San Juan, San Luis, Santa Fe, Santiago del Estero, and Tucumán.

3 Const. 1853, Art. 3. The capital is the City of Buenos Aires, which was ceded to the nation by
the province of the same name. Statute No. 1029 of 1880, 4 Colección completa de leyes nacionales
525 (1918).

4 Const. 1853, Art. 67(14). The territories at present are La Pampa, Neuquén, Río Negro, Chubut,
Santa Cruz, Tierra del Fuego, Misiones, Formosa, and Chaco. Their regulation and government are
regulated by Statute No. 1532 of 1884, 6 Colección completa de leyes nacionales 110, and numerous
later amendments, particularly Statutes Nos. 2662 of 1889 and 2735 of 1890, 9 id. at 164, 254; Statute
No. 3575 of 1897, 11(2), id. at 377. The former territory of Los Andes was divided and annexed to
the three neighboring provinces by Decree No. 9375 of 1943.

5 The leading texts on Argentine constitutional and federal law are Antokolitz, op. cit. supra note
97; Bas, El derecho federal argentino (2 vols. 1927); Gonzales Calderon, Derecho constitucional
argentino (2 vols.) (3d ed. 1933-1936); Zavalia, Derecho federal (2 vols.) (3d ed. 1941).

6 Const. 1853, Art. 104.

7 Id., Arts. 5 and 6.

8 Argentina has enacted the four codes thus authorized.

9 Const. 1853, Art. 67(27) and (14).
of the United States. The judicial power is vested in a Supreme Court of Justice and such inferior tribunals as Congress establishes by statute. The jurisdiction of the federal courts is regulated by Articles 100 and 101, which contain the following provisions:

Art. 100. The Supreme Court and the inferior tribunals of the nation shall have cognizance and adjudication of all suits which involve issues governed by the constitution and by the laws of the nation with the reservation made in Article 67, and by treaties with foreign nations; of suits concerning foreign ambassadors, public ministers and consuls; of suits in admiralty and maritime jurisdiction; of suits in which the nation is a party; of suits which arise between two or more provinces, between a province and inhabitants of another; and between a province or its inhabitants against [and?] a foreign state or citizen.

Art. 101. In these cases the Supreme Court shall exercise jurisdiction on appeal according to the rules and exceptions which Congress prescribes; however, in all matters concerning foreign ambassadors, ministers and consuls, and in those in which a province is a party, it shall exercise original and exclusive jurisdiction.

Thus, Argentina, like the United States, has adopted a concept of federal jurisdiction defined by the subject matter or the persons over which it is exercised, and has provided for the establishment of a dual judiciary. In contrast to United States law, however, it has been believed that this dualism is also mandatory for the capital territory. Hence, we find there one set of federal judges administering "federal jurisdiction" and another set administering "ordinary jurisdiction."

3. Statutory provisions as to the organization of the federal courts

a. The federal judiciary exercising federal jurisdiction in the technical sense consists of three groups of courts:

(1) The Federal Supreme Court of Justice, which is composed of five justices;

(2) Eight Federal Chambers of Appeal, composed of three judges each except in the provinces of Buenos Aires and La Plata, where they have five judges.

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100 There exist many excellent treatments of the organization and jurisdiction of the federal judiciary. The leading text is Gondra, Jurisdiccion federal (1944). Shorter presentations can be found in Alsina, Tratado teorico practico de derecho procesal civil y comercial 366ff. (3 vols. 1941-1943); Bas, op. cit. supra note 101, at 327ff.; Zavala, op. cit. supra note 101, at 295ff.; Saenz Valiente, Curso de derecho federal 77ff. (1944); Aquino y Barillatti, Lecciones de derecho usual y practica forense 145ff. (1944); Perez, Tratado sobre la jurisprudencia de la Corte Suprema 1ff. (15 vols. 1941); Alsina, Resena de la organizacion judicial en la Republica Argentina, 5 Revista universitaria juridicas y sociales 78ff. (1939).

101 Const. 1853, Art. 94, in connection with Art. 67(11).

102 See infra, under III.

103 The organization of the Supreme Court of Justice is based on Statute No. 27 of 1862, 3 Leyes Nacionales 21ff. (Peralta, ed. 1940).

104 The Federal Chambers of Appeal were created by Statute No. 4055 of 1902, id. at 31ff. The original number of four was subsequently increased to the present eight. For details, see 1 Alsina, op. cit. supra note 106, at 389.
(3) Twenty-nine Federal Sectional Judgeships, each of which is constituted by one judge. Originally each province formed one section with one judgeship (except Santa Fe, which possessed two), but the number has gradually been increased.

b. The federal judiciary exercising ordinary jurisdiction in the capital consists of two Chambers of Civil Appeals, one Chamber of Commercial Appeals, one Chamber of Criminal Appeals, and one Chamber of Labor Appeals, as well as a number of judgeships of first instance for civil, commercial, criminal, and labor cases, and justices of the peace.

c. In the other territories both federal and ordinary jurisdiction are administered by two Chambers of Appeals for the Courts of Justice, seventeen professional judges, and a number of justices of the peace.

4. Statutory provisions regulating federal jurisdiction (in the technical sense)

Pursuant to the constitutional authorization Congress has regulated the details of federal jurisdiction by statute.

a. The limits of legislative discretion. The original jurisdiction of the Supreme Court is narrowly defined by the constitution, but the same cannot be said of the appellate jurisdiction of that tribunal or the jurisdiction of the inferior federal courts. While Congress cannot add to the constitutional scope of federal jurisdiction, it has been held that it may leave certain matters to the provincial courts, although it might attribute them to the federal courts. The exact limits in this respect have not yet been clearly established.

111 Statute No. 27 of 1862, supra note 109.
119 The distribution of the sectional judges at present is thus: six are sitting in the province of Buenos Aires, three each in the Federal Capital and the provinces of Santa Fe and Córdoba, two each in the provinces of Entre Ríos and Mendoza, and one each in the remaining nine provinces. For details see Republica Argentina, Presupuesto general de la nación 386ff. (1943); 1 AlsinA, op. cit. supra note 106, at 391, and Aquino y Barillatti, op. cit. supra note 106, at 151ff.
110 The organization of the courts of ordinary jurisdiction in the capital is based upon Statute No. 1893 of 1886, 3 LEYES NACIONALES 213 (1940). It has undergone a number of amendments, particularly by Statute No. 7055 of 1910, id. at 253. For details see 1 AlsinA, op. cit. supra note 106, at 403. The labor tribunals were created by Executive Decree No. 3347 of 1944, Buletín Oficial, Jan. 13, 1945, and made permanent by Statute No. 12948 of 1947.
114 For details see 1 AlsinA, op. cit. supra note 106, at 410; Aquino y Barillatti, op. cit. supra note 106, at 155.
115 Established by Presidential Decrees Nos. 4256 and 4257 of 1945, 5 ANALES DE LEGISLACION ARGENTINA 79, 80.
116 See the list in 1 AlsinA, op. cit. supra note 106, at 394, which must be supplemented by Statute No. 12680 of 1941 and Decree No. 4257 of 1945 creating one additional judgeship for the territories of Chaco and Chubut respectively.
117 The basic statutes regulating federal jurisdiction are Statutes Nos. 48 and 50 of 1863, 3 LEYES NACIONALES 23ff. and 45ff. (1940) and Statute No. 4055 of 1902, id. at 31ff.
118 Thus the Supreme Court of Justice has upheld Statute No. 927 of 1878, 3 LEYES NACIONALES 29ff. (1940), which excludes from the field of concurrent federal jurisdiction all suits involving less than 500 pesos, Vignale c. Albarracin, 36 Fallos de la S. C. 394 (1889); Pinto c. Moureaux, 53 Fallos de la S. C. 111 (1893); Ferrocarril Buenos Aires c. Sociedad E. Bertolina, 119 Fallos de la S. C. 161 (1914); Millan c. Caviglia, 152 Fallos de la S. C. 344 (1928). The Supreme Court has also declared recently that the adjudication of matters regulated by federal statute of general application may be left to the
b. Jurisdiction conferred upon the inferior federal courts. The original jurisdiction of the sectional judges is predicated either upon the character of the subject matter or of the parties.\textsuperscript{119}

(1) The federal jurisdiction defined by the subject matter is exclusive.\textsuperscript{120} According to Article 2 of Statute No. 48 of 1863, it includes all matters

\ldots which are governed specifically by the national constitution and the laws which Congress has enacted or may enact and by public treaties with foreign nations.\textsuperscript{121}

Numerous difficulties are encountered in the interpretation of this article. Since a broad construction of the first clause would mean that whenever a constitutional issue is raised the provincial court loses jurisdiction, the Supreme Court of Justice has taken pains—not always consistently—to restrict its meaning to causes of action directly based on the constitution.\textsuperscript{122} Otherwise the original federal jurisdiction would be unduly extended. The second clause has likewise required restrictive interpretation. Since the constitution itself excludes the four codes from the exercise of federal jurisdiction (absent other reasons for it),\textsuperscript{123} the term “laws” in Article 2 of the statute of 1862 has been interpreted to apply only to “special” laws. Exactly what comes under this concept is a much debated question.\textsuperscript{124} The statute governing bankruptcy has been considered a general law and not within the reach of federal jurisdiction.\textsuperscript{125}

Original federal jurisdiction by reason of the character of the parties includes among others “civil suits in which the parties are an inhabitant of the province in which suit is brought and an inhabitant of another or in which the parties are an Argentine citizen and a foreigner.”\textsuperscript{126} The interpretation of this section has been much influenced by United States precedents. The statute itself requires for the acquisition of inhabitancy within the meaning of this section a continuous residence of two years, or the holding of real property or such establishment that the intent to remain is manifested.\textsuperscript{127} The Supreme Court of Justice has declared that this
The extraordinary appeal lies from judgments of the sectional judges of first instance. It means the acquisition of domicile is necessary in all cases. In addition it has limited the application of this article to Argentine citizens. Inhabitants of the capital territory are by special statute assimilated to the inhabitants of a province. Jurisdiction over this category is concurrent. Provincial jurisdiction attaches if the defendant denies the allegations of the complaint in a provincial court without contesting the jurisdiction.

The federal Chambers of Appeal exercise appellate jurisdiction chiefly over the judgments of the sectional judges of first instance.

c. Appellate jurisdiction of the federal Supreme Court of Justice. While the original jurisdiction of the federal Supreme Court is defined by the constitution, its appellate jurisdiction is statutory. Argentine procedural theory distinguishes between ordinary and extraordinary appeals. The former is a true appeal while the latter corresponds to a writ of error. Ordinary appeals lie from the judgments of the Federal Chambers of Appeal in specifically enumerated cases of particular importance. The extraordinary appeal lies from judgments of the Federal Chambers of Appeal, the Chambers of Appeal of the Federal District, and the Supreme Courts of the provinces to preserve the supremacy of the federal constitution, the federal statutes, and treaties in accordance with Article 31 of that instrument, which is a copy of the corresponding Article VI of the United States Constitution.

The prerequisites of these extraordinary appeals are regulated by Statute No. 48 of 1863, Article 14, which is in turn a close adaptation of the United States Constitution.

128 GONDRÁ, op. cit. supra note 106, at 223; ZÁVALIA, op. cit. supra note 106, at 422.
129 ASPIAZU y BILBAO c. CASTAGNO, 1 Fallos de la S. C. 451 (1865); GONDRÁ, op. cit. supra note 106, at 223; ZÁVALIA, op. cit. supra note 106, at 421.
130 Statute No. 1467 of 1884. See DEMARCHI c. OLMOS, 29 Fallos de la S. C. 363 (1885). The constitutionality of this statute was not questioned in this case, in contrast to the attitude of our courts toward our similar statute of 1940. See WILLIS v. DENNIS, 72 F. Supp. 853 (W. D. Va. 1947).
131 Statute No. 48 of 1863, Art. 12(4).
132 Statute No. 4055 of 1902, Arts. 15 and 16, 3 LEYES NACIONALES 31ff. (1940). The value of the litigation must exceed 500 pesos. For details see 1 ALSINA, op. cit. supra note 106, at 689ff.
133 As to the jurisdiction of the Supreme Court of Justice in general, see 1 ALSINA, op. cit. supra note 106, at 691ff. The difference between the ordinary and extraordinary appeals consists chiefly in the scope of review. The writ of extraordinary appeal, which was unknown to the Italo-Spanish concepts of procedure that govern Argentine law, was introduced in imitation of the old United States writ of error.
134 Statute No. 4055 of 1902, Art. 1, 3 LEYES NACIONALES 31ff. (1940). It lies in such civil actions against the nation as are authorized by statute, actions against private persons in tax matters and cases involving certain crimes, extradition, and certain war measures. Suits against the nation in certain matters were first authorized by Statute No. 3952 of 1900, 3 LEYES NACIONALES 93 (1940), after the Supreme Court of Justice, following North American rather than Spanish precedent, had declared the nation to be immune from suit by private parties.
135 Statute No. 3952 of 1900, 3 LEYES NACIONALES 93 (1940), extended the suability of the nation to civil suits generally, see 1 ALSINA, op. cit. supra note 106, at 680.
136 The present basis of this review by the Supreme Court is Art. 6 of Statute No. 4055 of 1902, supra note 117. For details see 2 ALSINA, op. cit. supra, note 106, at 642; ZÁVALIA, op. cit. supra, note 106, at 257ff; PECACH, Los modos de iniciación del control judicial de la constitucionalidad de las leyes en la Rep. Argentina, 5 REVISTA UNIVERSITARIA JURIDICAS Y SOCIALES 150 (1939). As to the political efficacy of the institution of judicial review in recent political developments, see ZAVILIA, AMPARO JUDICIAL, su alcance y eficacia, 1 REVISTA DE LA FACULTAD DE DERECHO Y CIENCIAS SOCIALES (3d Ser.) 53 (1946).
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Judiciary Act of 1789, Sec. 25, which provided for writs of error to the Supreme Court under identical conditions.

5. Reform movements

The present system has recently been criticized as unsatisfactory and changes have been proposed. On the one hand, it has been suggested that the diversity jurisdiction is of no advantage and should be abolished. But Argentine theory has taken the position that Congress could not go so far without constitutional amendment. On the other hand, it has been advocated that the Supreme Court be transformed into a national court of review for the purpose of eliminating the discordant interpretations given to the great national codes by the provincial supreme courts.

B. The United States of Brazil

1. General features of the constitutional system

Brazil declared her independence of the Crown of Portugal in 1822. Two years later the Empire of Brazil obtained a constitution. In 1889 the republic was proclaimed, and in 1891 adopted its first constitution. It established a federal form of government, transforming the former imperial provinces into autonomous states. Following the Vargas revolution of 1930 a new constitution was put in force in 1934 and it in turn was superseded by another in 1937. The present organic

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Footnotes:

126 It provides: "Once a suit has been commenced in the provincial courts it must be decided and determined in the provincial jurisdiction, but the final judgments pronounced by the provincial courts can be appealed to the Federal Supreme Court in the following cases:

1. if in the complaint the validity of a treaty, a Congressional statute or of an authority exercised in the name of the Nation was questioned and the decision was against the validity;

2. if the validity of a statute, decree or authority had been questioned under the claim that it was repugnant to the national constitution, a treaty or the laws of Congress and the decision was in favor of the validity of the statute or authority;

3. if the significance of any clause of the constitution or a treaty or a congressional statute or a commission exercised in the name of the national authority had been questioned and the decision went against the validity of the title, right, privilege and exemption which was founded upon these clauses and was a matter of the litigation."

Article 15 of the same act excludes specifically the codes mentioned in Article 67(1) of the constitution from the term "laws" as used in Article 14(3).


128 See Rivarola, La unidad de derecho en la Republica Argentina, 15 REVISTA DEL COLEGIO DE ABOGADOS DE ROSARIO 53 (1944); COLOMBO, LA CORTE NACIONAL DE CASACION (2 vols. 1943).

129 For the text of the constitution of 1824 see Constitucioes Do Brasil 5ff. (ed. by Marchese, 1944); for the history of its adoption see Leal, Historia constitucional do Brasil (1915).

130 For the text of the constitution of 1891 see Constitucioes Do Brasil, supra, note 139, at 37ff. The leading Brazilian commentators are Barbalho, Constitucioes federal brasileira (2d ed. 1924); Maximiliano, Commentarios a Constitucioes brasileira (3 ed. 1929); Barbosa, Commentarios a constitucioes federal brasileira (6 vols. 1934). A good English discussion is HERMAN G. JAMES, The Constitutional System of Brazil (1923).

131 For the text of the constitution of 1934 see Constitucioes Do Brasil, supra note 139, at 67. Its features are discussed in Eggen, Reorganizacion del sistema constitucional del Brasil, (1935).

132 For the text of the constitution of 1937 see Constitucioes Do Brasil, supra note 139, at 129. Its features are discussed in Araujo Castro, A Constitucioes de 1937 (1938) and Pontes de Miranda, Commentarios a Constitucioes de 10 de Noviembre de 1937 (3 vols. 1938). See also Pereira de Vasconcellos, Constitucioes dos E. U. do Brasil, interpretada pelo do Supremo tribunal federal (1944).
charter was promulgated on September 18, 1946. The United States of Brazil form a federal union comprising twenty states, the federal district constituting the capital, and the territories.

The powers of the union are enumerated by the constitution. Its legislative competence extends to civil, commercial, penal, procedural, aviation, and labor law. The states retain all powers which are not implicitly or expressly prohibited by the constitution. The union possesses full powers in respect to the administration of the federal district and the territories.

2. The eclipse of the system of a dual jurisdiction and a dual judiciary

The constitution of 1891 was greatly influenced by those of the United States and Argentina. It provided, accordingly, for a federal jurisdiction and a dual judiciary. The judicial power was vested in a Supreme Federal Tribunal and as many federal judges and tribunals as Congress chose to create. Federal jurisdiction was regulated much along the same lines as in the United States and Argentina. The original jurisdiction of the lower federal courts was predicated upon either the subject matter or the character of the parties to the suit, including litigation between citizens of different states. The original jurisdiction of the Federal Supreme Tribunal consisted of the familiar categories, and its appellate jurisdiction extended not only over the lower federal courts, but also over the state supreme courts. In the latter case appeals lay only to safeguard the supremacy of the federal constitution and statutes, under conditions similar to those specified by the United States Judiciary Act.

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145 Id. 12 Anuarrio de legislação federal 1004 (1946).
147 Const. 1946, Art. 1, §2.
148 The territories are Acre, Fernando de Noronha, Amapá, Rio Branco, Guaporé, Ponta Pará and Iguazú. With the exception of Acre, which was acquired in 1903, they were established in 1942 and 1943.
149 Const. 1891, Art. 55.
150 Id. Art. 15, sec. 1.
151 Excellent surveys of the development of federal justice in Brazil are given by Justice Castro Nunes in his great treatise, Teoria e Prática do poder judiciário, 58ff. (1943), and by Nunez Leal, Organização judiciária dos territórios, I Revista de direito administrativo 789ff (1945).
152 Const. 1891, Art. 55. Even before the adoption of the constitution the republican government had established a Supreme Tribunal and twenty-one federal courts (one for each state and one for the capital). Decree No. 848 of 1890, amplified by Decree No. 1420A of 1891. This organization was retained, and all rules and regulations concerning organization and administration of federal justice were consolidated by Decree No. 3084 of 1898, Coletão das leis da República dos E. U. do Brasil, 779ff. (1898).
153 For details see Lessa, Direito constitucional brasileiro: do poder judiciário (2d ed., 1915), and Barbalho, op. cit. supra, note 140, at 313ff.
154 Const. 1891, Art. 60. Federal jurisdiction because of the subject matter was not predicated, however, simply on the fact that the litigation was based on a federal statute. To come within federal jurisdiction the suit had to involve a claim or defense founded on the constitution. This concept created great difficulties.
155 Id., Art. 59, §§1 and 2.
The constitutional provisions gave rise to numerous doubts and proved unsatisfactory. Consequently, this portion of the constitution was amended in 1926 for the purpose of eliminating the difficulties. The most significant change was the abolition of federal jurisdiction in diversity of citizenship cases.\textsuperscript{167}

The 1934 constitution, in spite of its centralizing and authoritarian tendencies, retained the dual jurisdiction on the insistence of some states.\textsuperscript{158} Its major innovation in the administration of justice was the grant to the federal government of power to enact rules of procedure applicable in the state courts. Otherwise no material changes were made except that the appellate jurisdiction of the Supreme Court was extended to review by writ of error (called \textit{recurso extraordinario}) of decisions rendered by the state courts in violation of the literal terms of a federal statute.\textsuperscript{160} The constitution of 1937, however, made a radical break with tradition. It eliminated all lower federal courts except in the federal district and the territories.\textsuperscript{160} The state courts were listed as organs of the judicial power of the nation, thus manifesting the trend toward the national state.\textsuperscript{161}

3. The present scope and organization of federal justice

a. The organization of the federal courts. The framers of the new constitution of 1946, while reemphasizing democratic principles, did not feel it necessary to restore lower federal courts of the old type. Apart from the electoral and the military tribunals, the constitution vests the judicial power of the national government in three types of courts: (1) the Federal Supreme Tribunal, (2) the Federal Tribunal of Appeals, and (3) labor tribunals.\textsuperscript{162} The Federal Supreme Tribunal has its seat in the capital and is staffed by eleven justices; their number can be increased by statute upon request of the tribunal.\textsuperscript{163} The Supreme Tribunal of Appeals likewise sits in the capital and is composed of nine members.\textsuperscript{164} The labor tribunals form three sets of courts, viz., the Superior Labor Tribunal, regional labor tribunals as determined...
by statute, and conciliation and arbitration commissions. In addition, the federal district and the territories have a separate federal judiciary. The constitution contains rigid standards for the appointment and tenure of the state judges, and guarantees impartial judicial process to all residents.

b. The jurisdiction of the federal courts. Only the jurisdiction of the Federal Supreme Tribunal and of the Tribunal of Appeals will be outlined, in as much as the jurisdiction of the federal courts of general jurisdiction in the federal district and the territories and that of the labor courts are separately controlled by special statutes.

(1) The Federal Supreme Tribunal exercises either original or appellate jurisdiction. The former extends to eleven specifically enumerated classes of cases, which include criminal prosecutions of certain high foreign or domestic officials and the revision of convictions in these cases; suits between foreign states on the one side and the union, the states, the federal district, or municipalities on the other; suits between the states or between the nation and the states; jurisdictional conflicts between state courts, between federal courts, or between state and federal courts; extraditions requested by foreign states; and, finally, writs of habeas corpus or mandamus, and injunctions against certain high officials.

The appellate jurisdiction of the Federal Supreme Tribunal is exercised either in “ordinary” appeals or by writs of error. Appeals are permitted (1) from denials by courts of last resort of writs of habeas corpus and mandamus, (2) from judgments of local courts concerning either claims based on a treaty with a foreign nation or suits between foreign states and inhabitants of Brazil, and (3) from judgments in prosecutions for political crimes.

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105 Id., Art. 122. The labor tribunals are now regulated in detail by Decree-Law No. 9797 of 1946 (Annuario de Legislacao Federal, 894 (1946)), amending the Consolidação das leis do trabalho; Decree-Law No. 5425, 9 Coleccao das Leis do Brasil, 240 (1945).

106 The administration of justice in the Federal District is regulated by the Código de Organização Judiciária do Distrito Federal, Decree-Law No. 8527 of 1945, 5 Coleccao das Leis do Brasil 578ff (1946), providing for a Tribunal of Appeal, now called Tribunal of Justice, composed of twenty-seven judges sitting in eight divisions, a tribunal for the press, a number of single judges of first instance, and a jury.

107 The administration of justice in the territories is regulated by Decree-Law No. 6887 of 1944 (7 Coleccao das Leis do Brasil, 296 (1944)), which establishes various judicial districts and provides for a single judge, a press tribunal, a jury, and justices of the peace in each of them. See Nunez Leal, op. cit. supra, note 151.

108 See Const. 1946, Art. 124, Art. 7, VII, g (federal intervention in case of non-compliance), and Art. 141.

109 See notes 165-167 supra.

110 Const. 1946, Art. 101, 1, a to k. For the development of the original jurisdiction of the Supreme Federal Tribunal, see Castro Nunes, op. cit. supra, note 151, at 212ff.

111 As to the development of and difference between ordinary and extraordinary recourse (appeals and writs of error) see Castro Nunes, op. cit. supra, note 151, at 287ff, 309ff, and FragA, Institucions do processo civil do Brasil 256ff (1941).

112 The mandada de segurança, which combines the functions of the writ of mandamus and an injunction against public officers, was introduced into Brazilian law in 1934. See Araujo Castro, op. cit. supra, note 142, at 383ff, and Castro Nunes, Do mandado de segurança e outros meios de defesa do direito contra actos do poder publico (1937).

113 Const. 1946, Art. 101, II.
Judgments rendered by courts of last resort are reviewable upon writ of error in four classes of cases, viz.:

(a) when the decision is contrary to a provision of the constitution or the terms of a treaty or federal statute,

(b) when the validity of a federal law has been questioned in view of the constitution and the decision below denied the applicability of the attacked statute,

(c) when the validity of the statute or act of a local government has been contested in view of the constitution or federal law and the decision below upholds the statute or act, and

(d) when in the decision below the interpretation of a federal statute is different from that which was given to it by another court or the Federal Supreme Tribunal itself.\(^{174}\)

(2) The Federal Tribunal of Appeals has jurisdiction to issue writs of mandamus or injunctions against the ministers of state, and to hear appeals from cases in which the federal government is a party, or in which writs of habeas corpus or writs of injunction or mandamus against federal authorities have been denied.\(^{175}\)

C. The United States of Mexico

1. General features of the constitutional system

The constitutional organization of Mexico has undergone a stormy development.\(^{176}\) The first constitution based on democratic and federal principles was adopted in 1824.\(^{177}\) It remained in force for only eleven years but, after various experiments with unitarian schemes, was restored in 1846. Its reign was again of short duration, however, due to the dictatorship of Santa Anna. The revolt of Ayutla resulted finally in the adoption of the liberal constitution of 1857, which was replaced by the present constitution of 1917.\(^{178}\)

The federation is composed of twenty-eight states,\(^{179}\) the federal district, and three territories.\(^{180}\) The federation also possesses jurisdiction over all islands not under the actual control of a state.\(^{181}\) The federal government is divided into the

\(^{174}\) Id., Art. 101, III, a to d. As to the construction of the analogous clauses in the constitution of 1937 see CASTRO NUNES, op. cit. supra, note 151, at 353 ff.

\(^{175}\) CONST. 1946, Art. 104.

\(^{176}\) On the constitutional history of Mexico, see CAMPILLO CAMARILLO, TRATADO ELEMENTAL DE DERECHO CONSTITUCIONAL MEXICANO (1928), xvii, and JOHN T. VANCE AND HELEN L. CLAGETT, A GUIDE TO THE LAW AND LEGAL LITERATURE OF MEXICO 161 ff (1945).

\(^{177}\) On the early history of federalism in Mexico, see MARTINEZ PALAFAX, LA ADOPTION DEL FEDERALISMO EN MEXICO (1945).

\(^{178}\) The constitution of 1917 has been amended several times pursuant to the procedure specified in Art. 135. For a recent text see TRUEBA URBINA, CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS (3d ed. 1946), which, however, does not incorporate the amendment of Dec. 16, 1946, regarding Art. 104, Diario Oficial Dec. 30, 1946.

\(^{179}\) Their names are listed in Art. 43 of the Constitution, 1917: Aguascalientes, Campeche, Coahuila, Colima, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán and Zacatecas.

\(^{180}\) CONST. 1917, Arts. 43 and 45: Territorio Norte de la Baja California, Territorio Sur de la Baja California, and Quintana Roo.

\(^{181}\) Id., Art. 48.
three traditional branches. Its legislative powers are specifically enumerated.\textsuperscript{182} The constitution provides expressly for the adoption of a commercial code but makes no such reference to a civil code.\textsuperscript{183} The federal government has full legislative powers in the federal district and the territories.\textsuperscript{184}

2. \textit{Constitutional provisions as to the judicial power}

The judicial power of the federation is regulated in Title III, Chapter IV of the constitution. It is lodged in a Supreme Court of Justice, Circuit Tribunals, and District Judgeships, the number and functions of which are fixed by statute.\textsuperscript{185} The Supreme Court of Justice is composed of twenty-one justices who sit \textit{in banco} or in four divisions as determined by statute. Since 1940 the Supreme Court of Justice has exercised supervision over the lower federal courts.\textsuperscript{186}

The constitutional scope of federal jurisdiction is governed by Articles 103 and 104.\textsuperscript{187} The former vindicates the supremacy of the constitution in regard to both the federal structure and the guarantees of civil rights.\textsuperscript{188} The latter defines the other controversies which the framers wished to confide to the federal courts because of the subject matter or the parties involved.\textsuperscript{189} Suits between a state and the inhabitants of another state are within the ambit of federal jurisdiction, but suits between citizens of different states are not. Controversies involving compliance with, or the application of, a federal statute or treaty which affects only private interests may be

\textsuperscript{182}\textit{Id.}, Art. 73 (I-XXIX).
\textsuperscript{183}\textit{Id.}, Art. 73(X). The Federal Civil Code of 1932 which applies in all of Mexico is therefore specifically restricted to federal matters.
\textsuperscript{184}\textit{Id.}, Art. 73 (VI).
\textsuperscript{185}\textit{Id.}, Art. 94.
\textsuperscript{186}\textit{Const.} 1917, Art. 97, as amended in 1940. \textit{Diario Oficial No. 9,} 1 \textit{(1940)}.
\textsuperscript{187}For a discussion of details, see \textit{Lanz Ducret, DERECHO CONSTITUCIONAL MEXICANO} 291ff (1936).
\textsuperscript{188}Art. 103 of the Constitution, 1917, provides: "The tribunals of the Federation shall determine every controversy which arises:

\textit{I.} because of laws or acts of federal authorities which violate civil liberties guaranteed by the constitution;

\textit{II.} because of laws or acts of federal authorities which violate or encroach upon the sovereignty of the states; and

\textit{III.} because of laws or acts of authorities of the latter which invade the sphere of federal authority."

\textsuperscript{189}Art. 104 provides: "The tribunals of the Federation shall take cognizance

\textit{I.} of all civil or criminal controversies which arise about the compliance with or application of federal statutes or out of treaties concluded with foreign powers. If such controversies affect only private interests the local judges and tribunals of general jurisdiction in the states, the Federal District and the territories may take cognizance thereof at the election of plaintiff. The judgments of first instance are appealable to the immediate superior of the judge who has decided the suit in first instance.

"In the suits in which the Federation has an interest the law may prescribe appeals to the Supreme Court of Justice against the judgments of second instance or against judgments of administrative tribunals created by federal statute, provided that these tribunals are endowed with full independence to render their decisions;"

\textit{II.} of all controversies involving maritime law;

\textit{III.} of those in which the Federation was a party;

\textit{IV.} of those which arise between two or more states, or between a state and the Federation, as well as of those which arise between the tribunals of the Federal District and those of the Federation or a state;

\textit{V.} of those which arise between a state and one or more inhabitants of another;

\textit{VI.} of the suits concerning a member of the diplomatic or consular corps."
adjudicated, at the election of the plaintiff, by the judges of federal jurisdiction or by the ordinary courts of justice.

The original jurisdiction of the Supreme Court of Justice extends to controversies between states, between the states and the federation, and all other suits to which the federation is a party.\textsuperscript{100} The Supreme Court also determines disputes between the authorities of one state about the constitutionality of their acts,\textsuperscript{101} and jurisdictional disputes between various federal courts, or federal and state courts, or courts of different states.\textsuperscript{102}

Article 107 gives rules for the vindication by judicial action of constitutional supremacy as provided in Article 103. This method is a proceeding, peculiar to the Mexican system, called the writ of \textit{amparo},\textsuperscript{103} the details of which are governed by statute.

3. \textit{Statutory provisions as to the organization of the federal courts}

The statute regulating the organization of courts is the Organic Law for the Judicial Power of the Federation of 1935.\textsuperscript{104} The national territory is divided into six circuits, each of which is the seat of a Circuit Tribunal (with one judge) and of a varying number of district judgeships.\textsuperscript{105} The Supreme Court of Justice exercises its original jurisdiction under Article 105 \textit{in banco}; in all other cases it acts through one of the four divisions.\textsuperscript{106} A Fiscal Tribunal of the Federation was added to the federal judiciary in 1936.\textsuperscript{107} Following the example of Argentina, federal jurisdiction and ordinary jurisdiction are separate even in the federal district and the territories. The latter is regulated by a statute of 1932\textsuperscript{108} which establishes a Superior

\textsuperscript{100} The nation must be a party not in its capacity as "authority" but as "person." Vásquez Vallejo, \textit{c. Gov. Fed., 81 SEMANARIO JUDICIAL, 6015} (1941).

\textsuperscript{101} \textit{Id.}, Art. 106.

\textsuperscript{102} Morena Cora, \textit{Tratado del Juicio de Ampara conforme a las sentencias de los tribunales federales} (1902); Cortes, \textit{El juicio de amparo al alcance de todos} (1908). Also illuminating is Vega, \textit{El juicio de amparo y el recurso de casación Francés} (1889), reprinted in 8 \textit{REVISTA DE LA ESCUELA NACIONAL DE JURISPRUDENCIA}, 213 (1946). More modern treatments are De Leon, \textit{Manual de procedimiento civil} 64ff (1934); Couto, \textit{La suspensión del acto reclamado en el amparo} (1929); Morero, \textit{La sentencia del amparo}, 1 \textit{JUS, REVISTA DE DERECHO Y CIENCIAS SOCIALES}, No. 2, 35 (1938); De Leon, \textit{Manual y Ley de Amparo} (1946). The most significant discussions of the writ are contained in the report of the third division of the federal Supreme Court of Justice in INFORME RENDIDO A LA SUPERMA CORTE DE JUSTICIA (1941), and the report of the committee of justices, entitled \textit{El problema del rezago de juicios de amparo en materia civil}, in \textit{INFORME RENDIDO A LA SUPERMA CORTE DE JUSTICIA} (1946).

\textsuperscript{103} The Mexican literature on the writ of \textit{amparo} is extensive. See Vance and Clagett, \textit{op. cit. supra}, note 176, at 172ff. The classical treatises are Castillo, \textit{Teoría del recurso de amparo} (1901); Morena Cora, \textit{Tratado del Juicio de Ampara conforme a las sentencias de los tribunales federales} (1902); Cortes, \textit{El juicio de amparo al alcance de todos} (1908). Also illuminating is Vega, \textit{El juicio de amparo y el recurso de casación Francés} (1889), reprinted in 8 \textit{REVISTA DE LA ESCUELA NACIONAL DE JURISPRUDENCIA}, 213 (1946). More modern treatments are De Leon, \textit{Manual de procedimiento civil} 64ff (1934); Couto, \textit{La suspensión del acto reclamado en el amparo} (1929); Morero, \textit{La sentencia del amparo}, 1 \textit{JUS, REVISTA DE DERECHO Y CIENCIAS SOCIALES}, No. 2, 35 (1938); De Leon, \textit{Manual y Ley de Amparo} (1946). The most significant discussions of the writ are contained in the report of the third division of the federal Supreme Court of Justice in INFORME RENDIDO A LA SUPERMA CORTE DE JUSTICIA (1941), and the report of the committee of justices, entitled \textit{El problema del rezago de juicios de amparo en materia civil}, in \textit{INFORME RENDIDO A LA SUPERMA CORTE DE JUSTICIA} (1946).

\textsuperscript{104} Diario Oficial No. 8 (Jan. 10), 1ff (1936).

\textsuperscript{105} Ley orgánica del Poder Judicial de la Federación, Art. 71ff. The six circuit tribunals sit at Mexico City, Aguascalientes, Monterrey, Guadalajara, Puebla City, and Merida City. The total number of district judgeships at present is forty-six, the Federal District having six federal judges and each state at least one.

\textsuperscript{106} Ley orgánica del Poder Judicial, Art. 11. \textit{Cf. Wheless, Compendium of the Laws of Mexico} 530 (2d ed. 1938).

\textsuperscript{107} Ley de Justicia Fiscal of Aug. 27, 1936. The position and jurisdiction of this court are now defined by the Código fiscal de la federacion of 1938, Arts. 146 and 160.

\textsuperscript{108} Ley orgánica de los tribunales de justicia del fuero común del Distrito y territorios federales, 75 \textit{DIARIO OFICIAL}, No. 53, 2 (1933). The statute has been amended several times.
Court of Justice for the federal district and one Superior Tribunal each for Northern and Southern Lower California, and provides for a variety of judicial officers of inferior jurisdiction. The federal courts and the courts of ordinary jurisdiction in the federal district and the territories observe different rules of procedure.109

4. Statutory provisions regulating federal jurisdiction

In addition to and in pursuance of the constitutional provisions, the federal jurisdiction (in the technical sense) is regulated by two statutes, viz., by the above mentioned Ley orgánica del poder judicial of December 30, 1935, and by the Ley orgánica de los Artículos 103 y 107 de la Constitución Federal, called Ley de amparo, of the same date.200 The first statute sets forth in detail the jurisdiction of the district judges over criminal, civil, and administrative litigations,201 that of the Circuit Tribunals, which is chiefly appellate,202 and that of the Supreme Court of Justice,203 the appellate jurisdiction of which was recently augmented by giving to it the appeals listed in Article 104(T), Par. 2. of the Constitution.204

The jurisdiction in amparo is controlled by the separate statute mentioned. The bulk of the business of the federal courts and of the Supreme Court in particular is formed by proceedings under the Ley de amparo.205 The office of the writ, as we have said, is the prevention of infringements upon the federal structure and of the civil liberties guaranteed by the constitution.206 One of these liberties is embodied in a provision similar to our due process clause with the specific addition that "civil judgments must be in conformity with the letter or the juridical interpretation of the statutes or in the absence thereof be based upon the general principles of law."207 Logically, therefore, any incorrect judgment constitutes a violation of this constitutional guaranty which can be vindicated by the writ of amparo. The Supreme Court of Justice, indeed, has reached this conclusion. As a result the federal judiciary, particularly the Supreme Court itself,208 has gradually become "an organ of control

109 They are contained in the Código de procedimientos civiles para el Distrito federal y territorios of Aug. 30, 1932, and the Código federal de procedimientos civiles of Dec. 31, 1942, 173 Diario Oficial, No. 45 (1943).
201 Ley orgánica del Poder Judicial Arts. 41, 42, 43, 44, 45. Cf. Wheless, op. cit. supra, note 196, at 532.
202 Id., Art. 36; cf. Wheless, op. cit. supra, note 196, at 531.
203 Id., Arts. 11, 24, 25, 26, 27.
204 See note 189 supra. The significance of this amendment is discussed by Carrillo Flores, La significación de una reciente reforma constitucional, 9 Revista de la Escuela Nacional de Jurisprudencia, No. 33, 9 (1947).
205 The business of the federal courts is classified in the judicial statistics contained in the annual Informe issued by the Supreme Court of Justice.
206 See note 192 supra, and text. Civil liberties were suspended during the war by decree of June 1, 1942, but restored by law of Sept. 28, 1945. Diario Oficial (Dec. 28, 1945).
207 Const. 1917, Art. 14, par. 4.
208 According to the statute the writ of amparo lies either in the Supreme Court in the first instance (amparo directo) or goes there on review (amparo en revisión); cf. the headings of the Supreme Court cases in the official reports called Semanario Judicial. Five decisions by the Supreme Court of Justice to the same effect, not interrupted by a contrary holding, are binding on all lower courts. Ley de amparo, supra note 200, Arts. 193, 194; see also Vance and Clagett, op. cit. supra, note 193, at 177; Wheless, op. cit. supra, note 196, at 542.
of the legality of all acts of the authorities of the whole country,” and a “veritable centralization of justice” has taken place. To remedy this condition a radical reform of the pertinent provisions of the constitution and the statute regulating the writ has been projected.

D. The United States of Venezuela

1. General features of the constitutional system

The constitutional history of Venezuela vascillates between periods of unitarian and federal organization. The birth of the present federation is officially set at 1858. The style of “United States of Venezuela” was first adopted in the constitution of 1864. A number of constitutions succeeded one another. The present organic charter was adopted on July 5, 1947. According to this constitution the United States of Venezuela is composed of twenty states, the federal district containing the capital, and federal territories, and federal dependencies.

The constitution regulates the powers of the states and of the nation. The states retain all non-delegated powers, but their legislatures and executives must comply with certain prescribed standards of organization. The powers of the nation are divided into the traditional three branches. The subjects of national legislation are specifically enumerated and include the administration of justice, civil, commercial, penal, and procedural law, and all other matters which the constitution attributes to the national government.

2. Constitutional provisions as to the judicial power

Until the adoption of the constitution of 1945, which has been superseded by the present constitution, the states were responsible for the administration of justice on the lower level. The federal government merely participated through the high-

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209 These are the observations of the court itself in the committee report of 1946, supra, note 193, at 65.
210 See the memoranda by the Supreme Court in 1941 and 1946, supra note 193.
211 Cf. PERERA, HISTORIA ORGANICA DE VENEZUELA (1943); GILOUFL, HISTORIA CONSTITUCIONAL DE VENEZUELA (3 vols., 3d ed. 1942); OROPEZA, EVOLUCION CONSTITUCIONAL DE NUESTRA REPUBLICA (1944).
212 The texts of the various Venezuelan constitutions from 1811 to 1936 are reprinted in PICÓN RIVAS, INDICE CONSTITUCIONAL DE VENEZUELA (1944). For a summary see CLAGETT, A GUIDE TO THE LAW AND LEGAL LITERATURE OF VENEZUELA 59ff. (1947).
214 Gazeta Oficial, July 30, 1947, No. 194 Extra.
215 CONST. 1947, Art. 2.
216 They are Anzoátegui, Apure, Aragua, Barinas, Bolívar, Carabobo, Cojedes, Falcón, Guárico, Lara, Mérida, Miranda, Monagas, Nueva Esparta, Portuguesa, Sucre, Táchira, Trujillo, Yaracuy, Zulia.
218 Amazonas and Delta Amacuro, CONST. 1947, Art. 7. Their administration is regulated by statutes of 1940. See note 235, infra.
219 All islands except Coche, Margarita, and Cubagua, which form Nueva Esparta. CONST. 1947, Art. 9. Their administration is governed by statute of 1938, note 236 infra.
220 Id., Tit. VI.
221 Id., Art. 120.
222 Id., Art. 138.
The constitution of 1945 provided for the nationalization of the whole administration of justice. The present constitution operates on the same principle. The states have no constitutional power to establish a judiciary, and the administration of justice is listed among the subjects of national legislation.

The new constitution provides specifically that "the judicial power of the Republic is independent of the other Public Powers and constituted by the Supreme Court of Justice and the other Tribunals which the law establishes.

The Supreme Court of Justice is composed of ten justices who may sit in divisions according to statutory regulation. Its jurisdiction, original and appellate, is specifically enumerated under thirteen heads, which include appeals and all other writs which are conferred upon it by statute and "all other attributions which are assigned to it by the constitution and states on subjects of national power.

3. Statutory provisions regulating the organization and jurisdiction of courts

The abolition of the state courts has not yet been effected. The organization and jurisdiction of the Supreme Court, except in so far as they are altered by the new constitution, are still regulated by the Organic Law of the Federal and Review Court of 1945. In addition, special labor tribunals and tax courts have been established. Separate statutes have been passed for the regulation of the administration of justice in the federal district, the federal territories, and the federal dependencies.

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225 Corte Federal y de Casacion. The name and the functions of this court have varied with the different constitutions.

226 As to the movement towards nationalization of the administration of justice, see RuggeriPara, La justicia centralizada (1944), Hernandez Ron, La nacionalizacion de la justicia en Venezuela (1944), 2 Wolf, Tratado de derecho constitucional Venezolano 340 (2 vols. 1945).

227 See the provisions concerning the organization of the states and the legislative powers of the nation, supra, notes 221, 223, and text.

228 Const. 1947, Art. 211. 229 Id., Art. 218, 220. 228 Id., Art. 220(3) and (13).

229 Cf. the temporary regulation by Decree No. 87 of December, 1945, Decretos y resoluciones de la junta revolucionaria de gobierno 124 (1946).

230 Ley organica de la Corte Federal y de Casacion, Gazeta Oficial Aug. 27, 1945, No. 21796. The planned companion statute, Ley organica del Poder Judicial, was never promulgated because of the revolution of 1945. The court sits either in banco or in two divisions called Federal Chamber and Appeal Chamber. The court reviews all applications of federal statutes, Ley organica, Art. 15(6). Its decisions are reported in the annual Memoria de la Corte Federal y de Casacion and in the Gazeta Oficial.

231 Ley organica de tribunales y de procedimiento de trabajo of 1940 (1940), 63(2) recopilacion de leyes y decretos 215, which establishes a Superior Labor Tribunal and various Labor Tribunals.


233 Ley organica de los tribunales del Distrito Federal of 1936 as amended in 1939 and 1943, 66 recopilacion de leyes y decretos 565. The administration of justice in the district is confided to a Supreme Court, a Superior Civil and Commercial Court, a Superior Criminal Court, five judges of first instance, three divisional judges of limited jurisdiction, and other specialized judicial personnel.

234 Ley organica del Territorio Federal Delta Amacuro, 1940, 63(2) recopilacion de leyes y decretos 55; Ley organica del Territorio Federal Amazonas, 1940, id. at 170.

235 Ley organica de las Dependencias Federales, 1938, 63(3) recopilacion de leyes y decretos 45 (1940).
I. General features of the constitutional system

The Swiss Confederation boasts the oldest federal tradition of any existing government. Its origin goes back to the celebrated compact of 1291 between Uri, Schwyz, and Unterwalden. The present constitution dates from May 29, 1874, but has undergone a number of amendments. The confederation is composed of twenty-two sovereign cantons. No federal district or federal territories exist. The legislative powers of the confederation are specifically enumerated and extend to the whole field of private, commercial, bankruptcy, and criminal law.

2. Constitutional provisions as to the judicial power

The constitution specifically provides for the establishment of a Federal Court and a Federal Administrative Court, the organization of which is left to statute. The Federal Court is given jurisdiction in a number of specifically listed civil, criminal, and constitutional matters. The last include the violation of the civil rights guaranteed by the constitution, but it is expressly declared that the statutes and resolutions passed by the Federal Diet and all treaties ratified by it are binding upon the courts. These rules are supplemented by two important catch-all clauses.

On the one hand, the Federal Court must take jurisdiction over cases which both

238 For the evolution of Swiss constitutional law see Hilty, Die Bundesverfassungen der Schweizerischen Eidgenossenschaft (1897); His, Geschichte des neuen Schweizerischen Staatsrechts (3 vols., 1920); Hiedler, Schweizerische Verfassungsgeschichte (1920).
239 The present form is printed in 1 Neues Rechtsbuch der Schweiz (ed. by the Chancellery of the Confederation, 2 vols., 1945). The leading commentary on the constitution is Bürckholz, Kommentar der Schweizerischen Bundesverfassung (3d ed. 1931).
241 Id., Arts. 64 and 64 bis. 242 Id., Arts. 106 and 114 bis. 243 Id., Art. 107.
244 Id., Art. 110. "The Federal Court adjudicates civil controversies "1. between the confederation and the cantons; "2. between the confederation on the one side and corporations or individuals on the other, if the object of the litigation is of significance as determined by law and the corporations or individuals are plaintiffs; "3. between the cantons; "4. between the cantons on the one side and corporations or individuals on the other, if the object of the litigation is of sufficient significance as determined by law and if one of the parties requests it . . . " 245 Id., Art. 112.
246 Id., Art. 113, last paragraph. The Federal Court is not only denied the power to declare federal statutes or resolutions unconstitutional, but is also severely restricted in its jurisdiction over complaints based upon a violation of the constitutional rights of citizens. The federal statute on the organization of the federal administration of justice of 1943, note 252 infra, Art. 84a, confers jurisdiction only in respect to ordinances or decrees by officials of the cantons. Complaints against decisions or orders of federal agencies or departments are decided by the Federal Council, id., Art. 124, except in cases in which the jurisdiction of the Federal Court is expressly prescribed by the Act, Arts. 97-99. On the whole question, see the references in Schoch, Conflict of Laws in a Federal State, The Swiss Experience, 55 Harv. L. R. 738, 749, notes 60-61 (1942); Ruck, Schweizerisches Staatsrecht 133ff (2d ed. 1939).
parties submit to it, if the object is of sufficient significance as defined by statute. On the other hand, the Federal Diet is given power to add further cases to the jurisdiction of the court, especially such functions as are necessary for the uniform application of the laws on the subjects mentioned above. It is, however, expressly provided that the cantons retain control over the organization and procedure of their courts.

The organization and jurisdiction of the Administrative Court are left to statutory regulation.

3. Statutory provisions as to the organization of the federal courts

The organization of the Federal Court, envisaged by the constitution, is regulated by the recent revision and codification of the law on the organization of federal justice of 1943. No separate administrative court has been established; its functions have been conferred upon the Federal Court. There exists, however, a separate Federal Insurance Court for the adjudication of controversies arising under certain social insurance statutes. While its establishment is not in terms provided for by the constitution, its legality followed from the power of the Diet to legislate on social insurance.

The Federal Court is composed of not less than twenty-six and not more than twenty-eight regular justices, and eleven to thirteen substitutes. Its judicial functions are exercised by nine different divisions. The whole bench acts judicially only in exceptional circumstances—when one division wants to deviate from the decision of another.

4. Statutory provisions regulating federal jurisdiction

The federal law on the organization of federal justice also defines in detail the original and appellate jurisdiction of the divisions of the Federal Court in civil, bankruptcy, constitutional, and administrative matters. The criminal jurisdiction
is governed by separate statutes. It may suffice to point out that an appeal from the final judgments of the cantonal courts in civil suits may be based only upon a violation of federal law or of a treaty. Infringement upon one of the constitutional guaranties cannot be vindicated in that way, but must be asserted in separate proceedings within specially and narrowly defined limits. The decisions of the Federal Court are officially reported and classified according to the four main heads of jurisdiction.

B. The Union of Soviet Socialist Republics

1. General features of the Constitutional system

With the disintegration of the Russian Empire in war and revolution in 1917 and 1918, the major ethnic groups established their independence and declared themselves republics. Russians, Ukrainians, Byelorussians, Georgians, Armenians, and Azerbaidjanians created soviet socialist republics. Finns, Poles, Estonians, Latvians, and Lithuanians adopted patterns of governmental organization and economic structure familiar to Central and Western Europe. The nomadic feudal peoples of Central Asia emerged in a middle position by establishing soviet republics without public ownership of the means of production.

Survival as individual republics in the face of economic stagnation and the danger of annihilation was found difficult, if not impossible, and a movement toward union emerged as early as 1919. By degrees the peoples of the soviet socialist republics brought their economic, military, and diplomatic activities together until formal union was agreed upon in December, 1922. Union took the form of federation. Since that time internal boundary changes and the admission of
additional peoples have swelled the total of federated republics to sixteen.\footnote{59} In addition to these “union republics” there are sixteen “autonomous soviet socialist republics,” nine “autonomous regions,” and ten “national districts.”\footnote{60}

2. Constitutional provisions as to the judicial power

The federating republics brought into the union in 1922 their own systems of courts. These republic courts have remained to the present day the major judicial agencies within the U. S. S. R. The first federal constitution granted to the federal government power to establish the basic principles to be followed by the republics in the structure of their courts and also in the enactment of legislation relating to procedure and to civil, criminal, and labor law; but the enactment of statutes putting these basic principles into effect remained the province of each republic.\footnote{61}

A Supreme Court of the U. S. S. R. was also created “for the purpose of enforcing revolutionary law and order within the territory of the U. S. S. R.”\footnote{62} No inferior federal courts were created by the constitution, but by the first federal judiciary act of 1924\footnote{63} military tribunals were created in districts, corps, fronts, and fleets, and the Military Transport College of the Supreme Court was given original jurisdiction over crimes committed by transport officials without regard to the republics in which the crimes were committed.

The judicial system of the U. S. S. R. has continued to be a dual one of federal and republic courts since the establishment of the union. It is currently established in accordance with the pattern authorized by the second federal constitution as follows:\footnote{64}

In the U. S. S. R. justice is administered by the Supreme Court of the U. S. S. R., the Supreme Courts of the Union Republics, the Territorial and Provincial courts, the courts


\footnote{66} The governmental agencies of these lesser republics, regions or districts correspond structurally but not in name to provincial or district agencies in the union republics. The principal claim to special constitutional status for these ethnic minorities lies in the fact that within each the language of the ethnic minority is the official language of state agencies and they are represented directly in the Soviet of Nationalities of the U. S. S. R., which is one of the two equally empowered chambers of the Supreme Soviet of the U. S. S. R. in which all federal power resides.

By Art. 35 of the Constitution, the rate of representation is twenty-five deputies from each union republic, eleven deputies from each autonomous republic, five deputies from each autonomous region and one deputy from each national district.

\footnote{67} C. I, Art. 11(o) and (p). The 1936 Constitution in Art. 14(u) changed the power of the federal government to authorize it to enact “legislation on the judicial system and judicial procedure: criminal and civil codes.” The intervention of the war prevented the development of federal codes, but they are currently in process of preparation.

\footnote{68} C. VII, Art. 45.


\footnote{70} Art. 102.
of the Autonomous Republics and the Autonomous Regions, the Area Courts, the special courts of the U. S. S. R., established by decision of the Supreme Soviet of the U. S. S. R., and the People's Courts.

Supremacy of the Supreme Court of the U. S. S. R. is established by the Constitution as follows: 271

The Supreme Court of the U. S. S. R. is the highest judicial organ. The Supreme Court of the U. S. S. R. is charged with the supervision of the judicial activities of all the judicial organs of the U. S. S. R. and of the Union Republics.

3. Statutory provisions as to the organization of the federal courts

Details of organization of the Soviet court system are provided in the Judiciary Act of 1938. 272 At the top of the federal court system is the Supreme Court of the U. S. S. R. It is composed of a president and sixty-eight judges named by the Supreme Soviet of the U. S. S. R. for five-year terms. 273 The judges are assigned to five "colleges," dealing with military, railroad transport, and water transport cases, and also criminal and civil cases. To provide a board of review over the work of the "colleges," the sixty-eight judges meet with the president not less often than once every two months as a plenum.

Inferior federal courts exist to hear cases of military, railroad transport, and water transport crimes. The military tribunals are composed of three officers in the military jurists' department of the Red Army. They sit in districts defined by armies, fronts, or fleets and have four grades: (1) division, (2) corps, (3) army or flotilla, and (4) military district, front or fleet. Railroad and water transport courts sit in districts defined by individual railroad systems or river basins, and have two levels.

Non-judicial agencies of the federal government performing functions as law-enforcing agencies are the state arbitration tribunals. 274 These tribunals are organized at three levels, two of which are in the republics. The top level is in the federal government. All have jurisdiction only over cases in which government corporations are the two parties.

4. Statutory provisions regulating federal jurisdiction

Original jurisdiction of the federal courts is determined largely by the subject matter of the case. The citizenship or status of the parties is not a determining factor, except in the state arbitration tribunals. In these specialized commercial tribunals one of the bases for federal jurisdiction is that each of the parties, which are always government corporations, has its place of business in a different one of the sixteen union republics. Even in such instances the dispute must involve 50,000 rubles or more, or the tribunal in one of the republics concerned will have jurisdiction. 275

271 Art. 104.
Federal matters are those of a specialized character having no relation to boundaries of republics. Military tribunals of all grades have jurisdiction depending on the military rank of the person to be tried, the highest grade having the right to review petitions from sentences of the lower tribunals. Jurisdiction in military tribunals is not limited to military personnel, but extends even in peacetime to all civilians who commit acts of treason, espionage, terror, arson, explosion, or other types of diversion. During the past war, jurisdiction was broadened in theaters of war to all crime, and civilians were tried by specially constituted military tribunals of the Ministry of the Interior rather than of the Red Army. Military tribunals have no civil jurisdiction.

The railroad and water transport courts have jurisdiction over criminal acts directed to the disorganization of labor discipline and other crimes upsetting the normal work of transportation, whether the accused be an employee of the transport system or an ordinary citizen.

Jurisdiction of the Supreme Court of the U. S. S. R. is original and appellate. The court may assume original jurisdiction over any case selected by the president of the court because of its national importance. It also hears cassational appeals from the inferior federal courts. While there is no right of appeal from a court of a republic unless the supreme court of a republic has heard a case as a court of original jurisdiction, the Supreme Court of the U. S. S. R. is also active in reviewing cases coming from the courts of the republics. Its attention is drawn by protests of the Prosecutor General of the U. S. S. R. or the president of the Supreme Court itself to the effect that the inferior court has violated substantive or procedural law, whether it be law of the federal government or of the republic concerned.

In making determinations in accordance with its duty to assure observance of the law, the Supreme Court may find that the law which has been violated is that of the Constitution of the U. S. S. R. In such an event the Supreme Court is not empowered to declare the law of a republic unconstitutional, but it notifies the Supreme Soviet of the U. S. S. R., as the repository of all federal power. The Supreme Soviet may then advise the republic to bring its law into conformity with the law of the U. S. S. R. The republic must do so if it desires to remain in the union. No law promulgated by the Supreme Soviet of the U. S. S. R. may be found unconstitutional by the Supreme Court. The Supreme Soviet is its own judge.

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278 See Judiciary Act of 1938, supra note 272, c. VII.
279 By Art. 43 of the first federal constitution of the U. S. S. R. the Supreme Court of the U. S. S. R. was authorized "to render an opinion on the constitutionality of any decree of a Union Republic if requested to do so by the Central Executive Committee of the U. S. S. R." This provision was not repeated in the second Constitution of the U. S. S. R., but Soviet law professors have said, in conversation, that nothing prevents the Supreme Soviet from asking advice of the Court, although nothing binds the Supreme Soviet to accept the advice when given.
280 By Art. 17 of the constitution a union republic may secede from the U. S. S. R.
as to when a projected law amounts to an amendment to the constitution, requiring promulgation in conformity with the procedure for amending the constitution.²⁸¹

Conclusion

The foregoing survey of the courts in foreign federal systems seems to lead to the following conclusions:

1. Federal systems, with their inherently complicated legalism, seem to spawn difficult jurisdictional questions as a matter of course and therefore to call for the establishment of a separate judiciary or at least specialized courts. While specialized judicial branches have been established even in unitarian governments,²⁸² the existence of separate judges for the administration of all or portions of the federal law is a general phenomenon in federations.²⁸³ The scope of the business of the federal courts will depend at least in part upon the ambit of federal powers granted by the constitution and upon the limits within which the enforcement of federal statutes can constitutionally be conferred or imposed upon the state courts.²⁸⁴ The absence of lower federal courts in Switzerland is somewhat deceptive. The different approach to the “rule of law” permits on the lower level the attribution of a non-judicial character to administrative litigation, which becomes judicialized only by complaint to the federal court.

2. The experience of the other federal systems seems to indicate that ordinary diversity jurisdiction tends to become outmoded and superfluous. There is no reason why the dangers against which this type of jurisdiction is intended to guard cannot be effectively suppressed by a proper handling of the Fourteenth Amendment, which of course did not exist when the diversity clause was devised. Interpleader jurisdiction, which does perform a valid function, could now be much more effectively based on the interstate commerce clause.²⁸⁵ The hope that diversity jurisdiction might tend toward a uniform application of the law has been dispelled by the Supreme Court. It should be realized, however, that such uniformity is really inconsistent with the basic idea of federalism and that its absence in certain fields is the price and effect of local autonomy.

²⁸¹ Art. 146.
²⁸³ In the United States the “federal specialties,” in spite of their ever-expanding scope, have been generally entrusted to the jurisdiction of a common system of federal tribunals. See Frankfurter, Distribution of Judicial Power Between United States and State Courts, 13 Corn. L. Q. 499, 515 (1928). The creation of specialized federal tribunals such as the Emergency Court of Appeals under the Emergency Price Control Act of 1942 has been the exception.
²⁸⁴ In the United States Congress apparently can impose the administration of federal statutes upon the state courts to an extent which is very far-reaching and as yet not clearly circumscribed. See Testa v. Katt, 67 Sup. Ct. 810 (U. S. 1947), and Hatton, State Court Jurisdiction of Federal Rights of Action, 40 Ill. L. Rev. 355 (1945).
²⁸⁵ See the suggestion to this effect in 30 Minn. L. Rev. 643, 645 (1946).
3. Experience of other nations, particularly Mexico, shows that the federal due process clause is an important regulator of the centralization and character of justice on the higher level. Constitutionalization of rules of private law, conflicts, or practice may make for uniform application, but it also produces the danger of overburdening the Supreme Court. Constitutionalization of administrative activities is even more dangerous, for it enmeshes the court in problems of political or technical expediency and threatens to impair the standards of judicial performance.