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Grading a Revolution: 100 Years of Mexican Land Reform

William D. Signet*

ABSTRACT

As Mexico celebrates the centennial of its Revolution and the bi-centennial of its Independence, its chief historical objective—the distribution and use of land for economic betterment and social justice—is assessed in this article. Mexico offers a paradox: Almost half of its territory is held by a communal form of agrarian organization called the ejido, and foreigners are expressly limited in the ways they may own land. Yet, for most of the last 100 years the country has been considered an economically attractive and legally secure haven for private investment in real property. Furthermore, although the ejido has been a dismal failure in terms of economic production and the betterment of its individual members, the reforms that created it are considered by some to have been successful, and will be cause for celebration this year. This article represents one of the few attempts to present the last 100 years of Mexican land reform from a legal point of view, that is, by a careful and coherent analysis of the legislation that preceded, occurred during, and was enacted after the Mexican Revolution. The author’s conclusion is that Mexican land reform can be seen as successful only from a political point of view, in that through artful drafting and the exercise of great political acumen, the leaders who emerged from Mexico’s Revolution were able to absorb and redirect the energies of its more radical factions, and attain decades of political stability and relative social harmony, albeit it at the cost of institutionalizing rural poverty.

In 2010, Mexico will celebrate the centennial of the two most significant events in its history. Two hundred years ago,1 beneath the night skies of the central plateau, Miguel Hidalgo stepped before his parish church and made a short but effective speech, in which he conveyed his heartfelt sentiment that the *gachupín* should die along with his 300 years

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* J.D. Columbia Law School; Parker School of Foreign & Comparative Law; adjunct professor, University of Texas Law School (Mexican law); principal, Signet Ramos Abogados, former director general, Land American Title Insurance Company of Mexico; author, *Mexican Law Library* (West Group 1998) and various articles and other publications on Mexican legal topics; former editor, Mexico Law & Commerce Report (West Group).

1. September 16, 1810, is officially celebrated as Mexico’s Day of Independence.
of colonial rule.\textsuperscript{2} One hundred years ago,\textsuperscript{3} Francisco Madero, representing his compatriots' impatience with the perennial presidential administrations of an octogenarian Porfirio Diaz,\textsuperscript{4} initiated a Revolution into which his own presidency would quickly be swallowed.

This article assesses the motivation and legacy of the Mexican Revolution in terms of its most important issue, which was the place of land in the everyday life of the average citizen. If results can be measured by raw statistics, the Mexican Revolution led to a fundamental change in the nation's ownership of real property, and even in the legal regime by which property is owned and used. The Revolution ushered in a century which finally saw ownership over half the nation's surface area held by roughly 28,000 communal ejidos (eh-HEE-dos), in whose precincts the typical attributes of the free marketplace—the ability to buy, sell, lease, and mortgage land—were banned. Private ownership over strategic resources, like oil and other hydrocarbons, was constitutionally prohibited. No private person could own more land than closely prescribed limits allowed. Until recently, corporations could own no farmland at all. No one can argue that the Mexican Revolution was not revolutionary.

Against these results, on the other hand, can be juxtaposed a strange and often contradictory reality. Mexican elites today seem just fine with their homes in the cities and their hobby farms in the countryside. For foreign real estate investors, in particular, Mexico seems to be run on the same basis as most other capitalist countries.\textsuperscript{5} Investors buy, sell, mortgage, and lease land in the free market for offices, factories, hotels, and shopping centers with a legal security that must be satisfactory—if the results now available are any indication. In the sixteen years in which private investors have been able to bring claims for discriminatory or unfair behavior against the three signatories of the North American Free Trade Agreement (NAFTA), not a single claim against Mexico based upon unfair deprivation of land ownership has even been arbitrated, much less won.\textsuperscript{6} The two most important restraints on foreign ownership

\begin{itemize}
  \item[2.] Although ethnically Spanish himself, Hidalgo used the disrespectful reference of gachupin to native-born Spaniards in the famous grito commemorated each year: “My children: A new dispensation comes to us today. Will you receive it? Will you free yourselves? Will you recover the lands stolen three hundred years ago from your forefathers by the hated Spaniards? We must act at once... Will you not defend your religion and your rights as true patriots? Long live our Lady of Guadalupe! Death to bad government! Death to the gachupines.”[translation by author].
  \item[3.] November 20, 1910, officially marks the outbreak of the Mexican Revolution.
  \item[4.] Porfirio Diaz was elected president of Mexico from 1876 to 1880, and, beginning in 1884, was reelected in successive terms of office (the last one, 1910, is disputed) until his abdication and exile in 1911 (see discussion infra).
  \item[6.] An authoritative compilation of claims brought against Mexico, that also contains the text of all pleadings, is found in the website of the Mexican Secretaria de la Economia [Secretariat of the Economy]; see Investor-State Dispute Settlement, Secretaria de la Economia, in http://www.economia.gob.mx/swb/en/economia/p...
of real property—the requirement that the foreigner agree to the “Calvo Clause” and the prohibition against direct ownership of land in the “Restricted Zone” (see discussion below)—are largely symbolic.

Similarly, the radical changes ushered in by the Revolution have not created a picture of prosperity in the countryside. Since 1940, a year that can be seen as the high watermark in the development of Mexico’s “social sector,” agricultural production on the _ejido_, as a share of the nation’s total, has consistently fallen. From 1960 on, growth fell dangerously behind that of the population. By 1980, the culture that had first perfected the cultivation of corn was not producing enough corn to feed itself. The _ejido_ began to depopulate. By the end of the Twentieth Century, the mean age of the total rural Mexican population was below the age of twenty; the mean age of the _ejido_ population, on the other hand, was fifty-two.

There are reasons for these discrepancies, these “disconnections,” between the nominal and the real changes brought about by one hundred years of land reform, and chief among them is that the reforms stare back far beyond the year 1910 both in terms of inspiration and political purpose. It is not just that the “land question” dominated the political history of both Mexican centuries. Land reform in the second century of Mexico’s existence was consciously perceived as a second chance to establish and implement the failed policies of the first, to “hit the reset button,” so to speak, on all the pertinent legislation of the pre-Revolutionary period. In so doing, the legislation that would shape land tenure and use in the Twentieth Century would owe more to the quaint notions of a bygone era than the realities of the modern world. With all the complexities and challenges of 20th century life—the shift of economic activity to industrial and technological processes, the migration to the cities, the ascent of the financial industry, the inter-connectedness of the world economy—the Revolutionaries’ vision of the future could still be reduced to the phrase—to borrow from the American vernacular—“forty acres and a mule”—only the Mexican _peon_ received far less than forty acres, and was never given a mule. As a result, a policy designed to provide millions

solucion_controversias_inversionista (last visited July 14, 2010). According to the author’s analysis, only four claims have involved the ownership of real property: Billy Joe Adams et al. (2000), Lomas de Santa Fe (2001), Calmark Commercial Development, Inc. (2002), and Robert J. Frank (2002), none of which have proceeded to arbitration.


8. _Id._

9. _Id._


11. A popular phrase originating from the temporary military orders issued by General William T. Sherman in which 400,000 acres of expropriated land in South Carolina, Georgia, and Florida would be redistributed among freed slaves.
of Mexicans with the articles of bare subsistence did not accomplish even that dubious end. Today, the great majority of the 28,000 ejidos that wind across Mexico's central plateau or its empty coastlines are archipelagos of poverty sustained by electronic remittances from men in other places.¹²

This assessment of land reform in the second century of Mexico's existence quite properly begins in its first century.

I. 200 YEARS AGO

A. FALSE START

The first decades of Mexico's nationhood were undeniably rocky for several reasons. Mexico's unfortunate presence in the path of its northern neighbor's westward expansion must be considered one of them, but not all of its initial problems can be blamed on external circumstances. Mexico's difficulties resided in the very nature and meaning of its independence, in the fact that many Mexicans who succeeded the Spaniards in power in 1821 did not really envision a break from the cultural and economic conditions of its colonial past. It is also possible they had no vision at all. The picture we may have of New World sons rising against the father country, eager to shake off the outworn strictures of an old and discredited order, is an attractive one. In this image, the colonial rebel is at least an unruly and assertive teenager, if not altogether considered a patricide. America's War of Independence would fit this form. It would be called a Revolutionary War (something other wars of independence, including Mexico's, would never be called) precisely because of the conscious decision to turn from old forms of government to new.

In the Spanish colonies of the early Nineteenth Century, by contrast, the "new" was not happening in Mexico City but in Madrid. It was the old Spanish parents who were becoming peculiar and getting crazy with the family car, threatening to make the kids not patricides but orphans. It was not only French troops and a French (Corsican really) king that had slipped into Madrid by 1810. Also sloshing across the Pyrenees (and perhaps of greater concern to the flame-keepers of Spanish orthodoxy) were the Enlightenment ideas of the previous century, most notably, a certain willingness to question the absolute nature of monarchical authority, and even the temporal if not spiritual authority of the Roman Catholic Church.

In a series of political and military maneuvers beginning in 1808, Napoleon forced the abdication of Spain's Bourbon king, Carlos IV, and the confinement of his heir, Ferdinand, in favor of his brother, Joseph Bonaparte. With Napoleon's fortunes descending steadily thereafter, Ferdinand's restoration (as Ferdinand VII) was universally accepted by 1813,

and he ruled Spain from 1814 until his death in 1833. Nevertheless, a
certain Enlightenment seed, this one political, had taken root in Spanish
soil. The decade of the 1810's in Spain would be marked by an uneasy
relationship between Liberals espousing restraints on absolute rule, and a
monarch inclined to resist them. While, back in Mexico, the criollos
found some of the French ideas interesting, their exact political reaction
at the crucial times (at the beginning of the insurrection and the end) was
reactionary and conservative. In 1810, the year of Hidalgo's grito, the
criollos (and obviously churchmen) responded to a Bonaparte-led Spain
as a usurpation and broached the heady possibility of power descending
to the "people" (meaning them) pending the restoration of the legitimate
monarch. In 1821, the year of Agustin Iturbide's triumphal march into
the capital of a newly-independent Mexico, criollos would again rally to
the cause of the same Spanish monarch, this time in support of his resis-
tance to the reinstatement of the 1812 Constitution.

In terms of several misguided policies and personal demeanor, Ferdi-
nand might have filled the role of George III of England in relation to
Mexico's independence, but with a huge exception: In the case of Mexico,
he was supported, not rejected, as the symbol of ancien regime orthodoxy,
spiritually and temporally. If legitimate monarchs were no longer wel-
come in Europe, they would be welcomed in Mexico. Upon their final
victory over Spanish troops in 1821, the criollos offered the "Empire of
Mexico" to Ferdinand VII and three others of his royal line. When they
deprecated, Agustin Iturbide, the criollo officer who had spent most of the
preceding decade decimating the insurrectionists, but who was now their

13. An example would be those legislators meeting in the city of Cadiz in 1812 who
would adopt a form of constitutional monarchy a la espanola; see The Political
cervantesvirtual.com/servlet/SirveObras/c1812/12159396448091522976624/p00000
01.htm#I_2.
14. Criollo (akin to creole) as used in Mexican history refers to the Mexican-born
progeny of Spanish colonists, who maintained a relatively privileged position in
Mexican society, both economically and socially. The word peninsular refers to a
colonist born in Spain (i.e. the Iberian Peninsula).
1998).
16. The 1812 Liberal Constitution of Cadiz (see supra note 13) was abolished by Ferdi-
nand upon his restoration, and it was the attempt to restore it in 1820 that pro-
voked both Ferdinand and his loyal colonists. This "paradox" of Mexican
Independence is noted in ENRIQUE KRAUZE, MEXICO: BIOGRAPHY OF POWER, A
17. The "Treaty of Cordoba" between Agustin Iturbide, leader of the criollos, and
Juan O'Donoju, the Spanish captain-general, in August of 1821, provided for
Spain's recognition of the "Empire of Mexico" and for its imperial throne to be
offered first to four specific candidates of the Spanish royal dynasty; only in the
event of their refusal would the future emperor be selected by the Mexican con-
for a constitutional monarchy survived Spain's later rejection of the treaty (Spain
would not recognize Mexico's independence for fifteen more years) and Iturbide
was crowned emperor on July 21, 1822.
leader, took the title upon himself. In its first half-century as a nation, Mexicans would waste precious time trying to figure out who they wanted to be. In rough terms, their choices were either to continue the Old World model with some improvised link to the remaining Catholic dynasties of Europe, from which a suitable Bourbon or Hapsburg might become available, or to adopt, or better put, adapt to the New World model of presidents, legislatures, and judiciaries, similar to the American model whose success was beginning to attract the world’s interest.

The catastrophe inflicted upon Mexico during that time was exacerbated by the failure to choose either. It is telling that the national chief executives at either end of this period were not called presidents but emperors: Iturbide (1822-1823), and Maximilian I (1864-1867). Though the leaders between these two imperial bookends might be called “presidents,” the tenuous nature of their leadership, as well as their lack of wholeheartedness in embracing a republican form of government, is illustrated by their sheer number. Between 1824 and 1855, forty-seven presidential administrations held office, each lasting an average of about eight months. Rebellions erupted in Texas and, soon thereafter, in Yucatan, Guadalajara, Oaxaca, San Luis Potosi, Sonora, New Mexico, and Tampico. It is hardly surprising that the Mexico of that day, whose territory extended all the way to the northern border of today’s State of California, would tempt the territorial ambitions of other powers. In 1839, France invaded, but was unsuccessful. In 1846, the United States invaded, more successfully. Only six Mexican states—Jalisco, Michoacan, Guanajuato, Queretaro, San Luis, Aguascalientes—and the Federal District, itself, came to Mexico’s defense with men and revenues.

18. Id. at 4-5. Hidalgo’s grito in 1810 had unleashed a popular campaign of murder and vengeance against the peninsular Spaniards then living in Mexico, sufficiently horrifying his fellow criollos, that the initial movement was brought to a quick end. Hidalgo was captured in Chihuahua in 1811, tried by his fellow clerics as a heretic, and executed. The Insurrection continued sporadically for the following ten years, led primarily by Vicente Guerrero, who was able to use the natural protection of the southern mountains to his advantage (the same protection that would be used by Emiliano Zapata 100 years later). Agustín Iturbide, a criollo assigned to lead loyalist troops, had successfully repressed the insurrection (with the notable exception of Guerrero), but towards the end (1820), saw that his better opportunity lay in forging an alliance with Guerrero and kicking the Spaniards out, based on a program—the “Plan of Iguala”—of loyalty to the Roman Catholic Church, independence from Spain, and legal equality between peninsular Spaniards and Mexicans. Upon victory, there were factions (epitomized by Masonic associations in Mexico City) that desired a republican form of government, but they were outweighed by those still favoring the monarch as the head of state.


21. Cuevas, supra note 19, at 246.

22. Id.

23. Id. at 248.
B. THE ARMIES OF REFORM (1855-1867)

The catastrophe that had been inflicted upon Mexico was due in part to the stubbornness of a political and economic establishment unwilling to acknowledge or accept the new forces at work in the Western world. It also smoothed the way for members of the next generation of Mexicans to take power in the 1850s. This generation was known as the reformistas, or Reformers. Its most honored hero, Benito Juarez, occupies a place in the Mexican political pantheon similar to Lincoln’s: Both came from humble backgrounds and were contemporaries.

The Reformers represented the arrival in Mexico of Nineteenth Century liberal and bourgeois economic and political ideas. In the political sphere, it meant the adoption of democratic and republican systems of government, especially as formulated in the United States. In the economic sphere, it meant freer markets, freedom to contract, and laissez-faire. In the social sphere, it largely meant the eradication of the privileges and entrenched power and influence of the old elites, in particular, the Roman Catholic Church.

The Church seemed to embody everything the Reformers did not like about the old antiquated order, and its perceived abuses constituted a short list of what they wanted to change. First, the Reformers still identified land ownership as the main engine of economic prosperity; if the Church was still the dominant landowner in Mexico, scrutiny of its role and performance was unavoidable, and in this regard it came up short in the Reformers’ eyes. The instrument for the perpetuation of ecclesiastical landholding had been, for centuries, and in various countries, the “company sole,” that is, the one-man corporation, a non-personal legal entity owned by one shareholder (e.g., bishop) who held shares in a representative capacity, thus allowing ownership to survive death. To those who still equated agriculture with economic progress, and economic progress with individual initiative fueled by capital in search of profit, Church ownership seemed particularly retrograde.

Since medieval times, the Church’s propensity to hold land interminably has become to be viewed as a “dead hand” holding back progress, hence the name mortmain. It was this lack of mobility (what a modern real estate broker might call lack of “turnover” or “frozen market”) that the Reformers cited as the official reason for some of their most important legislation, discussed below.

25. Friedrich Katz, The Liberal Republic and the Porfiriato, in Mexico Since Independence 50 (1991); see also Vanderwood, supra note 24, at 371.
26. Katz, supra note 25, at 50. The Roman Church may have also been viewed unfavorably by the Reformers because of its supposed friction or disfavor with the mainly Protestant beliefs of the immigrant farmers it was trying to attract. Id.
28. The preamble to the “Lerdo Law” cited “the lack of movement or free circulation of a great part of real property, the fundamental basis of public wealth,” as “one of
But it was not just for its perceived inefficiencies as an agribusiness that the Catholic Church became the favored political target of the Enlightenment Liberals in Mexico. To the Reformers, it did not seem possible to dispose of the secular leaders of the ancien regime without also taking aim at the organization that seemed woven into its warp and woof. Their Jeffersonian vision, in which power and resources were distributed among the free and industrious citizens of a striving and growing country, seemed at odds with the reality before them in which millions of faithful peasants kneeled in humble obeisance before the local priest. It would not be enough to strip the Church of its lands. It would be necessary to strip its hold upon the Mexican mind. Or so they reasoned.

In their first year in power, the Reformers attacked the Church at the point of its greatest temporal strength, its ownership of land. Named after the Reformer's first president, the "Lerdo Law," as it came to be called, required "civil" and "ecclesiastical" companies to divest all non-essential lands immediately and without exception. The law's putative aim was to place divested lands in the hands of their working tenants, for a price equal to paid rents capitalized at the rate of six percent per annum. Anticipating that existing tenants, emotionally tied to the Church or to the communal interests of their community, would not immediately appreciate what was deemed good for them, the tenants' right of first refusal would expire in three months, whereupon civil authorities could intervene directly to sell the property, in the following order of preference: to any sub-tenant, then to any whistleblower who alerted the authorities to the violation, and then to the highest bidder at auction. Lands that had no tenants would be sold immediately to the highest bidder, and as in the case of rented land, if the owner dragged his feet in selling, civil authorities would intervene to sell the land at auction, with eight percent of the proceeds going to the whistleblower. The only properties exempt from forced sale were properties used exclusively for spiritual or educational purposes, like churches, convents, and schools.

Another provision allowed purchasers of larger tracts to immediately subdivide them into lots they could immediately resell, provided the lots would remain encumbered by a master lien until the master note was repaid in full. This provision greatly facilitated financing by land specu-

the greatest obstacles to the prosperity and development of the Nation." [author's translation].
29. Katz, supra note 25, at 49.
31. Id. art. 1.
32. Id. art. 10.
33. Id. arts. 5, 11.
34. Id. art. 8.
35. Id. art. 22.
lators and developers. The text of the Lerdo Law targeted not just "ecclesiastical corporations" (corporaciones eclesiasticas) but "civil corporations" (corporaciones civiles) as well. There was some confusion, even at the time, as to what a civil corporation was intended to include, but, in political terms, the phrase targeted the communal organizations in which indigenous communities still held and farmed property, despite three centuries of steady encroachments by the peninsulares and their progeny.

In the early Sixteenth Century, Hernan Cortes came upon one of the largest populations in the world, much of it organized around local and familiar units sometimes called calpulis. The various forms of the indigenous' own social and economic organization were legally recognized in terms of a "Republic of Indians" (as opposed to a "Republic of Spaniards"). To these calpulis and "indigenous communities" the Spaniards would add additional layers of social and economic arrangements, displaying varying degrees of communal, cooperative, or corporate organization that reflected their evolving interests and needs. From their own country they would emulate and transplant the ejido, a Latin-


38. A better translation of republica de los indios might be a "legal regime applicable to the Indians (or indigenous peoples)."

39. The Spanish theoretical tolerance of existing social organizations was not all altruistic; they recognized the benefit of leaving in place a successful food-producing community already accustomed to tribute. See Carbo, supra note 37.

40. The term is Aztec (nauhual) and refers to the village unit within the administrative and tributary system, which the arriving Spaniards sometimes referred to as barrio. The landholding regime of the calpuli would be repeated in later manifestations in that some land (calpulalli) was allotted to families but only in usufruct which could be transferred only by inheritance, and with the condition that it be worked continuously; other lands (altepetlalli) were assigned for the communal benefit and working of the community. See El Antecedente Lejano del Ejido, Secretariat of Agrarian Reform, http://www.sra.gob.mx/sraweb/conoce-la-sra/historia/el-antecedente-lejano-del-ejido/ (last visited July 10, 2010). This division between individual parcels with limited rights, and common-area lands, would be extended into the landholding system of the Colonial administration—the so-called Republica de los Indios—the individual usufructs taking the name of "tierras de comun repartimiento" and the common lands taking the name proprios or fundo legal. The numerous title documents assigned to these various categories by the Colonial administration became the legal basis for agrarian claims in succeeding centuries. See Creacion de las Republicas de Indios, Secretariat of Agrarian Reform, http://www.sra.gob.mx/sraweb/conoce-la-sra/historia/creacion-de-las-republicas-de-indios/ (last visited July 10, 2010). The same basic division between parcels enjoyed by individual members in usufruct, with limited rights of transfer, and the common areas used to support the community, was carried through into modern ejido legislation.

derived name referring to common lands normally adjunct to the city and often used for common pasturage. Later, in the course of reorganizing colonial administration, and assimilating indigenous society to the rest of civil society, the indigenous communities would be rolled into the new municipal governments, or ayuntamientos, into which the country was intended to be organized.42

By the Reform Era, the term “civil corporation” had become a reference to these indigenous communities, but the extent was not clear.43 At any rate, by virtue of the Lerdo Law, indigenous communal land was not expropriated to the same degree as church land. In the first six months in which the Lerdo Law took effect, $3 million of communal land was sold, in comparison with $20 million of church land.44 After centuries of encroachment by Spanish hacienda owners, attrition caused by the Spaniards’ various manpower programs,45 and disease, indigenous communities were spared by their own typical remoteness, and the low economic desirability of their holdings. Thirty years later, indigenous communities would be severely disrupted by the land programs of the Diaz administration, discussed below, but the legal pretext would shift from the appropriation of lands held by “civil corporations,” to the presumed privatization of lands presumably belonging to no one (terrenos baldios).46

Largely congregated in the middle sections of the country, the ejido47 represented a form of land ownership and economic organization at odds with the new liberal economic model, a model that depended on companies, and individuals, acting in their own best interests and, therefore, requiring sufficient personal freedom to do so. In the tens of thousands of small communities that stretched from Zacatecas to Veracruz, the Reformers saw what we might today call “individual initiative” buried in an old-world culture that the Reformers, themselves, considered worth burying.48 Like the neo-liberal reformers of our own age who saw privatiza-

42. Carbo, supra note 37 (referring to the Constitution of Cadiz of 1812).
44. Meyer et al., supra note 15, at 360.
45. The encomienda, followed by the repartimiento, were the two best-known programs implemented primarily to provide low-cost labor to arriving colonists. See generally Meyer et al., supra note 15, at 159-161.
46. Pernell, supra note 43.
47. While ejido is only one of several names given to the indigenous’ social and economic organizations during the Colonial Period, and is a Spanish word, in the remainder of this article it will be used generally to refer to indigenous (and later mestizo or mixed) local populations who farmed either communally or in family parcels in which the family was entitled to retain and in many case inherit the usufruct. In these communities, the concept of fee simple ownership was not fully developed. Individual parcels remained within the community. By the 1920’s, the word ejido began to be used more specifically as a result of agrarian legislation (see discussion infra).
tion of government-run companies as the key to economic betterment, the liberal reformers of the mid-19th century saw the breakup of ecclesiastical and communal land tenure as the necessary precursor of modern Mexican society.49

Finally, to ensure that the Church and the “civil corporations” representing communal landowners did not reemerge as an economic force, article 25 of the Lerdo Law, and article 27 of the new Mexican Constitution of 1857,50 stripped them of even their legal capacity to own or administer real property, other than (in the case of church corporations) the properties used directly for religious purposes. Without legal capacity, the ejidos were greatly handicapped in their ability to seek legal redress for alleged illegal expropriations of their property, a large impediment that would be noted in the major legislation of the Mexican Revolution, discussed below.

In hindsight, the Reformers’ direct challenge to ecclesiastical and civil landholding failed on several levels. First, it did not adequately provide for the realization of its ostensible objective, which was to put land in the hands of tenants and workers who could not afford to buy it.51 The Reform-era legislation did not provide impoverished land tenants or ejido members with any means of financing. This omission stands in stark contrast with the ample financing that would be extended to foreign colonists in the following century. Even when tenants were able to purchase their lots, they were often preyed upon by alliances of local government and large estate owners, who complicated their lives through devices like denial of water rights, and extremely high tax assessments.52 Whether tenants existed or not, most land passed into auction where money determined ownership. Many upper and middle class Mexicans boycotted the land auctions on religious grounds. The remaining bidders, who ultimately acquired most of the former lands of the Church and the ejidos, were land speculators and large landholding companies, hardly an emerging class of Jeffersonian farmers.53

The Reformers’ direct assault on Church ownership of land was also a political miscalculation of the first order. Many Mexicans viewed the legislation (probably correctly) as an attack on the Church’s role in Mexican culture, not on its possible shortcomings as an efficient farming organization. In addition, the forced divestiture of millions of hectares of real property did not seem compatible with what liberal political beliefs or

49. Katz, supra note 25, at 50.
50. Constitución Política de la República Mexicana de 1857, 12 de Febrero de 1857 art. 27 (Mex.) (“No civil or ecclesiastical corporation, whatever its character, denomination or purpose, shall have legal capacity to acquire real property in ownership or its own administration, with the sole exception of buildings used directly and immediately in the service or for the purposes of the institution.”).
laissez-faire capitalism supposedly stood for. Despite having passed a new Constitution that textually was a model of Nineteenth Century Liberalism, the Reformers, developed a reputation for being heavy-handed in the administration of civil liberties.

Almost immediately upon the adoption of Mexico’s second constitution (1857), the country plunged into new internecine strife.54 New life was breathed into the hopes of Mexican conservatives still pining for the old school monarchy. Ironically, their pleas were finally heard not by the Spanish, but by the French, and not by a Bourbon but a Bonaparte. With the help of French Emperor Napoleon III, a suitable Hapsburg was located (though one supposes that the term “royal headhunter” would not have been used to describe the firm that found him), and “Maximilian I,” as he was now called, was installed in Mexico City with the help of French troops, a development that put the Reformers on the run, and plunged the country into further years of civil war. The situation soon became absurd. It had not dawned on the most reactionary and conservative members of Mexican society that Europe had moved on and was no longer living in the Eighteenth Century, and to the conservatives’ growing horror, Maximilian appeared to have some rather progressive ideas of his own.55 Maximilian’s brief reign ended—and with it, any further European pretensions in Mexico—before a firing squad in 1867, bringing years of civil conflict to an end. In those years, however, the Reformists would age, and their political perceptions would harden even further.

Finally, the Reform Laws of the 1850’s were probably wrong in their own underlying assumptions. The Reformers were at least fifty years behind the times in their understanding of the new economic forces then at

54. The conflict can be more properly divided into:

“War of the Reforms,” 1857-1861: Essentially a civil war between the Reformers and the Conservatives provoked by the former’s strong anticlerical legislation, the liberal character of the 1857 Constitution (the second of Mexico’s three distinct constitutions), and perceptions of the heavy-handed manner in which the Reformist government, ironically, was suppressing civil liberties. Benito Juarez would assume the presidency in 1858, and served until 1871, although his effective hold on power was interrupted by the French intervention.

“War of the French Intervention,” 1861-1867. Ostensibly, an intervention by France, England, and Germany to force Juarez to retract his disavowal of foreign debts. It might also be seen as a new attempt by the defeated Conservatives to remove the Reformers, by supporting Napoleon III’s appointment of Maximilian, a Habsburg, to rule Mexico. Maximilian’s reign would be short-lived. The Conservatives’ support of Maximilian ebbed as signs of his own liberal tendencies became clear. After the U.S. Civil War, the U.S. clearly began throwing its weight behind Juarez, consistent with the Monroe Doctrine. Abandoned by the European powers, Maximilian was captured near Queretaro and executed on orders of Juarez, who wished to make the point that European powers, especially the French, should stay out of Mexico. The French would do so from that point forward. Nevertheless, the well meaning but naïve Hapsburg, with his charming wife, Carlota, won a permanent place in the romantic mythology of Mexico.

work in the world. Like Jefferson, they imagined land as the fundamental store of economic value and its cultivation as the fundamental engine of economic growth. But this concept was already disintegrating even when Jefferson was thinking about it. By the 1850’s, the growing irrelevance of land tenure in a world being transformed by the Industrial Revolution should have been noticed by the Reformers. Instead, by investing all their political capital in stripping ownership from the most powerful political forces in Mexico, the Reformers may have squandered a prime opportunity to bring Mexico into the 19th century, while preserving domestic tranquility. This observation would not be lost on Porfirio Diaz.

C. The “One Indispensable Leader” (1876-1910)

Jose de la Cruz Porfirio Diaz was a young Reformer general whose political ambitions were fulfilled when he became president in 1876. Re-elected again in 1884, he occupied perennial terms of office until his abdication and exile in 1911. His era in Mexico is named “the Porfiriato.” To his country he provided an entrée into the Industrial Revolution and new international respect. By offering his countrymen a clear, practical choice between the “carrot or the stick,” he gave them three decades of peace and order, and finally, through malice or benign neglect, he engineered the conditions that would lead to the Revolution. Public revenues and the national currency stabilized. It was an era for the building of rails and telegraph, the erection of belle époque monuments along the Paseo de la Reforma, and the development of a nascent oil industry. Relations with the Catholic Church, though not widely advertised, began to improve. Foreign investment was lured by generous tax exemptions and subsidies. In 1884, a radical change in the centuries-old rule allotting sub-surface minerals to the sovereign spurred foreign investment in the extractive industries. At the outbreak of revolution in 1910, foreign investment stood at about $2 billion, half of which came from the United States, and was concentrated in railroads, mining, and oil.

Diaz was a man of his times; he could spin the intellectual attitudes of Liberalism, and the social theories opportunistically appropriated from Darwin’s recently published theories, in ways that allowed the strong to prosper and the weak to serve. In this, he collaborated closely with a like-minded group styling itself the científicos, or scientists, who could be counted upon to drape any policy, no matter how depredatory, in the velveteen of fashionable intellectual theory. The chief luminary of the

58. Id. at 250.
59. Id. at 248.
60. Id. at 250.
61. Id.
científicos, Jose I. Limantour, who became Diaz' Finance Minister, permitted himself to say things like "liberty constituted a privilege of the select; the weak would have to yield to superior men."63 Diaz found it politically possible to tell a foreign reporter that "the indigenous, who are more than half of our population, care little for politics . . . They are accustomed to look to those in authority for leadership instead of thinking for themselves."64 Such attitudes towards the weakest segments of the population may have been shared by their counterparts in Washington, D.C., London, Paris, or Berlin. The problem with Mexican leaders thinking this way was that the classes against whom this attitude was directed constituted a majority of the populace. The attitude could not last long in a nominal democracy, and it did not.

As stated above, with the help of the Lerdo Law, millions of hectares of productive farmland, much of it in the more fertile southern and central parts of the country, had fallen into the hands of speculators and large individual and corporate landowners.65 The porfiriastas, coming a bit later in the century, could turn their attention to privatizing the vast tracts of lands that were still public, especially those in the large and relatively empty states of the north, such as Sonora, Chihuahua, Tamaulipas and Coahuila.66 For the ostensible purpose of colonizing the frontier through smallholding, much of it coming through immigration and colonization, a new version of the Vacant Lands Law67 was enacted, followed by the Law of Occupation and Disposal of Vacant Lands.68

The rather military and sinister sound of the words "occupation and disposal" was appropriate. The less populated parts of Mexico were not, of course, completely unpopulated; they had been occupied for centuries by local people, or the remnants of those who had been dispersed during the Conquest. And it was not that such occupation took place with no legal basis whatsoever, but ownership often lacked the kind of documentary support that stood out in a courtroom. While the ostensible purpose of the laws was to privatize vacant public lands,69 the machinery devised to implement the laws was strongly tilted in favor of resolving almost any legal irregularity in that direction. A surveying company (often foreign-owned) would survey a given region and determine which lands were "va-

63. Id. at 266.
67. Ley de Terrenos Baldios [Vacant Lands Law], Diario Oficial de la Federacion [D.O.], 22 de Julio de 1863 (Mex.).
68. Ley de Ocupacion y Enajenacion de Terrenos Baldios [Law of Occupation and Disposal of Vacant Lands], Diario Oficial de la Federación [D.O.] 26 de marzo de 1894 (Mex.).
69. Terrenos baldios, referring to a category of publicly-owned lands still recognized today that have not been marked or staked.
cant,” hence federally owned. The surveying company would receive, in compensation, one-third of the land thus demarcated, giving rise to a monumental conflict of interest aggravated by the fact that few indigenous or small farmers could adequately prove their titles in modern legal terms. The remaining two-thirds of the surveyed lands would be sold cheaply to wealthy and politically favored individuals and companies, most of who continued as absentee owners. The former tenants would be incorporated into the new latifundia through debt peonage, or sometimes, like Yaqui and Mayo Indians living in the northwestern state of Sonora, they were shipped to the Yucatan peninsula and “contracted out” as laborers on henequen plantations.

According to the Mexican government’s own statistics, between 1883 and 1910, fifty surveying companies staked out fifty-nine million hectares of lands purportedly in the public domain (about thirty percent of the entire national territory). In compensation, they received twenty-one million hectares, or about ten percent of the entire national territory. The remaining forty-two million acres (twenty percent of the national territory) were conveyed by the nation mainly to hacendados, mining companies, and rail companies.

The disparity in landholding among hacendados and companies, on the one hand, and the millions of rural peones, on the other, became unhinged. One-fifth of one percent of the total number of private landowners owned eighty-seven percent of the private land. Of the forty-two million hectares of “vacant land” delivered to the nation through staking, ninety percent was ceded to twelve individuals. Of a total Mexican population of 15.3 million in 1910, 11,000 persons and fifty surveying companies controlled fifty-four percent of the national territory.

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70. Keen & Haynes, supra note 57, at 249.
71. Id.
72. Id.
73. Miller, supra note 62, at 267.
74. Deslinde y Acaparamiento, supra note 66. The roughly 59 million hectares cited by this governmental source resulted from the “surveying” activities conducted in the largely unpopulated northern states and along the Pacific Coast. In addition, 13.4 million hectares were confiscated from agrarian communities predominantly in the central part of the country as the result of private formal complaints (denuncias) in which the agrarian communities were unable to adequately document their titles, and their long-held lands were formally adjudicated (adjudicados) as “vacant,” creating a groundswell of peasant anger that would erupt in the Revolution, and become represented to a large degree by the zapatistas. Id.
75. Id.
76. Id.
77. Id.
78. Id.
II. 100 YEARS AGO

A. Revolution (1910-1917)

In the aftermath of the era of reform and the Porfiriato, there would emerge an array of political sensibilities towards the land that would eventually ripen into the public policies of the Revolution and beyond. By 1910, much of the populace had become alarmed if not disgusted by the extreme concentration of landholding and the retrograde social conditions it fostered. But different opinions were held as to the possible solutions.

Those who still believed in the ability of the indigenous and mestizo poor (most of Mexico's population) to operate within the market system wanted to reprise the original smallholder strategy of the 1850's Reformers (that is, the Jeffersonian vision in which land is widely held by individual and independent farmers in fee simple). But, to avoid the obvious mistakes made by the Reformers, land would be given directly to poor communities only after some preparation. It would be their land, but collectively only for a suitable time period. Eventually, it would convert to parceling and private, individual smallholding. This position made its way into the legal texts of the Revolution, as we shall see below.

Other Mexicans considered smallholding a suitable goal only for the more progressive elements (middle and upper classes) of Mexican society as well as foreign colonists. In this view, the needs of the agrarian underclass were "special," a euphemism that means insoluble, and their economic interests should be permanently and specially protected. As we shall also see below, this position became the de facto policy underlying Mexican legislation for most of the 20th century, although perhaps not consciously phrased in the same manner.

Others saw the agrarian problem as the domain of the legal system, a matter of restoring legal ownership over properties that had been taken wrongfully through the preceding decades. For them, the answer lay in perfecting existing procedural processes in which individual rights could be individually vindicated by creation of special agrarian tribunals or restoring to ejidos the legal capacity to sue. This program, too, found its way into the texts of the Revolutionary era.

Still others saw the merit of simply giving subsistence land to the poor, not based on a conventional legal pretext, but for reasons of political expediency, or a more radical agrarian ideology, or simple human compassion.

Some of these sensibilities were commingled, probably incompatibly, in the same person. Emiliano Zapata, for example, lobbied passionately for the restitution of legal titles—a policy that depended on the improvement, not abandonment, of the prevailing legal system. In many cases, he and his followers oversaw the wholesale redistribution of land from the rich to the poor—a result that required a discrete lack of concern for the rule of
In 1908, a seventy-seven year old Porfirio Diaz told a foreign journalist that he would not run again in 1910. The news was digested by the local populace, who greeted it warmly and with high expectations for political change. But, not only did Diaz decide to stay in the race, he became particularly heavy handed in the manner in which he suppressed the opposition. His younger rival, Francisco Madero, was forced to spend election-day in a San Luis Potosi jail. This time, the electorate did not accept more business as usual from the now octogenarian leader. Diaz survived the election but his legitimacy did not. Madero escaped to San Antonio, Texas, where he organized an armed protest that quickly gained traction. Within four months, Diaz and Madero negotiated the terms of transfer. Diaz left Mexico for good, and died in Paris.

Madero, for his part, was a conciliator in an age that called for firmer action. He allowed a Diaz ally to serve as interim president for five more months, perhaps out of kindness, and, even upon assuming the presidency, he allowed most of Diaz's ministers and hand-picked members of the legislature to remain in office. Despite Madero's vindication, Mexico's democratic institutions had botched it. Unable to maintain his credibility with the more whole-hearted revolutionaries of the day or control the porfirista leaders he had allowed to stay in power, Madero's brief tenure came to an end before a firing squad arranged for him by his trusted general, Victoriano Huerta.

Huerta proved so odious to all remaining factions of the Revolution—and, indeed, finally, to the administration of Woodrow Wilson—that they began to develop a framework for ending it. In the northern state of Chihuahua, Doroteo Aranda, a quick-witted and charismatic muleteer...

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80. The political platform of the Zapatistas became known as the "Plan of Ayala."
81. Creelman, supra note 64, at 231, 242.
82. This leniency, in the face of apparent victory, provoked severe criticism at the time, particularly by Venustiano Carranza, who became Madero's eventual political heir. One indication that Madero might not have been the man to keep the country together was the fact that, amidst the tumult of 1911, he found the time to write and publish the Spiritualist's Manual in which he assumed the name of Bhima, the second of the Pandava brothers in the Sanskrit epic, the Mahabharata. Krauze, supra note 16, at 343. The biographical similarities between Bhima and Madero will be instantly obvious to all readers of this article, but, just in case, Bhima also suffered exile (Madero in San Antonio and New Orleans), but later came back to successfully challenge and kill King Jarashanda. See id. Unfortunately for Madero, other comparisons were not so apposite: While Bhima would survive a trap laid by the treacherous Hidimba, and live to achieve great exploits, Madero would not survive the similar treachery practiced by Victoriano Huerta. See Creelman, supra note 64.
83. John Womack, Jr., The Mexican Revolution, in MEXICO SINCE INDEPENDENCE 134 (1991). By November 1912, "disgusted with the government's academic attitude towards 'the agrarian question,' the Morelos peasant chiefs under Zapata formally denounced Madero, proclaiming in their Plan of Ayala a national campaign to return land from haciendas to villages." Id. at 136.
84. See Creelman, supra note 64.
85. Womack, supra note 83, at 144. (Womack suggests U.S.-British rivalry as the primary cause of the rupture with Huerta).
who adopted the name, “Pancho Villa,” exploited the modern benefits of rail transportation, U.S. arms, and German cavalry maneuvers to thrash Huerta’s forces along the central rail axis. In the south, his ally Emiliano Zapata secured and held the mountainous terrain of the states of Morelos and Guerrero.

But another significant faction of leadership also emerged, represented by less interesting but more practical Venustiano Carranza who, like Madero, came from a prosperous northern family. Carranza became the “First Chief” of the loose and shifting factions who initially united against Huerta, and who had significant success (particularly Villa) doing so. As the end game came into view, a split emerged between the Cadres led by Villa and Zapata, who we might call the “Conventionists” (named for their convention in Aguascalientes in which their rival plan, and government, was announced), and the self-described “Constitutionalists” led by Carranza.

It is of continuing importance to us today to understand the nature of the two sides battling for the soul of the Mexican nation in the concluding years of the Mexican Revolution, less than 100 years ago. To a certain degree, the Constitutionalists and Conventionists mirrored the two approaches in the larger world to the fundamental issues of labor rights and the distribution of wealth in the first half of the 20th century. In one corner—epitomized by the Conventionists in the person of Emiliano Zapata—were those who no longer trusted the various models of economic liberalism or institutions of bourgeois political democracy. They came to regard the instruments of such power, like federal apparatchiks living in a distant capital city, or a judicial system applying Westernized concepts of real estate law, as the protectors and perpetrators of a rigged system that would inevitably crush them. They favored a new model that would distribute land on broad based moral and social grounds rather than strictly legal ones and that would see political power flowing downhill and away from a centralized federal government in Mexico City.

In the other corner were the Constitutionalists, whose leaders, like Carranza and his ally Alvaro Obregon, were drawn from the big northern states and the bourgeoisie that had prospered in the Porfiriato. There is no doubt that these men were repelled by the excesses of the Porfrian

86. In fact, men of almost identical backgrounds dominated the federal government in the post-revolutionary era. They were almost all from the big northern states, and mostly from prosperous families whose interests included extensive cattle-ranching and farming: Francisco Madero, 1911-1913 (assassinated in office), from Coahuila; Venustiano Carranza, 1916-1920 (assassinated in office), from Coahuila; Adolfo de la Huerta, 1920 (interim president after Carranza’s assassination), from Sonora; Alvaro Obregon, 1920-1924, from Sonora; Plutarco Elias Calles, 1924-1928, from Sonora; Emilio Portes Gil (interim president after assassination of Obregon before taking office, and resigned from office), 1928-1930, from Tamaulipas; Pascual Ortiz Rubio, 1930-1932, from Michoacan; Abelardo Rodriguez, 1932-1934, from Sonora.

87. Womack, supra note 83, at 142.

88. The point should be reiterated, however, that Zapata continued to attach importance to the vindication of conventional legal rights to land.
age, and fought for a wholesale change in the economic and social conditions of the country. They did so, however, as the reformers, not destroyers, of an existing political model.

Intense fighting occurred between the Conventionist and Constitutionalist forces for the last half of 1914 and the first half of 1915.89 With the country’s raw mood and manpower favoring Zapata and Villa, the Constitutionals’ eventual victory could only have been gained by drawing upon another resource, one that was not necessarily present in other countries of that era that were undergoing the same political distortions and one that still characterizes the rather unique politics of the country to this day. That resource was the superb political acumen of its leadership class. To provide only one of several examples, Villa and Zapata represented what might be called the Agrarian Revolutionaries, but there was still a vital revolutionary component of unionized and highly radicalized workers in Mexico City and in some of the industrial areas lying to its east that had never joined the Villistas and Zapatistas’ military or culture. The Casa del Obrero Mundial (World Worker’s House), one of the most radical of the unions, claimed 100,000 members.90 They were far more citified than their agrarian comrades, their leaders faced eastward, towards Europe, for political inspiration, and, as a result, they labeled themselves “anarchists” and decked their meeting halls with the red and black of that international movement.91 Nevertheless, it was the Constitutionals, whom the trade unionists could easily have mocked as hideously bourgeois, not Zapata or Villa, that enlisted their active support. In a display of ideological suppleness that has marked Mexico’s ruling class ever since, Obregon not only talked the anarchists into his own camp, he inspired them to fight Villa under the direction of his own officers.92 The so-called “Red Battalions” moved into the broad central plateau of the Bajio, and, with the help of American machine guns and German military advisors, turned back Villa’s far more experienced troops at Celaya, Leon, and Aguascalientes. While Villa’s and Zapata’s influence was never erased—they would retain their political and symbolic influence in the revolutionary movement for years to come—it was the Constitutionals who ran the machinery of government from that point forward.

The same political calculus that allowed the Constitutionals to make strange bedfellows of the anarchical trade unionists, now compelled Carranza to adopt the radical agrarian planks of the Zapatistas’ agrarian platform—at least temporarily, and to the extent his own instincts would allow him to do so.93 Carranza was a practical man from the northern state of

89. CHARLES CURTIS CUMBERLAND, MEXICAN REVOLUTION: THE CONSTITUTIONALIST YEARS 186-87 (1972).
90. Womack, supra note 83, at 156.
91. Id. (One of which was the House of Blue Tiles (now Sanborn’s Restaurant), occupying the corner next to the Fine Arts Palace in Mexico City).
92. Id. at 161.
93. Carranza’s lack of natural sympathies for the more radical agrarians are shown in the words of one of his most significant speeches: “Once the armed struggle . . . is completed, Mexico will have to embark upon the formidable and majestic task of
Coahuila, himself a substantial landowner. His natural sympathies inclined him more towards the Reformers of the 1850's and their liberal Constitution of 1857 (still operative until 1917).\textsuperscript{94} In his view, the Reformers were not wrong to have broken up the civil corporations by which ejidal farming was carried out in communal fashion or to facilitate the colonization and private ownership of public lands. Their error, according to Carranza, was in their implementation, specifically the manner in which the divested land had bypassed the poor communities involved, and had gone directly to speculators, the wealthy, and foreigners. The Carranzista policy taking shape by the year 1915 would hold that the wrongs perpetrated in the name of economic and political liberalism in the preceding sixty years should be undone, and the dials reset to the year 1857. This time, however, the land would be directly placed into the hands of the intended beneficiaries, who happened to include many Zapatistas.

B. LAW OF JANUARY 6, 1915

Carranza’s political turn to the Zapatistas was embodied in his Law of January 6, 1915.\textsuperscript{95} The law was officially incorporated by name into the most important land articles of the 1917 Constitution. It is the quintessential piece of Carranza legislation as much for its political artfulness as for its artifice. It facilitated the Constitutionists’ survival and eventual triumph. In so doing, it established the pattern and technique of political governance during the Revolutionary and post-Revolutionary periods.

Its preamble began with a \textit{mea culpa} for the misdirected legislation of the Reformistas: “[U]nder the pretext of complying with the [Lerdo Law], and other regulations ordering the division and conversion to private property,” it began, “communal lands that were granted to the Agrarian population by the colonial government were seized,” and, instead of such lands being sold to “the neighbors of the villages to which they belonged,” they “came into the hands of so many speculators.”\textsuperscript{96} Lamented as well was the seizure of other lands that had, perhaps, never been legally owned by their inhabitants in the strictest sense, but that had “originated with a family or families in common possession of tracts . . . that continued undivided for generations.”\textsuperscript{97} Both types of seizures, it was claimed, had been made under the pretext of the “laws [of the Re-
or by sales carried out by [the tax authorities], or under the pretext of boundary proceedings, to benefit those who reported excessive holdings, and the so-called surveying companies.” 98 The laws under the prevailing system had “made a mockery” of the ability of aggrieved parties to seek redress. In the case of disenfranchised civil companies, it was because the 1857 Constitution had officially outlawed their legal existence. In the case of the indigenous communities evicted in the wake of the surveying of public lands in the latter part of the 19th century, it was because the legal standing for protecting such communities was cynically entrusted to the very local authorities who were among the primary beneficiaries of the public land grab.

Those who had profited from these injustices had no grounds for protest, the preamble continued: Their initial acquisitions had been “in express violation of such laws, that had only ordered the distribution of communal assets to neighboring peoples, not strangers.” The current owners had no grounds for claiming ownership through adverse possession, because the laws under which they had acquired their properties did not “establish the prescriptive rights with respect to such properties.” To remedy this situation, restitution through legal proceedings would not be enough because “sales...had been made in accordance with the law, or because titles had been lost, or were deficient, or because it was impossible to identify the parcels or fix their boundaries.” 99 In such cases, there would be no other solutions than for the “higher military authorities in each place, after carrying out the necessary expropriations, to give lands to those who needed them...” 100

The final paragraph of the preamble is interesting, and not often remembered: The legislation never intended the ejido communal form of land ownership to again become a permanent fixture in the Mexican real estate system, but rather a provisional station on the way to direct fee ownership by members of the indigenous communities. The principle of small land ownership was very much on Carranza’s mind. In carrying out the expropriations and distributions, the Preamble stated, “it was not a matter of bringing back the old communities, nor of creating new, similar ones, but simply of giving such lands to the miserable rural populations who lack them today...” 101

98. Id.
99. Id.
100. Id.
101. It appears that Carranza could not bring himself to convey full ownership to the rural poor immediately because he, too, shared the common view of his time that the poor were not prepared for such responsibility: “[A]ll we need to do is to enlighten the people, to teach them—with dedication, with concern and with
Thus, the revolutionary land policy would be based both on restitution (*restitucion*)—a classical legal remedy for the recovery and vindication of legal rights, on a case-by-case basis—and endowment (*dotacion*)—the simple distribution of land to a group of people who may not have the complete means of proving their claims in court but who have nevertheless been injured by past social wrongs, or are simply living in an injured condition. Endowment was intended to be summary, collective, and direct, however, once lands were received by the community in question, future legislation would direct the manner in which they were to be partitioned and conveyed to members of the community in fee simple.

After so sweeping a preamble, one might have expected the Mexican sun to have risen over a new *bolchevik* heaven of mass expropriations (and that was, in fact, its hoped-for impression on many of the Zapatistas), but such was not the case. The operative provisions of the law may be summarized as follows:102

- The genius of the legislation lay in certain wording that could have given the impression—to those who wanted to hear it this way—that all transfers of property made under the laws of the Reform era were automatically invalidated. A closer reading, however, would establish that the only transactions that might be invalidated were those that could be proven to have taken place “illegally”—and such illegality had to be established on a case-by-case basis within the framework of conventional restitution (*reivindicacion*) proceedings, with the burden of proof squarely on the shoulders of the disenfranchised communities. The new legislation did not establish any new elements on which “illegality” might be based; thus, aside from restoring the communities’ legal standing to bring such actions, the new

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102. “Article 1. The following are declared null:

I. “All alienations of lands, waters and mountains belonging to the villages, ranches, congregations or communities, made by the political executives, state governors, or any other local authority, in violation of the provisions of the Law of June 25, 1856 and related rules;

II. “All concessions, compositions or sales of lands, waters or mountains made by... federal authority from the first day of December of 1876 until the present, pursuant to which ejidos, distributed lands or any other kind of land belonging to villages, ranches, congregations or communities were illegally invaded or occupied;

III. “All judicial boundary determinations [*diligencias de apeo y deslinde*] made during the period of time referenced in the preceding section, pursuant to which ejidos, distributed lands or any other kind of land belonging to villages, ranches, congregations or communities were illegally invaded or occupied.” Constitucion Politica de los Estados Unidos Mexicanos [*Const*]., as amended, Diario Oficial de la Federacion [*D.O.*], 5 de Febrero de 1917, art. 1 (Mex.)
legislation did not provide them with any particular remedies they did not have before. In essence, it is not exactly revolutionary to tell someone that, if he or she can establish the illegality of a certain transaction under existing law, then that transaction will be invalidated.

- The other category of disenfranchised communities described in the preamble—those who had long occupied their lands but whose legal titles may not have been good enough to vindicate in court—could petition for outright endowment (dotacion) of lands necessary for their maintenance. Neither the communities nor the lands are identified. Importantly, the text does not literally require that the lands to be used for endowment be the same lands on which the communities had lived. As the discussion below attempts to explain, this was a significant detail that allowed the large estates to survive almost intact during the following two decades, while communities were endowed with generally inferior public lands.

- Cases for restitution and endowment would be submitted to local governors, with the help of local agrarian boards; the provisional awards made by governors would then be vetted by a new federal agrarian commission.

- On the other hand, private landholders who considered themselves aggrieved by any land decision had the right to bring an action before federal tribunals, whether through ordinary civil proceedings, or by a convoluted federal procedure called amparo (see below).

- Future regulations would define the manner in which the new lands would be subdivided and transferred in individual ownership.

By failing to provide any criteria by which illegality might be proved, in the case of restitution proceedings by which a particular community entitled to endowment might be identified, or even by which its entitlement might arise in the first place, and, above all, by placing the entire implementation of the program within the personal discretion of local Agrarian

103. KRAUZE, supra note 16, at 352: "The beneficiaries of the new law were to be the 'pueblos,' but the law did not precisely define them. The social fabric of the Mexican countryside included figures that the law ignored: partners owning small ranches, tenant farmers, agricultural peons, laborers living in shanties on the haciendas. Carranza had hoped for the peaceful submission of reality to the law, but violent reality, in many areas, went beyond the law." See also RAYMOND B. CRAIB, CARTOGRAPHIC MEXICO: A HISTORY OF STATE FIXATIONS AND FUGITIVE LANDSCAPES 223 (2004): "Underneath the progressive patina, Carranza’s proclamation elided practical issues of implementation to the degree that one National Agrarian Commission, part of a new bureaucracy established to hear claims] official recalled that he and his colleagues operated 'blind.' Lengthy delays and Byzantine discussions over questions of jurisdiction, the relationship between grants and restitutions, and even the definition of the word 'ejido' ensued, leaving CLA [Local Agrarian Commissions] and CNA staff with little to show after a year's work.

104. Ley de Dotaciones y Restituciones, art. 10.
105. Id. art. 11.
commissions and governors, implementation could not have been made more political and discretionary.\footnote{106} Additionally, the legislation was unable to accomplish its announced goals on any wide scale, except in those states already under the control of the agrarian radicals where most lands had already been distributed to the peasantry.\footnote{107} In the two years between the Law of January 6, 1915, and the enactment of the new Constitution of February 5, 1917, a “total of nine villages in the entire country were established through the reform.”\footnote{108} A report later written by the manager of a British-owned oil company would observe of Carranza: “A tendency to conservatism is observable now that the government is . . . not so dependent on the radical military element. Undoubtedly Carranza is doing his utmost to free himself from the extremists . . . You probably know that they returned Don Jose Limantour’s properties.”\footnote{109}

C. Constitution of 1917

By 1917, the Constitutionalists had consolidated power sufficiently to institutionalize their platform in a new constitution, Mexico’s third and current one. The essential provisions of land reform were contained in Article 27:\footnote{110}

- \textit{Sub-surface minerals.} The first plank of the new land program was to return subsurface minerals, as well as other national resources, to the sovereign (in this case the Nation), a rule that had been in place since the country was owned by the King of Spain, and whose application had only been suspended in 1884\footnote{111} to encourage investment by private oil companies. In 1917, the removal of hydrocarbons from the private sector became one of the most successful symbols of national sovereignty and of independence in Mexican politics, then, and since. Nevertheless, little would happen during or in the immediate aftermath of the Revolution to disturb private ownership rights in subsurface minerals and oil deposits. Throughout the 1920s, the United States would successfully lobby the Mexican government to exempt American real estate interests (including below-ground real

\footnote{106. Craib, supra note 103, at 224.}
\footnote{107. According to one source, Zapata’s acquiescence in a Carranza-led government was secured by promises that his forces could retain the lands previously seized in the “Zapatista Zone” (states of Morelos and Guerrero). See Jean Meyer, Revolution and Reconstruction in the 1920s, in MEXICO SINCE INDEPENDENCE 233 (1991). And, of course, Zapata’s acquiescence was further secured by his assassination in 1919 carefully arranged by Carranza supporters. Womack, supra note 83, at 188.}
\footnote{108. Womack, supra note 83, at 125, 169.}
\footnote{109. Id. at 179.}
\footnote{110. Constitucion Politica de los Estados Unidos Mexicanos, art. 27.}
\footnote{111. A Mining Code (Codigo de Mineria) promulgated on November 22, 1884, implementing authorizing legislation granted in the previous year, gave ownership over minerals in the earth to those who discovered and filed claims upon them (article 3), for an unlimited time as long as the exploitation was continuous (article 4). Private owners could include foreigners (article 6), and private rights were freely transferable (article 7).}
estate interests) from the provisions of the 1917 Constitution. In the last years of the Obregon administration (1920-1924), and early years of Calles’ (1924-1928), these efforts resulted in “understandings” named after the street in Mexico City where many of the talks were held (Bucareli). Sub-surface mineral ownership would be “grandfathered,” that is, rights in place at the time of the Revolution would be respected. Additionally, in 1925, Mexico enacted a Ley del Petroleo (Petroleum Law) that expressly permitted the granting of oil concessions to private companies, even those foreign-owned.

- **Foreign investment in real estate.** Despite all the anti-foreign rhetoric that one may have heard during and after the Revolution, the actual legislation produced in the course of the 20th century that was designed to prohibit, restrict, or limit foreign investment in Mexican real property, per se, was almost non-existent, and largely symbolic. It would be almost entirely contained within the provisions of Article 27 of the 1917 Constitution, and those provisions remain mostly unaltered to the present day. The foreign owner must accept the so-called Calvo Clause under which it agrees to be treated as a Mexican in terms of its investment, and not invoke the protection of his or her home government in the event of a dispute. In practical terms, acceptance of the Calvo Clause has been considered meaningless. The only other restriction on foreign ownership of real estate concerned purchases made in the so-called Restricted Zone, defined as a strip of land 50 kilometers in width along the coastlines, and 100 kilometers in width along Mexico’s boundaries with the United States, Guatemala, and Belize. Unlike land in other parts of Mexico where the foreigner’s name may appear in the property’s title, foreigners’ interests in Restricted Zone property used for residential purposes could only take the form of beneficial interests in Mexican trusts in which Mexican financial institutions acted as trustees. Since 1917, the Mexican government has been considered scrupulous in respecting the beneficial rights of foreigners in trusts established to hold residential property in the Restricted Zone, as the survey of NAFTA claims brought against Mexico, referred to earlier in this

112. On these efforts, see generally Meyer, supra note 107.
113. Id. at 206.
114. Ley reglamentaria del articulo 27 constitucional en el ramo del petroleo [Petroleum Law], as amended, Diario Oficial de la Federación [D.O.] arts. 4 & 5, 26 de Diciembre de 1925 (Mex.). The only condition imposed on foreigners was their consent to the Calvo Clause, and the prohibition of outright ownership of resources by a foreign government.
116. Constitucion Politica de los Estados Unidos Mexicanos, art. 27, Para. 1.
117. Id.
article, evidences. Additionally, the impact of this restriction has been softened considerably, first by permitting foreigners who wish to invest in the Restricted Zone for commercial purposes to do so as sole shareholders of Mexican corporations taking direct title. Second, in the years immediately following the Revolution, the American government successfully lobbied its Mexican counterpart to pass a new Foreigner Law (Ley de Extranjeria) to grandfather the interests of Americans who owned land in the Restricted Zone. Their direct ownership would be respected during their natural lives.

- Catholic Church. It seems that the divestiture of Church property in the 19th century did not fully sate the appetite of certain segments of the Mexican population who wanted more. It will be remembered that the 1856 Lerdo Law stripped the Church of lands not deemed essential to its ecclesiastical function. That measure had contributed in large part to ten years of civil war. Arguably, the measure was too radical or could have been implemented more diplomatically, but at least it represented a semi-rational policy at the time. In 1917, by contrast, the goal was to strip the Church even of its churches, nunneries, and schools. Other provisions of the new constitution severely curtailed the political activities of the clergy. All property used for ecclesiastical purposes, including the homes of priests, bishops, nunneries, seminaries, were declared state property, to be used

118. The author is not aware of a single instance in which beneficial rights in a Mexican trust holding land in the Restricted Zone have been expropriated or threatened based on the holder's nationality.

119. Subject to minimum shareholder requirements imposed on all Mexican corporations; the minimum number of shareholders of a Mexican business corporation (sociedad anonima) is two.

120. Ley de Extranjeria, Fraccion I del articulo 27 constitucional [Organic Law Article 27 Section 1], as amended, Diario Oficial de la Federacion [D.O.], 31 de Diciembre de 1925 (Mex.), in CALDAS, supra note 95, at 52.

121. Constitucion Politica de los Estados Unidos Mexicanos, art. 27, Para. II (original text, author's translation): “Religious associations called churches [iglesias], whatever be their creed, shall in no case have capacity to acquire, possess, or administer real property. . .that which they may have now, directly or through an intermediary, shall become the property of the Nation. . .The bishops' residences, rectories, seminaries, retreats or colleges of religious associations, convents, or any other edifice that may have been built for or for the use of the administration, dissemination of information, or teaching of a religious sect, shall pass henceforth, and in full ownership. To the direct dominion of Nation to be used in public service by the Federation or its respective States.”

122. The original article 130 begins with the statement that “the historical principle of the separation of the State and the churches is the basis for the rules set forth in this provision”—a statement curious because the principle had never been particularly well recognized in Mexico. The article really deals with another historical principle, that of free speech and association, or the suppression thereof. The clergy was prohibited from: holding public office; supporting or opposing a political candidate or party; or opposing the laws of the country.” No political association could use a word in its name referring to a religious association (perhaps accounting for why the party currently holding the presidency of Mexico is not called the “Christian Democrats”); and no meeting held for a political purpose could take place in a church.
as governmental offices. This time, the policy served no real social purpose, except, perhaps, the ventilation of personal or political animus.

It would take Mexican legislators almost ten years to implement the anti-clerical provisions of Article 27, and the predictable result would be renewed civil conflict. The Cristero Wars of the 1920s would take tens of thousands of lives, and destroy or dislocate hundreds of thousands more. The Roman Catholic Church would temporarily leave Mexico officially, and deny sacraments. Eventually, the Church would come back. Eventually, Mexican political leaders would once again proclaim their Christianity and belief in God, and the state and Church would achieve a type of co-existence which endures to this day. But political observers would still be left wondering exactly what benefits this innately Catholic nation would derive from the conflict.

- **Ejido creation.** The fourth major thrust of Article 27 was to address the primary issues of agrarian landholding that were part of the major political objectives of the Revolution, discussed above: (i) the need to restore lost lands to the ejidos, or to provide them with new ones, and (ii) the breakup of the latifundia.

Several paragraphs of the original Article 27 appeared to go even further than the Law of January 6, 1915, in making broad, bold proposals for restitution. All transfers of land made pursuant to Reform legislation (specifically, the Lerdo Law) that had deprived communities of their lands, woods, and waters were nullified. But, on closer inspection, the change was not so radical. Lands would be restored “pursuant to the provisions of the Law of January 6, 1915, which will remain in effect as a

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123. Constitucion Politica de los Estados Unidos Mexicanos, art. 27, Para. II.
124. The original text of Article 27, subsection VII, paragraph 3, of the 1917 Constitution, reads:

“All proceedings, rulings, resolutions and transactions relative to surveys, concessions, compositions, judgments, transactions, sales or auctions that have deprived, totally or partially, commonly-held lands, hamlets, villages, congregations, tribes, or other bodies of population, that may still exist, from the Law of June 25, 1856, are declared null. Accordingly, all the lands, woods and waters from which the foregoing... were deprived, shall be restored to them in accordance with the Decree of January 6, 1915, which shall continue in effect as a constitutional law. In the event that, in accordance with such Decree, the award of the lands requested by any of the foregoing bodies is not appropriate, by way of restitution, they shall be given in endowment... There shall be as an exception to the aforesaid nullification only those lands titled as the result of distributions made pursuant to the cited Decree of January 6, 1915, or those held in possession in their own name as owner for more than ten years, when the surface area does not exceed 50 hectares. The excess of such surface area shall be returned to the community, indemnifying the owner for its value... Only members of the community shall have the right to the distributed lands and the rights to such lands shall be inalienable as long as they remain undivided, as well as rights of ownership, after they have been divided.” See Constitucion Politica de los Estados Unidos Mexicanos, art. 27.
constitutional law." The invalidation would not be self-effectuating. It would require that further proceedings be brought successfully by the affected entities.

Other provisions were similarly intended to soften the blow of Revolution upon the thousands of persons who had purchased land—presumably in good faith—under the Reform-era laws. To do this, the Revolutionists blended two policies: (i) the doctrine of adverse possession, to which Mexico had long adhered as a part of the Civil Law tradition, and which could therefore be employed without straining traditional notions of Western justice, and (ii) the still politically viable concept of the smallholder. Those Reform-era landowners who had occupied their lands for more than ten years would be entitled to keep them, but only to the extent of fifty hectares. This part of Article 27 is particularly interesting because it provides the best example of what the Revolutionists (at least the faction that prevailed) really wanted, which was to perfect, not abolish, the laws of the Reform era. Retroactively, through constitutional mandate, lands divested by the Reform-era laws—even if done so illegally—would remain in the hands of the “small farmers” who had presumably worked them. Absentee latifundists would be excluded.

Article 27 also carried forward the program, first laid out in the Law of January 6, 1915, of endowing (through dotacion) communities which might not be able to prove restitution in the strictest legal sense, “in the event that, pursuant to such Decree [of January 6, 1915], lands [were] not adjudicated as a result of restitution proceedings, they might be given” to the plaintiffs by way of endowment. This language did not address the issues of where the land would come from, or how exactly such endowment would come about, or who would make such decision. Clues must be gleaned from other portions of Article 27, such as the stand-alone paragraph that refers to the land coming from “immediately proximate properties,” always respecting, however, the “rights of small landholding:”

The villages and communities that lack land and water, or who do not have them in quantities sufficient for their needs, shall have the right to be endowed with them, taking them from immediately proximate properties, always respecting the rights of the small landowner.

Finally, it is worth mentioning that the key idea present in the Decree of January 6, 1915, that the communal form of land ownership was only a temporary station on the way to full fee ownership of individual parcels, appears again in Article 27: “Only members of the community shall have

125. See id.
126. See id.
127. See id.
128. See id.
129. Constitucion Politica de los Estados Unidos Mexicanos, art. 27, Para. 1 (original text, author’s translation).
the right to the distributed lands, and the rights to such lands shall be inalienable as long as they remain undivided, as well as rights of ownership, after they have been divided."130 The Carranzista formula was preserved: The communal form of ownership would eventually give way to partition, and subsequent distribution, of parcels to the individual members of the community.

- **Breakup of latifundia.** Article 27 further directed federal and state congresses to enact the legislation by which the "subdivision of large properties would be carried out," in accordance with the following:
  - Each state jurisdiction would fix the maximum amount of land that one person or legally created company could own within its respective jurisdiction.131
  - Most importantly, it would also be the local law that would determine the time period in which over-sized properties must be partitioned, as well as the terms and manner of sale.132 In case of the landholders' refusal, the land would be expropriated for a value equal to tax value. The owner would be obligated to accept the purchase price in no fewer than twenty annual installments, receiving five percent interest. If the owner refused to undertake the partition and sale voluntarily, the local government could expropriate them.133

- **Limitations on corporate ownership.** Finally, Article 27 limited ownership of rural properties by commercial corporations and banks. Commercial companies could own the lands necessary to carry out industrial and commercial purposes, but could not own land for purposes of agriculture.134 Banks could make loans secured by property, but could not own more property than that strictly necessary to carry out banking functions.135

The Constitution of 1917 has been called a victory for the agrarians and those who wished to restrict the influence of corporations, banks, large landholders, and the Roman Catholic Church. Certainly, there is a textual basis for such statement, but it should not be forgotten that the document also served as a political framework for resolving the conflicts inherent in a broad-based revolution, and thereby adjusted its results to suit the various factions.

130. *See id.*
131. Constitucion Política de los Estados Unidos Mexicanos, art. 27, Para. VII(a) ("In each State or Territory there will be established the maximum surface area of land of which a single individual or legally constituted company may be the owner.") (author's translation).
132. *Id.* sub-para. (b).
133. *Id.* sub-paras. (c)-(e).
134. Constitucion Política de los Estados Unidos Mexicanos, art. 27, Para. IV (original text).
135. "The Banks...may not own or administer more real property than that strictly necessary for their direct purpose." Constitucion Política de los Estados Unidos Mexicanos, art. 27, Para. V (author's translation).
For example, although the nullification of all land transfers made as a result of the legislation of the Reform era was ostensibly bold, its effect was considerably tempered by the incorporation of the implementing methodology of the Law of January 6, 1915. The process of restitution became an exceedingly difficult path to pursue, and resulted in very few awards of land during the entire 20th century. Similarly, by letting the restitution questions be decided by local agrarian commissions and the local governor, subject to final review by the Federal Agrarian Board whose makeup was controlled by the president, the pace of endowments would depend very much on the political climate in each state, as well as the political climate in the national capital.\footnote{3
136. The governors most supportive of agrarian reform included Candido Aguilar in Veracruz, Pascual Ortiz Rubio in Michoacan, Alfonso Cabrera in Puebla, Domingo Arrieta in Durango, and Gustavo Espinosa in Coahuila. See La Transformacion Agraria, Origen, Evolucion, Retos, Secretariat of Agrarian Reform, 1 SECTOR AGRARIO 41 (1997). On the other hand, the governor of Tamaulipas simply dissolved the local agrarian board. See CRAIN, supra note 103, at 224.}

Another example is the paucity of guidance provided on how those ejidos who were not able to prove restitution might still be able to receive endowments. At least the 1915 Law had placed decision-making authority with local boards and governors still under revolution. Aside from some vague references to land being taken from "immediately proximate" properties, "always respecting the rights of the small landholder,"\footnote{137. Constitucion Politica de los Estados Unidos Mexicanos, art. 27, Para. 1.} the new Constitution provided very little to go on.

Finally, the key issue concerning the breakup of latifundia was essentially punted to the states. Each state would determine the maximum size of land that could be held by an individual person or corporation, and even then the owner would have an initial opportunity to partition and sell the excess. As we will see below, that right afforded landowners a crucial opportunity to circumvent the law or mitigate its impact by sales to various entities. The constitutional text did not require that land deemed excessive be used to endow nearby poor communities or ejidos; presumably, the excess could be sold to anyone, including family members, associates, or newly created colonies. This is exactly what happened in many cases. Finally, by allowing states to set maximum landholding allowances, most large estates remained intact, because they were located in those states least likely to pass meaningful restrictions.

\textbf{D. AND A MOUSE ISSUES FORTH (1917-1934)}

The fifteen years following the new Constitution was a time period that, not coincidentally, encompassed a string of presidential administrations dominated by landowning men from northern states, Sonora in particular.\footnote{138. Venustiano Carranza, 1916-1920 (assassinated in office), from Coahuila; Adolfo de la Huerta, 1920 (interim president after Carranza's assassination), from Sonora; Alvaro Obregon, 1920-1924, from Sonora; Plutarco Elias Calles, 1924-1928, from Sonora; Emilio Portes Gil (interim president after assassination of Obregon before
During the Revolutionary decade, only 381,926 hectares would be distributed in all the country, an amount smaller than some haciendas. During the first seven presidential administrations following the Revolution, covering about seventeen years, the actual endowments granted by the federal government would look like this:

<table>
<thead>
<tr>
<th>President</th>
<th>Years served</th>
<th>Hectares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Venustiano Carranza</td>
<td>1915-1920 (assassinated)</td>
<td>381,000</td>
</tr>
<tr>
<td>Adolfo de la Huerta</td>
<td>1920</td>
<td>34,000</td>
</tr>
<tr>
<td>Alvaro Obregon</td>
<td>1920-1924</td>
<td>971,000</td>
</tr>
<tr>
<td>Plutarco Elias Calles</td>
<td>1924-1928</td>
<td>3,088,000</td>
</tr>
<tr>
<td>Emilio Portes Gil</td>
<td>1928-1930</td>
<td>1,173,000</td>
</tr>
<tr>
<td>Pascual Ortiz Rubio</td>
<td>1930-1932</td>
<td>1,469,000</td>
</tr>
<tr>
<td>Abelardo Rodriguez</td>
<td>1932-1934</td>
<td>799,000</td>
</tr>
</tbody>
</table>

Private property was seldom the source of land turned over to ejidos. Millions of hectares of publicly owned lands were available and used for such purpose. Included among them were (i) lands taken in foreclosure by the Agrarian Credit Bank of Mexico in the years preceding the Revolution; (ii) the “vacant lands” (terrenos baldios) in the original possession of the Nation that had not been marked or staked (such as those that were later surveyed during the Porfiriato); and (iii) national lands, a special legal category of public lands that had been staked (therefore, lands that have been taken out of the vacant category) and were therefore susceptible for conveyance to the public. It is not surprising that agrarian commissions found endowment from these sources the preferred path of least resistance, when compared to the process of seizing excessive landholdings from enraged landowners who were willing to litigate, and who, in some cases, hired their own thugs, called guardias blancas, to resist seizures. Landowners were particularly enamored of the Mexican judicial proceeding known as amparo that allowed its proponent to challenge the actions of any governmental authority, whether in the executive, judicial, or legislative branch, due to the alleged violation of a constitutional right. With more than 100 articles in the Constitution, it would not require a particularly astute attorney to find at least one constitutional right violated by the state’s action. What was particularly attractive about amparo was that the proceeding could be brought in federal court, thus countering the potential disadvantage of bringing the

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139. La Transformacion Agraria, Origen, Evolucion, Retos, Secretariat of Agrarian Reform 41 (1997).
141. See CRAIN, supra note 103, at 252-57.
142. See id.
action before the tribunal of a state government that was almost by definition in favor of the seizure, under the mechanisms established in Article 27 and discussed above.

Claims for restitution, as opposed to outright endowment, encountered even more obstacles. Restitution claims greatly complicated the work of the local agrarian commissions, who would much prefer to endow an ejido with a defined parcel of public or expropriated land (a process that could literally be concluded in a few months) rather than spend the years and considerable expense involved in patiently listening to the immemorial stories of the local communities, many of whom relied on an oral tradition. 143 To paraphrase Zapata, the boundaries of indigenous parcels seldom ran in straight lines, and it seemed that each zig and zag along a garden wall was based on its own set of legal proofs that each proponent seemingly wanted to vindicate. 144 The lands claimed by restitution often overlapped the lands seized from the haciendas, claimed by the new municipal authorities, or, claimed by neighboring communities. 145 As a result, restitution as the means of fulfilling the policies of the Revolution offered nothing other than psychological satisfaction for the communities themselves. The period up to 1934 produced only 124 successful cases of restitution, involving not even 1.5 million hectares, while in the same period there were over 5,500 distinct ejidal endowments of more than 8.5 million hectares. 146

Thus, while the extreme concentration of private landholding is always mentioned as a leading cause of the Mexican Revolution, or at least as the most notorious example of the worst conditions of the Porfiriato, surprisingly little was actually done about it in the early 20th century. In 1930, estates with more than 1,000 hectares (almost 2,500 acres) still accounted for 83.5% of all rural farmland, and estates with more than 10,000 hectares still controlled more than fifty-five percent of cultivated land. 147 Two million peasants had no land at all. 148 Two-thirds of the great estates remained undisturbed. One eminent historian wrote, "[f]rom absolutely no point of view could it be said that, through the ejido, the governments of the era would have proposed to eliminate the

143. For a thorough and exhaustive description of such tradition, and the ways in which it was brought to bear upon many proceedings to determine and delineate land tenure, see Craib, supra note 103, at 224.
144. “You engineers sometimes get stuck on straight lines, but the boundary is going to be the stone fence, even if you have to work six months measuring all the ins and outs...” John Womack, Zapata and the Mexican Revolution 227 (1968) (quoting Zapata).
145. Craib, supra note 103, at 244-46.
Even worse—from the standpoint of the Revolution's announced objectives—much of the public land distributed during this era, including some of the best, was not given to ejidos, but to private entities, primarily those formed to avail themselves of the generous benefits of several new colonization laws. The public lands distributed to ejidos were often poor. By 1930, of the 7.6 million hectares that had been distributed, only twenty-three percent were under cultivation. Ejidos were in possession of only thirteen percent of total irrigated land. The northern states were also the home states of most of the Mexican presidents of this era, who viewed farmland in an agricultural rather than agrarian light, as the instruments of economic progress rather than social harmony. To increase productivity, it was necessary to achieve scale in farm operations, bring in expertise, and lend money. The first of these goals could be accomplished, at the state level, by generous definitions of small ownership. In addition, new programs promoted mass colonization of both public and private lands, even by foreigners. The Colonization Act, for example, authorized not only the partition and colonization of public lands, but allowed private landowners—perhaps wishing to avoid their excess lands being allotted to an ejido—to do so as well. The era also saw new legislation designed to provide agricultural infrastructure and credit. A large portion of these facilities helped larger-scale irrigation and distribution projects in the presidents' home states.

The Ley de Bancos Refaccionarios, a law passed in the early 1920s whose purpose was to facilitate farm credit, did not even mention the words ejido or communal farming, and by requiring that bank loans made for the purpose of purchasing seed, machinery, labor, etc., be secured by a mortgage on the property, made it virtually impossible to extend its benefits to communal farmers. The Irrigation Act (Ley de Irrigacion), intended to promote infrastructural projects, applied by its own terms ex-
clusively to private owners.157

E. The Ejido Emerges

The 1917 Constitution was vague in defining the process by which those ejidos that were unable to prove entitlement to land in restitution proceedings might otherwise qualify for endowment. As long as there was vacant or public land to give ejidos in the 1920s, precise rules were not necessary. But by the early 1930s, it became increasingly apparent that the aspirations of the populace could only be satisfied from the excess lands held by large estates and haciendas.

Despite not much having been done to implement the 1917 Constitutional principles in a concrete way, several key features of an agrarian program did take shape in this period, without which Lazaro Cardenas, who would be elected president in 1934, and who took ejido endowment seriously, as we shall see below, would not have been able to accomplish as much as he did. First among these was the Law of Ejidal Parcel Estates (Ley del Patrimonio Parcelario Ejidal).158 This act, in particular, established the rules of ejidal governance and, even more importantly, the rules governing the State’s ability to expropriate private lands to endow ejidos. While these rules would be amended from time to time, they served to establish the basic framework for the agrarian program for most the Twentieth Century. They are summarized here.

1. Governance

The basic question of exactly who could collectively benefit from land endowment had been over-answered in the 1917 Constitution, to the point where it was not. The original text of the 1917 Constitution, referring to villages, hamlets, and communities (“pueblos, rancherias, y comunidades”), could conceivably encompass any rural life form other than a hermit’s cave.159 While some of these descriptors were excised in subsequent constitutional amendments, and other phrases (like the not very poetic “nucleuses of population”) added,160 the reality remained that qualification was largely a matter of imagination, and therefore discretion.161

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157. Ley de Irrigacion [Irrigation Act] Diario Oficial de la Federación [D.O.], 4 de Enero de 1926 (Mex.).
158. Ley del Patrimonio Parcelario Ejidal [Ejidal Parcel Estates Act], Diario Oficial de la Federación [D.O.], 25 de Agosto de 1927 (Mex.) (replacing an earlier law of the same name enacted in 1925 under the same Calles administration).
159. See Constitucion Politica de los Estados Unidos Mexicanos, art. 27 § VIII(a).
160. Id.
161. One of the rare pieces of legislation that excluded places from consideration as recipients of ejidal endowments was the Ley de Dotaciones y Restituciones de Tierras y Aguas of March 21, 1929 (Law of Endowment and Restitution of Lands and Waters), whose article 14 excluded (i) the federal or state capitals, (ii) population centers of more than 10,000 inhabitants among whom less than 200 were eligible to receive endowments pursuant to the “agrarian census,” (iii) any population center with fewer than twenty such eligible inhabitants, (iv) ports carrying on high-seas traffic, and (v) population centers formed within accredited colonies.
If distinctions were not made in terms of place, some were made in terms of the people who would be considered as members of the ejido. Excluded, at least in the early going, were peones acasillados, literally house peons, those who worked on haciendas and were normally provided their residences, together with a small garden plot, for free. Perhaps such exclusion was due to the feeling that such persons were not those most in need of material help. Perhaps it was due to the political pressure exerted by hacendados who needed their workers. Perhaps it was due to the reality that, prior to the mid-1930s, haciendas had remained intact, and were carrying on business as usual. This exclusion was eliminated in the Cardenas administration.

The governance of ejidos was designed mainly to be internal, with the agencies of the federal government involved in a support role to monitor and, in announced cases, certify acts taken by the various internal organs of the ejido (e.g., decisions by assemblies). Ejidos would be internally governed much like a business corporation: major or organic decisions would be in the hands of ejido members, meeting from time to time in assemblies, with the day-to-day affairs and representation of the ejido handled by a smaller commission (comisariado) elected by the assembly. An agrarian registry was established to permanently record such decisions, as well as significant actions.

Ejidos could elect to hold, work, and enjoy all ejidal land as truly collective, but few chose this option. Most opted for the mixed regime under which land in the ejido would be assigned to one of three general categories: (i) the land dedicated to services benefiting all ejido members, like schools, clinics, or meeting halls; (ii) communal agricultural land, usually pastoral; and (iii) agricultural land, usually cultivated, that could be divided into parcels assigned to individual ejido members. The parcelarios (parcel holders) could hold their parcel for the remainder

162. See Ley de Dotaciones y Restituciones de Tierras y Aguas, art. 14 (IV). This article defined “house peons” as “those individuals who live without charge in a house constructed within the confines of the hacienda...and whose means of subsistence habitually depend on the day-wage or salary they may receive for labors related to cultivation.” In addition, article 16 of the same legislation excluded certain types of people from receiving ejidal parcels: (i) those with existing land greater than the parcel to be given, (ii) those with more than 2,500 pesos in any kind of capital, (iii) federal or state employees, (iv) those earning more than seventy-five pesos per month in salary, or (v) members of the “professions.”


164. See Constitucion Politica de los Estados Unidos Mexicanos, art. 27 § XI.


166. The only era in which wholly communal ejidos were widely operated was in the 1930s, during the Cardenas administration, an era that corresponded to some of the highest gains in productivity. Commencing in the 1940s, ejidos became increasingly parcelized. See Bethell, supra note 17, at 259, 261. This may suggest that agrarian productivity, at least in this case, depended less on individual ownership and more on the whole-hearted backing of the administration in office.

167. Ejidal Estates Act, art. 16.
of their lives and, in fact, pass on their rights to their heirs, but did not enjoy typical ownership rights in any other sense. They could not sell, rent, or mortgage their land.\textsuperscript{168} If they failed to till their respective parcel for more than one year, their rights could be forfeited.\textsuperscript{169} This restriction later became particularly detrimental because it could penalize temporary emigration to the United States.

Both the \textit{ejidos}, collectively, and the \textit{parcelario} with respect to his or her individual parcel, were also prohibited from entering into any contractual arrangement with an outside party, be it the renting of land, or joint cooperative agreements.\textsuperscript{170}

The original objective of the January 6, 1915 Act and Article 27 of the Constitution of 1917, making communal ownership a temporary measure on the way to full, fee ownership of land for Mexico's poor farmers, got no further than in this ability to assign certain parcels to individual \textit{ejido} members, and in that ability it was entombed. There would be nothing provisional about the social sector: land would come into it, and never leave.

Perhaps worst of all, the policy makers of the 1920s and 1930s, in determining the amount of land necessary for \textit{ejido} endowment, began to relate the amount of land that should be given to each parcel owner to the amount of income it could generate.\textsuperscript{171}

Initially, two days of wages seemed right. At a surface level, the ability to earn two days' of wages in one day had appeal. The problem was that the policy was based on a conception of wages that barely kept people alive, and, in establishing an income floor, it established an income ceiling. To illustrate, if a member was given, say, four hectares (corresponding to the amount of land necessary to produce twice the perceived daily wages), he or she was doomed never to do better, assuming no substantial changes in agricultural productivity—and it is difficult to imagine any increase in productivity in farming four hectares of land, without the benefit of normal financing to purchase machinery or fertilizer, or infrastructure. By 1942, this policy was incorporated into an official program (\textit{unidad de dotacion individual}); the amount given to each member was increased from four to six hectares of irrigated land (1942 amendments to Agrarian Law), and to ten hectares in 1947.\textsuperscript{172} Nevertheless, the average parcel was and remains today about five hectares, with about two-thirds of the total campesino population in possession of three hectares.

\textsuperscript{168} See, e.g., Ejidal Estates Act, art. 20(II).
\textsuperscript{169} See Ejidal Estates Act, art. 20(V) (one year limit for non-cultivation).
\textsuperscript{170} Id. sub-sections (II) and (III) of art. 20.
\textsuperscript{171} One law from this period, the Ley de Dotaciones y Restituciones de las Tierras y Aguas, set the following limits on parcel size: 3 to 5 hectares, for irrigated land; 4 to 6 hectares, for land with abundant rainfall; 6 to 10 hectares, for land with scarcer rainfall; up to 24 hectares, in good pastureland for the raising of cattle; and up to 48 hectares for pasturage in arid lands.
hectares.\textsuperscript{173}

Since neither the \textit{ejido}, collectively, nor the \textit{parcelario}, with respect to his or her individual parcel, could mortgage land, an interesting question arose as to how seed and machinery could be procured. Only at certain times would there be a realistic answer to this question. It is to be assumed that no private bank provided loans to \textit{ejido} members or to \textit{ejidos}. Various forms of government-run rural credit banks were established to provide limited credit to \textit{ejidal} farmers, secured by a limited lien upon the crops to be produced.\textsuperscript{174} Not surprisingly, the only period in which such schemes achieved even a modicum of success was during the Cardenas administration.

2. \textit{Expropriable Lands}

By the 1930s, the rules were being worked out for determining which private land was susceptible to expropriation to endow \textit{ejidos}. This susceptibility, \textit{i.e.}, vulnerability to expropriation, became coded into the Mexican legal lexicon in the words \textit{afectacion}, or \textit{afectabilidad}, whose correspondence to the English cognates “affection” or “affected,” began to slip away decades ago. For this reason, “expropriability,” though not really English, is used here, with apology. From the 1930s on, private landowners would care mightily whether their parcels were or were not expropriable. The following provides a summary of those rules.

- First and foremost, the legislation of the late 1920s and early 1930s hewed to the original constitutional concept that endowments would come “from immediately proximate properties, always respecting the rights of the small landowner.”\textsuperscript{175} The legislation attempted to define the meaning of “immediately proximate property,” and “the small landowner.”

Article 21 of the \textit{Ley de Dotaciones y Restituciones de Tierras y Aguas} (Law of Endowments and Restitutions of Lands and Waters) defined “proximate estates” (fincas proximas) as “those which, whether or not bordering the subject population, has all or part of its lands located within a distance of seven kilometers starting from where the urban zone of the population terminates.”\textsuperscript{176} Thus, large estates outside of the seven-kilometer radius were not necessarily expropriable, and their mere ownership (until 1992) was not per se illegal. Additionally, the seven-kilometer rule was interpreted in a manner very favorable to the \textit{hacendados}: the rule did not apply to communities completely enclosed within the boundaries

\begin{itemize}
  \item \textsuperscript{173} \textit{La Iniciativa}, Secretariat of Agrarian Reform, http://www.sra.gob.mx/sraweb/conoce-la-sra/historia/la-iniciativa/ (last visited July 11, 2010).
  \item \textsuperscript{174} Under the \textit{Ley del Patrimonio Ejidal}, while liens to secure indebtedness were prohibited upon the \textit{ejido} parcel, itself, indebtedness incurred to provide food to the debtor and his family might be secured by a lien on up to eighty-five percent of the value of the harvested crops. \textit{Ejidal Estates Act}, art. 21.
  \item \textsuperscript{175} \textit{Constitucion Politica de los Estados Unidos Mexicanos}, art. 27, Para. 1.
  \item \textsuperscript{176} \textit{Ley de Dotaciones y Restituciones de Tierras y Aguas}, art. 21.
\end{itemize}
of an existing *hacienda*.\(^{177}\)

Although the original Constitution had delegated to the states responsibility for setting small landholder limits, by the late 1920's and early 1930's safe-harbors began creeping into federal legislation, and by 1947 the limits became defined at the federal level by constitutional amendments. The *Ley de Dotaciones y Restituciones de Tierras y Aguas*, cited above, for example, excluded either: (i) some lands that had been distributed under the Lerdo Law, or (ii) up to 50 hectares held under conditions of adverse possession (more than 10 years).\(^{178}\) That legislation also exempted defined smallholdings based upon the familiar tiered system: 150 hectares for irrigated land, 180 hectares for land with abundant rainfall, etc.\(^{179}\) The maximum sizes were variable, depending on whether the land was irrigated or depended on rainfall, or on the type of crop grown, or on whether the land was used for crop cultivation or the raising of livestock. The "base rate" to this tiered system, that is, the cap placed on irrigated land used to grow a staple crop like cotton or corn, was set at 100 hectares by the constitutional amendment of 1947, and has not been raised since.\(^{180}\)

Regardless of the protections afforded by such legislation, the fortunes of large landowners were often determined by the judicial mechanisms available to them to assert or defend rights. Article 10 of the Law of January 6, 1915, discussed above, had given private landowners the right to go to federal tribunals, and to use the *amparo* proceeding, both extremely valuable assets. By the late 1920s, such rights were severely curtailed. A 1932 law amending article 10 now stated that "lands affected by *ejido* endowments or restitutions... had no rights or legal recourse either through ordinary [proceedings] or through extraordinary *amparo* [proceedings]."\(^{181}\) The landholder's sole remedy was to argue the amount of indemnity to be paid for the expropriation before the federal government.\(^{182}\) Just to spare one from arguing that such a deprivation of due process was unconstitutional, the law was followed by a 1934 amendment to Article 27. The ban effectively stripped landowners of ability to contest expropriation.\(^{183}\) A 1947 amendment to Article 27 restored *amparo*, but only to litigants whose lands had been certified as compliant, pursuant to a certificate of non-expropriability (*certificado de no afectacion*) issued by what was then called the Agrarian Department (Departamento

\(^{177}\) Modesto Aguilar Alvarado, *supra* note 79, at 65.

\(^{178}\) *Ley de Dotaciones y Restituciones de Tierras y Aguas*, art. 25.

\(^{179}\) *Id.* art. 26.

\(^{180}\) *Id.* art. 27 § XV. Other examples of maximum limitations are: (i) cotton on irrigated land, 150 hectares; (ii) where the source of water is natural rainfall, the limits corresponding to irrigated lands is doubled; (iii) forestry, 800 hectares; (iv) cattle-raising, the amount of land needed to raise 500 head of cattle, as determined by the local department of the federal agricultural authority.


\(^{182}\) *Id.*

\(^{183}\) Constitucion Politica de los Estados Unidos Mexicanos, art. 27, Para. I.
In addition, smallholding did not always afford a complete guarantee against expropriation. If it was found that the amount of expropriable land within the seven-kilometer radius was insufficient for the needs of the *ejido*, the non-expropriable size of the smallholding could be reduced by one-third. Thus, the owner of, say, eighty acres of irrigated farmland (otherwise within the 100 hectare limit of smallholding) was not completely secure. To the extent a population was recognized within seven kilometers of his or her farm, upon a finding of insufficiency of available land to endow the *ejido*, perhaps only $\frac{66}{2/3}$ hectares might remain non-expropriable. Since an *ejido* could theoretically be formed from any nucleus of population, smallholders had no real assurance against expropriation until certificates of non-expropriability became available for such purpose in 1947.

Changes of land use presented another problem because smallholder limits were set according to whether the land was irrigated, whether it grew sugar cane or barley, or whether it was used for pasture, and so on. It soon became apparent that a farmer, who might otherwise wish to boost productivity by converting rain-fed land to irrigated land, might not do so because part of his lands might become subject to expropriation. Laws were eventually passed that retained the greater smallholding limit prior to the use conversion.

Finally, large-scale farming activities involving a high degree of processing or industrial activity, such as sugar cane, hennequin, banana, cocoa, and maguey plantations, had their limits set by National Agrarian Commission in accordance with the "technical capacity of the plant [industria]."

3. Other Measures Used to Avoid Expropriation

Colonization as a means of accomplishing the Mexican ideal of yeoman smallholding continued to be popular, particularly in the less populated northern part of the country. The Colonization Act (*Ley de Colonización*) made public lands, and lands that had been foreclosed upon by the Banco Nacional de Credito Agricola, available for colonization, but it also allowed any private owner to develop a colony without participation of any governmental entity. Colonists could be, and often were, foreigners who were eligible with no other requirement than agreement to the Calvo Clause and payment of a $1,000 per family deposit that

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184. See Constitucion Política de los Estados Unidos Mexicanos, art. 27 § XIV.
185. Ley de Dotaciones y Restituciones de Tierras y Aguas, art. 27.
186. See Constitucion Política de los Estados Unidos Mexicanos, art. 27 § XV.
187. Ley de Dotaciones y Restituciones de Tierras y Aguas, art. 36(II).
188. Colonization Act.
189. Id. arts. 2, 3.
190. Id. art. 9
191. Id.
could be used immediately to defray operating expenses.\textsuperscript{192} Lot sizes could range from 5 to 150 hectares,\textsuperscript{193} in the case of irrigated land, from 15 to 250 hectares in cultivated land with abundant rainfall,\textsuperscript{194} and even larger tracts in other cases.\textsuperscript{195} Lots could be purchased with a down payment of only five percent which could be deferred and paid from the proceeds of the first harvest, even later if those proceeds were insufficient.\textsuperscript{196} Most importantly, the size of each colonized parcel was determined by the more generous small landholder limits described above, not the \textit{ejidal} single parcel limit.\textsuperscript{197} Neither benefit was available to the member of an \textit{ejido}. Since new colonies could come from private lands, and be organized by private landowners, colonization became a way around the possible forced expropriation of excessive landholdings to endow \textit{ejidos}. The federal government also did its part to promote and occasionally favor colonization. From 1917 to 1934, it gave 1.5 million hectares of national lands to private landholders rather than \textit{ejidos}.\textsuperscript{198} During the administrations of Miguel Aleman (1946-1952), Adolfo Ruiz Cortines (\textemdash), and Rodolfo Lopez Mateos (the government’s agrarian policy shifted notably in favor of endowing colonies rather than \textit{ejidos}, particularly in what concerned land with access to irrigation in the northern states of Sonora and Baja California, to the extent that, by 1962, article 58 of the Agrarian Law (was amended “to prevent owners of surface areas greater than that permitted by agrarian law [that is, applicable to \textit{ejidos}] from evading agrarian distribution through colonization.”\textsuperscript{199}

Even with these allowances, large landholders resisted expropriation, often through the simple expedient of voluntarily selling excessive parcels to family members, friends, and various straw men. While such transfers are routinely voidable in more advanced legal systems, the Mexican legal system had not, until recently, developed meaningful legislation designed to invalidate sham, fraudulent, or otherwise voidable transactions.\textsuperscript{200} While it was widely assumed that large landowners were using such device to avoid or preempt forced expropriations, the only legal counter-
measure used against it was the rule that invalidated any transfers made after a formal application for ejidal restitution or endowment had been submitted, and denied recognition to transfers made prior to submission of the application if not recorded in the public registry of property.\footnote{Ley de Dotaciones y Restituciones de Tierras y Aguas, art. 29.}

\section*{F. Comes Cardenas}

By the mid-1930s, the legal and political conditions were in place for a marked increase in the amount of lands being transferred into what became known as the social sector. It was not just the political effects of the Great Depression that tended to make people question the promise of the market system. Mexico's poor farmers had been so miserable prior to the Great Depression that a change towards the worse might well have gone unnoticed. What was changing was the political landscape: Political parties and other quasi-governmental organizations were becoming “institutionalized.”\footnote{\textsc{Bethell}, supra note 17, at 244.} The men on horseback who won battles in the 1910s, and became presidents in the 1920s, were dying out, replaced by men who not only ran the new organizations but made their livings doing so. It will be remembered that the 1917 Constitution allowed states to determine the pace of agrarian reform within their own jurisdictions. In the states where such reform was most advanced, permanent political organizations sprang up that eventually joined to form national apparatuses. By 1934, Plutarco Elias Calles, the former president (1924-1928) who was acknowledged as running a de facto presidency (called the “\textit{maximato}”) during the terms of his three successors, would become so frustrated by the attitudes of these new political professionals that he would leave Mexico in disgust. He once told a reporter, “‘I was exiled . . . because I opposed the attempts to implant a dictatorship of the proletariat.’”\footnote{Benjamin, supra note 148, at 478.}

The pronounced change could also be attributed to a man. Lazaro Cardenas was not a rancher from Sonora, or Coahuila, but from the central, more traditional state of Michoacan, and, to judge him by the opinions of his contemporaries, held the ideals of the Revolution—particular those of Zapata—closer to his heart. In governing his home state, his reputation for probity earned him the name “Boy Scout” (a sobriquet not always meant as a compliment in Mexico).\footnote{\textsc{Bethell}, supra note 17, at 249.}

Elected as president in 1934, Cardenas's agrarian policies struck early and hard. Instead of giving away relatively infertile land in the northern reaches of the country, he ordered the mass expropriations of fertile lands like those in a region called the Laguna around the city of Torreon (150,000 hectares given to 35,000 peons), the henequen plantations in the Yucatan (366,000 hectares to 34,000 peons), a fertile area in the state of Sonora called the “Valle del Yaqui” (47,000 hectares to 2,160 peons), in Lombardia and Nueva Italia in the State of Michoacan (61,449 hectares
to 2,066 peons), and irrigated sugar cane fields near Los Mochis, Sinaloa (55,000 hectares to 3,500 peons). While an estimated 942,125 campesinos were endowed in all the years prior to Cardenas, in his single term of office 771,640 were endowed. More importantly, ejidos were given better lands. The portion of cultivated lands (tierra de labor) held by ejidos rose from 13.3% to 46.5%. By the end of his term, ejidos represented almost fifty percent of total agricultural production in Mexico, a figure never again duplicated.

Nor was the Cardenas administration content to leave undisturbed the understandings laboriously achieved with foreign oil companies on Bucareli Street. The Nation’s ownership of in-the-ground oil assets would have to be restored, but this time the Cardenas administration found a way around the politically difficult route of direct expropriation of subsurface real property. By adroitly managing labor confrontations between the companies and their labor unions, followed by the companies’ refusal to honor the decisions of the labor authorities, a pretext for confiscation was found, and followed.

G. Aftermath

True to his word, Cardenas did not provoke another constitutional crisis by attempting to run for a second term. The year 1940 would mark the conclusion of what might be called the revolutionary or post-revolutionary phases of agrarian reform in Mexico. While additional lands would be distributed to the social sector, particularly in the 1960s and early 1970s, the whole idea of land as a means of achieving social betterment—basically, as a solution for the Mexican peasant and widespread poverty—would never have the same importance.

Perhaps one reason was the diminishing role of land as the touchstone of the economy. A law passed in 1934 could call agricultural land “the supreme cornerstone” of wealth, but fewer and fewer of Mexico’s poor, emigrating to the cities in the 1940s and 1950s to work in the new factories, would believe this was true. World War II created an opportunity for Mexico to send products, crops, and farm workers to the United States to fill the holes and new requirements created in the U.S. war economy. In the 1940s, Mexico’s industrial production grew eight percent per year; in the 1950s, the annual increase was seven percent. Agrarian policy was replaced by industrial policy, a policy that turned increasingly coddling towards its national producers, including commer-

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205. Secretariat of Agrarian Reform, supra note 147.
206. Id.
207. Id.
209. See Benjamin, supra note 148, at 478.
cial crop producers, and increasingly indifferent to peasants tilling corn with oxen, five hectares at a time.

From 1940 to the mid-1960s, agriculture in general grew at an average annual rate of four percent, well above the rate of population growth in that period, but the social sector received little public support. By 1960, 50 percent of agricultural properties contributed to only four percent of production. Much of the rate of growth occurred in the countryside, in a period (late 1960s) preceding the creation of new employment programs (e.g., the twin-plant, or maquiladora program primarily along the U.S. border), and mass emigrations to the United States. The first response of the Mexican government to these demographic pressures was to endow new ejido lands rather than try to correct its inherent problems or abolish the program altogether. The Diaz Ordaz administration, in particular (1968-1974), distributed more new land to the ejido sector that any previous administration since Cardenas.

The results of simply expanding the scope of a failed policy in order to mitigate its defects were predictable. By the 1980s, Mexico began to import corn for the first time, an event that shook the country that had basically perfected its cultivation. Mexico’s 20th century land program also came to be viewed not just as a failure, but the very special kind of failure brought about by the very principles it embodied. By capping ejidal parcels at ten hectares per farmer, and precluding access to credit, or participation with the outside world, rural poverty was not alleviated, it was institutionalized.

III. NOW

The issue of land redistribution had emerged from the Mexican Revolution as an enshrined, if under-achieved, ideal of Mexican politics, but towards the end of the 20th century several factors came together that would enable Mexican leaders to fashion an exit from what was clearly a failed policy. First, the worldwide tendency to privatize state-owned assets and businesses, to open markets, and to liberalize the economy—a broad movement described as neo-liberalism—took strong hold in Mexico, particularly during the administration of Carlos Salinas de Gortari (1988-1994). Mexico acceded to the General Agreement on Tariffs and Trade (1986). It negotiated a North American Free Trade Agreement (NAFTA) with the United States and Canada that became

211. See Auge y Crisis Agropecuario, Secretaría de la Reforma Agraria [Secretariat of Agrarian Reform], http://www.sra.gob.mx/sraweb/conoce-la-sra/historia/auge-y-crisis-agropecuario/ (last visited June 7, 2010).
212. Id.
effective in 1994. Major industrial and commercial sectors opened to private and foreign participation (telecommunications, natural gas distribution, railroads, banks). NAFTA, in particular, imposed a new logic on the agricultural sector. In theory at least, Mexicans would import more of those products in which U.S. and Canadian farmers enjoyed a competitive advantage (e.g., grains), and export those products in which they enjoyed a competitive advantage (e.g., broccoli, seasonal lettuce and tomatoes, avocados, tropical fruit). This logic did not augur well for low-productivity ejido farming which focused on corn and bean production.

Second, it was politically possible to point out that the purely political objectives of the Revolution had been achieved. By 1990, the great latifundia had been reduced (although large ranches were not hard to find, if one looked), and ejidos owned about 100 million hectares of real estate, almost one-half of the entire country, and the Mexican government could report that “if in 1900 less than 2,000 families were owners of 87% of the surface area of the country, by the end of the 1980s there were more than five million members of ejidos, communes, and small landholders with direct control over 90% of the territory.”

But, perhaps most importantly, the grandchildren and great-grandchildren of the peones, who had clamored for their bit of land 100 years ago, were no longer there but in Dallas working in construction, in Iowa disemboweling poultry, or in Ciudad Juarez assembling auto parts. Conversely, Mexican cities had swelled during the population boom of the late 20th century, and were now rubbing up against ejidos at several suburban points. Foreign investment created a demand for industrial parks; foreign tourists and home buyers created a demand for more beachfront; and, in almost all cases, it was difficult to find large pieces of developable land that did not encompass an ejido. If given a choice, would the ejido member living and working in Chicago prefer to sell his five-hectare parcel to Canadian sun-seekers or enter into a production-sharing arrangement with Green Giant, or would he rather return to his family parcel to eke out a subsistence living?

The politically astute response, embodied in a completely new Agrarian Law enacted in 1992, with accompanying changes to Article 27 of the Constitution, approached the issue from several directions. First, the decision to privatize a particular ejido remained completely voluntary among its members; this made it impossible for any ejido to claim it was being railroaded by an outside entity. Second, even when the ejido had

218. Id.
219. Ley Agraria [Agrarian Act], Diario Oficial de la Federación [D.O.], 26 de Febrero de 1992 (Mex.).
opted for the privatization route, the decision to privatize effectively re-
ained at the level of the individual parcel holder, who could choose
among several options: privatize and hold, privatize and sell, or not priva-
tize at all.\textsuperscript{221} Third, in the event such owner of a now privatized parcel
decided to sell to an outside entity, the collective interests of fellow \textit{ejido}
members were safeguarded somewhat by a preferential right to
purchase.\textsuperscript{222} In any case, it was the individual seller, not the State, who
would reap the economic benefits of the sale. Fourth, old rules that re-
quired an \textit{ejido} parcel to be continuously worked by the parcel owner, at
the risk of losing it,\textsuperscript{223} were abolished, thus extending the benefits of the
program to hundreds of thousands, if not millions, of \textit{émigrés ejido} mem-
ers, a detail that virtually guaranteed its political acceptance. Finally,
\textit{ejidos}, and \textit{ejido} parcel owners who did not wish to go all the way with
privatization, but who desired the expertise or capital of outside parties,
were now free to enter into almost any kind of development agreement
with such entities.\textsuperscript{224}

A. LAYING OUT THE BOUNDARIES

As the new Agrarian Law was passed, it was recognized that its liberal-
izing tendencies could not be implemented without addressing serious de-
iciencies in the legal descriptions not only of the lands originally given to
\textit{ejidos}, but of the internal divisions of lands within the \textit{ejidos}, themselves.

Establishing the external boundaries of the \textit{ejido} would have been nec-
esary whether the new Agrarian Law was passed or not. By the end of
the 20th century, the edges of many cities had pushed up to the edges of
many \textit{ejidos},\textsuperscript{225} and rights had to be delineated with precision. In the fifty
years after the Mexican Revolution, both public and private lands had
been distributed to 28,000 \textit{ejidos} with breath-taking disregard for the es-
sential points of legal conveyances or land surveying. One example is an
endowment in which an \textit{ejido} was given all land within a certain radius of
a certain point on the earth's surface.\textsuperscript{226} It is hard to imagine how a pe-
rimeter described by a geometric circle would address existing realities,
or serve future needs. This perfect circle did, indeed, encroach on several
privately owned tracts that were never intended to be disturbed. For the
same reason, it left huge gaps between the circle and existing parcels,

\begin{footnotesize}
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\item[221.] Agrarian Act, \textit{infra} notes 250-59.
\item[222.] Agrarian Act, art. 84.
\item[223.] \textit{See}, e.g., Ejidal Estates Act, art. 20(V) that subjected ejido parcels left uncultivated
more than one year to forfeiture.
\item[224.] \textit{See} Agrarian Act, art. 45.
\item[225.] Gareth A. Jones \& Peter M. Ward, \textit{Privatizing the Commons: Reforming the Ejido
and Urban Development in Mexico}, at 78, available at http://www.uky.edu/
\textasciitilde tmute2/mexico/Mex\%20PDFs/jones-ward_private-commons.pdf.
\item[226.] Based on the author's personal examination of the map attached to the 1964 presi-
dential decree endowing the Ejido Colonel Esteban Cantu. By coincidence, the
endowment was the same one that caused scores of Americans, who had presum-
ably purchased land near Punta Banda, south of the city of Ensenada, Baja Califor-
nia, to be evicted \textit{en masse}.
\end{footnotes}
\end{footnotesize}
creating lagunas. The predictable result was decades of needless litigation and in the end, the intervention of the Mexican Supreme Court.227

By the same token the internal divisions made within ejido land needed better delineation because of the manner in which the new legislation would stage the process of privatizing the ejido. Certain plots within the ejido might never be privatized, others could be used but not owned by outsiders, others still could be completely privatized eventually.

The program that would be created to address these deficiencies was called “PROCEDE,” the initials for Programa de Certificación de Derechos Ejidales y Titulación de Solares (Program for the Certification of Ejidal Rights and Titling of Urban Plots).228 Participation in the program was voluntary and at no cost to the ejido.229 Although the initial participation by ejidos was much less than expected, by 2006 more than ninety percent of all ejidos and communes had become certified.230

The benefit of PROCEDE is that it provided a practical mechanism and the resources for resolving boundary disputes in a relatively expeditious manner. For example, the governmental agencies charged with the program would literally bring ejido members together with adjacent private landowners, walk the fences, agree on boundaries, and enter into a binding agreement that would then be reflected in boundary maps kept in a formal registry. While this process did not always end happily, it was far superior to any process that had come before it.

B. Categories of Ejido Land

Ejido land is divided into three categories:

- Land used for “human settlements” (asentamientos humanos) is the portion of the ejido set aside for houses, schools, and the other facilities of everyday life.231
- Another is common use (uso comun), the land used in common for the economic sustenance of all the ejido; it is usually land used for grazing.232
- The principle of individual use and benefit is reflected in parcels

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228. PROCEDE is generally described in: “Procede” supra note 220; Ana de Ita, Land Concentration in Mexico after PROCEDE, PROMISED LAND: COMPETING VISIONS OF AGRARIAN REFORM 148-164 (2006).


231. Agrarian Act, arts. 63-72.

232. Id. arts. 73-75.
(parcelas) that are assigned to individual ejido members. The ejido may not collectively exploit a parcel without the written consent of its titleholder. Within certain guidelines, individual parcel owners are able to convey their parcels into the private sector. No individual ejido member may own parcels representing more than five percent of the total area of the ejido, nor more than the maximum limit applicable to all Mexicans under the small landholding limitations applicable to all persons and corporations, discussed below.

It is also possible for the ejido, by the vote of its assembly, to choose to collectively use all ejido land. The ejido is also free to opt out of this collective regime, once in it.

C. ASSOCIATIONS AND TRANSACTIONS WITH THIRD PARTIES

The ejido enjoys considerable freedom in entering into transactions with persons or entities outside of the ejido for the temporary use or exploitation of ejido lands. Such transactions can range from joint ventures, other types of contractual associations, or leases. For the purposes of the remaining discussion, all of these shall be referred to as “use agreements.” The following are some examples of allowable use agreements under the Agrarian Law:

- The ejido, acting through its assembly, may enter into use agreements with respect to the common use areas described above.
- An individual ejido member who holds title to a parcel, as described above, is similarly free to enter into use agreements. Such agreement does not require permission of the ejido or any authority.
- The term of the use agreement may be for the lifetime of the project involved, not to exceed thirty years. However, the term is extendable.

It is noteworthy that the Agrarian Law uses the term “any” to describe the use agreements that may be entered into. There appear to be no limitations.

D. USE OF EJIDO PROPERTY AS COLLATERAL

Article 46 of the Agrarian Law permits the ejido, in the case of common use lands, or the individual holder of a parcel in the case of a parcel, to secure loans by granting the creditor the usufruct (the product or fruit)
of such respective properties.\textsuperscript{242} Such grant may only be made to a credit institution (e.g. bank) or the entity with which the \textit{ejido} or parcel owner has entered into an association or use agreement.\textsuperscript{243} In the event of default, the creditor is only entitled to the \textit{usufruct} for a stipulated period of time, after which the \textit{usufruct} goes back to the grantor.\textsuperscript{244} This means that the creditor is not entitled to foreclose upon the land itself. To exercise its rights in the collateral, the creditor must petition an agrarian tribunal, and the agreement granting the right must be entered into before a public notary and be recorded in the Agrarian Registry.\textsuperscript{245}

Due to the fact that the creditor is only entitled to a \textit{usufruct} for a certain period of time, must plead before an agrarian tribunal, and may not resort to extra-judicial procedures in enforcing its rights in the collateral, it is hard to imagine this security device appealing to private sector banks providing regular credit. This limitation must be considered a major impediment to the modernization of the \textit{ejido}.

E. \textbf{Sale or Transfer of \textit{Ejido} Lands to Third Parties}

\textit{(i) Transfer to governmental entity.} Lands for human settlement may be transferred to municipal or similar governmental entities only, when needed to provide public services.\textsuperscript{246}

\textit{(ii) Transfer of “common use” property.} In cases of manifest public utility, an \textit{ejido} may contribute “common use” lands to regular business corporations whose shareholders consist of \textit{ejido} members, other \textit{ejidos}, and even third parties.\textsuperscript{247} The plan must be approved by the \textit{ejido} assembly and the Agrarian Attorney General. The contribution will also be subject to the following:

- The value of the lands contributed in exchange for shares must be at least equal the value established by the government agency called \textit{Comision de Avaluos de Bienes Nacionales} (Commission for the Appraisal of National Properties) or any credit institution (e.g., bank).\textsuperscript{248}
- In the event of corporate liquidation, the \textit{ejido} and \textit{ejido} members will have a preferential right over non-\textit{ejidal} shareholders to receive the contributed lands as an in-kind distribution.\textsuperscript{249}

\textit{(iii) Privatization of parcels.}

By far the most normal way to transfer or privatize \textit{ejidal} lands is by transfer of specific parcels by their individual holders. The rules are as follows:

\textsuperscript{242} Id. art. 46.
\textsuperscript{243} Id.
\textsuperscript{244} Id.
\textsuperscript{245} Id.
\textsuperscript{246} Id. art. 65.
\textsuperscript{247} Id. art. 75.
\textsuperscript{248} Id. art. 75(IV).
\textsuperscript{249} Id. art. 75(V).
Once a majority of the parcels designated by the *ejido* have been assigned to *ejido* members, the *ejido* assembly may vote to allow individual parcel owners to own their parcels in fee simple, that is, as full owners of such parcels and incorporating such parcels into the private sector.\textsuperscript{250} After the assembly has given such approval, each individual parcel owner may convert the parcel to the private sector by petitioning the Agrarian National Registry to deregister the parcel.\textsuperscript{251} The Agrarian National Registry will then issue to the owner a certificate of ownership, which the *ejido* owner may then register with the (normal) public registry of property.\textsuperscript{252} From that point forward, the property is in the private sector with respect to that parcel owner.\textsuperscript{253}

But, should the parcel owner (now regular owner) of the property wish to convey the land to someone else, the *ejido* is not done. He or she must give a right of first refusal to purchase the land to the following, in this order:

- Family members;
- Those who have worked the land in question for more than one year;
- Other members of the *ejido*;
- Neighbors (*avecindados*) of the *ejido*;
- The *ejido*, itself.\textsuperscript{254}

Presentation of a notice of sale, prepared before a public notary or two witnesses, and delivered to the commissariat of the *ejido*, constitutes valid evidence of notice to all the persons or entity listed above.\textsuperscript{255} Such persons or entity have thirty days in which to declare their intent to exercise their right of first refusal.\textsuperscript{256} If the right is not exercised, the owner of the land is free to sell or transfer to any third party.\textsuperscript{257} Once consummated, neither the *ejido* nor any of the above persons have any further rights in the property.\textsuperscript{258}

The sale must be for a price at least equal to the appraised value set by the *Comisión de Avaluos de Bienes Nacionales* (Commission for the Appraisal of National Properties) or any credit institution (e.g., bank).\textsuperscript{259}

IV. CONCLUSION

The struggle that would commence in 1910 has been called the “first

\begin{itemize}
  \item \textsuperscript{250} Id. art. 81.
  \item \textsuperscript{251} Id. art. 82.
  \item \textsuperscript{252} Id.
  \item \textsuperscript{253} Id.
  \item \textsuperscript{254} Id. art. 84.
  \item \textsuperscript{255} Id. art. 85.
  \item \textsuperscript{256} Id. art. 84.
  \item \textsuperscript{257} Id.
  \item \textsuperscript{258} Id.
  \item \textsuperscript{259} Id. art. 86.
\end{itemize}
successful revolution" of the 20th century.\textsuperscript{260} Such success would serve to end the lives of millions, disrupt the ownership of property on a large scale, provoke the intervention of the U.S. military at least twice, expose the utter dependency of Mexico upon the flow (or shut-off) of foreign arms, and create a new type of romantic revolutionary hero, thanks in large part to another revolution, this one technological, in the form of the motion picture camera. It would, in the year 1917, give Mexico its third and current, constitution. One article of that new charter, Article 27, would encapsulate many of the ideas regarding land use and tenure for which the Revolution was waged.

And yet the label of "success" should not belong to a program that has institutionalized and preserved poverty for millions of Mexicans strewn across its great land mass. A drive across the dirt roads of almost any region will reveal village after village predominantly peopled by women and children, except perhaps for the months of December until February when the young men return as conquering heroes, their pockets filled with money from their stints as emigrant laborers.

The "success" of the last 100 years of Mexican land reform, if indeed such label is accurate, might be better viewed in the sepia tones not of material, but political accomplishment. In the Revolution and beyond, an astute political class was able to fashion a formula for the survival of a process that would give Mexico a century of peace (its conflicts with the Catholic Church apart) and relative prosperity despite its real accomplishments in the fields. In the last 100 years, the private ownership of Mexican real property in general, and foreign ownership of real property in particular, have been marked by a stability and legal security seldom enjoyed in other developing countries. The restrictions on foreign ownership of Mexican land have not deterred foreigners from purchasing Mexican property, nor have the size limitations placed on individual and corporate land ownership crimped reasonable investment programs in the agricultural sector.

In the end, the successes or failures of land reform in the last 100 years have mattered less because land itself has mattered less. In the current stretch of Mexican history, land has become detached from wealth, in particular from the expectation of self-betterment. It is only for these reasons that Mexican history does not swirl about its distribution and tenure as it did in the past. The great, great grandsons of the aggrieved peasants of a bygone era will sell their dunes of white sand to the Marriott hotel chain, or they will work as waiters in exclusive restaurants in Cabo San Lucas, for good tips. And life will go on.

Comments and Casenote