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MONOPOLISTIC LAND TENURE AND FREE TRADE IN MEXICO: RESURRECTING THE GHOST OF PORFIRIAN ECONOMICS

Lola Clayton Rainey*

[O]metecutli el señor de la dualidad y Omecihuatl la Iseñora de la dualidad, recorrieron el mundo de la noche eterna abordo dos cocodrilos. ("Ome" en nahuatl signifca dos). Ellos tuvieron cuatro hijos: Quetzalcoatl, Tezcatlipoca, Camaxtle y Huitzilopochtli, a cada uno le otorgaron distintas cualidades para que crearan y protegieran La Tierra . . . Tezcatlipoca y Quetzalcoatl escogieron un monstruo que tenia el cuerpo regado de ojos y bocas y lo hicieron bajar del cielo para convertirlo en "señora de la tierra" pero abajo de la gran capula celeste solo habia agua, y la bestia iba de un lado a otro sin ningun orden. Entonces, Tezcatlipoca y Quetzalcoatl planearon convirtirse en dos grandes serpientes para dominar a la bestia y poder darle forma a lo que seria La Tierra. Fue tanto el jaloneo con el monstruo, que este termino por romperse . . . y asi, con una parte formaron el cielo y con la otra la tierra firme¹

[O]metecutli the master of duality and Omecihuatl the mistress of duality traveled world of eternal night aboard two crocodiles. ("Ome" in nahuatl means two). They had four sons Quetzalcoatl, Tezcatlipoca, Camaxtle and Huitzilopochtli, each one possessed special powers for the creation and protection of the world . . . Tezcatlipoca and Quetzalcoatl selected a monster that had a body sprinkled with eyes and mouths and they came down from heaven in order to change it into "mother earth". But under the great celestial stratum there was only water and the beast moved from one side to the other at random. Therefore, Tezcatlipoca and Quetzalcoatl agreed to change themselves into two serpents to subdue the beast so they could transform it into land. A fierce struggle with the monster ensued and when it was over the beast had broken itself into pieces . . . and so, with one part they formed the sky and with the other solid land²

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1. NELIDA GALVAN, MITOLOGIA MEXICANA PARA NIÑOS 16 (1995).

2. BRIAN M. FAGAN, THE AZTECS 213 (1984). "The Aztec philosophers thought of the earth as supported by the universal, primeval sea, teoatl. In this sea floated a terrible monster that took

Introduction

Free trade is not a panacea for the myriad of ills afflicting Mexican society. In order to receive the maximum benefits of a free marketplace, a culture of fairness must exist because political and economic stability are a prerequisite to trade growth.³ Standards of fairness are norms that have yet to take root in Mexican culture.⁴ The attempts to transform the ideology of fairness into institutional standards of fairness have failed because neutralizing or equalizing social practices threaten the political status quo.

The Partido Revolucionario Institucional (PRI), the dominant national political party of Mexico, for over thirty years managed to control the balance of power between the mainly bourgeoisie class, demanding capitalist expansion, and the worker class, seeking land redistribution, through a mixed policy of *pan y palo* (bread and stick).⁵ This coalition of antipathetic forces was formed in the post-revolutionary era of Mexico.⁶ Over the years, however, the move toward increased capitalization has expanded the influence of the industrial elite in the national government, particularly in the area of economic policy, and strengthened their position as the dominant class in civil society.⁷ Concomitantly, the political power and stability of the worker class has weakened.

The state, acting in its traditional paternalistic role as social arbiter, has been unable to institute needed land and fiscal reforms to ease growing class antagonism because of fierce opposition to such reforms from the industrial elite.⁸ The resulting power gridlock has led to a loss of faith in the political

several forms. One of its forms was the Earth Monster, Cipactli, the crocodile-like creature that had once been torn asunder to form heaven and earth." *Id.* at 219.

3. See Boris Kozolchik, *Political Change and Instability*, 18 CAL. W. INT'L L. J. 105 (1987).

4. See CARLOS G. VELEZ-IBANEZ, *RITUAL OF MARGINALITY* 18, 29 (1983), quoted in Kozolchik, *supra* note 3, at 106.

5. See STEVEN E. SANDERSON, *AGRARIAN POPULISM AND THE MEXICAN STATE: THE STRUGGLE FOR LAND IN SONORA* 218 (1981) [hereinafter STEVEN SANDERSON, *AGRARIAN POPULISM*]. The PRI's stranglehold on political power in Mexico was weakened for the first time in 68 years as a result of the July 6, 1997, elections. For the first time since 1929, the PRI is not the majority party in the Mexican Congress. Opposition parties formed an alliance which intends to wrest control over key congressional committees from the hands of the PRI. The opposition is also threatening to reform the Mexican presidency by bringing an end to the imperialistic excesses of the office. See *State of Union to Mark Change for Zedillo, PRI*, ARIZ. DAILY STAR, Aug. 31, 1997, at 5A.

6. The coalition is based on a simple principle of mutual annihilation. This means that each group understands that continuation of conflict can only end in their mutual destruction. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 211.

7. See *id.* at 218.

8. Although referring specifically to the administration of Echeverria, the same can be said of the Salinas and Zedillo presidencies. See *id.* at 220.

apparatus of the state.⁹ The goal of this weakened national government must be to restore the public confidence in its authority. This will inevitably result in the pacification of the industrial elite through a retreat from reform measures and an acquiescence to policies that promote or protect the interests of the dominant class.

The introduction of the North American Free Trade Agreement (NAFTA) into this volatile sociopolitical climate is reminiscent of the Porfirio Díaz free-trade era. Díaz's implementation of state policies that favored the bourgeoisie, in its nascent and less potent stage, resulted in massive unemployment, dislocation, and impoverishment of Mexican laborers, particularly Indians, and their families. In the aftermath of the brutal repression of opposition to his failed free-trade policies, the Díaz regime was toppled. The lesson learned from the Porfirian experiment with free trade is this: the introduction of free-trade policies to an oligarchic society, to a country controlled by monopolistic business practices, fans the flames of revolution.

Lastly, it was the struggle for land, a subject which continues to dominate the polemics of the widening class chasm, that sparked the last revolution. The torch bearers of the last revolution, however, were not the Mexican *campesinos*, who continued to hope for social and political inclusion, but the Indians of Mexico, the social outcasts, who understood that the language of capitalism is war. If NAFTA resurrects the ghost of Porfirian economic policies, the rumbling of discontent emanating from the Indian villages in Chiapas may be a forewarning of difficult times ahead.

I. Historical Background

An idea endemic to a democratic, liberal understanding of the world is a belief in the supremacy of humans beings over all living things.¹⁰ The Judeo-Christian belief in the preeminence of human beings in the natural world is the source of an important corollary idea: the separation of man from nature — separation caused by his elevation above it. Man, in his exalted status, has unfettered powers of dominion. However, man himself is subordinated to a higher authority because the natural world order is governed by a parallel moral hierarchy. This hierarchy is one in which moral obligation extends upward from man to God, laterally from man to man, but not downward from man to lesser life forms. The theological basis for the

9. "Leading factions of the bourgeoisie became willing, in the 1970's, to act as ruler of civil society independent of the political will of the state . . ." *Id.* (speaking of the strife-laden years under Mexican President Echeverría).

10. See E.T. Freyfogle, *The Ethical Strands of Environmental Law*, 4 U. ILL. L. REV. 819, 830 (1994). "General Christian theory, derived from Roman theory and augmented by numerous glossators and theologians, held that there was a natural law binding upon all people and peoples wherever they might be. That law was inherent in the universe and in man . . ." WOODROW W. BORAH, *JUSTICE BY INSURANCE* 6 (1983).

superiority of man stems from the Judeo-Christian belief in the existence of the human spirit or soul which permits man to act morally.¹¹ These ideas were ingrained in the belief systems of Western societies who developed an objective or utilitarian view of nature; that is to say, the value of nature was determined by the uses or benefits men derived from it. The conceptualization of land and other natural resources as property emerged from Christian theology, embodied in the utilitarian view of nature, and from Roman Law.¹²

When Hernán Cortés arrived on the shores of the southeastern parameters of the Aztec empire, in what is now the state of Veracruz, Mexico, he came in search of gold and silver and the Indian labor needed to extract wealth.¹³ Instead, he encountered a mighty civilization built on an ideology which was the antithesis of Western thought.¹⁴ The Spanish distinction between civilized and barbaric peoples provided the conquistadors with a conceptual framework they used to shape their perception of the non-Christian and nonwhite inhabitants of pre-colonial Mexico.¹⁵ In accordance with the directives of the Catholic Church, a partner in the program of Spanish and Portuguese expansion, the strategy for conquest of Mexico included the goal of transforming the native "barbaric" inhabitants into "civilized" subjects worthy of European rule.¹⁶ Thus, the Spanish occupation of Mexico, although driven primarily by economic interests, marked the beginning of an ideological war that led to the systematic dismantling of the indigenous culture.¹⁷

After the conquest of Mexico, the Spanish Crown moved quickly to enrich itself with the vast natural resources of its new colony.¹⁸ Spain initially concentrated on the development of industries that produced commodities in high demand among its European trading partners and colonies.¹⁹ The

11. See Kent Greenawalt, *The Limits of Rationality and the Place of Religious Conviction: Protecting Animals and the Environment*, 27 WM. & MARY L. REV. 1011, 1021 (1986) ("[T]he subjects of moral duties undoubtedly must have moral capabilities, and among creatures on earth, those capabilities may exclude all but humans.").

12. Roman geometric logic is the source of Roman commercial law which establishes a hierarchy of rights and duties.

Roman law enabled measurement of graphic representations of the physical world. Thereafter, it was possible to analogize, say, a fee simple absolute to a perfect quadrangle, and an easement to a rectangle or triangle within the quadrangle. The geometric analogy, then, provided a means with which to measure previously unmeasurable non-corporeal rights and duties.

Boris Kozolchik, *On the State of Commercial Law at the End of the 20th Century*, 8 ARIZ. J. INT'L COMP. L. 1, 4 (1991).

13. See ANDRE GUNDER FRANK, *MEXICAN AGRICULTURE 1521-1630*, at 4 (1979).

14. See FAGAN, *supra* note 2, at 4.

15. See EDWARD HOLLAND SPICER, *CYCLES OF CONQUEST: THE IMPACT OF SPAIN, MEXICO, AND THE UNITED STATES ON THE INDIANS OF THE SOUTHWEST, 1533-1960*, at 281 (1962).

16. *Id.*

17. See FAGAN, *supra* note 2, at 279.

18. See FRANK, *supra* note 13, at 2.

19. See *id.* ("[T]he type of economy which the Iberian metropolis organized was of a definite

profitability of commercial agriculture in colonial Mexico precipitated a shift of investment capital to agricultural production.²⁰ The resulting demand for arable land, which was tightly controlled by the Spanish government,²¹ became a catalyst for legal reforms that increased private ownership of real property.²²

The principal beneficiaries of the early land distribution had been the Crown, the Catholic Church, and the conquistadors and their families.²³ The Crown, endeavoring to thwart the development of feudal estates in its colonies, enacted laws which impeded private ownership by limiting the ability of individual colonists to accumulate land.²⁴ This changed with the development of a market for real property, a market largely created by greedy land speculators and unscrupulous landholders who found ways to maneuver around legal barriers.²⁵ The Monarchy, unable to stop the privatization of land, acquiesced to the demands of the marketplace.²⁶ The Spanish government's more favorable disposition toward private land acquisitions accelerated the redistribution of Indian lands to Spanish owners. The legal rights and privileges created as a result of this redistribution of land reified social and economic relationships which are still an integral part of Mexican society.²⁷

The political hegemony of colonial Mexico was forged in the chaos and brutality of worlds colliding. In the wake of this cataclysmic event, the top

colonial nature, oriented to the Central and West European markets"); SERGIO BAGU, *ECONOMIA DE LA SOCIEDAD COLONIAL: ENSAYO DE LA HISTORIA COMPARADA DE AMERICA LATINA* [ECONOMY OF COLONIAL SOCIETY: ESSAYS OF LATIN AMERICA COMPARED HISTORY] 39, 68, 260 (1949), *quoted in* FRANK, *supra* note 13, at 36.

20. See FRANK, *supra* note 13, at 17; see ROSS HASSIG, *TRADE, TRIBUTE, AND TRANSPORTATION* 225 (1985).

21. See FRANK, *supra* note 13, at 22.

22. See *id.* at 23.

23. See *id.* at 10. See generally FAGAN, *supra* note 2, at 279-96 (presenting an overview of the collapse of the Aztec Empire after the Spanish conquest).

24. The *encomienda* system which developed was of particular concern to the Spanish monarchy because of its feudal-like organization. The Crown used judicial bodies known as *audiencias* to investigate and legally eliminate the *encomiendas*. Eventually these type of land holdings disappeared in the colony. See Colin M. MacLachlan, *Criminal Justice in Eighteenth Century Mexico*, in JOHN HENRY MERRYMAN & DAVID S. CLARK, *COMPARATIVE LAW: WESTERN EUROPEAN AND LATIN AMERICAN LEGAL SYSTEMS* 158, 162 (1978).

25. See FRANK, *supra* note 13, at 22, 23, 60.

26. See *id.* at 67-71.

27. See ROGER BARTRA, *ESTRUCTURA AGRARIA Y CLASES SOCIALES EN MEXICO* [AGRARIAN STRUCTURE AND SOCIAL CLASSES IN MEXICO] 105 (1974). Bartra applies Marxist economic principles to explain the Mexican class struggle over land. He describes land tenure in Mexico as primarily an arrangement of social and economic relationships expressed in legal terms. "*Las formas de propiedad de la tierra son una mera situacion juridica formal; constituyen relaciones sociales y economicas que generan formas juridicas particulares.*" ["The forms of land tenure are not only formal legal arrangements; they constitute social and economic relationships that generate particular legal forms."]. *Id.*

level of the native social structure, consisting of the regality, sacerdotes, and military leaders, was destroyed.²⁸ The Spanish Crown, in order to minimize the disruption and loss of Indian productivity, grafted its colonial government onto the body of the native government in hopes of facilitating a constructive transfer of power.²⁹ The stunned and traumatized aboriginal peoples, their ranks decimated by disease and inhumane treatment, had no direct link to the reconstituted monarchical political regime.³⁰ Their political status was determined by Spanish bureaucrats acting under a misguided policy of noblesse oblige, a system that stymied the development of a strong, independent, Indian voice in colonial government.³¹ By the time this system was abandoned, native peoples had been relegated to a periphery role in the internal politics of Mexico. Their political status did not improve in post-colonial Mexico. Although recognized as Mexican citizens, Indians were politically marginalized. During this era, their lands were confiscated as a part of a "revolutionary vision" of land reforms that led to reentrenchment of colonial land distribution patterns. However, *criollos*³² and foreigners assumed a more dominant position among the class of property owners. Nevertheless, the vast majority of *criollos* and Indians remained propertyless.

The unequal distribution of land in Mexico has caused a divisive class struggle between the privileged propertied elite and the disenfranchised propertyless masses. It is an epic struggle that has corrupted many of the country's social institutions, including the legal system. Law, whether emanating from the political or juridical spheres of government, has been the primary legitimizing authority for Mexico's monopolistic land owners. By pandering to the interests of the privileged elite, the Mexican legal system has traditionally protected and empowered the *hacendados*.³³ The complacency of the legal system and the complicity of other public and private institutions in the propagation of the *hacienda* helped to solidify its status as the predominant form of land tenure in Mexico.³⁴

Mexico's ratification of North America Free Trade Agreement (NAFTA or the Agreement),³⁵ however, was supposed to mark the beginning of a new

28. See FAGAN, *supra* note 2, at 279-96.

29. See FRANK, *supra* note 13, at 4, 5.

30. See *id.* at 5. See generally BORAH, *supra* note 10 (detailing the various legal measures taken by the Spanish Monarchy to protect Indian tribes after the conquest of Mexico).

31. See generally BORAH, *supra* note 10.

32. See FAGAN, *supra* note 2, at 290. Fagan explains that the word *criollos* refers to Spaniards born in the New World. They held a lower social status than the *peninsulares*, people of Spanish birth who emigrated to the colony. *Criollos* included mestizos, Indian and Spanish birth, and mulattoes, people of Black and Spanish birth. See *id.*

33. The term *hacendado* refers to the owner of a large land estate known as *latifundia* or *haciendas*.

34. See FRANK, *supra* note 13, at 67-71.

35. Dec. 17, 1992, U.S.-Mex.-Can., 32 I.L.M. 289, 605 (1993); see NAFTA Implementation Act, 19 U.S.C. §§ 3301-3473 (1994) (enacted as of Jan. 1, 1994).

era. Can Mexico simultaneously embrace free trade and monopolistic capitalism? If the Porfirian experiment with free trade and monopolistic capitalism in Sonora is an indication of what the future holds in store for Mexico under NAFTA, the answer to the foregoing question is, "no."

Traditionally the most marginalized segment of the Mexican labor force has been the workers dependent on the land: the *campesinos*, *ejidos*, *jornaleros*, and *peones*. It is within this bottom stratum that most of Mexico's indigenous people (*los indigenas*) are found. Their precarious status in Mexican society can be attributed to the same economic policies that fostered the creation of the *latifundio*. Examining the effect that privatization has had on the communal lands of one Mexican indigenous tribe, the Chatino of Oaxaca, Mexico, may provide insight into the harsh realities and choices facing the impoverished Indian communities struggling for survival in an increasingly hostile environment. More importantly, by understanding the economic pressures facing the embattled Chatino, one has a greater understanding of the cultural crisis facing Indian tribes in Mexico.

II. The Pre-Colonial Epoch

One of the important variables in the successful conquest of indigenous peoples by Western nations has been the presence of a dominant culture or monoculture.³⁶ In other words, the inability of the would be conquerors to decipher the cultural code of a nation, oftentimes thwarted or, at least, slowed down the process of conquest.³⁷ Early European expeditions in the Americas were primarily military operations with economic objectives.³⁸ Consequently, there was a need for "intelligence-gathering" to assess the strengths and weaknesses of native civilizations.³⁹ Likewise, by unlocking the codes to the monoculture that developed in Mesoamerica, one is able to better understand the vulnerabilities of the world that emerged from the chaos of prehispanic Mexico. These weaknesses were deeply ingrained within the structure and

36. The presence of a dominant culture (Aztec) with a centralized government in Mesoamerica enabled Cortés to subdue and conquer the Triple Alliance in less than two years of his arrival in the capital of Tenochtitlan. See FAGAN, *supra* note 2, at 261-77. But see MICHAEL E. SMITH & FRANCES E. BERDAN, *Introduction to AZTEC IMPERIAL STRATEGIES* 4 (Frances E. Berdan, et al., 1996). Smith and Berdan explain that the people known as the "Aztecs" were comprised of Nahuatl speakers from diverse polities and ethnic groups loosely aligned with the Triple Alliance. The Aztecs were actually the inhabitants of the Valley of Mexico at the center or core of the empire. See *id.*

37. Hernán Cortés was aided in his efforts by a marooned Spaniard, Jeronimo de Aguilar, who had lived among the Maya for eight years and learned their language. He was also assisted by disgruntled provincial leaders who gave him insight into the structure of the Triple Alliance. Perhaps his most valuable cultural interpreter was Marina (or Malinche), an Indian woman who became his concubine and common-law wife. See generally FAGAN, *supra* note 2, at 261-27.

38. See FRANK, *supra* note 13, at 1-7; see also FAGAN, *supra* note 2, at 261-77.

39. See FAGAN, *supra* note 2, at 261-77.

character of the monoculture that spread throughout Mesoamerica and, like a Greek hubris, sowed the seeds of its destruction.⁴⁰

A. *The Development of a Monoculture in Mesoamerica*

1. *Stages-of-Development Analysis*

To understand the contemporary problems of land ownership and distribution in Mexico, one must start at the beginning, with the origins of the culture. Since culture is the essence or sum total of the elements which bind individuals to a particular group or social unit, the social development of the native inhabitants of prehispanic Mexico is relevant to this discourse.

The use of historical models to explain social change often contradicts the empirical evidence of historical reality.⁴¹ This is particularly true of historical models which utilize the concept of stages.⁴² The concept itself is derived from the attempts of theorists to deal with social transformations over a long historical time.⁴³ The long term is divided into segments in order to observe the structural changes from specific points in time.⁴⁴ These segments represent "stages" in the "development" of a social structure.⁴⁵ As its name suggests, a stages-of-development model is decidedly Western in orientation; that is to say, it operates on the premise that human social development occurs in linear stages. Malinowski uses a stages-of-development model to explain the evolution of human organization beginning with the smallest social unit, the family, and progressing to the stage of tribe-states and the penultimate, tribe nation-state, which is identifiable by the presence of distinct cultural markers.⁴⁶

40. The subjugated tribes within the monoculture continually rebelled against the repression of the dominant tribe.

[T]he fact of conquest was a logical consequence of the Aztec structure. The Aztec empire was never a territorially integrated system that could stand in opposition to an outside threat. . . . [The] endemic revolts show a certain amount of continual hostility, so the appearance of Cortes, rather than being simply a new and opposing force of equal organization, was instead a small wedge driven into a nonintegrated empire, splitting along the cleavages inherent in its structure.

HASSIG, *supra* note 20, at 150.

41. See Immanuel Wallerstein, *The Rise and Future Demise of the World Capitalist System: Concepts for Comparative Analysis*, in INTRODUCTION TO THE SOCIOLOGY OF "DEVELOPING SOCIETIES" 29 (Hamza Alavi & Teodor Shanin eds., 1982).

42. See *id.* at 29.

43. See Wallerstein, *supra* note 41, at 30.

44. See *id.* at 1, 44.

45. See *id.*

46. See BRONISLAW MALINOWSKI, *FREEDOM AND CIVILIZATION* 255 (1944). Malinowski treats the concepts of tribe-state/tribe-nation as prototypes of the modern city-state/nation-state. See *id.*

Tribe-nations are defined as an amalgamation of the largest number of social groups sharing a common culture.⁴⁷ Bound by common customs, traditions, language and religion, tribe-nations are formed by homogenous social groups. Individual membership in a tribe-nation is maintained and reinforced through socialization; to wit, primary social institutions such as kinship clans, warrior societies, and religious orders fuse the individual's identity with that of his group culture. This bonding process is made easier because the cultivation of culture is a function of these same institutions. The development of social mechanisms for cultivating and transmitting culture is one of the markers of a tribe-nation.⁴⁸

Individual group members are continually adapting to changes in the cultural landscape, or, if you will, altering their concept of an external "cultural self." This expression of individuality creates social tension that is always pulling at the threads of group cultural cohesion. One of the fundamental attributes of an enduring or living culture, however, is that it does change. It is, in fact, always undergoing change. "What lasts, or anyway has for a long time lasted, is not what it is these [nations] are. They are still terrains on which ambitions cross. What lasts is what it is they are up against: diversity, dispersion, and the enormous tenacity of immediate allegiance."⁴⁹

Maintaining political unity or cohesion, as opposed to cultural unity, is a function of tribe-states which historically have used physical force to retain power and control over groups within their territorial boundaries.⁵⁰ The concentration of power in a centralized authority and the corresponding organization of armed force is the distinguishing characteristic of tribe-states.⁵¹ The tribe-nation and tribe-state are interdependent to the extent that the political agenda of the latter furthers the cultural objectives of the former.⁵² The inculcation of culture through the exercise of political authority is possible because the day-to-day mechanism of "politics" involves many of the same institutions associated with culture transference: religion, education, law, and family.

The use of scientific methodology to decipher the mysteries of a culture has its limitations. Foremost among these limitations is its reliance on objective criteria to explain the human chaos that is culture. Another way of looking at scientific methodology is to see it as a screening process that filters out knowledge bases which do not comport with Western thinking. This filtering process prevents researchers who use Western modes of analysis

47. *See id.* at 253.

48. *See id.* at 257.

49. CHARLES GEERTZ, *AFTER THE FACT* 29, 30 (1995).

50. *See* MALINOWSKI, *supra* note 46, at 258.

51. *See id.*

52. *See id.* ("[W]hen the political control extends to the boundaries of the cultural unit, the tribe-state and the tribe-nation coincide and form a primitive tribal nation-state."); *see id.* at 261.

from acquiring an intimate knowledge of a culture. Intimate knowledge, in this context, refers to a level of deep understanding that requires the researcher to use his subjective mind to experience the "resident suchness" of a culture. Renowned cultural anthropologist Charles Geertz coined the term "resident suchness" as a metaphor for the *chakra* or "spirit" of a living culture — the source of its power.⁵³

Using a research model based on linear progression or stages of development to explain the evolution of non-Western societies has other limitations as well.⁵⁴ Progress is defined in Western terms, therefore, societies whose development does not follow a pattern of linear progression are falsely labeled as "backward" or "primitive." The devaluation of cultures in this manner perpetuates a Western view of world that does not correlate to reality. A more basic problem with studying the social development of a civilization from a posteriori prospective is the opportunity it creates for historical revision; that is to say, the researcher brings to his studies a myriad of personal biases that invariably alter or distort the lived reality no matter what analytical model is used.

In spite of these limitations, stages-of-development is an appropriate model for analyzing the evolution of a prehispanic monoculture. This is true particularly because historical evidence suggests Mesoamerican culture evolved linearly, so that a stages-of-development analysis is not incompatible with its natural pattern of development.⁵⁵ The existence of developmental similarities between the dominant cultures in Mesoamerica and Europe, however, does not mean the cultures evolved in an identical manner. There is a certain element of chance in a culture's pattern and rate of growth which makes it highly unlikely that civilizations reaching similar stages of development arrived there through an identical course of events.

Finally, an analysis of the social development of culture in Mesoamerica must include an examination of the contributions these indigenous cultures made to the emerging world economic system.⁵⁶ Unfortunately, the genius

53. GEERTZ, *supra* note 49, at 23 (referencing inner cultural values).

54. See JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 16 (1996) (stating that even the broad definition of nation and state, as envisaged by the early international law theorist, Vattel, is conditioned by a basic prejudice favoring the values behind European political and social organization).

55. See *id.* (stating that the civilizations of the Incas of Peru and the Aztecs of Mexico were considered to have evolved in a Western manner because of the strong similarities in their social structure).

56. Precapitalist annexation of foreign territories by stronger powers left the economies of the subjugated intact. These relationships changed under capitalism.

[T]he roughly five centuries of conquest and domination that began at the end of the fifteenth century was distinguished by the extent to which the conquerors imposed social and economic changes on their victims and the degree to which the latter became appendages of the economies at the core of the empire.

of indigenous economies was neither fully appreciated nor understood by the Western European nations, the core members of this fledgling world economic system. Imperialism and greed would destroy the native economy in Mesoamerica; the flourishing civilization would decline in the shadow of world capitalism.

2. The Contribution of the Teotihuacan and Tolteca

Sixteenth-century Mesoamerica witnessed the rise and fall of two great indigenous cultures, the Teotihuacan and the Tolteca.⁵⁷ These civilizations began as simple agricultural societies organized as economic minisystems and evolved into tribe nation-states with elaborate redistributive economies.⁵⁸ The consolidation of tribe-states — who shared common cultural, sociological, and ethnic characteristics under an indigenous theocracy and a centralized political authority — led to the creation of tribe nations.⁵⁹ The subsequent extension of political authority to the limits of the cultural borders of the tribe-states gave rise to tribe nation-states.⁶⁰ This process was made easier because of the redistributive mode of production. Redistribution, broken down to its most basic elements, is a mechanism for expanding political authority through trade and cultural unification through economic interdependence.⁶¹

The forces that converge to move a society toward a redistributive economy are often, like other pivotal steps in human development, products of necessity.⁶² In the case of the Teotihuacans' and Tolteca, the urbanization of centralized or core cities led to the restructuring of relationships with

Harry Magdoff, *Imperialism: A Historical Survey*, in *INTRODUCTION TO THE SOCIOLOGY OF "DEVELOPING SOCIETIES"* 11 (Hamza Alavi & Teodor Shanin eds., 1982).

57. Teotihuacan, at its zenith in the fifth century, is believed to have been home to as many as 90,000 inhabitants. *See generally* MORELOS VIENTE EN LA CIMA, FUEGO EN EL CANAVERAL, MONOGRAFIA ESTATAL, SECRETARIA DE EDUCACION PUBLICA [MORELOS WIND IN THE SUMMIT, FIRE IN THE SUGAR CANE FIELD, ESTATAL MONOGRAPH, SECRETARY OF PUBLIC EDUCATION] 40 (1992) [hereinafter MORELOS].

58. *See* FAGAN, *supra* note 2, at 27-42.

A minisystem is an entity that has within it a complete division of labor and a single cultural framework . . . any such system that became tied to an empire by the pavement of tribute as "protection costs" ceased by that fact to be a "system," no longer having a self-contained division of labor . . . for such an area, the payment of tribute marked a shift . . . from being a reciprocal economy to participating in a larger redistributive economy

Wallerstein, *supra* note 41, at 31.

59. Anaya points out that the terms "nation" and "state," which are used interchangeably by Vattel in his seminal work *Law of Nations*, are Western concepts. ANAYA, *supra* note 54, at 16 ("[concepts which] developed as a reference to the post-Westphalian political community and attendant bureaucracy, whose dominant organizing characteristic was territory").

60. *See* MALINOWSKI, *supra* note 46, at 258.

61. *See id.* at 31.

62. *See generally* HASSIG, *supra* note 20, at 3-8 (speaking about general theories of urbanization as they relate to development of a basic market system precolumbian Mesoamerica).

neighboring tribes in outlying regions.⁶³ The systematic supply of necessities to dominant tribe states, which were not states in modern terms but rather highly populated city-states, was the impetus behind the realignment of political relationships. Thus, the use of tribute payments, in the form of crop staples, to augment regular food production was essential to the growth and stability of these tribe states.⁶⁴

In order to expand or diversify the redistribution network, the tribe-state had to subdue weaker tribes whose tribute payments added value to the existing network.⁶⁵ Campaigns of conquests, in essence, achieved economic stability through political force. As these campaigns extended beyond the traditional boundaries of the tribe-states, political influence in an entire region became consolidated under a central government.⁶⁶ This development set the stage for progression to the tribe nation-state phase.

The process of coalescing into a tribe nation-state involved the transference of values and norms from one group to the other, usually from the dominant to the subordinate group, and the subsequent transfiguration of both groups into a new cultural paradigm. Once subjugated groups were integrated into the redistributive network, they began to engage in local and regional commerce with other vassals of the tribe city-state and later the tribe nation-state.⁶⁷ Transmittal of cultural values and norms in the marketplace was a natural phenomenon. Markets were hubs of activity where groups from various regions and sectors of the emerging tribe nation-state congregated and socialized. Thus, trade was not only an instrument of commerce it was an important medium of cultural exchange.

By the beginning of the ninth century, a distinctive monoculture had emerged in Mesoamerica. It was a culture derived from the two prominent tribes, the Teotihuacan and Tolteca, with variations reflecting regional differences.⁶⁸ Nowhere was the influence of the Teotihuacan and Tolteca cultures more evident than in the area of religion. Although the theocratic structure of the Teotihuacan and Tolteca governments was rejected by succeeding generations, the basic tenets of their religion survived.⁶⁹

63. See generally *id.* at 5 (discussing the impact of urbanization upon the social relationships and civil structure of precolumbian city-states in Mesoamerica).

64. See generally *id.* at 5-6 (describing the dynamics of the economic symbiosis between urban and rural population centers).

65. See generally Frances F. Berdan, *The Tributary Provinces*, in *AZTEC IMPERIAL STRATEGIES* 120 (Frances F. Berdan et al. eds., 1996) (reviewing the historical patterns of empire building in precolumbian Mesoamerica).

66. See *id.* at 120-21.

67. Some historians argue that Teotihuacan was organized as a strong centralized state government because of its agricultural-tribute mode of production. See MORELOS, *supra* note 57, at 40.

68. See *id.* at 42-43.

69. See *id.* at 40-44.

The perpetuation of one component of a dominant culture and the elimination of another is part of the process of group selection. In the case of religion, a major social institution, the establishment of a tribe nation-state invariably includes the transmittal of religious values. As noted previously, the religious views of the dominant group often replace those of the subordinate group. There is, however, an element of randomness associated with the formation of culture. In other words, those cultural ideas which flourish, that become integrated into the collective consciousness of a group, are, in the final analysis, an expression of free will. In this context, free will is the selection of the most desirable traits of a culture for transmittal to future generations. The religious ideology and traditions of the Teotihuacan and Tolteca survived because they embodied the magic and mythology most true to the native belief system of the widest spectrum of indigenous groups.⁷⁰ The religious component of this monoculture was instrumental in the development and organization of the Mexica or Aztec society.

The demise of the last great prehispanic civilization in Mesoamerica brought with it significant changes in the structure and focus of the indigenous religion. The change was precipitated by a radical shift in the religious orientation of the Tolteca, the dominant clan within a tribe known as the Tollan or Tula.⁷¹ The Tula rule was characterized by a cultural dynamism expressed through the arts, architecture, agriculture, and metaphysics. Their core values and basic orientation was that of aesthetic. In the religious realm, reverence for beauty was reflected in the sacrifice of flowers, butterflies and jade objects in ritual offerings made to their principal god, Quetzalcoatl (the feathered serpent). These traditional sacrificial offerings were supplanted by human sacrifice with the advent of an age of militarism.⁷² The period of militarism that began with the Tulas would end with the Spanish conquest of the Triple Alliance also known as the Aztec empire.⁷³

70. The role of "magic" is essential to group cohesiveness.

[Magic] in its very essence is the belief that man, by virtue of his tribal lore, traditional spells and ritual gestures, can conquer accident and overcome disaster through the assertion of his mystically founded power; and thus secure success in human enterprise Magic brings about the spiritual mobilization of all values

MALINOWSKI, *supra* note 46, at 245.

71. See MORELOS, *supra* note 57, at 43.

72. One legend attributes the fall of the Tula to treachery perpetrated by rival sacerdotes, worshippers of Tezcatlipoca, the God of Wind. According to this legend, a beautiful maiden who induced the leader of the Tulas to drink "pulque," a drink made from the maguey cactus. The leader, who was a sacerdote of Quetzalcoatl became, and his allies became intoxicated. In this weakened state, his enemies aided by the sacerdotes of Tezcatlipoca, ousted his government. Human sacrifice allegedly began under the regime of the sacerdotes of Tezcatlipoca. See *id.* at 44.

73. See FAGAN, *supra* note 2, at 41, 49-73.

The religious expression of this militarism, the ritual sacrifice of humans, was viewed by the Spanish Conquistadors as evidence of the barbarism of the Indian population.⁷⁴ Barbarians were infidels under Catholic doctrine. Consequently, the ferocity and brutality of the repression of the native population by Spanish conquistadors assumed the characteristics of a holy war; a systematic purging of heretics.⁷⁵ In the end, the bloodletting which followed in the wake of the Spanish conquest of Mexico would rival that shed by the Aztec through decades of warring and religious human sacrifice.⁷⁶

B. The Social Organization of the Aztecs

1. Cultural Renewal and Revitalization

After the disintegration of the Tula empire, there was no longer a dominant group with enough political force to unite weaker tribe-states into a single nation. The period that followed was marked by continuous warring among the tribe-states.⁷⁷ During this tumultuous time, culture flourished episodically but was extinguished by the wages of war. Although some would call this period a "dark age," it was in fact a period of cultural dormancy⁷⁸ — a period of internal strife created not only by political instability but by the lack of a unifying nation suprastructure. Even in the absence of a visible cultural link or continuum, the influence of the earlier monoculture was present in the language, religion, customs, and traditions of the groups who succeeded the Tulas. These cultural building blocks formed the foundation for the next tribe nation-state.⁷⁹

The Mexicas, Tenochas, or Aztecas arrived in the valley of Mexico around the eleventh century from a place they called Aztlan.⁸⁰ In 1325 the Aztecs founded a city called Tenochtitlan at a site where, as it had been prophesied, they observed an eagle perched on a nopal cactus.⁸¹ Mexico City now stands over this site. Under the leadership of Izcoatl, the Tenochtitlan united with Texcoco and Tlacopan to defeat a common enemy, the Tepanecas (Tacuba). The success of this mutual assistance arrangement was the beginning of the Confederation of Anahuac also known as the Triple Alliance.⁸² The con-

74. See *id.* at 273.

75. See generally *id.* at 279-84 (speaking about the impact of the culture and value clash between the Spanish conquerors and Indian natives).

76. See *id.*

77. See MORELOS, *supra* note 57, at 45-47.

78. "A serious breakdown in the economic, political or legal order, which usually also implies deterioration in the systems of knowledge and ethics, leads human groups to disorganization and to the sinking of the cultural level." MALINOWSKI, *supra* note 46, at 256.

79. See FAGAN, *supra* note 2, at 44-47.

80. See *id.* at 50-51. "Aztlan" in nahuatl means *tierra de garza*, or "land of the heron." *Id.*

81. See *id.* at 48. "Tenochtitlan" in nahuatl means "place of the fruit of the prickly pear cactus." *Id.*

82. See *id.* at 60-63.

solidation of power in the Triple Alliance provided the framework for the unification of the weaker tribes into a new tribe nation-state.⁸³ Although the three allies were politically independent, power was not equally distributed among the three. The Mixeca, or Aztecs, were the dominant group.⁸⁴

The Aztecs were not cultural innovators like the Teotihuacan and Tolteca. They were warriors who built an empire on the foundation created by their powerful predecessors.⁸⁵ Since many of the basic cultural institutions were already in place, having been inherited from the Teotihuacan and Tolteca, the Aztecs can be credited with the renewal and revitalization of the dormant tribe-nation culture.⁸⁶ The rebirth of the tribe-nation under the militaristic regime of the Triple Alliance, an organizing political mechanism, gave rise to the Aztec empire or Aztec tribe nation-state.⁸⁷

This last, great indigenous civilization was organized initially as an oligarchy but evolved into an elective absolute monarchy.⁸⁸ The king, or *huey tlatoani*, which means "great king," was elected by the Aztec nobility through indirect election.⁸⁹ Candidates for *huey tlatoani* were drawn from the eligible pool of males in the royal family who possessed the following attributes: mature (at least thirty years old), brave, just, temperate, and educated at the Calmecac.⁹⁰ Five royal advisors, four regular and one senior advisor, were elected simultaneously with the *huey tlatoani*. These advisors served the *huey tlatoani* throughout his reign.⁹¹

The militaristic nature of the Triple Alliance facilitated the development of a well-extended indigenous redistributive economy. Conquered tribes were required to pay tribute to the Alliance in the form of goods, arms, and soldiers.⁹² The Aztec no doubt created a stronger and more diversified economy because of their effective war machinery. The resulting redistribution network would have encompassed most of Mexico because of the breadth of Aztec political authority. The military expansionism under the Alliance also enabled the Aztecs to satisfy religious demands for human

83. *See id.*

84. *See id.*

85. *See* Frances F. Berdan & Michael E. Smith, *Imperial Strategies and Core-Periphery Relations*, in *AZTEC IMPERIAL STRATEGIES* 209-17 (Frances Berdan et al. eds., 1996).

86. *See id.*

87. *See id.*

88. *See* Francisco Avalos, *An Overview of the Legal System of the Aztec Empire*, 86 *LAW LIBR. J.* 260 (1994).

89. L. MENDIETA Y NUNEZ, *EL DERECHO PRECOLONIAL [THE PRE-COLONIAL LAW]* 36 (1937) [hereinafter *EL DERECHO*].

90. *See id.* at 38. Calmecac was a school for the males of Aztec nobility. All males were sent to the school from age 15 to 22. Thereafter they served the King in various capacities but usually militarily. If a young male was selected as emperor, a regent was elected to rule until the King came of age. *See* Avalos, *supra* note 88, at 261.

91. *See* *EL DERECHO*, *supra* note 89, at 39.

92. *See id.* at 13.

sacrifices.⁹³ Prisoners of war were sacrificed to their Sun God, Huitzilopochtli.⁹⁴

The renewal of the tribe nation-state under the Aztec rule did not end the underlying group animus and tensions.⁹⁵ The revitalization of the common cultural heritage was a means to an end; to wit, the creation of a national identity. But underneath this facade subjugated groups clung to their ethnic differences and chafed under Aztec rule. These divisions later would be skillfully exploited by Hernán Cortés.⁹⁶

2. Division of Property

All land in the Triple Alliance was the property of the *huey tlatoani*. The division of interests and assignment of rights in property were determined by the *huey tlatoani*.⁹⁷ In speaking of private property it is important to distinguish between the concept of property ownership found in Aztec society and Western societies.⁹⁸

The ownership of land was valued in Aztec society because of the status associated with being a property holder. The Aztecs believed land was a gift from the gods; therefore, owning land carried with it special duties.⁹⁹ Only certain classes of individuals could own land: members of the nobility and warriors of distinction. The other property holders were institutions and "barrios" or communal collectives.¹⁰⁰ The land owner received enhanced social status and some but not all of the economic benefits derived from land. The land itself remained a community asset. Private property holders, in fact, had limited control over the productive uses of the land. Only the *huey tlatoani* had absolute authority to use the land as he choose.¹⁰¹

The Aztec leadership, called the *tlatoque* (singular: *el tlatoani*), considered the maintenance of social order a key to state strength and unity.¹⁰² In such a militaristic society individual members are conditioned to sublimate personal interests for the good of the collective; nonconformity carried a high price.

93. See MORELOS, *supra* note 57, at 49. The primary Aztec god Huitzilopochtli (also known as *colibri zurdo*, or "left handed hummingbird") represented the sun. The Aztecs believed human hearts sacrificed to this deity maintained the cosmic balance. See *id.*

94. In some instances the prisoner of war would be made to fight Aztec warriors for his life. If the prisoner was victorious, he would be spared. See Avalos, *supra* note 88, at 275.

95. See generally Berdan, *supra* note 65, at 115-35 (discussing the dual economic and political function of the Aztec tributary provinces).

96. See FAGAN, *supra* note 2, at 269.

97. See Avalos, *supra* note 88, at 272.

98. See EL DERECHO, *supra* note 89, at 39.

99. See FAGAN, *supra* note 2, at 283.

100. See Avalos, *supra* note 88, at 273.

101. See *id.* at 272.

102. See *id.* at 270; see also Fernando Flores Garcia, *La Administración de Justicia en los Pueblos Aborígenes de Anahuac*, 15 REVISTA DE LA FACULTAD DE DERECHO DE MEXICO 86 (1965).

The attitude of the Aztecs toward social deviance is most evident in their legal system where even crimes of moral turpitude, such as theft, official graft, and adultery, were capital offenses.¹⁰³ Nobility and military leaders were held to an even higher standard of conduct. "Their behavior was expected to be exemplary to serve as an example for the masses, and, thus, their offenses were more severely punished."¹⁰⁴ Since most land was held by the highest-ranking members of Aztec society, they would have strictly adhered to the social mores of land ownership.

Further evidence of the communal value of property in Aztec society is found in their social structure. The Aztecs used a specialized vocabulary to denote land classifications in their society. The terminology used by the Aztecs to differentiate between land classes, however, should not be construed as evidence of underlying precepts of property that conform to Western notions of land tenure. This is not the case. These terms are only descriptive and refer to the qualities of the land or its uses.

The basic social unit was the *calpulli* (plural: *calpultin*) which constituted both a territorial and family structure. *Calpulli* means "big house," and it was the primary family residence. The entire nuclear family and many of their relatives lived in the *calpulli*. The Aztecs were a patrilineal society so every *calpulli* member had a kinship bond (real or mythical) with the father.¹⁰⁵ These kinship bonds were like blood ties, so male members were prohibited from marrying women within their own *calpulli*.¹⁰⁶ The fact that incest was considered to be a capital offense doubtlessly reinforced the social taboo of inter-*calpulli* marriage.¹⁰⁷

Each *calpulli* was assigned a parcel of land (also called *calpulli*) which was the common property of the family. The *capulin* lands were carved from larger parcels, the *altepetalli*, owned by the pueblos or towns. Individual families were given an inheritable, usufruct interest in their *calpulli* parcel.¹⁰⁸ If, however, the parcel of land was untilled for a period more than two years, the *calpulli* returned it to the *calpullec* who reassigned it to another family.¹⁰⁹ The *calpullec*, a local level public office, was responsible for the organization and distribution of the *capulin* lands.¹¹⁰ The officers of the *calpullecs* were elected by the barrios or neighborhoods.¹¹¹

There were two classes of land granted by the *huey tlatoani* to nobles and warriors in gratitude for the services they rendered: the *pillalli* and the

103. See Avalos, *supra* note 88, at 270.

104. *Id.*

105. See MORELOS, *supra* note 57, at 53.

106. See *id.*

107. See Avalos, *supra* note 88, at 270.

108. See BARTRA, *supra* note 27, at 106.

109. See *id.*

110. See MORELOS, *supra* note 57, at 53.

111. See Avalos, *supra* note 88, at 273.

tecpillalli, private estates similar to feudal fiefs.¹¹² The *tecpillalli* lands were granted to nobles and functionaries called *tectecuhtzin*.¹¹³ These lands were essentially life estates given to the *tectecuhtzin* as remuneration. The *tectecuhtzin* were given temporary grants to collect and keep all the tributes owed to the state by designated communities.¹¹⁴ The people who worked on *tecpillalli* lands were called the *tecallec*. They had the same inheritable usufruct interest in the land as the *calpulli*.¹¹⁵ The *pillalli* lands were established through royal concessions made by the *huey tlatoani* for the benefit of the *pipiltin*, the sons and daughters of nobles.¹¹⁶ These lands usually had restrictions on them regarding the owner's right of alienation and inheritance.¹¹⁷ The laborers who worked on the *pillalli*, the *mayeques*, had no interest in the land. The *mayeques* were completely dependent on the land and were, in fact, sold or inherited in conjunction with it.¹¹⁸ They paid tribute to a *pilli* (noble), not the *huey tlatoani*.¹¹⁹ The precarious, landless status of the *mayeques* relegated them to the periphery of the *calpulli*.¹²⁰

Land set aside for the personal maintenance of the *huey tlatoani* was called the *tlatocalalli*.¹²¹ The *mitlchimalli* were lands allocated for the maintenance of the military, whereas the *teotlalpan* were lands designated for the maintenance of the temples.¹²² There were two types of land owned by the barrio, the *calpulli* and the *calpullalli*. The former type of land, as previously noted, referred to the parcels of land distributed to individual families but owned communally; the latter denoted lands owned and cultivated communally.¹²³ Of the two types of barrio land, the *calpullalli* were the most vital to the Aztec empire. The proceeds from these lands were used to pay the barrio's tribute obligations and taxes.¹²⁴ All of the aforementioned forms of property were consistent with a redistributive or tribute based mode of production.¹²⁵

When the conquistadors arrived in Mexico, they encountered a flourishing culture and prosperous people.¹²⁶ This was due, in large part, to the genius of the Aztec imperial structure, particularly its trade and tribute network. The

112. See BARTRA, *supra* note 27, at 106.

113. See *id.* at 107.

114. See *id.*

115. See *id.*

116. See FAGAN, *supra* note 2, at 170-71.

117. See BARTRA, *supra* note 27, at 107.

118. See *id.*

119. See FAGAN, *supra* note 2, at 176-77.

120. See *id.*

121. See BARTRA, *supra* note 27, at 107.

122. See *id.*

123. See Avalos, *supra* note 88, at 273.

124. See *id.*

125. See BARTRA, *supra* note 27, at 107.

126. See FAGAN, *supra* note 2, at 113.

Spanish Crown would try in vain to maintain and perpetuate this system without ever discovering the secret to its success: the *calpulli* and *calpullalli*, the communal lands.¹²⁷

III. The Colonial Epoch: The Spanish Experiment

The origins of the monopolistic land tenure system in Mexico can be traced to the hybrid culture that flourished in the aftermath of the Spanish conquest. The systematic dismantling of the native culture by the twin powers, the Spanish Monarchy and the Catholic Church, left only the European colonial culture intact.¹²⁸ Yet the Spanish culture transplanted to Mexico was different than the one in the motherland. Perverted by a myriad of internal and external pressures, the colonial culture became despotic.¹²⁹ New Spain, as Mexico was called by the Spaniards, proved to be an inhospitable place for its nonwhite inhabitants which included not only Indians but Africans imported to work in the sugar cane fields.¹³⁰ Racism was an integral part of the Spanish strategy for the colonization of Mexico. The Spanish made a clear distinction between the economic value derived from the native labor and resources of Mexico and the questionable value of the Indian people, in particular, and their culture, in general. The Indian population was considered barbaric by European standards, and the Crown found the idea of ruling over such uncivilized peoples repugnant. The dilemma, from the perspective of the Monarchy and Catholic Church, was how to siphon-off the surplus of the Indian and colonial economies, which required preservation of the native culture, while making over the Indian in the image of his Spanish conqueror, which meant "civilizing" the natives.¹³¹ The twin powers initiated a dual policy of racial separation, to protect Spain's economic interest in the Indian population, and "Europeanization" of the Indians, in keeping with the church's social agenda.¹³²

Greed was a dominant cultural trait of Spanish colonial society.¹³³ The colonists of New Spain were preoccupied with amassing wealth because it led to the object of their desire, higher social status. Since much of the aggregate wealth of Mexico was sent to Spain, the colonial economy was heavily dependent upon the European market for its stability.¹³⁴ Spain's economic

127. See BARTRA, *supra* note 27, at 107.

128. See FAGAN, *supra* note 2, at 279-80.

129. See *id.* at 279-96.

130. See generally MORELOS, *supra* note 57, at 83 (regarding the use of African slaves to work in the sugar cane fields in Morelos, Mexico).

131. See generally BORAH, *supra* note 10, at 25-40 (discussing the various positions taken by the Spanish with regard to the handling of the "Indian" question in New Spain).

132. See *id.* at 25-48.

133. See FAGAN, *supra* note 2, at 279-84.

134. See FRANK, *supra* note 13, at 8.

decline at the end of the sixteenth century, however, led to a radical change in the economic and social structure of Mexico. The economic depression in Spain and Europe created opportunities for enterprising colonial capitalists, who turned their attention to the expanding domestic market.¹³⁵ Agriculture production, fueled by severe food shortages, made land a valuable commodity.¹³⁶ Thus, Indian lands and labor became the driving force behind the revitalization of the colonial economy.¹³⁷ The resulting land dispossessions and impoverishment of the Indian population was part of a genocidal cycle that would claim millions of lives before it peaked.¹³⁸ In the end, a reconstituted colonial society, built around the wealth and power of a landed elite, would arise from the economic ruins of Spain, nourished by the sweat and blood of the Indians.

"BAJO EL SUELO DE MEXICO"

*Bajo el suelo de Mexico verdean
espesamente putridas las aguas
que lavaron la sangre conquistada;
nuestra contradiccion: agua u
aceite,
permanece a la orilla dividiendo
como un segundo dios
todas las cosas:
lo que deseamos ser y lo que
somos . . .
el temor de ser nadie y replegarse
a la noche perpetua en que los
dioses
se pudren bajo el lago y su
silencio . . .*

*Below the ground of Mexico turning green
thickly putrefied waters
that washed the conquered blood.
Our contradiction: water and
oil.
It remains at the dividing edge
like a second god
all things:
that which we desire to be and that*

135. See *id.* at 51-60.

136. See *id.* at 56-60.

137. See *id.* at 51-60.

138. See FAGAN, *supra* note 2, at 285-88.

which we are . . .
 The fear of being nobody and to fall back
 to the eternal night in which the
 gods
 rot beneath the lake and its
 silence . . .¹³⁹

A. Merging Mesoamerica into the World Economy

Northwestern Europe at the end of the fifteenth century was the center of a redistributive empire. This redistribution took two forms: (1) the skimming off by the Europeans of as much as possible of the accumulated surplus of the rest of the world, and (2) the conflict among leading European nations — Spain, Portugal, Holland, France and England — for access to the wealth of other continents, including what they could pirate from each other on the high seas.¹⁴⁰ In this charged atmosphere, looting, plunder, and piracy were the primary agents of redistribution and new concentrations of wealth.¹⁴¹ "The prize in distant commerce went not to the best producers and merchants, but to the group of the best fighters; not size and resources, but ability to organize and willingness to risk resources in conflict, determined the question of success."¹⁴² This was the period of world agricultural capitalism, and the surplus coveted by these nations was primarily agricultural produce.¹⁴³ Profound changes in this system, however, were occurring. Mercantilism was spreading across the European continent, stimulating international trade and intensifying economic interdependence.¹⁴⁴ As Spain embarked on its expansion into the Americas, the core nations of the agricultural capitalist system were transitioning to mercantile capitalism.

The venture capital for Spain's exploratory forays into the Americas came principally from the emerging Spanish mercantile class, not the monarchy. It was the great Spanish merchants who provided much of the financial backing for the expeditions.¹⁴⁵ Despite the risky nature of these investments, the success of earlier expeditions in the circum-Caribbean region had

139. Jose Emilio Pacheco, *Bajo el suelo de Mexico [Below the Ground of Mexico]*, in EL REPOSO DEL FUEGO [THE CALM OF THE FIRE] (n.d.).

140. See Magdoff, *supra* note 56, at 11, 14.

141. See *id.* at 14.

142. CLIVE DAY, A HISTORY OF COMMERCE 166 (1938).

143. See Wallerstein, *supra* note 41, at 38-39.

144. See BAGU, *supra* note 19, at 39, 68, 117, 260; see, e.g., FRANK, *supra* note 13, at 2.

145. See JOSE OTS CAPDEQUI, EL REGIMEN DE LA TIERRA EN LA AMERICA ESPANOLA DURANTE EL PERIODO COLONIAL [THE LAND REGIME IN SPANISH AMERICA DURING THE COLONIAL PERIOD], CUIDAD TRUJILLO, EDITORA MONTALVO 8-11 (1946). The legal interests of expedition investors were memorialized in documents known as *capitulaciones*. The *capitulaciones* were not only legal documents but also negotiable instruments. See FRANK, *supra* note 13, at 3.

demonstrated to Spanish merchants that windfall profits awaited investors who acquired control over the marketable production sources in the new territories. Thus, the colonies became a byproduct of the developing mercantile capitalist system.¹⁴⁶ Conversely, colonial capitalism developed out of the efforts of Spanish merchants to satisfy European market production demands.¹⁴⁷ "This is how the trends which then predominated in European international markets formed the principal elements shaping the colonial structure."¹⁴⁸

Colonial capitalism was divisive in comparison to the strategic economic relationship of the Indian laborer tribute-producer and Indian lord tribute-consumer during the preconquest period.¹⁴⁹

The goal of the Indian noble was to consume wealth commensurate with his social position. The Spanish colonist, however, labored for different ends. He wanted to convert wealth and labor into salable goods — into gold and silver, hides and wool, wheat and sugar cane . . . the motor of this capitalism was mining.¹⁵⁰

The images of untold "golden" treasures in exotic parts of the world was part of the European lore of the sixteenth century. Such lore grew out of the extensive travels of European merchants searching for new trading opportunities. These adventurers' tales sparked the imagination and fueled the greed of conquerors who followed in their path. The quest for gold is what was foremost in the minds of Hernán Cortés and his fellow conquistadors as they looked out from their ships at the lush coastline of Veracruz, Mexico.¹⁵¹ The success of Spanish commercial ventures, including gold mining, in Mexico, however, was contingent on Spain's ability to control and manage the indigenous population.¹⁵²

The strategy of the Spanish Crown was not to destroy the Indian production but to graft their own economy onto the existing indigenous one and merely skim the cream off the top of the latter for the benefit of the former.¹⁵³ The surplus value traditionally paid to the Indian nobility in the form of tribute was given instead to a new set of privileged elite: kings, conquerors, friars, merchants, and administrators.¹⁵⁴ Although this despotic-

146. See FRANK, *supra* note 13, at 2.

147. See *id.*

148. *Id.* at 2 (quoting BAGU, *supra* note 19).

149. See ERIC WOLF, *SONS OF THE SHAKING EARTH* 179 (1959).

150. *Id.*

151. See FRANK, *supra* note 13, at 2 (commenting that Cortés allegedly said, "The Spaniards are troubled with a disease of the heart for which gold is the specific remedy.").

152. See WOLF, *supra* note 149, at 195 ("The conquerors wanted Indian labor, the crown Indian subjects and the friars Indian souls.").

153. See CHARLES GIBSON, *THE AZTECS UNDER SPANISH RULE* 335, 360 (1964).

154. See 4 MIGUEL OTHLON DE MENDIZABAL, *OBRA COMPLETA* 59 (Talleres Graficos de la Nacion eds., 1945-46).

tribute mode of production had succeeded in other places (China and India), it would ultimately fail in Mexico.¹⁵⁵ Quite simply put,

[t]he participation of the Spanish colonists in this world system generated objective needs, the pursuit of which necessarily drew the entire Indian population and its economy into the system as well. It became increasingly impossible to leave the Indian economy and agriculture undisturbed and merely to scoop off tribute.¹⁵⁶

The purpose of Spanish despotic-tribute was capital accumulation. Tribute payments made in conjunction with this production mode did not strengthen the native economy because a disproportionate amount of the value was transferred to the European economy.¹⁵⁷ As the tributary net for Indians grew finer and finer, larger numbers of Indians, traditionally exempt from such payments by virtue of their status, became obligated to pay the Spanish tribute.¹⁵⁸ The communal land distribution structure was disrupted and eventually collapsed under the weight of the tribute burden the Spanish placed on the indigenous populations.¹⁵⁹

In addition, the Crown modified the indigenous land distribution network to conform to its purposes.¹⁶⁰ The most valuable lands were appropriated by the Spanish colonists. Lands belonging to the Indian nobility, the *pillalli* and *tepillalli*, "*fue seriamente afectada y poco y poca fue pasando a manos de los espanoles* [were seriously affected and little by little were passing to the hands of the Spanish]."¹⁶¹ In an effort to preserve some of the indigenous communal lands, the Crown decreed that approximately 600 *varas* (a measure of about thirty-three inches) of land, measured from each new church toward the four cardinal points, were set aside for newly founded Indian villages. These lands were called *fundo real*.¹⁶² Indians were also given parcels of land

155. See FRANK, *supra* note 13, at 5-6. Frank points out that the capitalist tribute differs from tribute in other modes of production in that its extraction and its use for the development of one part of the system necessarily generates the underdevelopment of another part of the system. The underdeveloped part of the mercantile capitalist system included most of Mexican agriculture. See *id.*

156. *Id.*

157. See *id.* at 8. The proportion of services returned to the Indians from the Spanish in the form of social services and public investments was less than under the Aztec rule. The Spanish either invested this surplus in their own sector or shipped a good part of it to markets in Europe. See *id.*

158. See *id.* at 9.

159. See *id.* at 8-36.

160. See *id.*

161. *Id.* at 108.

162. See Jesus Romo Vejar & Lisa Weseman Larkin, *Abating Migration of Mexico's Rural Poor: A Legal, Practical, and Technical Examination*, 5 ARIZ. J. INT'L & COMP. L. 105 (1988) (explaining that some Indians who met the requirements of Christianity and loyalty to the Spanish

the Spanish called the *ejido*.¹⁶³ This was a Spanish translation of an nahuatl or Aztec term for a strip of land adjacent to the exit of a pueblo.¹⁶⁴ The *ejido* became the functional equivalent of the *altepetlalli*.¹⁶⁵ The land, which was inalienable, was controlled by the *consejo del pueblo*, or town council.¹⁶⁶ Instead of the *calpullalli* and *calpulli*, the Spanish created the *proprios*, a class of property that was worked in common, by rotation or through lease arrangements. The produce from the *proprio* was used to maintain the local government and pay taxes.¹⁶⁷

Lastly, the despotic-tribute system reified a feudal socioeconomic relationship between the Spanish and Indians.¹⁶⁸ The feudal nature of the relationship between the Spanish and Indians was in keeping with the social vision of the monarchy. The Crown wanted to create an Indian society separated from the Spanish population and protected from its abuses by the moral shield of noblesse oblige.¹⁶⁹ The implementation of this social plan was thwarted in part by the integration of the Mexican economy and its agriculture into the expanding mercantile capitalist system.¹⁷⁰ Most significantly, the execution of policies under the plan led to the entrenchment of racist group distinctions.¹⁷¹ The policy of separating the dark-skinned Indian populations from the light-skinned European population stigmatized Indians as the "other" that future generations of Mexicans would strive to be disassociated from.¹⁷²

Crown were allowed to retain their lands, a practice called *reducciones*).

163. See BARTRA, *supra* note 27, at 108. The word *ejido* comes from the Latin *exitus*: "exit." See *id.*

164. See Vejar & Larkin, *supra* note 162, at 112.

165. See BARTRA, *supra* note 27, at 108.

166. See *id.*

167. See *id.* at 109.

168. See *id.*

169. See FRANK, *supra* note 13, at 5; see also BORAH, *supra* note 10, at 25-40.

170. See FRANK, *supra* note 13, at 6-7. Frank built on the periods of the history of Spanish grain legislation completed in Enrique Florescano, *El Abasto y la legislación de granos en el siglo XVI [The Supply and the Legislation of Grains in the 16th Century]*, 16 HISTORIA MEXICANA [MEXICAN HISTORY] 570 (1965). Florescano delineates three periods of Spanish economic development. The first period (running to 1550), represents Spain's efforts to create a dual society and dual economy. *Id.* at 604. The second period, (running to 1579), represents Spain's attempts to overcome or mediate the difficulties created by its failed policies. See *id.* The last period (1580-1595), represents Spain's total abandonment of these earlier policies and the substitution of new ones which would lead to a full integration of the Mexican economy into the world mercantile system. See *id.*

171. See FAGAN, *supra* note 2, at 289-91.

172. See generally BORAH, *supra* note 10, at 401 (speaking about the impact that the dismantling of the Indian Court in New Spain had on the status of Indians in Mexico: "the indians . . . future role as the lowest class in a common culture was delineated unmistakably").

*B. The Origin of the Latifundio**1. The Encomienda (1521-1548)*

During the period immediately following the conquest of Mexico, Hernán Cortés and other military leaders and officials distributed land amongst themselves and to others.¹⁷³ The lands appropriated through this "self-help" method were called *encomiendas*. Initially, the atrocities committed under the *encomienda* system in the Spanish colony of Anchilles had caused many officials, even Hernán Cortés, to oppose its use in Mexico.¹⁷⁴ Cortés was forced to modify his position, however, to maintain authority and control over his troops. "[F]aced with the problem of organizing the conquest, providing for military security, and rewarding companions in arms, he revised his views."¹⁷⁵ Title to the soil was not automatically conferred to the possessor of an *encomienda*.

[I]n New Spain property in the soil was not conveyed by granting of an *encomienda*. Within the boundaries of a single *encomienda* could be found lands held individually by the Indians; lands held collectively by the villagers; crown lands; lands acquired by the *encomendero* through a grant distinct from his title as *encomendero* or affected by his right to the payment of tribute in agricultural products; and lastly, lands granted to Spaniards other than the *encomendero*.¹⁷⁶

The growth of the *encomiendas* generated some political concern on the part of the Monarchy, who did not want feudal-like estates flourishing in its new territories.¹⁷⁷

In an effort to rein in the ambitions of the conquistadors, the Crown appointed an archenemy of Cortés to preside over an *audiencia*, a judicial body, to regulate the *encomiendas*.¹⁷⁸ The first *audiencia* was preceded by a second and sandwiched between both was the office of the *corregimiento*.¹⁷⁹ This office was charged with the dismantling and absorption of the *encomiendas* within the royal system of government.¹⁸⁰

173. See FRANK, *supra* note 13, at 10.

174. See MacLachlan, *supra* note 24, at 1-2, 14-18, 21-29, 31-33.

175. *Id.*

176. SILVIO ZAVALA, NEW VIEWPOINTS ON THE SPANISH COLONIZATION OF AMERICA 80-84 (1943).

177. See FRANK, *supra* note 13, at 12 (quoting JOSE MIRANDA, LA FUNCION ECONOMICA DEL ENCOMENDERO EN LOS ORIGENES DEL REGIMEN COLONIAL (NUEVA ESPANA 1525-1531) [THE ECONOMIC FUNCTION OF THE ENCOMENDERO IN THE ORIGINS OF THE COLONIAL REGIME (NEW SPAIN 1525-1531)] at 10-34 (Mex. 1965)).

178. See MacLachlan, *supra* note 24, at 161. The *audiencia* later became the highest court in the viceregal system. See *id.*

179. See *id.*

180. See *id.* The power struggle between the monarchy and the conquistadors at a basic level

Despite the Monarchy's displeasure with Cortés' decision to establish the *encomiendas*, the estates did not have much economic significance to the colonists because land had little or no value to them during this time.¹⁸¹ The Spaniards were primarily interested in the Indian agricultural production for supplies and in the Indian labor for the establishment and operation of Spanish enterprises.¹⁸² The semi-feudal relationship that existed between the *encomendero* and the *encomienda* Indians made it a natural source for native labor. The Spanish colonists, not surprisingly, turned to the *encomienda* work force to secure tributary payments made in the form of labor.¹⁸³

Although the *encomienda* had the characteristics of a feudal estate, in reality it operated more like a capitalist enterprise. The *encomendero* (the master of the *encomienda*) was charged with the collection of tribute (which was channeled to the mercantile capitalist system), similar to a feudal lord — but he was also free to carry on industrial and commercial activities.¹⁸⁴

The *encomendero* is above all a man who has time, who is moved by desire for profit and pursues the goal of wealth . . . For that reason, he does not, like the feudal lord, limit himself to the mere enjoyment of tribute and service; but he converts the one like the other into the principal base of several business enterprises He will do the same as any entrepreneur from that time till now; use his own and others' resources and the work of others in the pursuit of his own wealth and well-being.¹⁸⁵

Influenced by the success of the *encomenderos*, the Spanish Indian nobility began to exact tribute labor from other Indians as they, too, began to invest in the building of capital through capital enterprise.¹⁸⁶

By 1560, Mexico had approximately 480 *encomenderos* who had collected a tribute of 377,734 pesos at a high price to the indigenous population.¹⁸⁷ The majority of Indians were condemned to the bondage of slavery and *encomienda* tribute labor.¹⁸⁸ The cumulative effects of the dehumanizing

was about philosophical difference over the merits of centralized government versus a decentralized one. See *id.*

181. See FRANCOIS CHEVALIER, *LAND AND SOCIETY IN COLONIAL MEXICO: THE GREAT HACIENDA* 55 (1970). The Crown viewed the *encomenderos'* power as a threat to its own still weak authority in the Americas. See, e.g., MacLachlan, *supra* note 24, at 160-61.

182. See FRANK, *supra* note 13, at 10.

183. See *id.* at 10-12.

184. See *id.* at 10.

185. JOSE MIRANDA, *LA FUNCION ECONOMICA DEL ENCOMENDERO EN LOS ORIGENES DEL REGIMEN COLONIAL* [THE ECONOMIC FUNCTION OF THE ENCOMENDERO IN THE ORIGINS OF THE COLONIAL REGIME] (NUEVA ESPANA F1525-1531), UNIVERSIDAD NACIONAL, AUTONOMA DE MEXICO 10-11, 33-34 (1965).

186. See WOLF, *supra* note 149, at 212-14.

187. See FRANK, *supra* note 13, at 13.

188. For the Indians, the only escape from tribute payment was through death or flight to

work conditions and physical abuse to which Indian laborers were subjected, in conjunction with a soaring mortality rate caused by the pandemic spread of European diseases, caused a massive depopulation of native peoples.¹⁸⁹ The loss of a significant portion of the Indian labor force strained the Mexican colonial economy. The Spanish response to this crisis led to the development of the institution of *repartimiento*¹⁹⁰ and the transfer of responsibility for tribute and tax collection to the office of the *corregimiento*;¹⁹¹ these two institutions began to replace the *encomienda* as the mechanism for organizing Indian labor and securing tribute.¹⁹²

2. The Repartimiento (1548-1575)

The *repartimiento* was the beginning of the institutionalization of Indian labor and the integration of this labor force into the mercantile capitalist system. The *repartimiento* grew out of the need for a more efficient system for allocating Indian labor to meet the growing demands of the Spanish in the face of a severe labor shortage.¹⁹³ The Mexican economy needed capital to develop but the colonists themselves possessed none. Consequently, capital was provided by the Indians in the form of land, labor, tribute, or taxes, and through trading profit.¹⁹⁴ The Spanish accumulation of capital through the acquisition of land and labor was a major source of colonial economic growth;

the high lands. See *id.* at 14.

189. See *id.* at 13. Some experts estimate that by 1830 the Indian population in Mexico had declined from 25,000,000 to 1,900,000. See also David Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L.Q. 405-13 (1975).

190. See FRANK, *supra* note 13, at 15. *Repartimiento* refers to the Spanish system of drafting Indian labor. See *id.*

191. See *id.* *Corregimiento* refers to the administration of the Spanish system of tribute collection through taxation. See *id.*

192. Francisco Avalos, *The Legal Personality of the Colonial Period of Mexico*, 83 LAW LIBR. J. 393 (1991).

By the Mid-Colonial Period of Mexico, the Crown had achieved centralized control. In Mexico, the landed gentry has been weakened, mainly through the death of the "Encomienda" system. The Church was also under control of the Crown. Centralized control was further enhanced by what Ots y Capdequi described as a balance and counter-balance technique, in which one institution would be played against another. Lines of authority were never clearly defined, and new offices were constantly being created in an effort to prevent any one institution from becoming too powerful. The offices of Viceroy and Royal Audiencia are examples of one institution being played against another, of jurisdictions not being clearly defined, and of bureaucratic overlapping. The desired effect was achieved by the Crown, but a huge and cumbersome bureaucracy was created. By the time of the Independence movement, Mexico had in place a bureaucratic monster that is still being tamed today.

Id. at 396.

193. See FRANK, *supra* note 13, at 24.

194. See *id.* at 21.

labor, however, was the most important source.¹⁹⁵ The *repartimiento* was a system of forced wage labor that was rationed, on a rotational basis, to Spanish employers in the public and private sectors.¹⁹⁶ The *jueces repartidores* (*repartimiento* judges) were responsible for allocating this labor.¹⁹⁷ For the first thirty years of *repartimiento*, only 1% to 2% of the Indian working population was pressed into service.¹⁹⁸ This meant that about 6.3% of the annual working time of the Indians was allocated to *repartimiento* projects.¹⁹⁹ The percentage of Indian labors allocated to the *repartimiento* increased by the viceroy to 5% to 8% by the end of the sixteenth century.²⁰⁰

The expansion of the Spanish economy meant Indian tribute was taken over by the civil government, specifically by the office of the *corregimiento*.²⁰¹ Over time, tribute had progressed from being a device for the generation of capital by a privileged Spanish class, to being a revenue generating device for the political state.²⁰² The greater involvement of the colonial state in this arena, however, did not end the exploitation or abuse of Indians. The men charged with collecting the tribute and taxes from the Indian communities, both *encomienda* and non-*encomienda*, were called *corregidores*.²⁰³ The *corregidores* maintained a direct relationship with the Indians which gave them a distinct commercial advantage. They were able to manipulate and control the Mexican market by controlling the Indian producer.²⁰⁴ In addition to overseeing the conveyance of tributes to the colonial treasury officers, the enterprising *corregidores* operated a thriving black-market in Indian produced commodities.²⁰⁵ Graft, too, became a major problem among the *corregidores*, who demanded extra or unauthorized tributes called *derrama* from the Indians.²⁰⁶

The corruptive hold of middlemen, like the *corregidores*, over Indian producers tightened after 1555 because of a strategic change in the point of delivery of tribute. Prior to this time, the point of tribute exchange took place in the cities; thereafter, the exchange took place in the villages.²⁰⁷ Once the middlemen got to the villages, the Spanish colonists saw the price of staple products rise exponentially because of the increased field of monopolistic and

195. See *id.* at 23.

196. See *id.* The institution of *repartimiento* was also called *rueda*, *tanda*, *cuatequil*, and, in Peru, *mita*.

197. See *id.* at 25.

198. See *id.*

199. See *id.*

200. See GIBSON, *supra* note 153, at 232.

201. See FRANK, *supra* note 13, at 27.

202. See *id.* at 26.

203. See *id.* at 27.

204. See *id.*

205. See GIBSON, *supra* note 153, at 93-94.

206. See *id.*

207. See FRANK, *supra* note 13, at 29.

speculative middleman activity.²⁰⁸ The conduct of the *corregidores* in their dealings with the Indian population was not atypical behavior. The Spaniards who came to the colonies were largely fortune seekers who had limited or no opportunity for wealth attainment in their native Spain.²⁰⁹ The Spanish colonists routinely used their European status to dominate and exploit the Indians.²¹⁰

The Monarchy's attempts to protect the Indians from such abuses, through legislation and other methods, failed because of the inherent contradictions of its policies.²¹¹ The Crown, whose economy was dependent on tributes from its colonies, enacted legislation favoring "capital accumulation," which led to greater Indian suffering and required stronger Indian protection policies and legislation.²¹² In this regard, the Monarchy's primary role was that of progenitor of capitalism, but it was also a Christian monarchy inexorably bound to the Catholic Church.²¹³ Thus, its efforts to protect Mexico's indigenous populations was motivated in large part by an obligation to provide moral leadership to its colonies.²¹⁴ The Monarchy's paternalistic treatment of the Indians, therefore, projected an image of benevolence and compassion to its subjects that reinforced its moral authority.

The General Indian Court grew out of the Crown's paternalism toward its Indian subjects.²¹⁵ In the eyes of monarchy, Indians were like children and as such needed protection from the evils of civilized society. The court, thusly, was forged, "in the concerns for social welfare and social justice, as the sixteenth century conceived them."²¹⁶ It was designed to ease the trauma of the assimilation of Indians into Spanish society.²¹⁷ The court's legal interventions on behalf of Indians in colonial Mexico provided some small measure of protection.²¹⁸ In time, however, it was viewed by the growing population of *criollo*, who often lived side-by-side with Indians, as an unfair benefit.²¹⁹ The General Indian Court was abolished as part of the revolutionary vision of a united nation.²²⁰

208. *See id.*

209. *See* FAGAN, *supra* note 2, at 281.

210. *See id.* at 289-91.

211. *See* FRANK, *supra* note 13, at 30; *see also* CARMELO VINAS MEY, *EL REGIMEN JURIDICO Y LA RESPONSABILIDAD EN LA AMERICA INDIANA*, UNIVERSIDAD NACIONAL AUTONOMA DE MEXICO 1, 34 (1993).

212. *See, e.g.,* BORAH, *supra* note 10, at 25-34.

213. *See, e.g.,* FAGAN, *supra* note 2, at 281-83.

214. *See, e.g.,* BORAH, *supra* note 10, at 6-24.

215. *See, e.g., id.* at 25-34.

216. *Id.* at 409.

217. *See id.*

218. *See id.*

219. *See id.*

220. *See id.* at 406, 409. Borah explains that the judicial functioning of the Court ended when the provisions of the Constitution of 1812 were implemented in 1820. The dismantling of

The concept of a dual economy was perpetuated by the Crown in spite of the fact that a single colonial economy was clearly emerging. This integrated colonial economy developed along two axes: east-west and north-south.²²¹ The east-west axis was the Mexican leg of the Spanish global commercial axis passing through Cuba to Spain in the west and extending through the Philippines to China in the east.²²² The north-south axis known as the Camino Real ran through Oaxaca to Chiapas to the south and up through Sonora in the north.²²³ After Mexico's share of tribute had been sent to Spain, Mexico City consumed the remainder of the economic surplus extracted from along the two axes.²²⁴

The integration of Mexico into the world capitalist economy necessarily caused it to penetrate deeper and deeper into the Indian economy.²²⁵ The appropriation of Indian lands for Spanish commercial agriculture and ranching meant that the Indian agricultural-based economy declined.²²⁶ The appropriation of Indian land also meant the loss of sources of fresh water and firewood.²²⁷ The Monarchy's active participation in the development and expansion of these industries ensured Indian opposition or protest over the loss of their lands. The loss of these lands was viewed unsympathetically by colonial authorities. Those Indian farm lands not acquired outright by the Spanish were rendered nonproductive because of land encroachment. Where competing land uses occurred simultaneously in a farm region, it was usually the Indian farmers who lost the competition. Their lands were frequently trampled under by the herds of cattle and sheep that roamed unrestrained across the Mexican countryside.²²⁸ Little by little, Indian farmers were forced into subsistence farming.

The Spanish acquisition of Indian lands was driven primarily by economic considerations; that is to say, "the Spaniards appropriated Indian lands where these were productive (and for that reason), in or near a center of high population density which provided a market for what was produced."²²⁹ The acquisition of Indian land was accomplished by a number of methods:

the colonial system of protection would take time. "It involved doing away with the court and analogous institutions elsewhere, the administrative functions of the Court, the levy that supported it and its officials, the staff officials, and that inevitable residue, their records." *Id.* at 406.

221. See Pierre Chaunu, *Comentario en Francois Chevalier, La formation de los grandes latifundios en Mexico [The Formation of the Great Latifundios in Mexico]*, PROBLEMAS AGRICOLAS E INDUSTRIALES DE MEXICO, Jan.-Mar. 1956, at 527.

222. See *id.*

223. See FRANK, *supra* note 13, at 17. The axes crossed in Mexico City. See *id.*

224. See *id.*

225. See *id.* at 30.

226. See *id.* at 32-33.

227. See *id.* at 33.

228. See *id.* at 32; see also WOLF, *supra* note 149, at 198 (stating that "Sheep ate men" in Mexico "just as they did in England").

229. FRANK, *supra* note 13, at 35.

purchase, extortion, or attaining a grant of land called *merced*.²³⁰ Such land grants were initially acquired from military leaders and, later, municipal authorities.²³¹ Near the end of the sixteenth century the Spanish instituted a policy of Indian resettlement which concentrated the supply of labor in regions where it was needed.²³² The resettlement policy, called the *congregacion*, was used to expand Spanish acquisition of Indian lands. They used the policy to relocate Indians living on lands they wanted.²³³ Once the Indians were removed, their former lands, which had been declared vacant, were seized by Spanish *latifundistas*.²³⁴ The loss of Indian lands to the Spanish quest for capital accumulation ultimately diminished the trading power of the Indians and further eroded their economic solvency.

The separation of the Indian population from their lands and their subsequent transformation into wage labor, albeit forced labor, was part of Mexico's progressive transition to a capitalist economy.²³⁵ Even in the early years of Mexican capitalism, however, monopolies abounded.²³⁶ The tendency toward monopolistic capitalism may be a product of the cultural milieu. The colonial period for the average Spaniard in Mexico was a time of "great expectations." The opportunities for wealth accumulation by the most enterprising colonists were considerably more favorable in Mexico than in Spain.²³⁷ The lack of legal or moral constraints on the conduct of Spanish colonists created a *laissez-faire* environment dominated by extreme demonstrations of greed.²³⁸ In such a climate the Spanish *latifundio* was born.

3. The *Latifundio-Hacienda* (1580-1630)

Between the years 1575-1580 Europe experienced an economic depression.²³⁹ It was during this time (1575-78) that a major epidemic struck the indigenous population of Mexico, further decimating their numbers.²⁴⁰ The extraordinarily high death toll among the Indians created a severe labor shortage, which in turn led to a severe food shortage.²⁴¹ Consequently, the demand for supplies, especially foodstuffs, exceeded the availability.²⁴² The

230. See *id.* at 22-23.

231. See *id.* Although pasture lands were originally excluded from *mercedes* grants, the blatant violation of this prohibition forced the Crown to recognize the occupation of pasture lands.

232. See *id.* at 27.

233. See *id.*

234. See *id.*

235. See *id.* at 25.

236. See *id.* at 36.

237. See FAGAN, *supra* note 2, at 287.

238. See *id.* at 282-83.

239. See FRANK, *supra* note 13, at 37.

240. See *id.* at 39.

241. See *id.* at 40.

242. See *id.* at 41.

situation was exacerbated by the fact the Spanish population, consisting primarily of consumers, grew while the Indian population, consisting primarily of producers, declined. Hoarding and speculation made the shortages worse which sent prices and inflation spiraling out of control.²⁴³ The economic fortunes of Mexico were further depressed by the decline in mining production — a decline attributable to the Indian labor shortage and the depletion of easily accessible surface ores.²⁴⁴

The colonial government's attempts to stabilize the economy produced mixed results. The *posito* and the *alhondiga* were two of the most significant anti-inflation measures enacted by Spanish authorities.²⁴⁵ The *posito* was an official agency established to reduce shortages and speculation by buying at, "officially pegged prices when these [foodstuffs] were low on the free market, and selling at lower ceiling prices when the free market price was high."²⁴⁶ The failure of the *posito* to curb inflation led to the establishment of the *alhondiga*. The *alhondiga* was a depository for foodstuffs, in short supply, purchased in large quantities by the colonial government on the open market.²⁴⁷ These foodstuffs were kept in stock and sold at below market prices during periods of scarcity.²⁴⁸ Although the *alhondiga* was more effective at curtailing speculative activity in the marketplace than the *posito*, it could not stop the great market fluctuations.

Some historians believe the appearance of the *latifundium/haciendas* is the result of the Mexican economy turning in on itself during this depression.²⁴⁹ Borah, for example, in his essay, *New Spain's Century of Depression*, attributed this phenomena to the efforts taken by the Spanish to correct their contracting economy:

[F]rom 1576 until well over a century later New Spain had a contracting economy . . . [t]his long period of depression was a major factor in molding the Mexican land and labor systems which became dominant in the seventeenth century and remained so to the Revolution of 1910. . . . The efforts of the Spanish to solve this problem, to continue to draw products and services in accustomed volume from the Indian understrata, speeded up and perhaps led directly to a radical reorganization of land holding

243. See *id.*

244. See *id.* at 39.

245. See *id.* at 42-43.

246. Florescano, *supra* note 170, at 617.

247. See FRANK, *supra* note 13, at 43.

248. See Florescano, *supra* note 170, at 618; see FRANK, *supra* note 13, at 43.

249. See WOODROW BORAH, *NEW SPAIN'S CENTURY OF DEPRESSION* 1, 44 (Univ. of Cal. Ibero-Americana ser. vol. 35, 1951).

and labor forms which greatly extended and strengthened the emerging hybrid Mexican Culture.²⁵⁰

In sum, the *haciendas* were created by the economic retrenchment of the white ruling class during the years of cultural isolation caused by Spain's decline.

Another more persuasive explanation is offered by Andre Gunder Frank. He argues that the *latifundium/haciendas* were initially developed and grew to produce meat, wheat, hides, and other products for the rising demands of the cities of Central Mexico and the mining operations in the north.²⁵¹ The *latifundium/haciendas*, therefore, were not a Old World feudal institution transported to Mexico but rather an indigenous one which continued to function as a capitalist enterprise during the depression years.²⁵² The interest in agriculture production during this time was prompted by two things: (1) the declining profitability of mining, a major industry, which freed up capital for investment in new ventures, and (2) the profitability of food production.²⁵³ "The hacienda grew primarily in response to its profitability, which in turn was a function of increased demand and price for its products and decreased supply from other sources."²⁵⁴ The monopolization of land, one of the dominant characteristics of the *hacienda*, was also a byproduct of this profitability.²⁵⁵

After the epidemic of 1576, Spanish *hacendados*, the term for the owner of a *hacienda*, began to acquire lands known as the *tierra baldas*, or vacant lands.²⁵⁶ The accumulation of these lands helped to create the large semi-feudal estates the public began to associate with *haciendas*.²⁵⁷ Legal approval for the *hacendados'* acquisition of the *tierra baldas* lands, however, did not occur until years later.²⁵⁸ In 1593, the Spanish Crown, as a result of its economic woes, demanded payment from Spaniards in possession of *tierra baldas* or *demasias*, lands acquired extra-legally.²⁵⁹ The Crown's demand for payment was made more attractive by its promise to convey title to the holders of these lands.²⁶⁰ Specifically, the Monarchy promised that upon receipt of a specified sum of money the *demasias* land would be legalized through the granting of a *composiciones*.²⁶¹ By legitimizing the *hacendados'*

250. *Id.*

251. *See* FRANK, *supra* note 13, at 48.

252. *See id.* at 46-47.

253. *See id.* at 53-54.

254. *Id.* at 56.

255. *See id.*

256. *See id.* at 68.

257. *See, e.g., id.* at 37-44.

258. *See, e.g., id.* at 67-71.

259. *See id.* at 68.

260. *See id.*

261. *See id.* The Crown also made individual land grants to soldiers and settlers in the form

monopolistic acquisitions of land, the Monarchy publicly acknowledged a fact that was self-evident: it could no longer control the economic destiny of Mexico.²⁶² Through the legal mechanism of the *composiciones*, the *hacendados* were able to obtain title to lands illegally acquired, including those taken from Indians.²⁶³ Ultimately, the *hacendados* profited more from the arrangement than the Crown, whose capital-generating strategy failed to recover the full value of all the property it had illegally acquired.²⁶⁴

Indian communities were entitled to protection under the law, but unscrupulous Spaniards often contended that their communities, usually those located on highly desirable land, were not legally constituted.²⁶⁵ By 1599, "armies of commissioners and scribes were sent to throw the Indian towns off the lands wanted by the Spaniards and Criollo latifundism . . ."²⁶⁶ Some Indian chiefs were forced to sell land to *hacendados* because lands within their communities without owners reverted to the Crown.²⁶⁷ The Indian depopulation caused by the ravages of European epidemics had left many parcels of land vacant.²⁶⁸ Selling these lands at least allowed the community to realize some financial gain.²⁶⁹ Indian lands were also lost to *hacendados* because of the owners' indebtedness. Generally, once these lands were sold, they were lost to the Indian owner forever.²⁷⁰ The best explanation for the Indians' inability to protect their land is that they were no match for the economically and politically entrenched *latifundistas*.²⁷¹

The land monopoly of the *latifundistas* gave rise to a new form of organized labor. Instead of the *repartimiento*, which was abolished by a *cedula* of 1601, workers were given the control over their labor.²⁷² Mexican agricultural workers called *gananes*, *laborios*, or *naborios* were for the first time free to choose their own employer.²⁷³ The concept "free labor" was deceptive because in practice the workers were bound to the land.²⁷⁴

of caballerias, peonias, and suertes. *See id.*

262. *See, e.g., id.* at 55. Frank discusses Spain's century of economic decline that started in 1575 and lasted until the beginning of the eighteenth century. Spain's economic woes left its colonies to their own devices. *See id.*

263. *See id.* at 68.

264. *See id.*

265. *See id.* at 69. Sometimes Indians were left with nothing but the land where their houses stood. *See id.*

266. MENDIZABAL, *supra* note 154, at 495.

267. *See FRANK, supra* note 13, at 69.

268. *See id.*

269. *See id.*

270. *See id.* at 69-70. By one account, a *hacienda* near Mexico was formed almost entirely by land parcels purchased for between two and 14 pesos. *See id.*

271. *See id.*

272. *See id.* at 74.

273. *See id.* at 72.

274. *See id.*

Latifundistas used a variety of methods to hold onto their Indian laborers: physical force, the offer of competitive wages, and, finally, advances of cash and goods.²⁷⁵ This latter form of enticement led to the creation of debt peonage;²⁷⁶ that is to say, laborers accepting cash or other goods from the *latifundista* were forced to work off their debt. The economic cycles of the *haciendas* had a corresponding affect on the tenants. "[I]n general commercially bad times for the hacienda permitted a higher level of subsistence for tenants, while demand-generated expansion of hacienda agriculture led it to deprive tenants of more of their labor and land."²⁷⁷ This pattern was especially pronounced at the end of the eighteenth century after the introduction of "free trade."²⁷⁸

C. Social Reorganization of the Indian Community

Under the yoke of Spanish colonialism, the Indian tribes experienced what some historians call a period of deculturation as a result of miscegenation and acculturation.²⁷⁹ What is clear is that the Spanish arrived in Mexico with a blueprint for conquering and civilizing the Indians.²⁸⁰ The plan at the local level, where it directly impinged on the Indians, consisted of two distinct programs.²⁸¹ One program was administered by Spanish missionaries; the other was administered by Spanish civil authorities.

The mission program of acculturation sought to integrate Indians into Spanish culture by forming them into largely self-sufficient communities under the direction of Jesuit and later Franciscan missionaries.²⁸² Needless to say, in the process of "civilizing" Indians the missionaries would convert them to Christianity. The missionary program of the Jesuits, in particular, was focused on the maintenance of a nonsecularized Indian community which continued to operate as a political, social, and economic unit.²⁸³ Their goal was "less an effort to transfer individuals from an Indian-type community to a Spanish-type community than it was to remake Indian communities into tightly knit, church-centered social units, with Indian leadership (under one or a few Jesuits) still operative."²⁸⁴

In contrast, those Indians living in or around Spanish towns were assimilated into wholly Spanish-controlled social units.²⁸⁵ Indians living in this

275. See *id.*

276. See *id.* at 73.

277. *Id.* at 77.

278. See *id.*

279. See WOLF, *supra* note 149, at 212-14.

280. See SPICER, *supra* note 15, at 283.

281. See *id.* at 285.

282. See *id.* at 287.

283. See *id.*

284. *Id.*

285. See BORAH, *supra* note 10, at 36 (summarizing the Spanish reorganization of the Indian

environment were often separated from their kinship network and forced to assume a new identity: slave laborer.²⁸⁶ They were exposed to the class stratification that separated and distinguished Spanish social groupings in towns. In no time, the urban dwelling Indians learned that the distinction between rich and poor was a permanent arrangement based on the sacredness of "pure Spanish blood."²⁸⁷ Under this social arrangement, Indians and mixed bloods were relegated to a life of service to the *gente razon*, or white upper class.²⁸⁸

The two modes of cultural exchange instituted by the Spanish were deeply at odds with one another.²⁸⁹ Instead of being complementary systems, the two modes of enculturation were at cross purposes: "The heart of the conflict lay in the fact that the missionaries conceived of a transitional institution, the self-sufficient agricultural community, as a necessary vehicle for bringing Indians into Spanish civilization while the civil administrators wanted prompt and direct integration of Indians into Spanish-style communities."²⁹⁰ The Spanish civil administrators resented the relative independence of Indian mission villages because there was no clear political integration with Spain, no development of the Indian as an individual wage earner and no obliteration of the Indians "pre-contact" identity.²⁹¹ With the subsequent expulsion of the Jesuits, the secularization of the mission villages began. The responsibility for the execution of the Spanish Indian program was transferred to the civil administrators.²⁹²

In an effort to maintain tighter control over the indigenous populations, the Indian communities were forced by Spanish authorities to adopt a Spanish style of local government.²⁹³ Key Indian officials, as determined by the Spanish understanding of their sociopolitical status, were singled out and given Spanish titles which corresponded to their position in the Indian community.²⁹⁴

Thus, the tribal parentela unit, the *calpulli*, which elected its own council and governed a particular district, was equated with the Spanish barrio, and its council with the standard municipal council, called ayuntamiento. The various elders and chiefs, who

community).

286. See SPICER, *supra* note 15, at 287.

287. *Id.* at 301.

288. *See id.*

289. *See id.* at 306.

290. *Id.*

291. *See id.* at 304.

292. *See id.* at 307-08.

293. *See, e.g.,* BORAH, *supra* note 10, at 35.

294. *See* MacLachlan, *supra* note 24, at 160.

did not hold their office by right of inheritance were mistaken by the conquerors for a hereditary nobility.²⁹⁵

By organizing the Indians into an acceptable European framework, the Spanish were able to impose obligations upon the newly created Indian nobility which served their economic and political objectives.²⁹⁶ The Spanish called the class of Indian nobles *cacique*.

Although these foreign lines of authority were initially confusing to the Indians, in time they conformed to the new order.²⁹⁷ This system of self-government, however, diluted the political power of the Indians because it imposed a weak leadership upon them. Most significantly, it stymied the development of an authentic or indigenous leadership with the ability to operate within the framework of a European-based power structure.²⁹⁸ This, of course, was the Spanish objective. The establishment of a Spanish-type governmental structure was for the benefit and convenience of the Spanish. The Indian leaders and officials were never intended to be more than a puppet government.²⁹⁹ This fact was not lost on the Indian nobles.³⁰⁰

In order to secure the *caciques'* loyalty, the Spanish conferred special treatment and privileges upon them.³⁰¹ The *caciques*, in exchange, were expected to enforce Spanish policies which were often detrimental to their people.³⁰² Not surprisingly, the *caciques* identified with their Spanish masters. It was not long before they, too, began to invest in the process of building capital through capitalist enterprises.³⁰³ "From 1530 on, concessions of lands to Indian governors, *caciques*, and important persons in the villages were frequent. Most *caciques* who received land concessions from the Crown sold part of the lands to Spaniards immediately after acquiring them."³⁰⁴ The *caciques'* influence and control over Indian labor during the years immediately following the conquest also allowed them to accumulate capital through the sale of labor to the Spanish.³⁰⁵ It was not uncommon for Indian nobles to

295. *Id.*

296. See, e.g., BORAH, *supra* note 10, at 35.

297. See FAGAN, *supra* note 2, at 283.

298. See, e.g., BORAH, *supra* note 10, at 35-37 (summarizing the Spanish reorganization of the Indian political and administrative structure).

299. See, e.g., *id.* at 33 (stating that the Spanish missionaries nor the royal colonial bureaucrats ever had any intention of preserving the organization of the Indian pre-conquest society).

300. See *id.* at 35.

301. See generally Vejar & Larkin, *supra* note 162, at 112 (indicating that the *cacique* would have been the principal recipients of *reducciones* land grants).

302. See, e.g., BORAH, *supra* note 10, at 42 (commenting that the former Indian nobility retained a favored position by adapting to the governmental structure and ways: "[T]he natural lord survived, if at all, as native boss, and the more enterprising among his former subjects could aspire to replace him . . .").

303. See WOLF, *supra* note 149, at 212.

304. STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 14.

305. See FRANK, *supra* note 13, at 13 ("Moreover, Indian chiefs who received tribute in kind

amass fortunes from the exploitation of their own tribe. The malfeasance of the *cacique*, in particular, became so notorious that the modern term *caciquismo* refers to the system of dominion by these often corrupt, petty officials.³⁰⁶

The hispanization of the Indian community, through intermarriage and acculturation, weakened the social and moral fiber of the tribe.³⁰⁷ "Within a few generations of the Conquest, Aztec society was a homogeneous, poverty-stricken shadow of its former hierarchical self."³⁰⁸ Yet it is the hispanization of Indians, the fusion of Spanish and Indian, which is the source of the *criollo* culture that now dominates Mexico. More importantly, distinct Indian cultures managed to survive the Spanish program of "civilization."

IV. The Post-Colonial Epoch: The Porfirian Legacy

The post-colonial economy was in shambles after the war of independence from Spain. Civil society, caught in the middle of a power struggle between liberal and conservative political factions, remained disorganized and impotent in the face of mounting economic pressures.³⁰⁹ The national government stepped into this leadership vacuum and, to secure its power and authority over civil society, assumed total responsibility for the economic well-being of Mexico. The brass ring of political power would slip through the fingers of the liberals and ultimately be seized by the conservatives. Although the conservatives would eventually stand at the helm of the "ship of state," the constitutional framework of the national government would be the product of liberal-inspired ideology.³¹⁰ The exclusion of Indians from meaningful participation in the establishment of a post-independence government was consistent with the "Mexico for Mexicans" policy endorsed by politicians of this era.³¹¹ The Mexican government's search for a final solution to its "Indian problem" set the stage for the brutal and repressive government of Porfirio Díaz.³¹²

Porfirio Díaz was the first of a long line of strong, paternal presidents in Mexico. He built a political coalition of opposition groups through "deal-making," trading the power of the presidency for support.³¹³ Public corruption became a feature of his regime and created a legacy that still colors

and labor from their subjects . . . now used it increasingly for their personal benefit as though they were any other encomendero, which indeed they essentially were under Spanish law.").

306. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 261.

307. See FAGAN, *supra* note 2, at 289-91.

308. *Id.* at 291.

309. See MORELOS, *supra* note 57, at 112-44.

310. See *id.* at 138.

311. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 20.

312. See MORELOS, *supra* note 57, at 145.

313. See *id.* at 148-53.

Mexican politics. The thirty-year reign of Díaz, however, would help to solidify the federal or national government structure of Mexico.³¹⁴ Marching under the banner of "free trade," Díaz would usher in a short-lived period of economic expansion.³¹⁵ The infusion of foreign capital helped to mask the underlying weakness of the Mexican economy and the festering class tensions exacerbated by shortsighted federal policies.³¹⁶ In the end, Díaz's free trade policies destabilized the domestic economy and shattered the fragile social peace built on the backs of Indian and Mexican laborers.³¹⁷

*Revolution is the harmony of form and
color and*

*everything exists, and
moves, under only*

*one law=life=
Nobody is separate*

*from anybody else-
Nobody fights for*

himself.

Everything is all and one.

Anguish and

*Pain-pleasure
and death*

*are no more
than a process*

for existence

*xxxthe revolutionary
struggle
xxx*

*this process
is a doorway*

*open to
intelligence.*

— Frida Kahlo³¹⁸

314. *See id.* at 156-66.

315. *See id.*

316. *See id.*

317. *See id.* at 156-72.

318. THE DIARY OF FRIDA KAHLO: AN INTIMATE SELF-PORTRAIT 243 (Phyllis Freeman ed., 1995).

A. The Politics of Land Redistribution

The end of the royal regime left the Indians of Mexico at the mercy of Mexican nationalists.³¹⁹ Any hope that the revolution for Mexican independence would improve the plight of Indians was quickly dashed. The appropriation of Indian lands by transitory constitutional governments and the exclusion of Indian leaders from full participation in the establishment of a national government sent a simple but clear message: Indians were relegated to lower class status; they were excluded as partners in the revolution in spite of the common cultural heritage of all Mexicans.³²⁰ The Indians, particularly the Yaqui of Sonora in northern Mexico, realized that the political agenda of the Mexican revolutionaries was, with few exceptions, hostile to their interests.³²¹ The growing tensions between the post-colonial Mexican government and Indian tribes would eventually erupt into armed conflict.³²² The seeds of this conflict, however, were sown during the 1821-1856 ideological battles between the liberal and conservative political factions in Mexico.³²³ As a result of this ideological conflict, "[t]he indigenous communities that survived the colonial period became the target of a class war between the bourgeois and colonial patron, between nascent capitalism and the ancient regime."³²⁴

The origin of the ideological differences between liberals and conservatives is the economic stagnation that characterized the post-colonial period in Mexico. The monopolistic land tenure system in Mexico had created a rigid agrarian structure which retarded capital expansion.³²⁵ "Not only was the circulation of labor and capital frozen, but state growth was stunted, taxes were ignored, and public debt mounted."³²⁶ The former colonial class structure fragmented into warring factions.³²⁷ These factions soon divided into two political camps: the liberals and the conservatives.

Mexican liberals were greatly influenced by the "classic" liberalism of France, Bourbon Spain, and the United States.³²⁸ One of the leading liberal thinkers of this era was Jose Maria Luis Mora.³²⁹ The tenets of Mexican liberalism, as articulated by Mora, were political empowerment of the agrarian

319. See BORAH, *supra* note 10, at 412 (noting the significant losses suffered by Indians in the post-independence Mexico).

320. See *id.* at 401, 408-09.

321. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 46.

322. See *id.* at 45.

323. See *id.* at 20.

324. *Id.*

325. See *id.* at 18-19.

326. *Id.* at 19.

327. See *id.*

328. See *id.* at 18.

329. See *id.*

bourgeoisie who adhered to a capitalist ideology; the separation of the Church from the state and the divestment of its wealth; and the colonization of the frontier and pacification of the Indians.³³⁰ In order to create a viable political organization, "the liberals formed a political alliance with the incipient mineral, agricultural, and commercial bourgeoisie of the northern and north-central states. The interests of this group included extending the internal market network and guaranteeing the political stability and productive progress of the nation"³³¹ This liberal platform would become the guiding force behind the policies of the newly independent Mexican government. The consequence of consolidating these liberal forces around a free market of property and the "Europeanization" of the frontier, however, was the degradation of the dispossessed. The Indian communities, in particular, would suffer greatly under liberal policies.³³²

The basic problem with the conservatives, from the prospective of the liberals, was their commitment to a colonial economic structure that the liberals considered to be an impediment to capitalist progress.³³³ Yet the liberals equated property ownership with "civic virtue" because, as they reasoned, only property holders possessed the requisite qualification to be good citizens. In this regard, liberals had a lot in common with the conservative *latifundistas* outside of the political arena.³³⁴

One of the leading conservative leaders of this era was Lucas Alaman. According to Alaman, the goals of conservatives in Mexico during the critical time of nation-building were to (1) preserve Catholicism; (2) create a strong central government; (3) oppose federalism and popular elections; (4) support new territorial divisions, for better administration; (5) garner support for a strong armed force; (6) fight against the creation of a congress; and (7) solicit European assistance.³³⁵ The conservatives tended to represent the interests of the colonial bourgeoisie, the *latifundistas*, and the Catholic Church.³³⁶ Despite having an established power base, their control over the military and the post-colonial economic machinery, the conservative platform did not appeal to the legions of poor *criollos*.³³⁷ Although the first stirring of revolution began in the ranks of the conservatives, they were unable to sustain the momentum to consolidate their power in a centralized national government.³³⁸

330. See *id.* at 20-22.

331. *Id.* at 22.

332. See *id.*

333. See *id.*

334. See *id.* at 22, 26. Mora proclaimed: "Only these [property-holders] possess true civic virtues: beneficence, decorum in person and style, and love of the public good; these are virtues almost exclusive to property-holders." *Id.* at 22.

335. See *id.* at 18-19.

336. See, e.g., MORELOS, *supra* note 57, at 122-44.

337. See, e.g., *id.*

338. See, e.g., *id.*

In the ensuing power struggle, both political camps manipulated the Mexican workers, especially the Indians.³³⁹

The conservatives argued that Indian uprisings were a product of liberal attacks on the colonial system and the expansion of the economy at the expense of the Indian. The liberals, on the other hand, blamed the campesino insurrections on the colonial system itself — the invidious combination of the "cruel yoke of community," "communal vice," and frustration caused by the lack of private ownership.³⁴⁰

The solution to these internal conflicts, according to the conservatives, was the reorganization of the corporate society created by colonialism.³⁴¹

In contrast, the liberals' plan to achieve social peace exposed the racist motivations behind their stated political objectives. Specifically, "[t]he liberals pledged to liquidate the 'communist' Indians and 'repress the colored classes,' on behalf of the new order of land tenure."³⁴² Such racist views were openly expressed by respected liberal thinkers like Mora, who stated one of the goals of the colonization of the northern frontier was the eventual assimilation of pure Indian races into the Mexican race: "All activity, we could almost say all intelligence, resides in the Spanish race; luckily the indigenous race . . . is coming to be a kind of auxiliary mass whose importance is invaluable if we know how to direct it well."³⁴³

By the time of the reforms of 1850-1859, the liberals had coordinated a political program based on the original principles enunciated by Mora.³⁴⁴ More importantly, the popularity of liberal ideology in Mexico allowed liberal thinkers and politicians to define the function and responsibilities of the emerging national government and that of civil society;³⁴⁵ that is to say, the liberals had begun to argue for state control over all property based on the theory that property is a byproduct of the social pact.³⁴⁶ According to liberal thought, the state, as the representative of society, had the absolute right to regulate or redistribute property to stimulate the circulation of wealth.³⁴⁷ By investing the state with the ultimate power to control the distribution of land,

339. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 20.

340. *Id.*

341. *See id.*

342. *Id.*

343. *Id.* at 23 (citing *Politica economica* by Florescano and Lanzagorta).

344. *See, e.g., id.* at 27.

345. *See, e.g., id.* at 26-27.

346. *See id.*

347. *See id.* at 27. As explained by Reyes Heróles, a Mexican liberal thinker, the basis for state control of property is as follows: "As property is a product of the social pact, the idea is that society or the state, which is its representative, can and should regulate property with one purpose: to divide it and to foment the circulation of wealth." *Id.*

liberal politicians believed they had the legal weapon needed to break the back of the much-hated colonial land tenure system.³⁴⁸

The shortcoming of this plan lay in the structural weakness of Mexican civil society. In particular, the lack of a landed middle class and existence of only a fledgling industrial bourgeoisie created a structural weakness that would become manifest during the period of land reforms.³⁴⁹ The liberals would soon discover that the monopolistic traits of Mexican society made it an unsuitable partner in the state's effort to institute a new land tenure system. It would become apparent that the gross class inequities in Mexican society would consistently distort the public will that the liberal state was obliged to uphold. If the liberal plan was to succeed, the state would have to assume the role of the protector of the dispossessed. The state, in effect, would have to usurp one of the basic functions of a civil society, translating the political will of government into reciprocal social action.³⁵⁰ It would also have to counter-balance the force of politics in the lives of its citizens, another function served by civil society.³⁵¹ In other words, "[c]ivil society, as the realm of private production and depoliticized rights — including the right of accumulation — commands many of the institutions of order in society, removing power over the daily routine of society from the public/political realm."³⁵² In economic terms this meant that the state became the market with regards to the disposition of property in particular, and capitalist accumulation in general.³⁵³

This constituted a fundamental change in the role of the government and of civil society in relationship to the marketplace. The Mexican state, rather than civil society, shouldered the burden for the economic success of the entire country.

The roles of the state and civil society as modeled under the liberal framework had been changed radically, due to the many structural and conjunctural differences which marked the nascent dependent economy. It was in this role distortion that land became a primary question of political legitimacy in post-independence Mexico.³⁵⁴

The state, having usurped many of the functions of civil society, used the promise of land to diffuse the tensions created by class inequities and land reform measures, and to revitalize the fledgling economy through the redistribution of "idle" land for more productive uses.³⁵⁵ These important

348. *See id.* at 26-27.

349. *See id.* at 20.

350. *See, e.g., id.* at 208.

351. *See, e.g., id.*

352. *Id.*

353. *See id.* at 24.

354. *Id.* at 27.

355. *See Vejar & Larkin, supra* note 162, at 113.

reforms, however, would not occur until much later in the liberal movement. The initial objective of the liberals was to wrest away political power from the Catholic Church.³⁵⁶ The method used to accomplish this goal would also lead to the loss of Indian communal lands.³⁵⁷

In keeping with its stated political agenda, the liberal-controlled, post-independence government enacted the 1856 Decree of Desamortization, ordering the sale of all agricultural lands owned by civil or ecclesiastical corporations.³⁵⁸ "The decree defined as corporations all religious communities of both sexes, confraternities, congregations, brotherhoods, parishes, municipalities, schools, and, in general, all establishments or foundations having the character of perpetual or indefinite duration."³⁵⁹ The government, through the enactment of subsequent regulations, made clear its intent to include indigenous parcels and communities in the definition of corporations.³⁶⁰ All Indian communal lands were lost as a consequence of this decree but the church managed to retain its properties by threatening to excommunicate land speculators.³⁶¹ Not only did Indians lose their lands, they were deprived of their capacity to contest the government's actions because they were no longer considered a legal entity entitled to rights of appeal.³⁶²

Not satisfied with legal dispossession of land belonging to the Church and Indians, the liberals next added article 27 to the Constitution of 1857, which deprived all corporations of the legal capacity to acquire or administer real property.³⁶³ This time *ejido* property was ensnared in the land dispossession net.³⁶⁴ The liberal vision of a brave new world order that would begin with the redistribution of communal lands to the propertyless masses, who would become, in turn, good citizens and budding capitalists, was threatened by the Church's refusal to comply with the Decree of Desamortization.³⁶⁵ Determined to bring its most powerful foe to its knees, the government ordered the nationalization of all lands belonging to the Church in 1859.³⁶⁶ Lastly, from 1863 to 1894 laws were passed authorizing the patenting of unoccupied lands, which was construed by the government to include Indian lands.³⁶⁷ In effect,

356. *See id.*

357. *See id.*

358. *See id.*

359. *Id.*

360. *See id.*

361. *See id.*

362. *See id.*

363. *See id.*

364. *See id.*

365. *See id.*

366. *See id.* Attempts to enforce these measures under President Plutarco Elias Calles led to the infamous *cristeros* revolt. *See* STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 83.

367. *See* Vejar & Larkin, *supra* note 162, at 113.

all lands not clearly titled were subject to *denuncia*, a declaration that the land in question was unoccupied and, thus, subject to expropriation.³⁶⁸ Surveying companies, *hacendados*, public officials, and foreign investors purchased a large percentage of the property made available through these laws.³⁶⁹ Those parcels left unclaimed by land speculators and *hacendados* were the undesirable, nonarable plots.

The effect of the sale of national lands has been likened to the rotation of capital among a small elite.³⁷⁰ The wealth of Mexico, which was still an agricultural-based economy, became more heavily concentrated in the hands of the *latifundistas*, land speculators, and public officials.³⁷¹ It has been said of the policies of disentanglement that "some rich people added to their fortunes and no poor person found remedy for his poverty."³⁷² This would become the lament of the majority of Mexicans under Porfirio Díaz, the "Great Dictator," who ascended to the presidency after the defeat of the conservative-backed monarchy of Emperor Maximilian.³⁷³

B. Porfirian Economics

During the early years of Porfirio Díaz's presidency, Mexico experienced tremendous economic growth.³⁷⁴ This growth was spurred by foreign investments, especially in the northern frontier regions, which poured into Mexico in response to the Porfiriato "pro-trade" policies.³⁷⁵ The pattern of aggregate economic growth showed that there were significant differences among the sectors of production in Mexico.³⁷⁶ These disparities in sector production also reflected regional differences.³⁷⁷ The *hacendados*, in particular, exhibited the regional divisions over Porfiriato economic policies that would escalate in the declining years of the Díaz regime. There were the progressive bourgeoisie in the countryside who were opposed to the traditional hacendado system of debt-peonage, associated with the *tiendas de raya*, and the waste or inefficient use of productive land characteristic of colonial-style *latifundismo*.³⁷⁸ This was in stark contrast to the urban-based *hacendados*,

368. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 36.

369. See *id.* at 38.

370. See *id.* at 20.

371. See *id.* at 10.

372. *Id.* at 26 (citing *La era de Juarez* by Luis Gonzalez).

373. See MORELOS, *supra* note 57, at 138-44.

374. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 39.

375. See *id.* at 35.

376. See *id.* at 41-42.

377. See *id.* at 41.

378. See *id.* at 42. *Tienda de raya* was a *hacienda*-owned store through which a great number of peones became indebted. See *id.*

who received the benefits of Porfirian favoritism: land and labor through state-led programs of colonization and disentanglement.³⁷⁹

The export sector, consisting mainly of agriculture and mining enterprises, showed the greatest aggregate growth.³⁸⁰ The success of exports in these two sectors was dependent on three things: increased exploitation of natural resources, the availability of cheap labor, and high levels of foreign investment and technology.³⁸¹ The decline in one or another of these inputs required government manipulation of those remaining. More often than not, labor bore the brunt of the fluctuations.³⁸²

The organization of labor also reflected regional and sector differences. For example, in the north, employers who competed in a scarce labor market dominated by foreign competitors depended on free wage laborers. In contrast, the labor in the south consisted primarily of convicts and Indians, deported through pacification and colonization programs, who were reduced to a slave labor force. In the central region, the *haciendas'* land expansion turned free Indians and *criollos* into rural laborers known as *jornaleros* (day-workers).³⁸³ In general, there was an increased dependence on the export sector for employment throughout Mexico. This labor trend in conjunction with the external orientation of the Mexican economy contributed to the decline in the numbers of subsistence farmers.³⁸⁴

One of the consequences of the liberal reforms of the 1950s was the mass dislocation of the poor who lost their lands through various dispossession measures.³⁸⁵ The now landless masses constituted the cheap labor supply that fueled the growth of the mining and agricultural sectors of Mexico's economy.³⁸⁶ Government control over the forces which increased the supply of labor, however, gave the Porfirian regime a potent bargaining "chip" when seeking support for its policies among the *hacendados*.³⁸⁷ Their support was needed to achieve the social peace the Porfiriato required to further its goals of primitive accumulation, a precursor to industrial capitalism.³⁸⁸ The increased labor supply created by dispossession, a characteristic of primitive accumulation, was absorbed into production activities that generated surplus

379. See *id.* at 41-42.

380. See *id.* at 40.

381. See *id.*

382. See *id.*

383. See SUSAN WALSH SANDERSON, *LAND REFORM IN MEXICO: 1910-1980*, at 14 (1984) [hereinafter *SUSAN SANDERSON, LAND REFORM*].

384. See *id.* at 15.

385. See, e.g., STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 32-34.

386. See, e.g., *id.*

387. See, e.g., *id.*

388. See *id.* at 33-34.

value.³⁸⁹ Those sectors that generated the most surplus value were in sectors controlled by foreign interests.

Social peace, to the Porfiriato, was a valuable commodity because it created a climate attractive to foreign investors whose capital investments were critical to the economic stability of Mexico. The Porfirian government maintained this fragile class peace, however, through the use of bribes and other acts of presidential benevolence.³⁹⁰ "Throughout the Porfiriato, fortunes were made through land legislation, wars of pacification, colonization and survey concessions, and the manipulation of water rights."³⁹¹ Such blatant abuse of power and public corruption is a lasting legacy of the Porfirian regime. The price of peace was the further distortion of the already gross class inequities in Mexico by the concentration of even greater wealth in the hands of the landed elite.³⁹²

The Porfirian government's class-alliance with the conservative elite for the purpose of primitive accumulation signaled a departure from liberal ideology to that of positivism.³⁹³ As expressed by the Porfiriato, positivism meant defending "dispossession and aggregate economic growth without concerning itself with ethical problems of concentrated land tenure."³⁹⁴ The Porfirian gamble would ultimately fail because of the inflexibility of the class structure fostered by its positivist ideology.³⁹⁵

From the beginning, the monopolistic proclivities of Mexican society undermined Díaz's primitive accumulation scheme. This was most evident, however, in the agricultural sector. In agricultural production, producers for the domestic market monopolized land and crops to drive up prices. At the same time, producers for the export market expanded production, through land and labor monopolies, to meet the growing demands of the international market.³⁹⁶ The end result of these conflicting monopolistic strategies was that land and labor for domestic food production began to evaporate.³⁹⁷ In sum, the domestic food supply of Mexico was sacrificed for the sake of the cash crops exported to the international markets.³⁹⁸ The impact of these market distortions on the Mexican population was dramatic and poignant; journalists began to report stories of mass hunger: "from Culiacan to Alamos nothing is being eaten but the roots and trunks of the mescal plants."³⁹⁹

389. *See id.* at 33.

390. *See* MORELOS, *supra* note 57, at 148-53.

391. STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 32.

392. *See, e.g.,* MORELOS, *supra* note 57, at 148-53.

393. *See* STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 34.

394. *Id.*

395. *See id.* at 50.

396. *See id.* at 40.

397. *See id.*

398. *See id.*

399. *Id.*

The irony of this situation was that Mexico was in the midst of an unprecedented "economic expansion," which the outside world heralded, while the majority of Mexicans were starving to death. It was not that crops for the domestic market were not being grown; it was that the volume of production was inadequate to meet the needs of the Mexican population, which had increased some 61% between 1888 and 1910.⁴⁰⁰ The domestic food shortage was at least partially attributable to the fact that the most backward and inefficient units of productions provided the bulk of the domestically consumed food staples.⁴⁰¹ The surplus value generated by the aggregate growth of the export sector could have been used to fund social welfare programs to soften the economic impact of Mexico's transition toward industrial capitalism, but this was not the case.

The surplus value was transmitted to the owners of the export sector, many of whom were foreigners, and the remainder was distributed to the Porfirian government, who used it for infrastructure development, cronyism, and bribes, in an attempt to hold onto political power. The working class did not receive its proportional share of Mexico's economic prosperity; in the end, the workers were both ill-fed and underpaid.⁴⁰² In fact, "[n]ot only were the increases in productivity, accompanied by little or no increase in wages, but due to rampant inflation, the real income of the worker was declining."⁴⁰³ Agricultural workers who received cash wages saw their income drop between 15% to 30% from 1877 to 1911.⁴⁰⁴ Market fluctuations during the Porfiriato regime fell heaviest on the shoulders of the exploited workers.⁴⁰⁵

The Porfiriato had launched a bold strategy for economic development in a desperate attempt to pull Mexico into the world capitalist economy.⁴⁰⁶ The fact that Mexico's primary trade partner during the Porfirian period was the United States is not surprising.⁴⁰⁷ The United States had risen to core member status in the nineteenth century as the leading industrialized nation in the world economy.⁴⁰⁸ In the context of the world economy, Mexico's independence "merely eliminated the last vestiges of Spain's semi-peripheral role and ended pockets of noninvolvement in the world economy in the interior of Latin America."⁴⁰⁹ The economies of industrial nations like the

400. See *id.* at 42.

401. See *id.* at 43.

402. See SUSAN SANDERSON, *LAND REFORM*, *supra* note 383, at 15.

403. *Id.*

404. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 43.

405. See *id.*

406. See, e.g., STEVEN E. SANDERSON, *THE RECEDING FRONTIER: ASPECTS OF THE INTERNATIONALIZATION OF THE U.S.- MEXICAN AGRICULTURE AND THEIR IMPLICATIONS FOR BILATERAL RELATIONS IN THE 1980's*, at 4, 8 (1981) [hereinafter STEVEN SANDERSON, *RECEDING FRONTIER*].

407. See, e.g., *id.* at 4-8.

408. See Wallerstein, *supra* note 41, at 46.

409. *Id.* at 40, 45. There are, according to most economists, three structural positions in a

United States needed raw materials to turn into material goods and agricultural products for its rapidly expanding urban populations.⁴¹⁰ Mexico, because of its close proximity to the United States, was under tremendous pressure to convert to an industrial capitalist mode of production, for no other reason than the fact it would be a better customer for the United States.⁴¹¹

It is readily apparent that the economic policies employed by the Porfiriato were consistent with those used by traditional colonial powers to break up noncapitalist societies:

This "break-up" was needed both to create markets and to obtain supplies via commercial agriculture and mining. And while the tactics used to reach these goals varied from one colonial power to another, the basic strategy was universal, involving to a lesser or greater extent the disruption of traditional self-sufficient and self-perpetuating communities; introduction of private property land; extending the use of money and exchange; imposition of forced labor and recruitment of a labor force depending on wages; destroying competitive native industry; creating a new class structure, including fostering of new elite groups as political and economic junior partners of the imperial powers; imposition of the culture of metropolitan centers, along with racism and other socio-psychological characteristics of minority foreign rule.⁴¹²

Although the Porfirian policies were rooted in the dynamics and eccentricities of the Mexican culture, it is not difficult to find the colonial or imperialist influence in the substance of development plan actually implemented. To this end, Mexico's economy was justifiably characterized as a "dependent economy." Its relationship to the United States was so close that the economic downturns there had devastating repercussions in Mexico.⁴¹³ In retrospect it is easy to see how Mexico's structural weakness — the lack of a developed social class with a well-defined social conscience to lead civil society, to organize productive growth, and to control capital investment and formation, among other functions — made it particularly vulnerable to such external influences.⁴¹⁴

world economy — core, periphery, and semiperiphery. *See id.* at 40.

410. *See* Magdoff, *supra* note 56, at 18.

411. *See, e.g.*, STEVEN SANDERSON, *RECEDING FRONTIER*, *supra* note 406, at 4-6.

412. Magdoff, *supra* note 56, at 18.

413. *See* STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 51. For example, a severe economic contraction in Arizona in 1907 and 1908, simultaneous mine closings in northern Mexico, and a bad harvest in 1909 caused massive unemployment even among the relatively privileged workers in northern and northwestern Mexico.

414. *See id.* at 206.

By 1910, four out of every five Mexicans depended on the land for survival but only four in every 100 owned any land.⁴¹⁵ When the 1910 insurrection finally occurred, the land distribution in Mexico was as follows: 72 million hectares owned by surveying companies, another 46 million hectares owned by 276 property holders, and 168 million hectares owned by Spanish and French descendants.⁴¹⁶ These holdings constituted three-fourths of the nation's land mass.⁴¹⁷ The collapse of the Porfirian regime did not reverse the radical changes in the Mexican social structure which occurred during his reign. Some land concessions were made to the Agaristas, based upon the compromise embodied in article 27 of the 1917 Constitution, but even the gains made through the Cardenismo period were reversed by the conservative backlash that followed.⁴¹⁸

C. The Indian Pacification and Colonization Policies

The goals of Porfirio Díaz, with regard to the development of the northwestern region of Mexico, were to advance mining and agriculture export interests through the pacification and dispossession of the Indians, particularly the Mayo and Yaqui.⁴¹⁹ Of the two tribes, the Yaqui proved the most formidable and resilient. The program of pacification was, in effect, an undeclared war against the Indians of Mexico. The open hostility of Indian tribes, like the Yaqui, toward whites and their refusal to submit to white domination further convinced the Mexican government of the need to find a final solution to the Indian problem.⁴²⁰ Northern liberals and foreign backers of the national railroad system, which was built through large expanses of land in traditional Indian territories, demanded assurances from Porfirio Díaz's government that aggressive measures to control the Indian-led insurrection were planned.⁴²¹

Military troops were sent to Sonora and other northern frontier towns to pursue and subdue rebellious Indian contingents.⁴²² Those Indians captured in these military campaigns were, pursuant to government policy, to be

415. See *id.* at 43.

416. See Vejar & Larkin, *supra* note 162, at 114.

417. See *id.*

418. See *id.*; see also STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 123. The two administrations that followed that of Cárdenas — Avila Camacho (1940-46) and Alemán (1946-52) — tried to dismantle the peasant-based agrarian structure. Collective *ejidos* were broken up and divided into individual plots. Peasant cooperatives were disbanded and their financial support withdrawn. See SUSAN SANDERSON, *LAND REFORM*, *supra* note 383, at 138.

419. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 45.

420. The Yaqui along with other tribes had fought for federalists, centralists, liberals, and the French. Their goal from the outset of these campaigns had been autonomy and separation from the white race. See *id.*

421. See *id.*

422. See *id.* at 45-49.

deported.⁴²³ Many Indian prisoners, in fact, were deported to southern regions of Mexico (i.e., Yucatan and Guerrero).⁴²⁴ The Mexican military's intense hatred of the Yaqui led to the formulation of a different policy for captured Yaqui prisoners: "Exhausted by the [Yaquis'] interminable energy, the Boletín Militar of the Expeditionary Force to the Northwest in 1914 coldly remarked that, 'all of the Yaqui prisoners caught bearing arms were immediately shot, proving that the best Yaqui is a dead Yaqui.'" ⁴²⁵ Interestingly, the liberal bourgeoisie of Sonora opposed the Porfiriato deportation program not out of humanitarian concerns but because of the destructive effect it had on the Indian labor supply.⁴²⁶

In addition to military suppression and deportation, the Porfirian regime declared the Yaqui lands *baldíos* (vacant land) so that concessionaires could subdivide and resell them.⁴²⁷ Since the Yaqui and Mayo occupied choice, arable lands in Sonora, these lands were quickly transferred to *hacendados*, survey companies, foreign investors, and the cronies of the President.⁴²⁸ The Yaqui retreated to the mountains and continued their fight against the genocidal policies of the Porfiriato.⁴²⁹

Over a nearly thirty-year period, the Porfirian solution to the Indian problem in Mexico would consist of pacification, starvation, deportation, and extermination through massacre.⁴³⁰ The Mayo would capitulate in 1887, but the Yaqui would continue their fight until 1929, even fleeing at various times into the United States to escape Mexican persecution.⁴³¹ The Yaqui would, again, become a force to reckon with during the volatile period of agrarian organizing, from 1937-1939, in Sonora, Mexico.⁴³²

V. The Modern Epoch: Resurrecting the Ghosts of Porfirian Economics

The monopolistic tendencies of Mexican society have found expression in the industrial age.⁴³³ Land monopolies have been replaced by commercial

423. See *id.* at 49.

424. See *id.*

425. *Id.* at 48.

426. See *id.* at 49.

427. See *id.* at 46.

428. See *id.* Under the law of colonization, Díaz granted up to one-third of the untitled land, mostly national lands, to commissions of engineers and private survey companies named by the government. According to the government, these lands were given as compensation for survey work, but in practice survey commissions became another way for Díaz to reward regime favorites or bribe opponents. See *id.* at 36.

429. See *id.* at 48.

430. See *id.* at 49.

431. See *id.* at 49, 112. A total of 18,000 Arizona Yaqui were repatriated to Mexico in the late 1930s.

432. See *id.* at 111-14.

433. See Boris Kozolchyk, *NAFTA'S Continuous Commercial Legal Highway, in 1 TOWARD SEAMLESS BORDERS* 12 (Boris Kozolchyk ed., 1993).

and international agricultural monopolies, and so the status quo remains unchanged. The industrial bourgeoisie control the purse strings of the national government, which needs their cooperation in order to buoy the economy and maintain social peace.⁴³⁴ As the financially strapped government teeters on the brink of disaster, it looks to foreign investors, following the yellow brick road of NAFTA, to throw in a lifeline. The parallels between the modern epoch and the free-trade era of Porfirio Díaz,⁴³⁵ however, suggest that free trade will open a Pandora's box of misery and chaos. Wrestling with their own identity crisis, the Indian population of Mexico must tackle the problems of privatization of communal lands⁴³⁶ and face an uncertain future without land as their primary cultural anchor.

Surems and the Talking Tree

It has been many centuries, in times long gone, that the Yaquis were not as they are now. They were Surems, a very little people that lived in el Cerro Surem in Sonora. The Surems were a peaceful, quiet people who couldn't stand noise and violence. One day, the people noticed a tree that seemed to be making noises in a strange language. This tree was one big, ash-colored Palo Verde, which was growing in the middle of the region, on Omteme Kawi.

While the villagers gathered around, the leaders attempted to communicate with the talking tree. However, it was of no use, not even the most important leader could interpret the message. During this time, a very young girl, Yomumuli, kept tugging at her father's hand and whispering that she could understand the talking tree. At first her father ignored her, then he became angry at her insistence. "All right, you will do it in front of the village, and then you will be punished publicly for your foolishness."

So Yomumuli sat down close to the tree and translated word for word what the prophetic tree foretold for their future. It warned of the coming of the white man with armor and new weapons; it told of the coming of much strife and bloodshed against these intruders and others, and of much suffering for a long time among the Surems, but that they would eventually overcome their adversaries.⁴³⁷

434. See STEVEN SANDERSON, AGRARIAN POPULISM, *supra* note 5, at 218.

435. See STEVEN SANDERSON, RECEDING FRONTIER, *supra* note 406, at 5.

436. See James B. Greenberg, *An Ethnography of Law and Violence in Rural Oaxaca, Mexico*, 1988 ARIZ. J. INT'L & COMP. L. 69, 103-04.

437. THE SOUTH CORNER OF TIME: HOPI, NAVAJO, PAPAGO, YAQUI TRIBAL LITERATURE 190 (Larry Evers ed., 1981).

A. Free Trade in a Monopolistic Society

The origin of the monopolistic character of Mexican society is hard to pinpoint. Yet it is a recurring theme, a sort of "economic wild card," that has scuttled economic development and recovery plans and toppled presidencies. The power players who hold this card are members of the same group that has traditionally called the "shots" in Mexico: the landed elite, who in the twenty-first century are known as the industrial bourgeoisie. While the intra-class tensions and divisions that characterized this group during the Porfiriato have not disappeared, they are nevertheless bound by a common history of privilege and power. When the Díaz presidency ended, the Porfiriato social structure of *hacendados*, bourgeois industrialists, public officials, and merchants survived. They were the ones poised to move to the next stage of capitalism — industrial capitalism — while the rest of country lagged far behind.

Arguably, the adoption of a market political ideology was from the beginning a mistake, given Mexico's postcolonial economic structure.⁴³⁸ Yet the proximity to the United States would have made it virtually impossible for Mexico to have developed as anything but a "dependent economy."⁴³⁹ Thus, the progression toward dependent capitalism continued even as the nascent agrarian revolution began its struggle for land equity in the wake of the liberal reforms, a tool of capital accumulation, that had turned so many Mexicans into landless paupers.

The agrarian revolution that followed the Porfirian insurrection was short-lived. The great economic disparity between the classes reflected the equally wide power gap between the *hacendados* and *campesinos*. In a culture of such extremes, the most the revolution could do is lead to "surface" changes in the social structure; the status quo, in other words, did not change. For example, those representatives sympathetic to the *latifundistas* used their influence to win a compromise from the *campesinos* during the constitutional convention. As a result, implementation of article 27 of the 1917 Constitution, the land redistribution measure, was left to local governments.⁴⁴⁰ Without the guidance or oversight of a strong national government, which was crippled by divisive conflict following the ouster of Díaz's presidency, local *caciques* were left to interpret national reform policy.⁴⁴¹ The local governments, because of their traditional alliance with the *hacendados*, were easily manipulated. The reform laws passed at the local level contained a variety of exemptions for property holders and imposed numerous restriction on the ability of *agraristas*

438. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 24.

439. *Id.* at 207.

440. See *id.* at 67.

441. See *id.* at 67-70. Without the presence of Díaz, the nation suddenly lacked a supreme arbiter of internecine warfare. The country was divided into fiefdoms dominated by *caciques*.

to sue for land. The *hacendados* had little difficulty slipping through these loopholes, and few *campesinos* received redistributed land.⁴⁴²

When significant land redistribution finally occurred under the Cárdenas administration, it came with a price. The agrarian movement was co-opted by the national government under Cárdenas, who then legitimized it by creating a state-controlled agency to defuse the political volatility of the *campesinos*.⁴⁴³ The agrarian movement's loss of autonomy and transfer of power from the workers to the state meant it was "depoliticized."⁴⁴⁴ The alliance between worker and state that pushed Cárdenas into the presidency coalesced into a dominant political party that reigns supreme in Mexico.⁴⁴⁵

The administration that followed Cárdenas embarked on an aggressive program of industrialization.⁴⁴⁶ These efforts were aided by the tremendous growth in exports to the United States because of shortages caused by World War II.⁴⁴⁷ This wartime boom led to a much heralded "economic miracle" sustained primarily by agricultural development.⁴⁴⁸ It was also at this juncture that *latifundismo* gave way to industrialized agriculture production because of its greater margins of profit. It was due to this economic boom that Mexico went through a period of "inward development," meaning it concentrated on "expansion of commercial agriculture, protection of the internal market, transfer of capital from the export sector to the domestic sector, and the creation of a fundamental infrastructure to support import-substitution."⁴⁴⁹ The economic miracle was buoyed by low worker wages, favorable export tax tariffs, the expansion of the domestic market (created by shortages of foreign imports), and low interest rates for investment borrowing.⁴⁵⁰

The rural reform programs, however, were neglected in favor of government investment in urban areas.⁴⁵¹ Overall public support of agriculture declined during this time. Some significant public investments in agriculture were made, however, through the extension of credit for modernization to large privately owned farms, agricorporations and agricultural bourgeoisie, the successors to the *latifundistas*, and the creation of

442. *See id.*

443. *See id.* at 133.

444. *See id.* at 124.

445. *See id.* at 133. The Party of the Mexican Revolution (PRM) changed its name in 1946 and became the Partido Revolucionario Institucional (PRI), the Institutional Revolutionary Party. *See id.*

446. *See* STEVEN SANDERSON, *RECEDING FRONTIER*, *supra* note 406, at 103.

447. *See* STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 135.

448. *See id.* at 142.

449. *Id.* at 135.

450. *See id.*

451. *See id.* at 137.

government-supported irrigation districts.⁴⁵² Concomitantly, the public's noninvestment in the small, rural farmers caused a decline in the productivity of the *ejidos*, *parvifundios*, and *minifundios* that increased migration to the United States and the urbanization of the *campesinos*.⁴⁵³

By the 1970s the decapitalization of the agricultural sector was reflected in a reduction in revenues generated by the industry. The reduction in revenues from agriculture, the engine that drove the economy, coupled with the huge foreign debt and balance of payment problems created by expensive public projects designed to stimulate domestic industries, contributed to a growing economic crisis in Mexico. The discovery of petroleum in Mexico in the 1970s and the availability of foreign credit based on the value of these oil reserves allowed Mexico to borrow heavily to close "the gap between public expenditure and public savings."⁴⁵⁴ This method of financing debt proved disastrous for Mexico when in the 1980s a worldwide recession occurred, followed by a more rapid-than-anticipated decline in the petroleum dependency of industrialized nations, and the depletion of its capital reserves. Mexico was left with a staggering foreign debt.⁴⁵⁵

Since the defeat of Porfirio Díaz, power has shifted from the beleaguered state to the dominant class. It is a change hard to detect because the state continues to act in the role of paternalistic protector and benefactor of civil society. It is business as usual except the Mexican Presidency and the working class are subject to the will of the ruling class. The concentration of economic and political power in the hands of the industrial bourgeoisie is a significant change in the power structure of Mexico that forebodes trouble ahead. The monopolistic tendencies of the bourgeoisie and the absence of a well-extended middle-class, which forced the state to take over control of the market in the first instance, continue to require state intervention, but the scope of its intervention is dictated by the dominant class.

The transition to capitalism, which involves the concentration of wealth in the hands of a single privileged class, has only reified the original colonial social structure instead of creating a new class structure. The class antagonism of the colonial social structure, exacerbated by the forces of capitalism, has caused the Mexican state to assume a nontraditional role in relation to civil society. It is both a paternal protector and benefactor. The state, in effect, counterbalances the inherent imbalance of the Mexican social structure.

Without state social intervention on its behalf, the working class would be at the mercy of a ruling class that has not shown interest in assuming the state's role as the arbiter of social peace — a function which logic dictates a

452. See STEVEN SANDERSON, *RECEDING FRONTIER*, *supra* note 406, at 129.

453. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 159.

454. *Id.* at 160.

455. See STEVEN SANDERSON, *RECEDING FRONTIER*, *supra* note 406, at 154.

dominant class performs out of self-interest. In other words, those who have the most to lose from the disintegration of society are usually the most vigilant in maintaining civil order. Instead, from the days of the *latifundista*, Mexico's ruling class has shown its primary interest has centered on wealth accumulation or, more specifically, the monopolization of wealth. Free trade, in this context, translates into new opportunities to amass wealth by the rich. Stated more concisely, the industrial elite of Mexico, like the *hacendados* of the Porfirian era, are willing to pursue economic policies that will ensure their continued wealth accumulation, even if to do so leads to social chaos.

The aggregate growth of Mexico is still concentrated in the export sector. Within the export sector agriculture and manufacturing dominate.⁴⁵⁶ Mexico's effort to stimulate a strong internal market, to counter the poor distribution of its aggregate growth, has failed. For example, the Import Substitution Industries (ISI) program, financed by the Mexican government, proved to be a tremendous economic drain that did not yield an adequate return given the public investment.⁴⁵⁷ One of the impediments to the development of a strong domestic market has been foreign competition and the demand for foreign products.

Although there are many reasons for Mexico's weak domestic market, its proximity to the United States is one reason. A large quantity of manufactured goods flow across the United States border to Mexican consumers. Mexico is, in fact, a primary market for U.S.-produced goods. This means Mexican manufacturers must compete against foreign manufacturers for the pesos of the Mexican consumer. Setting aside considerations such as quality of goods, marketing, and consumer preference, one of the impediments to the competitiveness of Mexican producers in general is the lack of capital.⁴⁵⁸

The Mexican banks, perhaps in response to the lopsided economic structure in Mexico, do not extend long-term credit. Instead of banks or other traditional financing sources, most Mexican entrepreneurs must rely on private funding or family wealth.⁴⁵⁹ The only long-term loans available come from the federal government and are given sparingly for projects in which it has an interest.⁴⁶⁰ Those individuals with substantial family wealth, however, can use their prominence to obtain bank financing.⁴⁶¹ Since commercial bank

456. See BARTRA, *supra* note 27, at 147.

457. See, e.g., STEVEN SANDERSON, *RECEDING FRONTIER*, *supra* note 406, at 9-28.

458. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 160.

459. See Paul Karan & D.G. Foulke, *Commercial Real Estate Practices and Development in Northwestern Mexico: A Comparative Living Law Description*, 1984 ARIZ. J. INT'L & COMP. L. 10, 27. According to Dr. Boris Kozolchik, Executive Director of the National Law Center for Inter-American Free Trade, "Mexico does not have the banking system adapted to modern commercial lending." *Facilitating Free Trade Through the Expansion of Credit*, NOVEDADES, Mar. 1997, at 3 (explaining that credit in Mexico is secured mainly by real property).

460. See Karan & Foulke, *supra* note 459, at 31.

461. See BARTRA, *supra* note 27, at 30.

loans in Mexico are secured with real property, only those individuals with substantial land interests could qualify for loans.⁴⁶² This excludes a majority of Indians and Mexicans from access to commercial loans. Such restrictive access to financing is another way rich Mexicans control or monopolize the methods of wealth accumulation.

While free trade could lead to foreign investment in domestic industries, the Mexican experience to date with foreign corporations, especially multinational corporations, has not led to a more diversified domestic market. There is evidence, in fact, which suggests the presence of foreign corporations in host states with weak domestic industries retards the development of a domestic market.

[S]tudies have shown that American multinationals tend to invest in the most profitable host-state industries and then to be even more profitable than their local competitors. As a result, host states perceive that important segments of their economy are increasingly subject to the control of multinational companies rather than national firms.⁴⁶³

The need to generate revenue through continued exports to international markets poses a dilemma for Mexico in the area of agricultural production. Since the 1970s Mexico has been unable to produce enough agricultural surplus to meet the food demands for its expanding population.⁴⁶⁴ "Drought, poor agricultural land, expensive farm inputs due to skyrocketing inflation, and finally reduced government spending," have constrained agricultural growth.⁴⁶⁵ The water monopolies of the agricultural bourgeoisie have had a devastating impact on the agricultural productivity of the *minifundios*, *ejidos*, and Indian farmers. For example, during a Sonoran water crisis in the 1970s,

the private landholders responded to [the] problem not only with renewed interest in complete control of on-site irrigation (which they already had) but with a continuation of the wasteful land and water management practices that had earned them the nickname "the mining farmers." . . . [A]gricultural profit, like water, ran through the fingers of the agricultural bourgeoisie of the northwest, not stopping to replenish its source, the earth.⁴⁶⁶

Such incidents attest to the irrationality of the monopolistic tendencies of the Mexican ruling class. Given these tendencies, Mexico's competing need for

462. *See id.*

463. DAVID BLAKE & ROBERT WALTERS, *THE POLITICS OF GLOBAL ECONOMIC RELATIONS* 93 (1976).

464. *See* STEVEN SANDERSON, *RECEDING FRONTIER*, *supra* note 406, at 128-29.

465. *Id.*

466. STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 164.

bread and capital lends itself to the possibility of a Porfirian nightmare: masses of starving wandering the Mexican countryside while the lush agricultural lands of the bourgeoisie are filled with cash crops destined for the international market.

Perhaps the most salient result of Mexico's land tenure system is the way it has stifled the productive use of agricultural land by *minifundistas*, *ejidatarios*, and *propietarios*. By monopolizing the public resources allocated for the modernization of Mexican farms, large agrocommercial and agroindustrial concerns have decreased the numbers of small farmers able to provide an alternative food supply to the domestic market. This has made the domestic market extremely vulnerable to manipulations by greedy speculators, thereby making the reoccurrence of the Porfirian famines more likely.

The rapid industrialization of Mexico from the 1940 to 1970 accelerated the creation of a large class of cheap labor.⁴⁶⁷ Those *campesinos*, unable to live off the land because of increasingly reactionary government policies, have been forced to sell their labor in the market place.⁴⁶⁸ The domestic market, however, has been unable to solve the growing problems of unemployment, underemployment, and urbanization.⁴⁶⁹ Even the influx of foreign investment, in the form of multinational corporations, failed to stimulate the creation of jobs in the domestic market because "the open door to foreign capital sharpened the tendency toward capital intensive technology."⁴⁷⁰

During the Porfirian regime, the inability of the fledgling industrial class, in conjunction with the *hacendados*, to absorb the large numbers of displaced workers created the economic tensions that gave rise to the 1910 insurrection. The resulting agrarian revolution was spurred by the demand for land redistribution, a demand to which the Mexican government was able to accede. Conditions are different now. "In the past the government has used land reform as one of the principal mechanisms of social control in the countryside. It is apparent this will no longer be possible since there is little additional cultivable land."⁴⁷¹ Without land to detract from the genuine issues of class conflict, such as the economic inequities of Mexico's class structure, escalating social tensions could force unemployed workers to take a more incendiary course of action. Jobs, in fact, lots of jobs, are benefits Mexico hopes to derive from free trade. The ability of free trade, alone, to generate sufficient numbers of jobs to reduce the ranks of the unemployed is made more problematic because of Mexico's expanding population. For

467. See *id.* at 133-68.

468. See STEVEN SANDERSON, *RECEDING FRONTIER*, *supra* note 406, at 141. ("By 1960, the number of independent farmers had declined both in absolute and in proportional terms. Rapid demographic growth coupled with unfavorable agricultural policies led to an increase in the number of rural migrants seeking to supplement insufficient farm incomes.").

469. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 159.

470. *Id.*

471. STEVEN SANDERSON, *RECEDING FRONTIER*, *supra* note 406, at 154.

example, the State of Sonora's Office of Tourism in Phoenix, Arizona, cites its "young and growing population" as a selling point in NAFTA materials given to foreign investors looking for investment opportunities in Mexico:

According to the 1990 National Census, Sonora had a population of 1,823,606 inhabitants. Population rose 1.9% annually between 1980 and 1990. The state has a predominantly young population with 36% of its inhabitants under 15 years of age and only 5% age 65 or older. Consequently, Sonora has the necessary human resources to meet the challenges of future development.⁴⁷²

In the past, the Mexican president could rely on the political process to help diffuse some of the social unrest generated by Mexico's class structure. The Partido Revolucionario Institucional (PRI) has managed to deal effectively with political dissension and threats to the status quo as demonstrated by its handling of the student revolts during the presidential elections of 1966.⁴⁷³ The PRI political machinery has traditionally been stoked by the executive branch of the Mexican government. As the dominant political party, the PRI has used its power to legitimize or delegitimize populist movements. This has been a very effective way of co-opting the ideas of groups that began to gain mainstream acceptance. For example, by bringing the agrarian movement under state control, the government was able to delegitimize the revolutionary fringe by excluding them from participation in labor leadership and was able to legitimize the mainstream factions by incorporating their platform into its agrarian policies.⁴⁷⁴

The PRI's practice of silencing opposition and suppressing populist movements may backfire. By not allowing political discourse to occur in the open, it is forced underground. This is especially true of laborers who have no access to the government other than through the state-controlled union.⁴⁷⁵ Attempts to organize outside this forum subject the organizers to state reprisals. The exclusion of the laborers from the political process during the Porfirian regime exacerbated their alienation from the state and contributed to the incendiary climate that proceeded the insurrection.⁴⁷⁶ The political alienation of significant numbers of Mexican workers could prove disastrous in Mexico because of its current economic condition. Unless the political

472. SONORA MEXICO NOW, SONORA — AN ECONOMIC OVERVIEW 6 (No. 2120, n.d.) (official publication of the State of Sonora to provide information on investment and development opportunities).

473. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 166. The student rebellion was crushed through the use of thugs from Ola Verde, a right-wing vigilante group loyal to Serna, who won the presidency.

474. See STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 125.

475. See MORELOS, *supra* note 57, at 156-65.

476. See *id.*

process is expanded to include those laborer groups whose views place them outside of the mainstream, the state is on a collision course with the growing forces of discontented workers.⁴⁷⁷ This, too, is a lesson of the Porfiriato: "[P]erhaps more important in light of the *campesino* support given to the Madero rebellion, was that the Díaz government was totally incapable of supporting those classes which produced value in society."⁴⁷⁸

The Porfiriato alliance with the *hacendados* helped to seal the fate of his presidency. The Mexican state, too, has sealed its fate by acquiescing to the power of the industrial elite. The power was not surrendered to them; rather, control over the nation's economic policies was wrested away from the state because of a lack of confidence in its economic leadership.⁴⁷⁹ The industrial bourgeoisie flexed their considerable economic muscle and the state blinked, evidenced by their ability to reverse the agrarian reform policies of President Echeverría.⁴⁸⁰ The weak bourgeois class of the Porfirian era has been replaced by a class strong enough to force the state to capitulate to its demands.

The state's loss of control over Mexico's economy places it in a precarious position because the balance of power has shifted. The state's role as paternal protector and benefactor of civil society has been compromised because it does not have the authority to bind all the classes by its actions. Class antagonism cannot be diffused without an arbiter to maintain civil order.

The coalition created in the aftermath of the revolution was based on a balance of power between the classes.⁴⁸¹ This balance of power is sustained by a shared consensus or understanding that each class has the power to initiate a conflict which will end in mutual annihilation.⁴⁸² The role of the strong state has been to maintain this fragile coalition through economic growth, which satisfies the needs of the bourgeoisie, and concessions to populist demands, which appeases the workers.⁴⁸³

The bourgeoisie's control of the economic sphere, to the exclusion of the state, creates an imbalance of power which is manifested as a crisis in leadership. The crisis could take place in a number of ways: (1) by both classes rejecting the leadership of the weak state; (2) by one class withholding its support from the state, which has already occurred except that the ruling

477. See *Opening the Door to Union Democracy in Mexico: 1 Year Later*, NOVEDADES, Apr. 1997, at 1 (reviewing the affect three Supreme Court decisions have had on the right of workers to organize). The author, University of Arizona College of Law Adjunct Professor Anna Torriente, comments that one year after the decisions, "Union democracy in Mexico is still more of a goal than a reality." *Id.*

478. STEVEN SANDERSON, *AGRARIAN POPULISM*, *supra* note 5, at 205.

479. See *id.* at 171.

480. See *id.*

481. See *id.* at 211.

482. This is known as a "Caesarist" coalition. See *id.*

483. See *id.* at 212.

class, for the time being, has given its "conditional" support to the state; and (3) lastly, by the state forming an alliance with one class against the other in order to remain in power. The last scenario was the compromise the Porfiriato made to hold onto power. The unanswered question is whether the state can reclaim its economic authority. Given the state's weak position and traditional affinity with the ruling class, it is doubtful. The workers, weary of government neglect of populist interests, might ultimately challenge the industrial bourgeoisie. Free trade cannot resolve these types of internal conflicts within a nation.

B. The Cultural Crisis Facing Indigenous Tribes in Mexico

1. The Effects of Privatization of Communal Lands: A Case Study of the Chatino Indian Villages in Oaxaca, Mexico

The Chatino Indians in Oaxaca, Mexico do not live on reservations; rather, they have organized themselves into distinct Indian communities.⁴⁸⁴ In 1988, there were 30,000 Chatino living in twenty-three Chatino villages.⁴⁸⁵ The government structure of these communities, which had been imposed on them by Mexico, consists of *municipios* (counties) and *agencias* (towns).⁴⁸⁶ The civil officials elected in the *agencias* are confirmed by the *presidente municipal* (mayor) and are accountable to him.⁴⁸⁷ The *presidente municipal* normally names a non-Indian secretary for the *agencia* to serve as a sort of "cultural broker."⁴⁸⁸ The secretary facilitates and regulates the integration of the Chatino village into the dominant culture, through such functions as collection of taxes and the administration of justice.⁴⁸⁹

The State of Oaxaca is divided into thirty districts, each with a district capital.⁴⁹⁰ The Chatino villages are politically divided between two districts: Juquila and Sola de Vega.⁴⁹¹ Mestizos, individuals of mixed heritage, run seventeen of the twenty-one Chatino villages through the manipulation of the *agencias* or *municipios*.⁴⁹² The remaining villages are designated as "free" *municipio*, although they too are subject to indirect control by mestizos.⁴⁹³

Indian traditions permeate the organization of local government.⁴⁹⁴ Constitutionally mandated posts permit men to alternate ranked religious posts

484. See Greenberg, *supra* note 436, at 70.

485. See *id.* at 71.

486. See *id.* at 70.

487. See *id.*

488. See *id.*

489. See *id.*

490. See *id.*

491. See *id.* at 71.

492. See *id.*

493. See *id.*

494. See *id.*

with civil posts over the course of their life.⁴⁹⁵ Men who have completed this ladder become elders of the community.⁴⁹⁶ The committee of elders has veto power over the civilian government and can force insubordinate elected officials to resign.⁴⁹⁷ Although the Chatino system of dispute settlement conflicts with the Mexican-imposed system of government, the Chatinos continue to rely on their traditional ways.⁴⁹⁸ The Chatinos' distrust of the non-Indians who control their communities further limits their access to political power.⁴⁹⁹ The fact that the Chatinos are not geographically isolated within Mexico but are in "theory" part of its pluralistic society presents unique challenges.⁵⁰⁰

Violence had become endemic in Chatino villages and disputes over the private uses of communal land was usually the flashpoint.⁵⁰¹ The process of privatization of Chatino communal lands began during the 1930s-1950s, a time when Mexico was experiencing an economic boom because of World War II.⁵⁰² There were shortages of food stuffs, like sugar and coffee, in nations all over the globe because of the war. North American growers enlisted Mexican growers to help meet the rising demand for coffee on the international market.⁵⁰³ Mexican growers enticed *campesinos* to grow coffee on their lands by offering them low-interest loans.⁵⁰⁴ Mestizo farmers were the first to grow coffee in the district, but after 1948, when the price of coffee on the international market began to soar, the Chatino leadership could not stop the introduction of coffee to communal lands.⁵⁰⁵ The first reports of coffee being planted on Indian lands began in 1949 in the village of Yaitepec.⁵⁰⁶

The introduction of coffee as a cash crop to the Indian communal lands had profound social consequences.⁵⁰⁷ The planting of traditional crops like corn, beans, and squash were suited to a collective system of land ownership.⁵⁰⁸ The slash-and-burn method of cultivation was used to grow these staple crops.⁵⁰⁹ The slash-and-burn method of cultivation restricts productive use of the land to two to three years; thereafter, the land is left fallow for up

495. *See id.*

496. *See id.*

497. *See id.*

498. *See id.* at 73.

499. *See id.*

500. *See id.*

501. *See id.* at 85-88.

502. *See id.* at 90.

503. *See id.*

504. *See id.*

505. *See id.*

506. *See id.*

507. *See id.*

508. *See id.* at 91.

509. *See id.*

to three years.⁵¹⁰ Conversely, the planting of coffee is an almost permanent investment in the land because coffee trees do not typically begin to produce until the fifth year and can remain productive up to 100 years.⁵¹¹ The planting of coffee, consequently, is inconsistent with the traditional cultivation cycle and uses of communal lands.⁵¹²

In addition, coffee only grows in a temperate climate and in areas with natural shade because its leaves burn in the sun.⁵¹³ Only a few hectares of communal lands in all of the Chatino villages possess the characteristics necessary to grow coffee, and these lands are at a premium.⁵¹⁴ The concentration of coffee plots in the hands of a few families is a source of resentment among those tribal members who have been dispossessed of these lands, and, concomitantly, the profits.⁵¹⁵ These resentments create social tensions that erupt in violence. Sometimes these predominantly clan or family confrontations turn into intra-tribal disputes which can divide barrios and villages.⁵¹⁶ Moreover, land in the Chatino culture is sacred; it is a sacred trust given to them by their gods.⁵¹⁷ This adds a dimension to land conflicts between Chatino Indians that non-Indians may not understand;⁵¹⁸ that is to say, preservation of communal lands is sometimes associated with protecting the sacredness of the land.⁵¹⁹ As one Chatino writer stated:

For us, things should be collective. What we have learned, for example, is that the land was given to the community and not to individuals by the gods. That is why it was worked in common and no one felt they were the owner of the land they worked. Moreover, it is our belief that there is not just one god, but many, and among them all, they collectively created the things they give.⁵²⁰

It is unclear whether tribal members who own coffee plots view the land as being less sacred than those who own no coffee lands. It appears, in any case,

510. *See id.*

511. *See id.*

512. *See id.*

513. *See id.*

514. *See id.* By 1960 the communal lands in Yaitepac had become privately owned by a handful of people. *See id.*

515. *See id.* According to Greenberg, a review of 1973 property tax assessment rolls indicate the bottom stratum of the tribes controls less than 3% of the coffee plots while the upper 10% controls 67% of the coffee plots. Given the loss of the coffee plots for traditional production purposes, the land holding inequities are more significant: 10% of the Chatino control 47% of the tribes arable lands. *See id.* at 92.

516. *See id.* at 93.

517. *See id.*

518. *See id.*

519. *See id.* at 92-93.

520. *Id.*

that the conflict over privatization of communal lands is more deeply rooted in class antagonism and race-based divisions than religious doctrine.⁵²¹

2. Surviving the Threat of a Cultural Meltdown: Preserving the Cultural Identity of Tribes

The privatization of Chatino communal lands signaled the onset of a major cultural shift. Through a process called cultural diffusion, traditional Chatino values had been supplanted by those of the dominant culture. Cultural diffusion usually entails replacement of the cultural traits of a weak group with those of a dominant group.⁵²² Since Indians have historically been the most economically and socially marginalized groups within Mexico, cultural diffusion poses a special threat to them.⁵²³

Cultural diffusion was at one time a matter of Spanish colonial policy.⁵²⁴ It was used as a tool of social control;⁵²⁵ that is to say, the destruction of indigenous cultures was viewed as an acceptable means of securing and maintaining control over subjugated populations. The culture of Indian tribes throughout Mexico took on Western attributes as a result of this forced inculcation. The magnitude of the cultural loss to indigenous people may never be known because the diffusion of Western culture throughout the world has operated like a giant eraser, eliminating the memory of what was and the ability to understand it even if remembered. As one African writer, in support of her arguments on the source of African customary law, explained: "Through the years, there has been a diffusion of cultural elements and ideas as various parts of the world have become inter-connected. Colonial expansion diffused the legal traditions of Western Europe so much that Western legal models have influenced most attempts to systematize and conceptualize legal norms."⁵²⁶ Cultural diffusion is not, however, restricted to situations of political aggression or cultural dominance. It also occurs, to a lesser degree, whenever diverse social groups interact over extended periods of time.

521. *See id.* at 94-95.

522. *See generally* OLMEC TO AZTEC SETTLEMENT PATTERNS IN THE ANCIENT GULF LOWLANDS 3 (Barbara L. Stark & Philip J. Arnold III eds., 1997) (an excellent example of cultural diffusion as evidenced by anthropological surveys of precolumbian Indian settlements in Mesoamerica).

523. *See generally* ROBERT BERKOFER, JR., THE WHITE MAN'S INDIAN 62 (1978) (discussing cultural anthropology and the modern conception of Indians).

524. *See, e.g.*, BORAH, *supra* note 10, at 6-24 (reviewing the policies regarding the assimilation of native populations into Spanish judicial system). According to Borah, these policies had broader application and reveal the pattern of diffusion of native cultures upon conquest was deliberate. *See id.*

525. *See, e.g., id.* at 25-40 (reviewing the process of cultural diffusion or absorption of the Aztec after Spanish conquest).

526. L. Amede Obiora, *Reconsidering African Customary Law*, 3 LEGAL STUD. F. 217, 217-18 (1993).

The Chatino conflict over land is a manifestation of an underlying cultural crisis. It is a crisis common to other Mexican tribes and one critical to their survival. Simply stated, the tribes must figure out how to adapt to the social and cultural demands of Mexico without losing their cultural identity.

Living in the shadow of the United States means that Mexican citizens are bombarded with images of Western materialism. The generally impoverished tribes of Mexico do not have the resources to create culturally based alternatives that can provide individual members with the economic security or prosperity they desire. The inability of Indian tribes to provide more than subsistence living to most of their members aids in the process of cultural diffusion. By excluding Indian tribes from full participation in Mexican society, the *criollo* majority has ensured its continued cultural dominance.

Even those individuals who choose to pursue the gilded dream of the West discover there are few social, economic, or political avenues open to them. This is due in large part to the labeling of Indians as the "undesirable other" in Mexican society. This label stigmatizes the Indians of Mexico much the same way it does African-Americans in the United States. The white majority, or the *criollo* majority in the case of Mexico, uses the label to make it socially acceptable, though not necessarily legally acceptable, to discriminate against the "undesirable other."⁵²⁷

Although the process of cultural diffusion, as it relates to the Indian tribes of Mexico, is at work constantly, a tribe's identity can remain intact even if substantial cultural changes occur. So long as the cultural core or the "resident suchness" of a tribe is not lost, it can survive the onslaught of cultural diffusion. Once the cultural core has been breached, however, social disintegration soon follows. For example, land was critical to the Chatino cultural identity. Consequently, the loss of this core value — i.e., the communal ownership of land — destabilized the tribe and triggered a "cultural meltdown." Yet given the historical resiliency of the tribes of Mexico, they ought to be able to survive even the loss of communal lands.

The Chatino experience with privatization of communal lands demonstrates that the external influences of capitalism and the lure of individual profits pose a substantial threat to the preservation of cultural traditions. In a nation of mostly landless people, land has a very market high value — a fact that must be recognized by tribal councils. Considering the tremendous economic pressures Mexico faces now and in the future, its economic policies will continue to favor production methods and land uses inconsistent with a communal system of production. The privatization of communal lands throughout Mexico is inevitable. The Indian tribes in Mexico must either adopt economic strategies that will promote the most profitable uses of their

527. See generally Kimberle Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

lands, even if this means breaking with tribal traditions, or face the prospect of a landless future.

As the new millennium approaches, tribal councils must begin to adapt to the social, political, and economic environment of Mexico. By breaking through the self-imposed barriers of isolation, the Chatino, and other tribes in Mexico, can then begin to eliminate the external barriers of racism, poverty and political disenfranchisement.

Conclusion

Resurrecting the ghost of Porfirian economics is a consequence of bringing free trade to a region, like Mexico, where class divisions and monopolistic tendencies create an unstable economic environment in which to do business. Americans, in particular, seem to operate under the misguided belief that developing and less-developed countries can improve their economic conditions by simply adopting Western economic models. Mexico has traditionally followed the United States' lead in terms of its economic policies but has achieved only mixed results. This is attributable to the fact that the significant cultural differences between the United States and Mexico dictate economic models transplanted south of the border be modified to accommodate these differences. Sometimes, even with alteration, Western models are ill-suited for transference to Mexico. Free trade falls into this latter category. Simply stated, free trade is an exciting prospect for countries like the United States, whose well-developed economy and stable social structure make it highly competitive in an open international market. Mexico is situated differently. It has a weak economy and an unstable social structure which makes it vulnerable to the unpredictable forces of the international market.

NAFTA's chance for success in Mexico depends upon the ability of the three governments (Mexico, Canada, and the United States) to neutralize the forces which are responsible for its underdeveloped domestic market. One of the chief impediments to a well-extended internal market has been Mexico's inability to develop a true free enterprise system. In other words, Mexico, because of its history of monopolies, does not have a financial infrastructure which promotes open competition. The lack of free competition in the domestic market makes it highly improbable that free trade will take hold in the Mexican business culture.

The following recommendations focus on the steps needed to facilitate the development of free enterprise in Mexico:

- Assert international pressure, through organizations like the International Monetary Fund, on the Mexican banking industry to adopt commercial lending policies that promote small business development.

- Encourage the Mexican government to adopt measures, perhaps through reform of existing tax schedules, which will make investment in smaller commercial enterprises more appealing.

— Encourage the government to enact, implement and enforce a more stringent anti-trust regulatory scheme to curtail the growth of monopolies.⁵²⁸

These recommendations, however, cannot effectuate significant change in the way Mexicans "do business" unless the industrial bourgeoisie are willing to change the status quo. Should they miss the window of opportunity for constructive change during the early stages of NAFTA, the prospect of civil unrest looms on the horizon.

The status of indigenous peoples in Mexico is not a burning issue for the Mexican government until there is a crisis. Despite the existence of a federal department to oversee the concerns of indigenous peoples, the Mexican government's Indian policies are shortsighted and inadequate. There is a critical need for an Indian political movement in Mexico. If conditions are to improve for them, Indian tribes must become politically empowered. Consequently, the following recommendation is vital:

— Provide indigenous peoples with a political mechanism for fuller participation in government decisions affecting their cultural integrity and right of self-determination.⁵²⁹

Without a strong Indian voice in Mexican politics, free trade will do little to improve their plight. If anything, the precarious status of Indians within the Mexican economy makes them particularly vulnerable to the market fluctuations that will undoubtedly occur once the borders of Mexico are open to free trade.⁵³⁰ It will take organized political action for indigenous peoples to survive in the post-NAFTA era.

528. See also Kozolchyk, *supra* note 433, at 11 ("Despite an official prohibition of private sector monopolization in a 1934 statute, monopolization and price fixing have continued to be facets of Mexican commercial and legal life. As is apparent to any observer of Mexico's marketplace, far from discouraging monopolies, Mexico's 1934 anti-monopoly law encouraged price fixing and governmental market intervention while it discouraged imports.").

529. The Zapatistas have made similar demands upon the Mexican government. See, e.g., *V Declaration of the Lacandon Jungle* (visited Mar. 4, 1999) <<http://www.ezln.org/archive/quinta-lacandona-eng.html>> (a public communique which provides an overview of the conflict between Mexico and the Zapatistas and summarizes a revolutionary manifesto).

530. See generally Pamela Hartman, *Tucson Group Aims to Help as Third World Gets Poorer*, *TUCSON CITIZEN*, Mar. 2, 1998, at 3B (reporting that a gathering of NGOs is concerned about the growing impoverishment of communities in Latin America because of "neo-liberal" global economic policies).