

Indigenous Lands and International Trade: A Look into a Failed Relationship Between Indigenous Mexican Communities, NAFTA, and Trade Liberalization

By Kerry McGuire*

A familiar American narrative around economic growth and financial success relies on an individual or company's ability to engage in free trade, whether domestically or internationally. The abilities to freely contract and negotiate are foundational to American business.¹ Despite the intertwined history of Mexico and the United States, Mexico did not develop with the same reverence for these ideals. Prior to colonization, indigenous peoples could travel freely without a border. Unlike the United States and perhaps due to sheer population density at the arrival of the Conquistadors, Mexican indigenous groups largely maintained their cultural identities without a geographic shift.² Revolution came much sooner for the United States, and with it, the United States government imposed its own definition of property rights and placed American indigenous groups in designated lands. Mexico's Revolution followed more than a century later with a distinct rallying cry that relied on the mixed race identity of Mexicans – indigenous and Spanish – to unite the country.³ When Mexico wrote its first Constitution, this identity was reflected in the protective property rights afforded to indigenous groups in the form of the *ejido*.⁴ The *ejido* consisted of a tract of land for

1. See, e.g., *E. Allgeyer & Co. v. Louisiana*, 165 U.S. 578, 579.

2. William D. Signet, *Grading a Revolution: 100 Years of Mexican Land Reform*, 16 L. & BUS. REV. OF THE AMERICAS, 481, 494 (2010) (quoting former leader Jose de la Cruz Porfirio Diaz, “the indigenous, who are more than half of our population” in the late 1800s, hundreds of years after Spanish colonization); *id* at 496 (describing the *ejido* as a tool for indigenous and mestizo groups).

3. See Signet, *supra* note 2, at 496 (ensuring land for the significant indigenous and mestizo populations who played a role in the revolution).

4. David D. Spencer & Fernando Rivadeneyra, *Some Case Studies of Joint Ventures with Mexican Ejidos*, 6 U.S. – MEXICO L. J., 99, 101 (1998) (stating that “cultivation was prohibited” and much of the desirable land

which a group of persons could apply to own communally.⁵ Generally, *ejidatarios* (members of the *ejido*) farmed their individual tracts and arrived at an agreement for the joint usage of any remaining land.⁶ Despite responsibility for individual tracts of land, *ejidal* rules required approval from the *ejido* at large for many decisions.

The *ejido* created highly regulated, communal property rights.⁷ As modern international relations led to countries working together more closely and trade becoming more globalized, the *ejidos* proved to be a stumbling block to modern Mexico's desired goal to liberalize trade and emulate the United States.⁸ In the early 1990s, Mexico entered the North American Free Trade Agreement (NAFTA) with the United States and Canada.⁹ Entering this agreement forced a number of changes to the Mexican property laws and an end to the *ejido*.¹⁰ Now, *ejidos* face a choice: function as they always have, or privatize as an *ejido* and create an opportunity to engage in foreign or domestic trade. The result of facing this choice is a destabilization of the *ejido* and, potentially, a slow dispersal of the groups inhabiting the *ejido* – many of which managed to maintain their native language and cultural identity after hundreds of years of colonization and another century of modernization.¹¹ Mexico risks losing this invaluable cultural heritage by failing to protect the *ejidos* and not providing viable alternatives.

This note seeks to understand how the influence of NAFTA and trade liberalization directly affected indigenous

remained in Spanish control).

5. See generally, Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.) §7, art. 27

6. *Id.*

7. See Spencer, *supra* note 4, at 102

8. Adriana De Aguinaga, *The New Agrarian Law – Mexico's Way Out* 24 ST. MARY'S L. J. 883, 889 and 898 (1993).

9. NAFTA, NAFTA NOW, available at <http://www.naftanow.org/>

10. See De Aguinaga, *supra* note 8, at 898.

11. See, e.g., M. Bianet Castellanos, *Don Teo's Expulsion: Property Regimes, Moral Economies, and Ejido Reform*, 15 THE JOURNAL OF LATIN AMERICAN AND CARIBBEAN ANTHROPOLOGY, 144 (2010); Saul Ruiz, "Cuando muramos, morirá el idioma" [When we die, the language will die], EL PAIS (Sep. 23, 2014), http://cultura.elpais.com/cultura/2014/09/22/actualidad/1411404288_888925.html (citing the impending extinction of indigenous languages in Mexico due to internal migration and the changes in structure of the Mexican economy).

communities. Section I will discuss the relevant background of the *ejido* and trade liberalization in Mexico, including the origin of the *ejido* and the policies of NAFTA. Section II will look at which precise policies and practices from these changes in the 1990s affect *ejidos*, and what their impact has been over the past 20 years. It will examine this impact more closely within one particular *ejido* in the state of Quintana Roo, Mexico. This note concludes that not only do NAFTA and trade liberalization have a negative impact on these communities, but also that the Mexican government has not put enough structures in place to support these communities.

I. BACKGROUND

A. CREATION OF THE *EJIDO*

The idea of the *ejido* originated in pre-Colombian societal structures in which communities large and small shared responsibility for the fruits of the same land.¹² European conquest of the Americas brought a dramatic change to this shared ownership. Spanish colonization removed control of the land from the indigenous habitants, a change not undone until the Mexican Revolution.¹³ Under Spanish rule, indigenous persons no longer held any property rights but continued to work the land much like serfs in a feudal system.¹⁴ The Spanish government created an *ejido*-like system which allowed some shared ownership of land, but it remained heavily regulated by the Spanish government.¹⁵

The Mexican Revolution brought about a number of major changes for rural indigenous communities.¹⁶ The newly signed Constitution provided for the redistribution of land into *ejidos* under a community's control, while restricting how the land could be used.¹⁷ The Revolutionaries saw these restrictions as a

12. See Signet, *supra* note 2, at 489.

13. *Id.* at 484.

14. *Id.* at 484–87.

15. Spencer, *supra* note 4, at 101 (stating that “cultivation was prohibited” and much of the desirable land remained in Spanish control).

16. See *id.* at 101 (the revolutionaries sought to restore land ownership to indigenous communities – those without significant Spanish heritage – which resided in rural areas with less desirable lands).

17. See Constitución Política de los Estados Unidos Mexicanos, *supra* note 5, at art. 27 § 7 (establishing a governing body for each individual *ejido*); *id.* at art. 27 § 17, 19 (providing for grants of land in fee tail, especially with an eye

temporary measure which would allow indigenous communities to return to pre-colonization self-sufficiency and eventually live in discrete communities, preserving each group's unique cultural patrimony.¹⁸ Shortly after 1917, large swaths of Mexican land became *ejidos* through redistribution or petition from an organized community.¹⁹ The fee-tail system continued for over eighty years with few significant changes to the government's regulation of *ejidos*.²⁰ Rather than move towards a model in which indigenous communities existed independently and without the protection of the *ejido*, regulations affecting the land holdings grew,²¹ along with the number of *ejidos*.²²

By the 1960s, *ejidos* held a majority of Mexican agricultural land, and the government continued to grant new parcels to groups applying for them.²³ Despite the growth in the number of *ejidos*, the Mexican government did not lift or modify restrictions on *ejidos*. The government did not permit *ejidatarios* to access credit through private or state-run banks nor lease land to outsiders who were not formally members of the *ejido*.²⁴ These restrictions on access to credit and alienability restricted the ability of indigenous land-holders to act in their community's interest and forced reliance on subsistence level farming with little to no room for advancement in farming techniques.²⁵

towards protecting indigenous communities, and restricting alienability of the land).

18. Spencer, *supra* note 4, at 102.

19. Antonio Azuela, *Property in the Post-Post-Revolution on the Crisis of the Constitutional idea of Property in Contemporary Mexico*, 89 TEX. L. REV. 1915, 1917 (2011) (granting nearly 50 percent of the country's national territory).

20. Signet, *supra* note 2, at 516 (describing one of the few changes in which the average land size proscribed by law grew in 1942 and 1947 so that each person would be able to produce the equivalent of two days wages in one day).

21. Constitución Política de los Estados Unidos Mexicanos, *supra* note 5, at art. 27 (granting *certificados de no afectación* (certificates of non-expropriation)).

22. Signet, *supra* note 2, at 521–22.

23. *Id.* at 483 n. 7 (holding nearly 50% of Mexico's agricultural land, the ejidal lands contributed only four percent of agricultural production).

24. Constitución Política de los Estados Unidos Mexicanos, *supra* note 5, at art 43–62 (preventing ejidatarios from using land holdings as securities or alienating the land in any way).

25. See Signet, *supra* note 2, at 517.

B. TRADE LIBERALIZATION IN MEXICO

Beginning in the 1980s, the Mexican government sought to mitigate the impact of what was seen as a failed policy, because it depended upon “uneconomically small, undercapitalized farms.”²⁶ Mexico looked to liberalization of its trade and land policies in order to address its relatively stagnant economy.²⁷ The North American Free Trade Agreement presented an opportunity for the country to modernize and form new partnerships quickly.

1. The Agrarian Law of 1992

The Agrarian Law of 1992 changed regulations of the *ejido* significantly.²⁸ These modifications took place shortly before Mexico entered NAFTA with the United States and Canada, and Mexico enacted them in order to bring its trade regulations in accordance with the pending agreement.²⁹ The new changes allowed for alienation of land either by individual ejidatarios or by an entire *ejido* through a decision of all members of the *ejido*.³⁰

26. Ronald H. Schmidt & William C. Gruben, *Ejido Reform and the NAFTA*, FRBSF WEEKLY LETTER, Vol. 92-34 (1 Oct. 1992), available at <http://www.frbsf.org/economic-research/files/el92-34.pdf>.

27. *Id.* at 1 (“Mexico has unilaterally attempted to restructure its economy by allowing free markets to operate in areas where government intervention had dominated, as well as by deregulating other industries.”).

28. See generally *Ley Agraria* [LA] [hereinafter *Agrarian Law*], as amended, art. 46, Diario Oficial de la Federación [DO], 26 de febrero de 1992 (Mex.) (permitting individual ejido holders to enter transactions with third parties, to use ejidal land as collateral for a limited period of time, and potentially sell or transfer land to previously prohibited third parties).

29. The Agrarian Law was passed in 1992, and NAFTA did not officially go into effect until 1994. See Signet, *supra* note 2, at 523-24; Agrarian Law, *supra* note 28, at art. 46.

30. Agrarian Law, *supra* note 28, at art. 46 (allowing for free entry into agreements by members of the *ejido*, but still restricting with whom they may negotiate. Individual land may be used as collateral, but *ejidatarios* may not fully mortgage their land, rather they may lend it for a number of years. Relatives and other members receive a right of first refusal when the ejidatario attempts to sell the land: “En caso de incumplimiento de la obligación garantizada, el acreedor, por resolución del tribunal agrario, podrá hacer efectiva la garantía de las tierras hasta por el plazo pactado, a cuyo vencimiento volverá el usufructo al núcleo de población ejidal o al ejidatario según sea el caso.” [In the case of a failure to complete a warranted obligation, the creditor, by resolution of the Agrarian magistrate court, will be able to enforce the guarantee up until the date listed in the agreement, at whose

While the land is not freely alienable, the 1992 Agrarian Law demonstrates a marked change from previous restrictions.³¹ The NAFTA negotiations envisioned a new law which had the potential to encourage foreign and private investment in Mexico, and the law itself allowed new, extended access to the *ejidos* by both state run banks and private entities.³² Effectively, the passage of the law moved these grouped landowners from rural isolation without access to modern credit schemes to modernization overnight.³³

2. The North American Free Trade Agreement (NAFTA)

Beyond the negotiations which led to the 1992 Agrarian Law and subsequent changes to the *ejidal* system, NAFTA created commitments between Mexico and both Canada and the United States.³⁴ The participating countries could not anticipate its effects at the time of signing and expected some mixture of beneficial and harmful ramifications.³⁵

expiration, the usufruct will return to the nucleus of the ejidal population or to the ejidatario if that may be the case.)).

31. See Spencer, *supra* note 4, at 103 (discussing the use of future products of an ejido as collateral); see generally Willem Assies, *Land Tenure and Tenure Regimes in Mexico: An Overview*, 8 J. OF AGRARIAN CHANGE, 33 (Jan. 2008); Agrarian Law, *supra* note 28, at art. 46.

32. De Aguinaga, *supra* note 8, at 894. .

33. See, *id.* at 894. See generally Ley de Vivienda [Housing Law], *as amended*, Diario Oficial de la Federación [DO], 27 de Junio de 2006 (Mex.) (allowing access by state run funder INFONAVIT (Instituto del Fondo Nacional de la Vivienda para Los Trabajadores) [Institute of the National Fund for Worker Housing]); Ley Hipotecaria [Mortgage Law], *as amended*, Diario Oficial de la Federación [DO], 8 de Febrero de 1946 (Mex.) (accessing rural *ejido* communities for the first time and establishing SOFOLES (Sociedades Financieras de Objeto Limitado [Limited Purpose Financial Partnerships]) which are able to provide funding to ejidal lands); Ley de Inversión Extranjera [Foreign Investment Law] *as amended*, Diario Oficial de la Federación [DO], 27 de Diciembre de 1993 (Mex.) (allowing foreigners to own up to 49% in shares in a corporation which holds agricultural, ranching or forested lands which may belong to an *ejido*).

34. See generally, Canada-Mexico-United States: North American Free Trade Agreement, Dec. 17, 2012, 32 I.L.M. 289 (1993) [hereinafter NAFTA] (outlining multilateral commitments between Canada, Mexico, and the United States).

35. Kevin Foster & Dean C. Alexander, *The North American Free Trade Agreement and the Agricultural Sector*, 27 CREIGHTON L. REV. 985, 1011 (1994) (concluding an analysis of NAFTA and its potential effects) ; see also, Johnathan Foley, *It's Time to Rethink America's Corn System*, SCIENTIFIC AMERICAN, Mar. 5, 2013 (discussing subsidies and NAFTA's quotas for American corn exports).

The agricultural components of this agreement eliminate tariffs on a variety of products while maintaining taxes on certain producers.³⁶ *Ejidal* exports are among those exempt from tax.³⁷ *Ejidos* remained underdeveloped due to the lack of access to credit before the 1992 Agrarian Law; this tax incentive created an ability to negotiate and engage in foreign investment in *ejidal* lands.³⁸ However, the preference for arbitration in disputes under NAFTA can create difficulties for an unsophisticated indigenous complainant.³⁹ NAFTA does not eliminate the *ejidos*, but the treaty affects them in many ways, not all for the better.⁴⁰

C. THE *EJIDO* IN POST-NAFTA MEXICO

The reforms of the early 1990s reveal Mexico's intentions to open up to American and Canadian trade without destroying the *ejido*.⁴¹ Currently, a number of *ejidos* engage with foreign investors to varying results.⁴² The pervasive idea among *ejidos*,

36. See De Aguinaga, *supra* note 8, at 898–900 (outlining agriculture under NAFTA and its tax exemptions).

37. *Id.* (applying these same exceptions to corn producers).

38. See Spencer, *supra* note 4, at 104–05; Steven E. Hendrix, *Property Law Innovation in Latin America with Recommendations*, 18 B.C. INT'L & COMP. L. REV. 1, 35 (“Joint ventures between private investors and *ejidatarios* have sprung up throughout Mexico.”).

39. See De Aguinaga, *supra* note 8, at 899 (“To solve commercial disputes for these products, the three countries will establish a private mechanism.”); Signet, *supra* note 2, at 482 (“In the sixteen years in which private investors have been able to bring claims for discriminatory or unfair behavior against the three signatories of the North American Free Trade Agreement (NAFTA), not a single claim against Mexico based upon unfair deprivation of land ownership has even been arbitrated, much less won.”).

40. See, e.g., Jane Hindley, *Review-Transforming Rural Mexico: Reforming the Ejido Sector*, 34 J. OF LATIN AM. STUD. 762-764 (2002).

41. See Wesley R. Smith, *Salinas Prepares Mexican Agriculture for Free Trade*, HERITAGE FOUND. (Oct 1, 1992), <http://www.heritage.org/research/reports/1992/10/bg914nbspsalinas-prepares-mexican-agriculture>; see generally THE POLITICS AND ECONOMIES OF REFORMING THE EJIDO SECTOR IN MEXICO: AN OVERVIEW AND RESEARCH AGENDA, 13 (Wayne A. Cornelius & David Myhre eds., 1998) (discussing the effect of Article 27 reforms on the ejido sector).

42. See Spencer, *supra* note 4, at 107 (describing the slow process of negotiating with *ejidos* complicated by the *ejidatarios*' remote locations, lack of access to modern technology, and mistrust of Americans in a position of power); La Superficie de Ejidos y Comunidades de México, Más Grande que Algunos Países [The Area of Ejidos and Communities in Mexico, Larger than Some Countries] Apr. 22, 2012, SECRETARÍA DE DESARROLLO AGRARIO, TERRITORIAL Y URBANO [SECRETARY OF AGRICULTURAL, TERRITORIAL AND

that land ownership is necessary to maintain wealth, has caused a sense of uneasiness to accompany any instances when land is allowed to leave the *ejidatarios'* control. This, in turn, has had an influence on a variety of foreigners' Mexican ventures, such as limiting sales of crops to an investor, to leasing out large swaths of land to investors.⁴³

Many of the structural changes intended to reach the *ejidos* and empower them to engage in international trade have not created the opportunities the government sought.⁴⁴ A number of government programs still have a greater presence in suburban and urban areas than rural areas, affecting any entity's ability to reach rural farmers.⁴⁵ More recent governmental policies tend to favor urban areas due to the ability to attract workers into cities and support industry in that particular city.⁴⁶ Risk of a financial crisis resulting from these factors has led to internal migration and other stresses.⁴⁷ The resulting internal migration draws many rural residents, including indigenous *ejidatarios*, to urban life, in the hopes of a higher salary and a greater quality of life.⁴⁸

URBAN DEVELOPMENT] ("A 20 años de dicho reparto, sólo el 2.5 por ciento de la propiedad de ejidos y comunidades ha adoptado el dominio pleno, es decir, transitado de la propiedad social a la privada." [Twenty years after the law passed, only 2.5 percent of ejidal land and communities have adopted the fee simple, in other words, transition from communal property to private.]) (translated by Kerry McGuire).

43. Spencer, *supra* note 4, 104 ("Most *ejidatarios* believe that land, in effect, is all they have.").

44. See generally James Barsimantov et al., *Tenure, Tourism and Timber in Quintana Roo, Mexico: Land Tenure Changes in Forest Ejidos After Agrarian Reforms*, 4 INT'L J. COMMONS 293 (2010).

45. See generally Carlos Aiza Haddad, *The Securitization of Assets in Mexico*, 7 U.S.-MEX. L.J. 141, 143 (1999) (explaining the role of SOFOles which tend to be the most prevalent government-related funding option in rural *ejidal* areas); Paavo Monkkonen, *Housing Finance Reform and Increasing Socioeconomic Segregation in Mexico*, 36.4 INT'L J. URB. & REGIONAL RES. 757, 760 (2012) (explaining that most major building expansion has occurred in the suburbs of large cities rather than rural areas); Kirsten Appendini, *Interpreting Property Rights from Below: The Case of the Procede Program, Mexico*, NEW LATIN AMERICAN DEVELOPMENT STRATEGIES IN A CHANGING INTERNATIONAL AND POLITICAL CONTEXT (May 20-22, 2008), http://www.hum.aau.dk/~institut12/Konferencer/Latinamerika%20Maj%202008/Papers_powerpoints/Kirsten%20Appendini.pdf.

46. See generally Monkkonen, *supra* note 45, at 769.

47. See generally Richard C. Jordan, *Will the Bubble Burst? Some Subprime Lessons for Mexico, Latin America's Leader in Asset Securitization*, 42 INT'L LAW. 1181, 1195 (2008).

48. See generally *id.*; Eric P. Perramond, *The Rise, Fall, and*

The migration of residents destabilizes communities such that many residents are concerned for the future viability of their own customs and languages.⁴⁹ The diversity of Mexico's indigenous communities means that many languages exist in small communities and *ejidos*; the emigration of *ejidatarios* may signify the end of a particular language.⁵⁰ This fear results in the ejection of some *ejidatarios* from their individual landholdings by the *ejido* after taking advantage of new rights provided for by the Agrarian Law or forced to migrate internally to Mexico's major cities or externally to the United States.⁵¹ The continued, strained interaction of *ejidal* and governmental policies creates a series of factors making the future of the *ejido* and indigenous groups uncertain.⁵²

D. A NOTE ON "WESTERNIZATION"

In this discussion, the term "westernize" (and "westernization") will be employed to a certain extent. The term itself is often used broadly to incorporate both causal and correlative ideas relating to what are considered to be the "industrialized" countries.⁵³ The term western as used here

Reconfiguration of the Mexican Ejido, 98 GEOGRAPHICAL REV. 356 (2008).

49. See generally Jan Martínez Ahrens, "Cuando muramos, morirá el idioma" [The Race to Save Mexico's Dying Languages], EL PAIS (Sep. 23, 2014), http://elpais.com/elpais/2014/09/23/inenglish/1411484950_125474.html (citing the impending extinction of indigenous languages in Mexico due to internal emigration); Leah Chavla, *Land Tenure and Human Rights Situation of Indigenous Peoples in Mexico*, HUMAN RIGHTS BRIEF (Apr. 6, 2011), <http://hrbrief.org/2011/04/land-tenure-and-human-rights-situation-of-indigenous-peoples-in-mexico/>; M. Bianet Castellanos, *Constructing the Family: Mexican Migrant Households, Marriage, and the State*, 35 LATIN AM. PERSP. 64 (2008); Stephen Lewis, *¡Zapata Lives! Histories and Cultural Politics in Southern Mexico* by Lynn Stephen, 45 LATIN AM. POL. & SOC'Y 185 (2003) (book review).

50. See, Saul Ruiz, *supra* note 49 (discussing the persistence of a large and varied number of indigenous languages).

51. See M. Bianet Castellanos, *Don Teo's Expulsion: Property Regimes, Moral Economies, and Ejido Reform*, 15 J. OF LATIN AM. AND CARIBBEAN ANTHROPOLOGY 144 (2010) (telling the story of an *ejidatario* in the state of Yucatan who was voted out by his *ejido* after electing to use his land as collateral in order to support new industry on *ejidal* land); Miryam Hazán, *Sustainable Jobs and Emigration: Drawing Mexico's Responsibility in Immigration Reform*, 16 L. & BUS. REV. AM. 697, 722 (2010).

52. See, Laura Carlson, *Under NAFTA, Mexico Suffered, and the United States Felt its Pain*, NEW YORK TIMES, (Nov. 4, 2011).

53. See generally, Holning S. Lau, *The Language of Westernization in Legal Commentary*, 61 AM. J. COMP. L. 507, 512-13 (2013). (discussing the

specifies the influence of the United States on the relationship between the United States and Mexico. Western European countries colonized both countries.⁵⁴ However, the state of property rights and economic policies in the United States and Mexico were substantially different in the 20th century.⁵⁵ Additionally, when the Constitution was drafted, indigenous peoples constituted a significant portion of the Mexican citizenry.⁵⁶ This identity seemingly contributed to the preservation of indigenous land rights and the creation of the near-autonomous ejido.

The United States was heavily influential in designing Mexico's new land use policies prior to Mexico entering the NAFTA.⁵⁷ At that point in time, the ability to freely alienate was less pervasive in Mexico. Westernization in this note focuses on the influence of the United States on Mexican policies around land and affecting indigenous landholdings. Major American financial institutions spearheaded these

utilization of "western" in a variety of disciplines and how it can deprive further discussion).

54. See generally, Signet, *supra* note 12.

55. See *supra* note 12 (discussing how Mexico's revolutionary war led to a post-war effort to secure indigenous rights, how despite centuries of oppression, many of Mexico's indigenous communities remained intact, and some never came under the control of the colonists). See also, Maria Consuelo Sanchez Gonzalez, *Gender and Natural Resources: Maya Women and the Agrarian Land Reform in Mexico*, CENTRO DE INVESTIGACIONES HISTÓRICAS Y SOCIALES: UNIVERSIDAD AUTÓNOMA DE CAMPECHE. at 5. (translated by Holly Yasui)

http://www.globaljusticecenter.org/papers2005/sanchez_eng.htm (2005) ("The tenancy of collective land, well-known today as ejidos, have a pre-Hispanic origin, that is to say, that the origin of regulated collective property existed before the Spanish presence in Mexico and has subsisted during the Colonial era and Independence to the present time.").

56. Signet, *supra* note 12, at 494 (the indigenous, who are more than half of our population, care little for politics . . . They are accustomed to look to those in authority for leadership instead of thinking for themselves."); See also, Appendini, *supra* note 45, at 4-5 ("the Mexican state recognizes that « La nación mexicana tiene una composición pluricultural » [the Mexican nation has a pluricultural composition] stating that « la ley protegerá y promoverá el desarrollo de sus lenguas, culturas, usos, costumbres recursos y formas específicas de organizaciones social . . . ' » [the law will protect and promote the development of its languages, cultures, uses, customs, resources and specific forms of social organization]).

57. Hendrix, *supra* note 38, at 35 ("As a direct result of the amendment to Article 27, the Mexican Department of Agriculture and Water was able to enlist the Chicago Board of Trade, Merrill Lynch, Spatts, and several other brokerage houses and Mexican financial institutions as consultants to create a new agricultural commodities market.").

changes which now have had an effect, at least to some degree, on the Mexican economy. The focus here is not the early or modern European influence, but the United States' role in North American economic development and its effects on a neighboring country – one whose property schemes developed differently in spite of somewhat similar beginnings.

II. ANALYSIS

A. THE FAILURE OF NAFTA'S NEOLIBERAL POLICIES TO MEET INDIGENOUS NEEDS

The new policies of the 1990s intended to create incentives which might encourage communities suspicious of the new laws to allow foreign investment in their traditional land. These new policies reflected popular opinion and practice in many industrialized nations at the time.⁵⁸ Common understanding and western values dictated that incentives which created monetary gain might be sufficient to encourage participation in a new regulatory scheme.⁵⁹ Traditional *ejido* regulations of the previous century focused on a communal environment in which no single person could determine the actions of the entire *ejido* – not even with regards to their individual parcel of land.⁶⁰ In other words, the *ejidos* provided protection from a liberal market, whereas the contrary western ideal reflected a desire to fully immerse oneself in the market and provide for possible competition against neighbors.⁶¹

1. The push and pull factors in the exploitation of parcels

This theoretical clash resulted in an impractical compromise. *Ejidatarios* were able to participate in the international market, but only to a certain point. Unlike northern farmers in the US, *ejidatarios* never gained full rights to alienate their land on their own.⁶² The change allowed the

58. See, Spencer, *supra* note 15, at 101-102. (noting major Agrarian Reform did not occur until 1992 and that ejidos held most usable land for the purpose of small farmers).

59. De Aguinaga, *supra* note 32, at 895.

60. Spencer, *supra* note 15 at 103; Constitución Política de los Estados Unidos Mexicanos, *supra* note 21 at art. 17, 18.

61. See, See, Spencer, *supra* note 15, at 102.

62. See, Agrarian Law, *supra* note 28 at art. 46 (“El núcleo de población

following options: (1) continue the status quo, (2) jointly finance changes to attract an investor, or (3) individually attempt to make changes to attract an investor.⁶³ To encourage participation in this new scheme and collaboration with investors, the law used tax incentives to try to overcome initial resistance.⁶⁴

More specifically, the strategy moved the transfer and use of each parcel of land out of the communal and into the individual sphere. The incentives consist of tax breaks to those engaging in business with foreign investors.⁶⁵ In addition to tax breaks, individuals and communities have the ability to engage in this business without *ejidal* approval.⁶⁶ However, these abilities are very constrained when compared to western ideas of what a landowner might be able to do with his or her own parcel of land. Tax breaks, a common tool for economic growth in the United States, exist for those who engage in agriculture, livestock, forestry, fishing, commercial or industrial activities.⁶⁷ But, *ejidos* retain tax-exempt status if they decline to privatize. A departure from the joint use of the *ejidal* lands may actually result in a higher tax rate applied to *ejidatarios*.⁶⁸

Mortgaging an individual's or an entire *ejido's* property presents equally complex issues not faced in the American credit structure. The restrictions limit guarantees to creditors to use of a particular piece of land for a predetermined number of years, and even then, what the land produces rather than

ejidal, por resolución de la asamblea, y los ejidatarios en lo individual podrán otorgar en garantía el usufructo de las tierras de uso común y de las tierras parceladas, respectivamente." [The nucleus of the *ejidal* population, by resolution of the assembly, and individual *ejidatarios* will be able to give as guarantee the usufruct of the common use lands and of the parceled lands, respectively].

63. See, SECRETARÍA DE DESARROLLO AGRARIO, TERRITORIAL Y URBANO, *supra* note 42 (describing how some *ejidos* privatized while others did not).

64. De Aguinaga, *supra* note 32, at 900.

65. *Id.* at 900.

66. See, Agrarian Law, *supra* note 28, at art. 56. (requiring certain decisions to be approved by two-thirds of the general assembly under watch of a government representative. A quorum (75 percent) of *ejidatarios* is required for the vote to privatize, but, if there is an insufficient number at the first meeting, that amount decreases to two-thirds approval required to privatize).

67. Ley de Impuesto Sobre la Renta [Income Tax Law with Regards to Rent], *as amended*, art. 10(B), Diario Oficial de la Federación [DO], 30 de diciembre de 1980 (Mex.).

68. *Id.*

the land itself controls the creditor's ability to collect.⁶⁹ The impact of mortgaging one's property cannot have the same impact as it does here in the United States. While the ability to mortgage *ejidal* lands is a significant departure from the previous state of the law, the continued restriction on alienation still affects the impact on investment in the *ejidal* lands. Investors and creditors have little protection from a defaulted loan.⁷⁰ The ability to reap 30 years of profit from the lands may not provide the intended payout and protection to an investor of a traditional mortgage in the United States.⁷¹

Those individuals and groups who wish to engage faraway investors face an obstacle in the form of convincing the potential investor that the risk itself is minimal. Additionally, a tax exists when *ejidos* privatize, whereas none exists for those who choose to retain their *ejido* status.⁷² The net gain is not immediately apparent to members of an agrarian community who often have little experience with western financing schemes.

The Mexican government implemented PROCEDE (Programa de Certificación de Derechos Ejidales y Titulación de Solares [Ejidal Rights and Land Title Certification Program]) to combat some of these perceived barriers and help create the actual space in which the newer, westernized policies might take hold in hopes that *ejidos* could participate without even more direct government assistance.⁷³ Unlike the

69. Agrarian Law, *supra* note 28 at art. 46 ("En caso de incumplimiento de la obligación garantizada, el acreedor, por resolución del tribunal agrario, podrá hacer efectiva la garantía de las tierras hasta por el plazo pactado, a cuyo vencimiento volverá el usufructo al núcleo de población ejidal o al ejidatario según sea el caso." [In the case of an unfulfilled guarantee, the creditor, by resolution of the Agrarian tribunal, will have the guarantee of the lands for the agreed time, at whose expiration date the usufruct will be returned be it of the entire *ejido* or the *ejidatario*.]).

70. *Id.*

71. *See*, Signet, *supra* note 12, at 516-17 (explaining that the purpose of the *ejidos* is to provide two days minimum wage salary in one day's work. This is a considerably lower amount than many corporations hope to produce: "The policy makers of the 1920s and 1930s, in determining the amount of land necessary for *ejido* endowment, began to relate the amount of land that should be given to each parcel owner to the amount of income it could generate. Initially, two days of wages seemed right. By 1942, . . . the amount given to each member was increased from four to six hectares . . . the average parcel was and remains today about five hectares, with about two-thirds of the total campesino population in possession of three hectares.").

72. *See*, *supra* note 67 (imposing tax).

73. Cornelius *supra* note 41, at 762 ("designed to restructure the Mexican

sudden imposition of the changed property laws, PROCEDE was a voluntary program that worked with local *ejidatarios* to demarcate their lands and encourage privatization.⁷⁴ Prior to division by PROCEDE, the boundaries of each parcel of land within an *ejido* were notably more fluid – a direct result of a communal influence and history of both shared and common use.⁷⁵ PROCEDE's process required approval by the assembly of each *ejido*, and the process, supposedly, lessened conflict amongst *ejidatarios* in the purpose of land usage.⁷⁶

PROCEDE helped to introduce the new type of land usage to a number of *ejidos*, but the SOFOLES (Sociedades Financieras de Objeto Limitado [Limited Purpose Financial Company]) played a necessary role by allowing those who participated in PROCEDE to continue on to actual privatization.⁷⁷ The SOFOLES utilized government funding set aside for social purposes and social support to reach the *ejidos* and individual *ejidatarios* which looked to privatize.⁷⁸ As small and independent institutions, SOFOLES had the ability to reach rural communities more effectively than larger financial institutions and adjust their policies and practices to their unique location. A relative lack of regulation likely allowed SOFOLES the ability to adapt to each community and deliver the necessary funds directed for this purpose seemed to provide the solution to working in new, often skeptic, areas of the country.⁷⁹ These areas consisted of communities with limited experience with financing institutions and perhaps low rates of financial literacy.⁸⁰

countryside in the run up to the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT). The explicit rationale underlying these reforms was to reorder legal frameworks and institutional structures to ensure compatibility with free markets and in particular establish well-defined property rights enforceable through the legal system.”).

74. Appendini, *supra* note 45, at 6.

75. *See*, Appendini, *supra* note 45, at 5.

76. *See*, Appendini, *supra* note 45, at 5-6.

77. *See* Mortgage Law *supra* note 33. (allowing creation of SOFOLES as small mortgage and credit lending institutions which were not associated with any bank).

78. Jordan *supra* note 47, at 1195.

79. *See generally*, Haddad, *supra* note 45.

80. Cornelius *supra* note 41, at 762 (explaining the goal to target the Mexican countryside).

B. PRESENT DAY STATE OF *EJIDAL* LANDS

The state of leased *ejido* lands, as well as the general economic state of the country, reveals the effects of these major barriers of mistrust and low financial literacy. The median Mexican income decreased in the 1990s, after the passage of NAFTA and during trade liberalization.⁸¹ As of 2012, only 2.5% of *ejidos* chose privatization.⁸² The prospect of earning more than two days minimum wage is an insufficient incentive to reach the goal of further diversification of agrarian lands in light of other barriers.⁸³ The initial outlook in many states seemed promising. By 2005, 71.2% of *ejidos* nationally participated in the initial certification process through PROCEDE.⁸⁴ This process, however, varied between states, and states with higher indigenous populations had significantly lower participation rates in PROCEDE.⁸⁵ Trade liberalization produced unintended, and likely undesired, results with respect to the rural indigenous populations of the *ejidos*.⁸⁶ While there is no single identifiable reason for this outcome, there are a number of factors which point to why this might be the case, and these indicate that *ejidos* which transitioned from communal to private lands do not necessarily fare better than their local counterparts.

1. The role of the SOFOLES

SOFOLES themselves may be one of the driving reasons behind the low rate of privatization. The Agrarian Law abrogates a former law specifying how and when rural credit could be delivered.⁸⁷ The new law does not leave any structure

81. Monkkonen, *supra* note 45, at 761.

82. SECRETARÍA DE DESARROLLO AGRARIO, TERRITORIAL Y URBANO, *supra* note 42.

83. *See*, Signet, *supra* note 12, at 516-17; Monkkonen, *supra* note 45, at 762 n. 2 (stating that minimum wages is currently equivalent to US \$4.13 to 4.79).

84. Appendini, *supra* note 45, at 10.

85. *Id.* at 12 fig. 4 (showing varied participation rates between states with predominantly indigenous populations. Compare Oaxaca's rate of 20% of certification with Quintana Roo's high of 68.6%).

86. *See*, Assies *supra* note 31 at 45 (“[The] main objectives of the 1992 reforms – promoting private property and associations with the private sector in order to capitalize the *ejidos* – have not been achieved.”).

87. De Aguinaga, *supra* note 32, at 892.

in the old law's place, and does not "contemplate any guarantees for banks that granted credit."⁸⁸ The previous laws contain a detailed credit system, but the new law's system does not create a workable replacement. The Agrarian Law provides guidelines, restrictions, and protections,⁸⁹ but it does not provide a mechanism with which to secure financing or engage in business outside of the *ejido*.⁹⁰ SOFOLES stepped in to fill this absence, but it is difficult to assess whether this was the best possible outcome post-Agrarian reform.

The ability of SOFOLES to harness government funding in order to establish themselves in rural areas where many *ejidos* are located effectively pushed out other financing options.⁹¹ This SOFOLES seemed a benefit to the *ejidos* due to the lack of options in the early 1990s, but their effectiveness also led to SOFOLES existing as the only option in rural areas.⁹² The independent nature of SOFOLES as well as their monopoly on many areas leaves many to operate without strict oversight.⁹³ Many *ejidatarios* have difficulty negotiating with them and do not have the ability to rely on the competition of other financing institutions.⁹⁴ Regardless of whether or not the impact of the SOFOLES themselves is positive or negative within each community, the net outcome for rural *ejidatarios* is not positive with respect to the goals of liberalization and NAFTA.⁹⁵

2. The role of NAFTA'S specific policies and the influence of foreign investment

SOFOLES are only one factor in the success, or lack

88. *Id.* at 894.

89. *See generally, id.*; Signet, *supra* note 12.

90. *Cf.* Agrarian Law, *supra* note 28. (lacking guidance with respect to specific funding mechanisms available to the *ejidos*).

91. *See, supra* note 47, at 1196 ("Since private banks no longer had to participate in the FOVI "social interest loans" program, they did not, leaving nearly 100 percent of their mortgage portfolios (if they had such portfolios) to the upper-income brackets.").

92. *Id.* at 1195–96.

93. Haddad *supra* note 45 at 143 ("As of today, nobody is certain as to what extent they are regulated, but they are regulated financial entities.").

94. *See* Bloomberg Businessweek Magazine, *Compartamos: From Nonprofit to Profit*, Dec. 12, 2007. (finding that one SOFOL in particular charges upwards of 105% APR on their loans).

95. Hazán, *supra* note 51, at 722 ("This situation produced a fall in rural incomes relative to urban incomes that became a continuous source for internal and external migration.").

thereof, of *ejidos*. 20 years after entry into NAFTA, the effects, anticipated or not, are more tangible, and their impact upon the *ejido* more identifiable. The trend appears to be economic boons for more sophisticated parties – generally foreign investors or those located nearer urban areas – with a negative impact on less sophisticated parties – generally *ejidatarios* in rural areas.⁹⁶

NAFTA calls for the import of a number of American products into Mexico including two staple domestic products – corn and maize.⁹⁷ *Ejididos* producing those goods thus stand to lose significant money. Mexican farmers’ ability to shift production to fruits and vegetables and take advantage of the country’s considerably longer growing season does not necessarily counter the spike in imports of these products.⁹⁸ This sort of shift in production is realistic for larger companies and businesses, already engaged with foreign investors, but the burden is too great on smaller producers such as *ejidos* dedicated to only a few, if any, commercial products.⁹⁹ Economically, non-privatized *ejidos* are unable to compete with larger domestic producers and the influx of subsidized American produce, especially considering that the American imports often exceed the NAFTA quotas.¹⁰⁰ Small farmers and *ejidatarios* face two options: (1) rely on subsistence farming to support the community and never gain profit from the land or (2) migrate internally or externally to an area that is able to provide job security.¹⁰¹

In addition to an unbalanced agricultural exchange, the method of resolving disputes also favors the sophisticated party over the less sophisticated party. NAFTA restricts methods of dispute resolution to arbitration for international disputes arising under its jurisdiction.¹⁰² This provision applies equally

96. *Id.*

97. *Id.*, at 722.

98. *Id.*, at 722.

99. *See generally*, Hazán, *supra* note 51.

100. *See, Id.*; Foley, *supra* note 35. (“the corn system receives more subsidies from the U.S. government than any other crop”); Foster, *supra* note 35 at 93, 1008, n. 167 (discussing import quotas and increased tariffs imposed for exceeding those quotas).

101. Hazán, *supra* note 51, at 722 (“From 1990 to 2008 2.3 million agricultural workers lost their jobs . . . Many displaced workers had no option but to migrate to the cities, or to the United States, or go back to subsistence agriculture.”).

102. De Aguinaga, *supra* note 32, at 899.

to *ejidos* and large Mexican businesses. There is no specified protection in the Agrarian Law or NAFTA based on the nature of the specific parties involved.¹⁰³ This type of unbalanced litigation has the potential to strongly disfavor *ejidatarios* in rural Mexico without experience in negotiation and arbitration and without the means to pay for an attorney who is familiar with the process. Based on recent Mexican filings, it appears that this remains true in the NAFTA context, with a majority of Mexican filings for arbitration made by larger businesses and industries.¹⁰⁴

While all *ejidos* must operate under these regulations, it appears that the actual location within Mexico has an equally strong impact on the success of the *ejido*. Certification, the second step in the PROCEDE process, has been much higher in the states of Quintana Roo and Yucatán.¹⁰⁵ Only about 20% of certified *ejidos* in both states, however, privatized.¹⁰⁶ Notably, this rate is similar to other states with predominantly indigenous populations.¹⁰⁷

The Foreign Investor and Cultural Impact

One possible explanation is the availability of foreign investors in those states generates initial interest in the certification process. Quintana Roo and the Yucatan have significantly greater access to the Gulf of Mexico and waterfront property as well as a major airport in comparison to other predominantly indigenous Mexican states such as Oaxaca, Guerrero, Chiapas, and Hidalgo.¹⁰⁸ “Both tourism and urbanization increase demand for land, increasing its price. Subsequently, higher land prices provide greater incentives for privatization as beneficiaries seek to internalize economic benefits of land, following the theory of the evolution of property rights.”¹⁰⁹

The presence of the tourism industry both pushes *ejidos*

103. Cf. Agrarian Law; NAFTA.

104. See, e.g. Mexico Disputes Round-up: Flurry of Notices Filed by Water Company, Tunnel Builder, Gaming Investors and Beverages Importer. INVESTMENT ARBITER REPORTER (Oct. 28, 2014).

105. Appendini, *supra* note 45, at 12, tbl 4.

106. *Id.*

107. *Id.*

108. *Id.* at 12 (“In the cases of Chiapas, Guerrero and Oaxaca where certification is low, the process was more targeted to commercial lands, as may also be the case in Quintana Roo and Yucatán where lands have been destined for tourism.”).

109. Barsimantov, *supra* note 44, at 299.

towards and pulls them away from engagement with foreign investors. For those *ejidatarios* who wish to participate in privatization, presence of the tourism industry makes it much easier to gain access to an investor as well as retain some bargaining power when engaging with that investor.¹¹⁰ Meanwhile, external pressure in the form of neighboring *ejidatarios* entering contracts with foreign investors, as well as the potential for land sales to yield a higher profit than cultivation, drive many *ejidatarios* to privatize as well.¹¹¹

In states where tourism is less pervasive, cultural and community ties seem to rebalance the scale. The price of privatization is considered a threat more than an opportunity in these areas.¹¹² It is not uncommon for indigenous communities to maintain a sense of distrust when it comes to the operations of the federal government, and, for those communities where this sentiment was particularly strong, the New Agrarian Law was met with extreme suspicion.¹¹³ These communities, despite resistance, still face with the same choices as others. Regardless of whether *ejidos* choose privatization or not, the effects are now felt all over the country and within each *ejido*.

C. CASE STUDY: DON TEO'S EXPULSION IN YUCATAN

The tourist industry remains heavily influential in the state of Yucatan and its neighboring state of Quintana Roo – the home of Cancún. While it has long been a tourist destination, heavy development of the area is a more recent phenomenon affecting the predominantly Mayan state.¹¹⁴

110. *Id.* at 310. (“The 1992 Reform facilitated the growth of a land market for tourism that was ready to expand rapidly. What might have happened in these communities given strong tourism pressure but no land policy reform is impossible to determine, however we suggest that the 1992 Reform played a key role in facilitating the process of privatization . . .”).

111. *Id.* at 310.

112. Chiapas residents viewed privatization and the end of the *ejido* land distributions as a threat to the indigenous communities and led to the well-known Zapatista uprisings. See, e.g., Lewis, *supra* note 49.

113. See generally, *Id.*

114. In the most concentrated indigenous areas of neighboring Quintana Roo, nearly 100% of the population still speaks an indigenous language. Even in areas closer to tourism, like Kuchmil, and Cancun, approximately 30% of the population still speak the indigenous language. Barsimantov, *supra* note

Heavy tourism and the PROCEDE credential rate have not translated into a high privatization rate.¹¹⁵ Rather, many of its *ejidos* are in a state of partial privatization.¹¹⁶ For this reason, eastern Yucatan and Quintana Roo provide valuable insight into how the process of privatization impacts indigenous communities in an area where community members have had the opportunity to witness other *ejidos* privatize, refuse to privatize, or go through partial privatization through unilateral actions of individual members. In light of the strong tourist industry in the state, and the region's resulting value to the national economy, the distrust that many *ejidatarios* feel towards the government is as germane to the discussion of this case study as any in an indigenous community.¹¹⁷

Kuchmil is a Maya *ejido* within Yucatan, close to Quintana Roo.¹¹⁸ After the Revolution, a group of families jointly petitioned for the *ejido* in an attempt to escape past experiences of heavy taxes and labor imposed by persons in power – both religious and indigenous.¹¹⁹ This grant automatically imposed the structural requirements of the *ejido*.¹²⁰ Kuchmil successfully separated itself from the problems of many Mexican communities in which one or a few powerful persons control the voice of the community. However, this is not to say that it was not completely free of this type of influence. A majority of community members were related to one family, and this family wielded significant influence in the community.¹²¹ The history of insulating itself from outside dominance eventually created a strict social structure within the *ejido*.¹²² Ejidatario don Teo began working his portion of the

44, at 304, tbl. 1.

115. See generally, Barsimantov *supra* note 44.

116. See generally, Perramond *supra* note 48.

117. See, Chavla, *supra* note 49.

118. Castellanos, *supra* note 51, at 145.

119. *Id.* at 150.

120. *Id.* at 151. See generally, Agrarian Law, *supra* note 28 (detailing new *ejidal* governmental structure and voting power as well as work requirements required of *ejidos*).

121. *Id.* at 151. (“Local politics were controlled by the *abuelitos* (grandfathers) and *tíos* (uncles) who represented the three extended kin families and rotated political office. Coercion and fraud existed in Kuchmil, but these tactics were strategically deployed by all three families.”).

122. *Id.* (“Ejidatarios who did not fulfill the social rights and responsibilities of *ejido* membership were sanctioned with fines, jail time, and threats of expulsion . . . For example after Rodolfo continually raised his voice during general assembly meetings, he was threatened with fines unless he

ejido at the young age of ten. The tight knit structure of the *ejido* and the property rights it guaranteed helped don Teo to retain his rights despite being orphaned at a young age.¹²³

The *ejidatarios* relied solely on subsistence level farming to get by from the 1960s onward.¹²⁴ The economic decline of the *ejido* led many of its youth to travel outside of the *ejido* to look for work.¹²⁵ When neoliberal trade reforms began to take place in the peninsula, residents of the *ejido* began to shift their expectations of what the *ejido* should be and in which activities – specific types of farming or industry – it should engage.¹²⁶ Don Teo, among others, supported a new movement towards dividing the *ejidal* lands for various purposes and creating a more streamlined agricultural process.¹²⁷ Other *ejidatarios* thought this was in conflict with their religious beliefs, and saw it as a slippery slope towards losing all their possessions and gains and a return to slavery and servitude.¹²⁸

Don Teo ran the *ejido*'s mill. He applied individually through a local credit union and secured financing, licensing and ran the mill independently.¹²⁹ His vocal views in support of capitalism put his business in danger.¹³⁰ His fellow *ejidatarios* eventually replaced his mill with another and had his license revoked.¹³¹ Over time, tensions increased and the *ejidatarios* gave him the choice to leave or face imprisonment.¹³²

Upon leaving, don Teo took advantage of new institutions to file a claim for his land – an opportunity unavailable to him before.¹³³ The community pushed back claiming that he no longer had any rights to the land, the *ejido*'s decided whether

signed an agreement to stop his behavior . . . Residents who refused to adhere to local norms were pressured to leave or migrated out.”).

123. *Id.*

124. *Id.* at 152.

125. *Id.* at 152.

126. *Id.* at 152.

127. *Id.* at 153.

128. *Id.* at 153; *Id.* at 160 (“For the residents of Kuchmil, privatization was viewed as a regression to a dark past.”); Maria Consuelo Sánchez González, *supra* note 40, at 5 (“For Mayan farmers the owners of the forest are divine beings and spirits, which include their ancestors. The God of the Forest is the owner of the productive spaces of the forest or k’aax. Productive spaces – fields for cultivation, for example - are called col, and have a temporary aspect.”).

129. *Id.* at 157.

130. *Id.* at 153.

131. *Id.* at 153–54.

132. *Id.* at 154.

133. *Id.* at 155.

he would be reimbursed.¹³⁴

Eventually, with government support, don Teo negotiated once more with the *ejido*.¹³⁵ The *ejido* offered only \$500 for his house and refused to negotiate further. Despite their expulsion of don Teo, he legally still owned the land. He had not participated in the process of privatization individually, nor had the *ejido*, and thus no legal action could solve his problem.¹³⁶ His case existed in the gray area stuck between the *ejido* and new laws encouraging privatization, and he ultimately had no legal recourse.

Don Teo is only one of a few Kuchmil *ejidatarios* to confront such a problem.¹³⁷ The *ejido* accused one member of not looking out for the interests of Kuchmil when that *ejidatario* could not play the necessary political games to secure subsidies.¹³⁸ In protest of a community appropriation of industrial sewing machines, one family ceased to contribute their labor; the *ejido* subsequently threatened expulsion.¹³⁹ The Agrarian Law's reforms did not provide an appropriate avenue to circumvent the *ejidal* government. One person could not stand up to the assembly of the *ejido* and the assembly at large remained resistant to change. This rift leaves Kuchmil members with two options: remain in place or emigrate.¹⁴⁰

D. THE ABSENCE OF A SOLUTION

There is no obvious solution for the struggling *ejidos* across areas of Mexico. It seems that cultural disagreements play a role but do not tell the whole story. The history of oppression of many *ejidatarios* engenders a mistrust of any governmental

134. *Id.* at 155. ("He no longer has any rights to the land in question, not to his house, absolutely none, because ever since he was given the time period he asked for, that's when it was made clear to him that he had six months to settle things with the *ejido* and that from the day on which this time period expired, it became definitive that he no longer had any role in the *ejido*.")

135. *Id.* at 156.

136. *Id.* at 154. (rejecting the option to privatize soon after it was offered through the New Agrarian Law); *Id.* at 156 ("The Procuraduría Agraria [office of legal matters with respect to land and Agrarian matters] acknowledged that don Teo's claim did not have legal standing, but they intervened in an effort to find a 'pacific solution to this problem.'")

137. *Id.* at 157.

138. *Id.* at 158.

139. *Id.* at 158

140. See, Castellanos, *supra* note 49, at 70–71.

structure. The government, in its attempt to respect this history while encouraging free trade, did not adequately provide the supports necessary to meet either the new westernized goals or protect the old structure of the *ejido*. The only certain trends are increases in organized crime and a dispersal of indigenous communities due to disagreement or economic opportunity.¹⁴¹

To a certain extent, the effects of modernization are present and permanent. There is no option to return to pre-NAFTA, pre-trade liberalization regulations without a great impact on the Mexican economy. The Mexican government needs to reconsider its global role and how international agreements hold a unique impact for the country itself. The results of 20 years should prove to be sufficient evidence that the current system does not benefit *ejidatarios*, if renegotiation ever occurs.¹⁴² The negotiation of NAFTA left out the voices of *ejidatarios* and focused on the western voice that was key in guiding the creation of NAFTA. A new approach to NAFTA may be more effective than any stop gap measures. Short of that, the imbalance between the push to enter into trade agreements and the desire to protect communities will continue to create the same destabilization and conflict experienced by don Teo.

III. CONCLUSION

The Mexican government must address the issues affecting its indigenous communities to preserve its unique cultural heritage. Mexico is one of a number of Latin American countries with large indigenous populations, and, due to the country's strength economically and relation with the United States, it has the potential to serve as a model of how to engage in free trade while protecting its indigenous peoples. Beyond looking at indigenous communities, the problem facing Mexican communities may be a paradigm affecting many countries that have not yet reached high levels of industrialization.

Mexico's entry into free trade provided some boosts to its economy at a cost to its smaller, agrarian, indigenous groups.

141. See Carlson, *supra*, note 42 ("The increase in people living in poverty feeds organized crime recruitment and the breakdown of communities."); Ruiz, *supra* note 49.

142. See, Carlson, *supra* note 42. (discussing the potential of negotiation in the coming years).

While a number of institutions were put in place to support its citizens participate in the market, these programs lacked regulation and tailoring to Mexico and which do not exist in the United States. Indigenous communities continue to experience destabilization and will become more disparate without renegotiation or action on the federal government's part.