Codifying the Past, Erasing the Future: NAFTA and the Zapatista Uprising of 1994

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I. Introduction

Did the American people know that, in signing NAFTA, their government had become an accomplice in genocide that the indigenous people of Mexico were now condemned to death?

-SubComandante Marcos, spokesperson for the Zapatista Army of National Liberation

On the evening of December 31, 1993, Mexican President Carlos Salinas de Gortari retreated to the exclusive Pacific resort in Huatulco, Oaxaca. There, in the company of close family and guests, and in the final moments of his regime, Salinas no doubt pondered the novel economic path that he had dutifully set for his countrymen. During his sexenio (six-year term), Salinas had done no less than retrench the entire revolutionary course of Mexican history: he had overseen the mass privatization of Mexican industry; the slashing of public-sector spending; but, above all, he had “liberated” his country from the clutches of decades-old state protectionism by signing NAFTA. Hence, as the countdown to the midnight hour quickened, Mexico’s first family and chosen guests, “raised glasses of Dom Pérignon to celebrate the long-awaited arrival of NAFTA and 1994.

Gaiety did not last long. Moments before 2:00 a.m., a military attaché “stepped onto the terrace and handed President Salinas a card.” General Antonio Reveillo Bazón, the Secretary of Defense, was on the phone. “I have just spoken with the commander of the 31st Military Zone,” he explained, “and he has informed me that an armed force, calling itself the Zapatista Army of National Liberation, has entered San Cristóbal de Las Casas, Chiapas and declared war on the military and the government.”

General Bazón’s nervous recantation was correct. About a ten hour’s bus ride southeast of the Presidential celebration, and in the lush highlands of the country’s poorest and most removed state, a wholly different scene played out. There, amidst the elusive canopy of Chiapas’ “foggy, wooded hills and valleys,” masses of desperate Indians gathered. Unlike their celebrating Commander-in-Chief, however, they did not wield bottles of Dom Pérignon. Instead, these “sons and daughters of poor farmers and plantation laborers,” a third of them women, swarmed...
upon four towns — San Cristobal de Las Casas, Ocosingo, Altamirano, and Las Margaritas — heralding the start of Mexico's largest post-revolutionary rebellion this century.8

With hardly any resistance and only a few pitched gun battles, the Zapatistas managed to take control of the towns from the start.9 Within hours, however, the Mexican Army launched a fierce counterattack. From the air they strafed villages and countryside with rocket and machine gunfire.10 From the ground thousands of government soldiers "conduct health to house-to-house" searches.11

By the fifth day of the Levantamiento (Uprising), government forces had gained the upper hand. Zapatista rebels were by then desperately trying to flee back to the Lacandon.12 Moreover, preliminary reports indicated that the Mexican Army had resorted to gross human rights abuses. When reporters were finally permitted into Ocosingo, the site of the fiercest confrontation, they found "a total of five bodies showed signs of execution, lying face down in the streets and buildings, particularly in the village market, where five bodies showed signs of execution, lying face down in a row with their hands tied behind their backs."13 It became increasingly clear that the Zapatistas were ill-equipped to do battle with a modern Army, particularly one trained and equipped by the United States.14 In one village market, in addition to the bodies of downed Zapatistas, reporters came upon a cache of crudely fabricated weaponry — "sticks carved in the shape of guns, some with knives or corrugated metal strapped to the barrel like bayonets."15

For many, an insurrection in Mexico's back country frontier, especially by a group of veiled unknowns, hardly seems a befitting topic for a journal on environmental law. One might even marvel whether inquiry into the uprising, and the fate of its indigenous combatants, would be better served from a human rights perspective.

Initial skepticism is understandable. Mexico and the United States each maintain their own unique conceptions of environmentalism. But if, for a moment, one could suppress his or her preconceived cognitive models of environmentalism, particular to his or her country's social, economic, and political milieu, Mexico's largest peasant rebellion takes on a different hue.

In the United States, environmentalism traditionally focuses on issues that are de rigueur within the larger mainstream movement: i.e. pollution, nature conservation, population control, and the protection of lower-order species.16 Some have even gone so far as to describe "mainstream environmentalism" as merely an "adjunct of the capitalist system" whereby theories of sustainable development are watered down and contorted to fit within the controlling canons of world trade and sustained economic growth.17 The protection of civilians from the over-arching power of police or market forces, i.e., civil and human rights, is treated as separable — an entirely distinct field with its own set of traditions.18

In Mexico, by contrast, civil and human rights and concern for one's natural living conditions are not so easily separable. There, the populace grapples with a maddening web of basic survival and empowerment issues: i.e. land expulsions;19 state-sponsored death squads;20 rule under one-party dictatorship;21 mass assassinations of grassroots political opposition candidates;22 extreme rural child poverty and malnourishment;23 lack of educa-

8. See generally La Borz, supra note 3, at 1-12.
9. See id.
12. See Darling, supra note 10.
15. Darling, supra note 13.
17. See id. at 202-03.
18. See id. at 204-08.
tion; and severe economic paralysis and unemployment. The fates of the Spotted Owl and Marbled Murrelet ring softly, if at all.

Given the enormous panoply of social, economic and political obstacles facing Mexico today, and the fact that millions of peasant families continue to survive through subsistence farming, any construction of environmentalism as it applies to Mexico must necessarily incorporate issues that transcend "Western" notions of land, air, water and species protection issues. A more nuanced construction would take into account core human and civil rights issues.

Mexico's small peasant farmers understand the human rights-environmental linkage very well: "We are campesinos. When the land is violated, our rights are violated — our right to work, to feed ourselves, to our health and the health of our children." "The struggle for survival is now an environmental one and it is being fought out on a very fragile stage. Farmers now go to the National Human Rights Commission because no other governmental agency will listen to them," adds Mexican Greenpeace activist Roberto Lopez.

The inherent difference between First World environmentalism in the U.S. and its people-centered counterpart in Mexico is potentially explosive. Nowhere has this been more apparent than in the fields of environmental and international trade law. When NAFTA was passed, for instance, it included the much celebrated Supplemental Side Accords (SSAs) on the environment, health and labor. Aside from smoothing the way for the Treaty's passage, the Side Accords earned NAFTA praise for being the world's first international trade agreement that substantively included quality-of-life values. Its key legal criterion provides that sanctions will lie once it is shown that a NAFTA nation suffers from a "persistent pattern of failure" to "effectively enforce" its environmental health, or labor laws. Conspicuously absent from the SSAs or NAFTA, however, was a subject dear to Mexico's millions of indigenous-peasantry — their potential displacement from communal lands. "Many people are scandalized by the ethnic cleansing in the former Yugoslavia. The current policies of the Mexican Government are not very different from this. They want to cleanse the farmers from the countryside," said Victor Quintana, leader of the Peasant Democratic Front.

This cultural oversight — the complete ethnic and economic reformation of the Mexican countryside — is unfortunate. Mexico's 3.1 million indigenous-peasant farmers are categorized as limited-surplus producers, and including their families, number approximately 18 million. They produce a select variety of crops such as corn, beans, cabbage, and squash for subsistence and marketing purposes. Corn, however, is by far the most important crop produced. It is estimated that 68 percent of those employed in agriculture in Mexico and 78 percent of those engaged in peasant communal farming are engaged in corn production.

Under NAFTA, however, the role of Mexico's indigenous-peasant agriculture is called into doubt. They are placed in direct free-market competition with the world's most advanced, and highly subsidized, corn-producing nation in the world, the United States.

Is it any wonder, then, that the Zapatista Levantamiento, which represents Mexico's most popular grassroots peasant rebellion in recent memory, launched their uprising on the inaugural date of NAFTA? They claim that free trade under the

24. See id. Fourteen out of every 100 rural schools do not offer the 6 grades of primary education; twenty-two of each 100 only have one teacher, and one out of every three Indian children do not have a preschool or primary education. Id.

25. Mexico's economy, in the last three years, has turned disastrous. One Mexican daily headlined their country's crisis as the "worst economic crisis in 50 years. Mexico Sufre su Peor Crisis Economica en 50 Años: PRED, CUARTO POIDER, Jan. 7, 1996, at 7. In 1995, over 1.5 million Mexicans lost their jobs; the peso lost 50 percent of its value; most major banks had to be bailed out; and the Mexican auto industry closed with a 70 percent loss in sales and production, "one of the worst years in decades. Anthony DePalma, at 95, Lafer's King, but Parity's Vassel, N.Y. TIMES, Feb. 5, 1996, at A4.


28. Id.


30. See id.

31. See id. at 442.


33. See BARRY, supra note 16, at 119.

34. Interview with peasant farmers, Chamula, Chiapas and Oaxaca, Oaxaca, Jul.-Aug. 1996.

35. See BARRY, supra note 16, at 103.


37. See generally LA BOTZ supra note 3, at Chs. 1-2.
Treaty is the equivalent of a "summary execution order against indigenous Mexicans" and that under the accord indigenous-peasantry will be "annihilated not with bullets or bombs but by the silent death of disease, of penury, of abandon-

The historical power and divining quality of these words suggest that the Zapatista Levante goes beyond the four corners of NAFTA. Zapatistas remind us that, at the dawn of the Twenty-First Century, Native Americans still wage an uphill battle for the most basic of human digni-

Seen thus from the despairing eyes of Mexico's indigenous-peasantry, disarmed and illuminated by the cruelty of history, NAFTA ascends to fuller meaning. More than just a novel free-trade instrument designed to spur trade and investment, the Treaty is seen by the peasantry as the codification of their communities' economic marginalization through mandatory participation in the world economy. It unilaterally imposes the dominant social orthodoxy, not by slavery as in the past, but by the economic and legal means of the present.

Believing that the post-Cold War Order, premised on an array of free-trade accords, seeks only to protect the movement of capital and goods and not the viability of human communities, the Zapatistas spoke for many, including their ancestors, when they cried Basta! (Enough!). This indigenous defiance, aimed at the darling center-piece of the New World Order, ushered in the world's first organized rebellion directed specifically against the seemingly unchecked process of free-market globalization.

This note assesses the claim by the Zapatista Army of National Liberation that NAFTA is a "death certificate" in the context of the potential long-term transformation of Mexico's agrarian sector under NAFTA-style free trade. First, it examines the political-economic processes that led to Mexico's current state of agrarian crisis, namely the "externalization" of Mexican agriculture between 1940 and 1980, with particular attention given to the state of Chiapas. Next, it discusses the role of global finance, in the wake of the 1982 Third World Debt Crisis, in limiting the ways in which Mexico could respond to its widening agrarian crisis. This part is followed by a discussion of NAFTA and how, under the theory of relative comparative trade advantage, Mexico's small corn producers stand to lose. The following sections then discuss the implications for survival of Mexico's indigenous-peasantry under the current free-trade regime and the broad rural and legal reforms necessary to ensure their survival. Finally, the morality of unilaterally imposing free trade on our hemisphere's native peoples is raised.

II. Seeds of Crisis: The Transformation of Mexican Agriculture

It is no surprise that Mexico witnessed a large-scale indigenous-peasant revolt in the 1990s. Between 1940 and 1980, the country underwent rapid changes in its industrial, demographic, and trade composition — changes which led to a fundamental transformation of Mexican agriculture: dams, hydro-electric power plants, railroads and highways were built, the population more than tripled, rising from 19.6 million in 1940 to 67 million by 1977, urbanization, which until then had been relatively static, took off as the proportion of people living in the rural sector dropped from 80 to 30 percent; and, finally, even though agriculture gave way to industry in terms of contribution to work or commercial enterprise in addition to farming. Because of these changes the term "peasantry" must be expanded to include Indians, such as "Zapatista women who want the chance to become truck drivers," but "who still have some ability to produce their own food" or associate closely with people who "have some ability to produce their own food . . . ." Hence when speaking of indigenous people in modern Mexico, it is perhaps more accurate to speak of an "indigenous-peasantry." Indians in Mexico have realities that "are no longer strictly defined by food production. Id. The rapid growth of "non-agricultural work and the increasing integration of peasant economies into national and international markets" has created an indigenous class no longer completely distinct from much of Mexico's wage-earning peasantry.

38. Marcos, supra note 1.
40. See Declaration of War from the Zapatista Army of National Liberation (Jan. 1, 1994).
42. BARK, supra note 16, at 157.
43. Today, the concept of peasantry in rural Mexico is very broad. It includes, for example, "masons, ditch diggers, truck drivers, small store owners, and tailors." GEORGE COLLIER, BIRDS: LAND AND THE ZAPATISTA REBELLION IN CHIAPAS 90 (1994). This was not always so. In the past, peasants were mostly confined to food production. "The vast majority of peasant households now participate in some kind of wage
GDP between 1940 and 1980, the value of Mexican agricultural exports actually increased from 4.3 million pesos to 42 million during that same period.\(^{47}\)

As a result of these long-term post-war changes (industrialization, demographic shifts and insertion into the world economy), Mexican agriculture confronted new challenges. It had to meet the enormous food demands of a rapidly expanding population; adapt to the modern dietary tastes that accompany urbanization; and at the same time reorient food production to compete optimally in the international market.\(^{48}\) Agriculture's focus thus shifted from production of basic food items and fresh foodstuffs for local and national consumption to production of non-essential food items, such as coffee, for consumption abroad. "Basic food production was no longer the principal goal of the agricultural system," one scholar observes, "it was geared increasingly to support agribusiness processors, retailers, and intermediaries, whether at the international or the national level."\(^{49}\)

Post-war externalization of Mexican food production did not bode well for the country's indigenous peasantry. Their small communal communities, so highly dependent upon basic grains production for sustenance and marketing, suffered disproportionately: first, there was the loss of cultivable acreage to competing export commodities, such as sorghum, oats, and alfalfa;\(^{50}\) and second, there was the leveling off of national demand for traditional peasant staple crops, such as maize and beans.\(^{51}\) This latter process can be attributed to demographics: as the country urbanized, city people came to 'disdain' the traditional devotion to maize and beans," and instead evinced a preference for food items "to which the peasants had no access," namely meat and milk.\(^{52}\)

The "double-edged phenomenon" of loss of cultivable acreage to export crops and reduced national demand for traditional staple crops, in consonance with the vital nutritional role peasant-produced foods play, led to one of the worst food crises ever to face the Mexican rural poor this century.\(^{53}\) By the 1970s, Mexico became for the first time a net importer of basic grains.\(^{54}\) And by 1980, it was estimated that 90 percent of the rural population suffered from "some degree of caloric and protein deficiency."\(^{55}\)

Hungry, desperate and mindful of their ongoing marginalization by the 1980s, peasant groups across the country struck back. They formed independent advocacy organizations. "These range[d] from zapatista groups demanding a renewal of agrarian reform, to sectorial associations fighting for their specialized economic interests, to local groups fighting for higher prices and better access to credit and technology."\(^{56}\) Non-economic demands included calls "to end government corruption and repression by private and public security forces."\(^{57}\) The proliferation,\(^{58}\) no less than the existence, of these groups indicated that the Mexican countryside, by the 1980s, was a time bomb waiting to explode.

For some regions of Mexico the pulse of indigenous unrest pounded more furiously than in others. In Chiapas, for instance, after decades of modern-agroindustrial development between 1940 and 1980, led principally through mass agroexports,\(^{59}\) the Mexican backwater found itself imprisoned in economic irony. It had created a macabre alloy between high economic growth and widespread social misery. Thomas Benjamin describes this process:

Despite the impressive economic expansion of the previous three decades, in 1970 more than 90 percent of economically active Chiapanecos earned less than 1,000 pesos a month, or slightly more than eighty dollars. Nearly 40 percent of the population was illiterate; about 50 percent of all houses were without running water and electricity; and 80,000 day laborers worked on fincas and plantations, often living in huts and receiving less than the minimum

48. See id. at 6-11.
49. Id. at 39.
50. See Barry supra note 19, at 159.
51. See Sanderson supra note 47, at 214-16.
52. Id. at 228-29. Sanderson describes Mexican consumption of maize after 1940 as a matter of class preference, adding that "Imajae is likely to continue to be a crop produced by the poor for the poor." Id.
53. See id. at 8.
54. See Barry supra note 19, at 16.
55. Sanderson, supra note 47, at 9.
57. Id.
58. During the 1980s, peasant groups formed in states as diverse as Oaxaca, Puebl, Veracruz, Tabasco, Hidalgo, Sinaloa, Baja California, Baja California Sur, and Michoacan. See interview with Zapotista Supporter, in Mexico City, Mexico (Jun. 5, 1996) (on file with author); see also Barry, supra note 16, at 153-171.
59. See discussion infra part II.A.
wage. Chronic alcoholism, malnutrition, and diseases such as tuberculosis, typhus, and intestinal parasites plagued Indian communities. Perhaps 90 percent of Indian children were undernourished.  

The shameful specter of “prosperity beside mass poverty” in Chiapas led one notable scholar of the region to conclude that “[t]he distribution of power and wealth within Chiapas has changed very little since the 1890s.” The government and the finqueros—“are the same thing,” remarked one agrarian leader, “[t]hey are together and they want to screw the Indian.”  

If poverty as handmaiden of high economic growth has become the resolute rule in Chiapas, then Mexico and its NAFTA partners had better take heed; the export-led development scheme employed in Chiapas during the last forty years is the precise model contemplated under NAFTA. Will NAFTA thus normalize throughout Mexico what has now become true of Chiapas—that it “remains as before: a rich land, and a poor people”?  

The rapid industrialization and urbanization that occurred throughout Mexico after 1940, and which led to deep agrarian crisis, did not similarly alter the rural-economic composition of Chiapas. It “remained predominantly rural and agricultural.” For example, while agriculture suffered a precipitous decline in national importance between 1940 and 1977 in Chiapas “[t]he total value of agricultural, livestock, and lumber production increased from $81 million pesos in 1950 to $1.5 billion by 1970 and $3 billion by 1975.” Land in cultivation “increased from 270,000 hectares in 1950 to 750,000 in 1975.”  

Chiapas’ impressive economic growth concentrated almost exclusively in agroexports and ranching. In fact, between 1940 and 1970, Chiapas became Mexico’s number one coffee producer, with that commodity comprising 40 percent of the state’s total agricultural production by 1970. Sugar cane and cotton had also become “economically important.” But the greatest agricultural expansion was seen in cattle raising. Between 1950 and 1960, “ranchers increased their herds by 65 percent from 480,000 head to 790,000.” By 1970, the cattle stock had reached 1.25 million head (or more than 2 million according to one estimate).  

Chiapas’ disproportionate and rapid growth in production for the national and international market led to a considerable over-concentration and underdevelopment of the Chiapan ejidal sector. By 1960, latifundistas (large landowners with over 1,000 hectares) owned about 60 percent of all land in Chiapas while comprising only 2.4 percent of all landowners. In addition, “while some 900 ejidos supported 92,000 families, as compared to 30,000 land-owning families, the ejidal sector earned one-third as much, owned one-tenth as many tractors, and possessed land valued at one-third of the amount of private property.” Much of this social distortion can be attributed to the process of ganaderizacion in Chiapas “the expansion of pastures for cattle at the expense of cropland.”  

Under ganaderizacion, “[c]attlemen converted lands formerly rented or sharecropped by corn farmers into pastures, rented or simply invaded ejido lands.” The case of Venustiano Carranza is illustrative. Beginning in 1945 residents there had...
petitioned the government for the return of lands being held by cattlemen. In 1967 the Mexican President awarded provisional title to 50,000 hectares to the residents. The cattlemen, who were in possession of 20,000, refused to leave. Later, in 1974, the Department of Agrarian Affairs and Colonization ordered the cattlemen to cede the land. Still, nothing happened. Finally, in 1976, the year after one of their ejido leaders was assassinated, the ejidatarios moved back on to their lands, "built houses, and started farming." However, the Mexican Army interceded by forcibly evicting the ejidatarios, burning their homes, and jailing their leaders. During the army offensive, several of the ejidatarios, "including women and children, were killed or wounded." 79

Incidents of state-sponsored terrorism were not an isolated event during the era. In 1975, 1976 and 1980, soldiers and/or police forced indigenous peoples in Chiapas off their lands by killing them and burning their homes. 80 Amnesty International described these peasant removal efforts as "a pattern of apparently deliberate political killings." 81

Mexico's leadership was not impervious to the agrarian crisis festering in its resource-rich southernmost region and elsewhere in the country. But, by 1980 any diversion of state assistance was "a case of too little, too late." 82 Overpopulation, soil degradation, stagnant agrarian reform, corruption of government aid entities, increased land concentration, inflation and labor exploitation had combined 83 to create "a system not only incapable of reproducing the conditions for the survival of the rural population but one fundamentally threatening to peasant agriculture and nutrition." 84

In these circumstances, it became clear that the seeds for violent and epic agrarian struggle had long been sown. In the center of that crisis strained the tug-of-war between large private landowners, on the one hand, and subsistence producers, on the other, for the country's most-prized natural resource—land. In one study of 115 peasant uprisings in Chiapas during the 1970s, ranging from violent attacks to simple takeovers of municipal buildings and land, the conclusions, though not surprising, are nonetheless telling: 87 of the uprisings "had been caused by the takeover of ejidal and communal lands" by large agroexport entities, namely cattle ranchers. 85

III. Zapata in Reverse 86 Global Finance and the Straightjacketing of the Mexican Revolution

"[S]ome two million campesino families—about three-quarters of the nation's corn farmers—will have to search for alternatives in other crops, reorganize their landholdings, associate with private capitalists, or become wage laborers." -Mexican Government's 1992 Program for Agricultural Development 87

Mexico's leadership, during the 1980s, did not respond to its nation's widening agrarian crisis with social development schemes or mass land redistribution efforts, as had some of its predecessors. 88 It instead looked to Latin America's version of the "invisible hand" theory, or neoliberalism, for national well-being and prosperity. 89 Given Mexico's traditional populist and nationalist slant, this new economic course was truly revolutionary. Combining part philosophy with part religion, 90 "[t]he neoliberal prescription is always the same: swiftly privatize the economy, liberate markets or government regulations and other obstacles, and open up the national economy to international and foreign investment." 91 The "social amelioration role" of government is rejected outright. 92

The obvious question remained, however: Why would a nation, once so committed to state intervention, suddenly "steer[ ] hard in the direction of

79. Id.
80. See id. at 235.
81. Id.
82. Id. at 230.
83. See interview with Bishop Ruiz, supra note 20.
84. Sanderson, supra note 47, at 8.
85. Benjamin, supra note 60, at 234.
86. See La Boyot, supra note 3, at 101.
88. Lazaro Cardenas (1934-1940), for example, on the heels of several conservative regimes and rising rural tensions, nationalized oil companies and railroads and energetically redistributed record amounts of land to peasants. See E. Berndt Burns, LATIN AMERICA: A CONCISE INTERPRETIVE HISTORY 196 (1990).
89. See Barry, supra note 16, at 78.
90. "Even more than other social theorists, neo-liberals in their public discourse are notably dogmatic and technocratic." Joseph Collins & John Lear, CHILE'S FREE-MARKET MIRACLE: A SECOND LOOK 49 (1995). Neoliberals "routinely put forward their economic program as the 'true'; 'modern' economic science, the only rational option, the only one backed by 'absolute knowledge' of a 'scientific' character." Id. (footnote omitted).
91. Id. at 40; see also Barry, supra note 19, at 77-78.
92. Collins & Lear, supra note 90, at 40.
economic orthodoxy." To answer that question we need to visit the Third World Debt Crisis of 1982 and, in particular, consider the role of the world financial community in crafting austere free-market debt rescheduling plans.94

A. Submission to the International Lending Community

"I can assert that in a few, recent years, a group of Mexicans headed, counseled and aided by the private banks, have withdrawn more money from this country, than all of the empires that have exploited us from the beginnings of our history."95

With these words Mexican President Jose Lopez Portillo (1976-82) nationalized all of his country's banks and declared a moratorium on debt payments.96 After years of lavish spending and ill-advised borrowing at high interest rates, the nation suddenly found itself unable to make payments on its national debt.97 Nevertheless, its departing leader, who himself had overseen much of the debt accumulation,98 struck a defiant tone against unscrupulous Mexican capitalists and interest-happy global lending institutions.99

Several factors contributed to Mexico's debt crisis. Expansionary government policies, currency over-valuation, capital flight and "extremely high" U.S. interest rates explain parts of the problem.100 The greatest contributing factor, however, was over-reliance on oil revenues. During the 1970s, as Mexico became a world leader in oil exports, its source of revenue and share of imports rose dramatically.101 Soon the value of imports far exceeded the balance of revenue generated by oil exports. For example, between 1976 and 1981, while "the value of oil exports grew from $560 million to $14,600 million," the total value of imports disproportionately skyrocketed from $9 400 million to $32,000 million.102 By the end of the 1970s Mexico was facing disastrous yearly current account imbalances.

One man's desperation is another man's opportunity. As Mexico's immense need for foreign monies became apparent, international lending institutions envisaged a golden opportunity to funnel endless amounts of funds to the region at high interest rates and, at the same time, make "very substantial profits."103 "U.S. money banks" led the way.104 By 1982, when three-quarters of Mexico's external debt was owed to commercial banks, "[t]he largest chunk of commercial credit—about one-third—came from U.S. banks."105 Moreover, the thirteen largest U.S. banks, led by Citibank and Chase Manhattan, saw profits from Latin America increase from 16.7 percent in 1970 to 49 percent in 1976.106

Loose international borrowing ultimately led to Mexico's undoing. By 1982, the country had "accumulated an external debt amounting to 49 percent of its gross domestic product."107 "Interest payments alone represented more than 50 percent of export income."108 But even then, while Mexico's long-term economic health stood in the balance, Washington did not confer its highest concern; the

94. The Third World Debt Crisis announced its arrival in 1982 when Mexico discontinued servicing its debt. See Doug Henwood, Whatever Happened to Third World Debt?, in 50 Years is Enough: The Case Against the World Bank and the International Monetary Fund 39 39-43 (Kevin Danaher ed., 1995). Marcos Arruda, coordinator of the Institute of Alternative Policies for the Southern Cone of Latin America describes the origin of Third World Debt:
During the 1970s, there was an enormous flow of petrodollars seeking easy investments throughout the world. The Northern countries sent ambassadors offering very cheap loans to finance investments in Southern countries. The 1970s was the decade of the two oil crises of 1974 and 1979, and it was also the decade of military regimes all over the world, many of them sponsored by the CIA. During the 1970s, 18 of 24 Latin American nations were under military dictatorships. So the bankers actually dealt with our dictators on the big loans that created our countries' overwhelming indebtedness.
Marcos Arruda, interviewed by Multinational Monitor, Brazil: Drowning in Debt, in 50 YEARS IS ENOUGH supra, at 44.
95. CAMIN & MEYER, supra note 45, at 216.
96. See id.
97. See Burns, supra note 88, at 198-99.
98. See CAMIN & MEYER, supra note 45, at 216.
99. Mexico was not the first Third World country to sound the nationalist alarm against the debt crisis. Three years earlier, in 1979, Julius Nyerere, former President of Tanzania, declared before the United Nations Food and Agricultural Organization (FAO), that "under the present economic order, the rich and the industrialized areas—automatically, as well as by the exercise of naked power, extract from the poor and rural areas even the little which they have. Julian K. Nyerere, MAN AND DEVELOPMENT 109 (1979).
100. See Rudiger Dornbusch & Alejandro Werner, Mexico: Stabilization, Reform, and No Growth, in BROOKINGS' PAPERS ON ECONOMIC ACTIVITY, 253, 256-257 (1994).
101. See Burns, supra note 88, at 198.
102. CAMIN & MEYER, supra note 45, at 210.
104. Id.
105. BARRY, supra note 19, at 84.
106. See Pauly, supra note 103, at 204-210.
107. Dornbusch & Werner, supra, note 100, at 256-57. Among the seventeen highly indebted Third World countries in 1982, Mexico was one of a group of four that accounted for 78 percent of total debt owed to commercial banks. Id.
108. BARRY, supra note 19, at 84.
exposure of the U.S. dominated lending industry to Third World debt was more worrisome. The nine largest U.S. banks had seen their debt exposure to the seventeen most-highly indebted Third World countries rise to 194 percent of capital reserves by 1982. A "definitive default on this debt could have provoked bankruptcy at the heart of the industrial banking system."

Mindful of the impending collapse of the world financial system, and with the "international balance-of-payments adjustment mechanism" firmly in their hands, private and world lending institutions, in conjunction with the Federal Reserve, the FDIC and the Office of the Comptroller of the Currency, quickly put together a stabilization strategy. The hallmark, and most controversial aspect, of this strategy was that debtor nations "demonstrate their ability and willingness to repay their debts in full." In the context of international lending euphemisms, this translated to submission to a prescribed free-market structural adjustment program: privatization, trade liberalization, and the slashing of public sector spending. Mexico, as the largest Third World debtor country and first to default, stood first in line to receive "free-market economic communion."

B. Straightjacketing the Mexican Revolution

The southern version of "trickle-down economics," imposed upon the Mexican people because of their lenders' irresponsible borrowing and global financiers' unscrupulous lending, gave the Mexican Republic little choice in how it could respond to its severe agrarian crisis, now in its second decade. Instead of rendering state assistance to the small campesino and indigenous farmer, as past regimes had done, the new technocratic power structure abandoned completely the idea of the populist-agrarian state and instead led a massive economic restructuring based on free-market principles: they opened up the country's domestic markets to foreign competition by joining GATT (General Agreement on Tariffs and Trade); dramatically reduced the number of state enterprises from 1,155 in 1982 to 217 in 1992; eliminated state subsidization, assistance, and price guarantee programs for the agricultural sector; and, finally, imposed fiscal austerity measures in the areas of wage and price controls.

By far the most far-reaching of these changes, however, occurred in the area of land reform. After 75 years of mandatory land redistribution, as set forth in Article 27 of the Mexican Constitution, Mexico's latest elite decided that a continued constitutional commitment to the indigenous-peonancy was no longer necessary.

When Article 27 of the Mexican Constitution was amended in 1992, it "created a completely new legal framework for land tenure and property rights." Up until then the Constitution had guaranteed land redistribution to peasant groups. In addition, it contained a whole battery of restrictions and stipulations severely limiting land use; government land endowments were limited to ejido or communal farms; new ejidatarios could not sell, rent or mortgage their endowed lands; the land could not be used as loan collateral; all labor on the lands had to be done by the ejidatarios themselves or family members; inheritance and inter-ejido contracting were subject to multifarious regulations; and finally, corporations could not own or manage ejido lands for agricultural, livestock or forestry activities.

The breadth of these rights and restrictions was immense. By 1990, land expropriation and redistrib-
ution had affected one-half of the country's total rural area and encompassed approximately three million people organized into over 28,000 ejidos.124

By amending Article 27 of the Mexican Constitution, however, Salinas demonstrated to his people and the world why Mexico has been coined the "perfect dictatorship." In November 1991 Salinas announced his proposed changes to Article 27 of the Mexican Constitution.125 Within two months his text was approved by both houses of Congress and ratified by all 31 states in the Republic.126 Enabling legislation, La Ley Agraria, was passed soon after.127

The changes to Article 27 granted ejidatarios the right to sell, buy, and rent their land; to hire labor; and to contract with other producers, including foreign entities.128 In addition, domestic and foreign corporations were given the authority to acquire ejido lands for agricultural, livestock and forestry activities.129 And in order to make the newly privatized lands transactable, the new law included an ambitious land titling and registration program. Land titling covered all 29,000 ejidos, spanning an area 102 million hectares or "more than one-half the national territory."130

Complementing land reform was the government's termination of agricultural price supports and subsidies. Under the new agricultural regime, crop prices would fall to international levels and payments were to be made directly to producers of basic grains on a per-hectare basis.131 This new emphasis obviously called for a "shift of resources from traditional crops into those in which Mexico has greater comparative advantage."132

The gist of Salinas' agricultural reform was clear. The government wanted to end Mexico's status as a bi-modal economy (agrarian-industrial) by privatizing indigenous lands, conferring land titles and registration, and terminating price guarantees. The country's "backward" and "inefficient" agricultural sector (the indigenous-peasantry), it was hoped, would modernize "so as to compete effectively in the capitalist world system."133 The groundwork for NAFTA, the vehicle by which Mexico's leaders hoped to carry them into the global economy, and the instrument that the Zapatistas perceived as their final death-knell, had been obediently laid.

IV. NAFTA and the Decline of Mexico's Corn Producers

"NAFTA is fundamentally changing the face of Mexican agriculture. Because it forced the Mexican government to substantially reduce supports for Mexican grain farmers, they are shifting away from corn production."134

On the eve of NAFTA's adoption, its U.S. proponents waxed poetic about the economic good the Treaty would bring to Mexico. "Increased trade, investment, and cooperation between the United States and Mexico, stimulated by the NAFTA should result in significant environmental gains," gushed USA*NAFTA, Inc., a consortium representing "1100 large and small companies" and "CEO's of 60 large U.S. multinational corporations."135 The U.S. Department of State opined that expected increased trade and investment flows among NAFTA partners "[would] lead to job creation and allow for more balanced development throughout Mexico."136 It stated that "the whole idea of [NAFTA] is to raise standards of living and incomes."137

Mexican free-trade adherents were no less hortatory in their free-trade incantations. But to them, NAFTA promised much more than mere economic salvation. It meant the difference between a country labeled as emergent and one garnering full membership in the western community of nations. As the Salinas Administration averred: "A North American
free trade agreement will pull Mexico out of the stagnation of the third world and place it firmly in the realm of the first world.\textsuperscript{138}

If, however, by shrouding NAFTA in a syrup of economic and nationalistic euphemisms, U.S. and Mexican free-trade proselytizers wished to avert a Mexican backlash, they grossly miscalculated. "ENOUGH IS ENOUGH," the Zapatista Army declared on January 1, 1994, NAFTA's inaugural date.\textsuperscript{139} For too long -

[we] have been denied the most elemental preparation so they can use us as cannon fodder and pillage the wealth of our country. They don't care that we have nothing, absolutely nothing, not even a roof over our heads, no land, no work, no health care, no food nor education.\textsuperscript{140}

The launch date of the Zapatista Uprising is not coincidental. NAFTA was viewed by them as the final insult after "500 years of struggle."\textsuperscript{141} Lamented one campesino, Margarito Sanchez, from Tuxtepec, Veracruz: "For us campesinos, the problem is that we are just beginning to understand all the implications of free trade and having to compete against U.S. farmers. We don't know why it has to be this way, but it probably means the end to our communities."\textsuperscript{142}

Mexico's indigenous-peasantry worry, in particular, about food security. Since they are first and foremost subsistence corn growers, they worry that free trade might fatally undermine their ability to continue producing that crop. As one writer observes: "Under NAFTA there is legitimate fear that cheap food imports from the United States will wipe out whatever small margin currently exists for the small producers. Bad news for the 90 percent of Chiapas communities already classified as economically 'marginal.'"\textsuperscript{143}

A. Corn and the Indigenous-Peasantry

"If the community loses corn, it means that the Indian campesino loses dignity. Corn is our food, and the life of our culture."\textsuperscript{144}

Maize, or corn, more than any other staple food item produced in Mexico, is a "crop of the poor."\textsuperscript{145} Together with beans, maize provides 84 percent of the dietary protein consumed by the poor in Mexico.\textsuperscript{146} By contrast, for those at the top income category, maize and beans provide less than 13 percent of the dietary protein consumed.\textsuperscript{147} In the rural sector, where poverty rates are highest,\textsuperscript{148} the dietary importance of maize is most striking — "a typical rural resident will consume three-fourths of his daily calories and 80 percent of his protein in the form of [corn] tortillas and beans."\textsuperscript{149}

The vast amounts of cultivable land surface devoted to maize production reflects the large numbers of poor in Mexico. "Maize is grown throughout Mexico, a crop spanning the full range of Mexican productive ecologies, from the highlands of Tlaxcala and Puebla to the irrigation districts of Sonora, Aguascalientes, Jalisco, and Michoacan, to the tropical extremes of the Yucatán Peninsula."\textsuperscript{150} It is grown by an estimated 68 percent of those employed in agriculture.\textsuperscript{151} And, as of 1990, it was planted on approximately 40 percent of the country's arable land surface.\textsuperscript{152}

In some regions, maize production reaches the extremes. In 1978, for example, maize cultivation "consume[d] over 90 percent of the agricultural area of the state of Mexico and over 85 percent of all land cultivated in Chiapas, Oaxaca, Quintana Roo, and Yucatan."\textsuperscript{153} Nonetheless, as testimony to its "broad geographical base," only Jalisco produced more than 10 percent of the total national production.\textsuperscript{154}

A substantial bulk of Mexico's corn is grown by the country's indigenous-peasantry. Categorized as limited-subsistence producers, and numbering approximately 2.2 million,\textsuperscript{155} they produce crops on subsistence and infra-subsistence farms of 5 hectares or

\begin{enumerate}
\item \textsuperscript{138} Barry, supra note 19, at 113.
\item \textsuperscript{139} Declaration of War, supra note 40.
\item \textsuperscript{140} Id.
\item \textsuperscript{141} Id.
\item \textsuperscript{142} Barry, supra note 16, at 65.
\item \textsuperscript{143} Cooper, supra note 41, at 7.
\item \textsuperscript{144} Barry, supra note 16, at 93.
\item \textsuperscript{145} Sanderson, supra note 47, at 215.
\item \textsuperscript{146} See id. at 221 (according to 1968 and 1973 household expenditure surveys).
\item \textsuperscript{147} See id.
\item \textsuperscript{148} See Correa, supra note 23, at 32.
\item \textsuperscript{149} Sanderson, supra note 47, at 221.
\item \textsuperscript{150} Id. at 215.
\item \textsuperscript{151} See Barry, supra note 16, at 103.
\item \textsuperscript{153} Sanderson, supra note 47, at 215.
\item \textsuperscript{154} Id.
\item \textsuperscript{155} See Barry, supra note 16, at 101.
\end{enumerate}
less. And though their farmlands are usually of marginal quality, indigenous-peasantry have been able to produce enough corn to feed not only themselves, but a considerable portion of their countrymen as well. In recent years, limited-surplus producers contributed 3.5 million metric tons of corn to their nation, an amount corresponding to one-fourth of the total national corn production. They also produce approximately 40 percent of Mexico's commercial corn. It is estimated that 78 percent of the country's communal farmers, i.e., those living on ejidos and comunidades agrarias, are engaged in corn production.

It is important to note, however, that while "corn is central" to Mexico's small rural economy, "it is the rare campesino who depends solely on what he or she harvests." Corn production, even prior to the neoliberal privatizations of the 1980s, rarely met the subsistence needs of the small peasant farmer. Consequently, "an estimated 85 percent of corn growers depend on other economic activities on or off the farm to ensure family survival."

Nonetheless, the importance of corn production to Mexico's small corn growers cannot be gainsaid. In addition to comprising the vital core of their nutritional profile, corn contributes significantly to the peasantry's economic survival: small growers of 5 hectares or less market nearly "one-half of the total corn they produce." Additionally, there is the fear of contaminating ancient native breeds of Mexican corn with biogenetically engineered U.S. equivalents:

Should Mexico become entirely dependent on corn imports from the Midwestern states in the U.S., just imagine what would happen in the case of [U.S.] floods like the one in the Summer of 1993? In Mexico, we have 20 breeds of corn, which have evolved over a period of one thousand years. Those farmers that are technologically more advanced in Chihuahua, are now facing viruses and plagues in their farms, due to the fact that they imported contaminated seeds from the U.S.


"The only thing that is not negotiable [in the free trade agreement] is the virginity of the Virgin of Guadalupe. That stays. Everything else is on the table."-Senior Ministry of Finance official, 1990

NAFTA's agricultural provisions best reflect the anxiety felt by Mexico's small corn producers. Those provisions remove all protective measures afforded the peasantry and pit them in direct competition with multinational U.S. grain concerns. Luis Hernandez Navarro, a peasant leader, captured the obvious asymmetry of this new relationship in 1993:

Some indigenous-peasantry are more blunt. They speak of the "great population surgery" or the demographic cleansing of the small peasant farmer from the Mexican countryside. They believe that free trade will lead to:

the ruin of hundreds of thousands of producers; and the more or less massive emigration of many of these to the United States as illegal workers — all this, even taking into account the fifteen year transition period established by the agreement. Several researchers have calculated that nearly 850 thousand households will leave

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156. See id.
157. See id.
158. See id.
159. See Suppan, supra note 152.
160. See Barry, supra note 16, at 103.
161. Id. at 103-04.
162. See id.
the countryside, 600 thousand of which will go to the United States in search of employment.\textsuperscript{169}

The predictions made by Mexico's indigenous-peasantry are dire. They essentially claim that the entire Mexican countryside will be transformed under NAFTA as their numbers are forced from the land. In the bosom of free-trade, there simply is no room for subsistence agriculturalists.

Because of the millions of families implicated and the relatively short tenure of NAFTA, it would be difficult, if not impossible, to confirm or deny this allegation. However, by focusing solely on the last three years, it is possible to ascertain whether NAFTA trade data either supports or negates the Zapatista's likening of NAFTA to a "death certificate."

The cardinal threat that NAFTA's agricultural provisions pose to Mexico's indigenous-peasantry is the potential for rapid and sustained surges in basic grain imports from the U.S.\textsuperscript{170} If that were to occur, and the indigenous-peasantry were unable to respond in kind with more cheaply produced corn, their ability to hold on to their farms, to feed their families, and to remain in the countryside would disappear.\textsuperscript{171} How and why this would occur, and the particular crops most susceptible to sudden import/export surges, requires a summary review of relevant NAFTA agricultural provisions and a basic understanding of the theory of relative comparative trade advantage that undergirds free trade.

1. NAFTA's Agricultural Provisions

Under NAFTA Mexico maintains separate bilateral agricultural agreements with the U.S. and Canada\textsuperscript{172} covering virtually every sector of Mexican agriculture. Under the U.S.-Mexico accord domestic protection is removed for all classes of agriculture, livestock, poultry and dairy products.\textsuperscript{173} The Canada-Mexico accord is less ambitious. Dairy, poultry, egg and sugar sectors remain tariff protect-

ed. Despite the different tariff reduction schemes, however, all three nations are expected to eventually move toward domestic support policies that are non-trade distorting.\textsuperscript{174}

The centerpiece of the agricultural agreement, the portion that may pose the greatest threat to Mexico's small corn producers, is the market access provisions that open up Mexico's protected sectors to international free trade. Principally contained in article 703 of NAFTA, they provide for the immediate elimination, or progressive elimination in a 5, 10, or 15-year period, of all tariff and quantitative restrictions on every agricultural good traded between member countries.\textsuperscript{175} This includes grains and oilseeds, fruits and juices, vegetables, sugar, sugar-containing products, dairy products, cotton, peanuts, livestock and meat, poultry, fish, cut flowers, lumber and wood products and alcoholic beverages.\textsuperscript{176} Under this schedule, by 2009 there should be no remaining agricultural tariffs between the U.S. and Mexico. All non-tariff barriers, such as import licensing restrictions, are eliminated through conversion to a tariff rate quota system (TRO).\textsuperscript{177} Under the TRO system, a particular item is assigned a specific quota on imports, with imports below this quota tariff free.\textsuperscript{178}

Certain domestically sensitive crops are given a mandatory long-term phase out schedule. In Mexico's case corn, dry beans, milk powder and sugar are assigned the maximum 15-year phase-out period.\textsuperscript{179} For the U.S., the 15-year phase out period covers frozen concentrated orange juice, sugar and peanuts.\textsuperscript{180}

2. Relative Comparative Trade Advantage

The success of NAFTA's agricultural provisions hinges on the theory of relative comparative trade advantage. According to this theory, if each nation were to produce solely those products to which their natural resources best conduce, then global production becomes maximized, followed by "improved quality and lower prices for con-

\textsuperscript{169} See supra note 69.
\textsuperscript{170} See Barry, supra note 16, at 100, 157, 253.
\textsuperscript{171} See id. at 233.
\textsuperscript{172} See Mexico: Agricultural Mach./Equipment/Related Services, National Trade Data Bank Market Reports, Mar. 21, 1995, available in LEXIS, Nexis Library, National Trade Data Bank File.
\textsuperscript{174} See Mexico: Agricultural Mach./Equipment/Related Services, supra note 172.
\textsuperscript{175} See supra note 173.
\textsuperscript{176} See id.
\textsuperscript{178} See Mexico: Agricultural Mach./Equipment/Related Services, supra note 172. The initial quota amounts are based generally on the highest annual trade level in the 1988-91 trade period and are tracked to grow at 3 percent annually. See id.
\textsuperscript{179} See Potential Impact on the U.S. Economy and Selected Industries of the North American Free-Trade Agreement, supra note 173.
\textsuperscript{180} See id.
sumers. Malthus, in his "The Grounds of an Opinion on the Policy of Restricting the Importation of Foreign Corn," summarized the process over a century ago:

"[If] every nation were to devote itself particularly to those kinds of industry and produce, to which its soil, climate, situation, capital, and skill, were best suited; and were then freely to exchange these products with each other, it would be the most certain and efficacious mode, not only of advancing the wealth and prosperity of the whole body of the commercial republic with the quickest pace, but of giving to each individual nation of the body the full and perfect use of all its resources."

Under NAFTA, relative comparative trade advantage is taken to its logical extreme. Since all protective tariffs and other protective measures are phased out in 15 years, NAFTA trade members should only produce those products that can turn a profit on the international market, i.e., those products in which they enjoy a relative comparative trade advantage.

One way of predicting which food items Mexico and the U.S. maintain comparative trade advantages in is through the United Nations Food and Agricultural Organization's Relative Trade Advantage Factor (RA). An RA measurement greater than zero indicates a "relative comparative advantage for a specific commodity in a global market, while a value below zero indicates a relative disadvantage." For coarse grains, such as corn, wheat, and oil seeds, the U.S. has the highest positive rating, a 7.5. But for fruits and vegetables the U.S. records an RA of zero. Mexico is a near mirror opposite. It has an RA of -7 and -6 in basic grains and oilseeds, respectively, but a positive 3 RA for fruits and vegetables.

Accordingly, under comparative trade theory, Mexico ought to become the major, if not sole, supplier of fruits and vegetables to the U.S., while the U.S. becomes the major, if not sole, supplier of basic grains to Mexico. This form of global food sourcing was evident by the 1980s. By then, Mexico had already become the largest single supplier of horticultural products to the U.S., "no match supplying more than 50 percent of the winter vegetables imported into the United States." In the last three years, it appears that this process has accelerated considerably.

C. Agricultural Trade Trends Under NAFTA

Recently, Florida vegetable producers began dramatically dumping their produce in a symbolic gesture to signal their displeasure over a rapid rise in Mexican vegetable imports. Senator Bob Graham of Florida complained that "the domestic farmer is about to be wiped out because he can't compete overnight with this surge of [vegetable] imports coming out of Mexico.

Senator Graham was correct. Under NAFTA, Mexico had dramatically increased its already dominant share of the U.S. winter vegetable market. In fact, by March 1996, it had increased its share of the U.S. winter fresh vegetable market to 62 percent.

While Mexican horticultural products flooded the U.S., U.S. grain likewise deluged the Mexican market. Marked by progressive record increases for each year of NAFTA, corn led the way. In NAFTA's first year, 1994, for instance, U.S. corn exports to Mexico rose tenfold to 3 million metric tons. As of October 31, 1995, Mexico's corn imports surpassed by 71.9 percent the record levels achieved in 1994.
Still, the most stunning gains came in 1996. By September of that year, the U.S. had exported some 6.3 million metric tons of corn to Mexico.195

The surge of U.S. corn exports to Mexico in NAFTA's first three years would, at first glance, appear counterintuitive. In late 1994, Mexico suffered from a 50 percent peso devaluation.196 This not only made the import of foreign goods prohibitive,197 but, by making Mexican products relatively cheap, it actually spurred Mexican exports.198 In addition, in 1995/96 the world experienced a global grain shortage,199 "with the prospective stocks-to-use ratio matching the low reached in the 1930's Depression."200 Corn prices consequently skyrocketed to record levels.201

In the face of a dramatic peso devaluation and record global grain price increases, how can the surge of U.S. corn exports to Mexico be explained? One reason posited by trade analysts is that Mexico suffered from drought during the last three years, and that this fueled the need to import historic amounts of U.S. corn.202 This scenario, by itself, however, is inadequate. Not only is corn known for its resistance to inclement weather,203 but in Mexico corn has traditionally been planted on close to 50 percent of its arable land surface by an estimated 68 percent of those engaged in agriculture.204 Additionally, the drought has affected only certain corn-producing states of Mexico, mostly in the North.205 And what little drought assistance the Mexican Government offered to afflicted states was not directed to corn producers, but instead was slotted for modernizing the irrigation systems "for livestock producers"—agroexporters.206

If the drought does not provide a complete explanation for the record flow of U.S. corn exports to Mexico in the last three years, NAFTA's agricultural provisions, in conjunction with past neoliberal reforms, provide additional insight. Recall that during the 1980s to early 1990s, Mexico slashed its rural assistance to small farmers—cutting subsidies, technical assistance, and credit programs.207 This led to a marked decrease in cultivation of traditional peasant staple crops. Between 1991 and 1993, for instance, land devoted to basic grains production dropped from 12,427,000 hectares to 9,406,000.208

The movement away from peasant-produced crops resulted in a marked national diminution in the production of basic grains, including corn, and, therefore, set the stage for increased dependency on U.S. grain products. The results have been devastating for Mexico's peasantry. The Institute for Agriculture and Trade Policy writes that "in Chiapas, approximately 200,000 farm workers have lost their jobs because of the 50 percent drop in agricultural production," adding that "most of the reduction is in maize and bananas, which account for 60 percent of agricultural employment in Chiapas."209

NAFTA complements and accelerates the process of food insecurity. It achieves this chiefly by permitting U.S. corn producers to ship millions of tons of corn to Mexico completely free of tariffs.210 This may seem striking considering that Mexican corn is categorized as a sensitive national crop, slapped with the maximum 15-year tariff phase out schedule.211 Under the tariff-free corn provisions, however, "many sensitive products," corn included, are assigned a tariff rate quota (TRQ).212 TRQs


196. See La Botz, supra note 3, at 230.

197. See International Agriculture and Trade — NAFTA (pt. 1), supra note 177.


201. See Suppan, supra note 152.

202. See International Agriculture and Trade, supra note 177.
allow a specific quantity to enter at a reduced tariff, usually zero." While imports above the quota "face a higher tariff, these over-quota tariffs will be reduced to zero during the implementation period, thus eliminating the need for a TRO." To date, Mexico has been very liberal with NAFTA's tariff-free quota provisions, permitting tariff-free importation of virtually all U.S. corn. As of October 1995, for instance, Mexico had raised its tariff-free corn import quota to 3 million tons, an 18 percent increase over the 2.5 million tons originally contemplated under NAFTA. Of this total nearly all, or 2.5 million tons, were slated for direct consumers in Mexico. By June 1996, "Mexico's duty-free quota for U.S. corn imports" was set at 4.5 million metric tons.

Hence, while NAFTA's 15-year phase out period ostensibly protects Mexico's "sensitized" crops from sudden import surges from the U.S., the Treaty, by its TRO terms, renders the phase out period meaningless. Not only is the U.S. given the economic incentive to flood the Mexican market with corn, but the U.S. is so doing in record fashion. In these circumstances, where nearly 18 million indigenous-peasant families depend upon corn production for consumption and marketing, and where the 15-year phase out period is but a fiction, the Zapata's likening of NAFTA to a "death certificate" for the country's Indians rings more true than hollow.

V. Implications

Today, Mexico's indigenous-peasantry stand at an historic crossroads. After having endured two major agricultural upheavals since the 1910 Revolution — the gradual externalization of Mexican agriculture after 1940 and the abandonment of populist-agrarianism during the 1980s — they now struggle in a new, more globalized context. Under NAFTA, the centerpiece of this era's formal global free-market integration, Mexico's small corn producers are thrust headfirst into the unannounced twists and turns of the international market. Whether their communal subsistence communities will wither or survive in the long term, depends on their ability to transmogrify themselves into savvy export-oriented free-marketeers.

Unfortunately, information gleaned from the first three years under NAFTA countenances otherwise. The ongoing neoliberal "policies undermining Mexican family farmers" meant that Mexico continued its national slide in basic grains production. "According to the Mexican government, basic-grain production [fell] for the ten principal basic-grain crops" by 13.3 percent during the first year of NAFTA. Production of corn, between 1994 and 1995 fell by 2.5 million tons. Victor Suarez, director of the National Association of Commercializing Enterprises of Rural Producers (ANEC), remarks that in these circumstances, with Mexican agriculture "decapitalized, stagnant, without integration in its different phases, with government institutions dismantled, and with drastic reductions in subsidies," his country's food dependency will worsen.

Already under NAFTA, the U.S. is shipping record levels of tariff-free corn to Mexico. As mentioned earlier, in 1994, the first year of NAFTA, the U.S. shipped ten times more corn than in 1993 or 3 million metric tons; in 1996, that figure topped 6 million metric tons. Meanwhile, Mexican exports to the U.S. of non-basic food items increased to record levels.

It is thus apparent that after three years under NAFTA, Mexico has quickened the pace toward food dependency and peasant marginalization; the U.S. is providing more and more of Mexico's basic grains, namely corn, and Mexico is in turn producing more and more of the fruit and vegetable products consumed by U.S. families. While this may represent a more efficient allocation of productive resources and lower regional food prices, it may very well lead to what peasants have feared all along — their "eth-
nic cleansing" from the Mexican countryside.\textsuperscript{230} This
ethnic transformation will likely result in both short
and long-term consequences.

A. Short-Term Consequences

Reports of rural violence have grown com-
monplace in Mexico since NAFTA took effect. As
the trend of rising U.S. basic food imports, cou-
pled with the intensification of Mexican agroex-
port production, continues in Mexico, the historic
tension between subsistence producer, on the one
hand, and the large landowner and government,
on the other, worsens.

In June 1995 seventeen peasants in the state of
Guerrero were assassinated in a hail of gun-
fire.\textsuperscript{231} Numerous state police officials were implic-
ated by federal authorities in the massacre,
including the state governor.\textsuperscript{232} A new rebel group,
the People's Revolutionary Army (EPR), incensed at
the impunity afforded the perpetrators, formed
in the wake of the massacre. Seemingly better
financed, and certainly more violent than the
Zapatistas, they have already engaged in several
deadly combats with the Mexican Military.\textsuperscript{233}

The Zapatistas, for their part, endure immi-
nent threats of attack from Mexican army units
ringing their stronghold. In December 1994, as
Zapatistas and their supporters peacefully fin-
ished construction on several small village encampments\textsuperscript{234} in preparation for their Special
Forum on Indigenous Rights, government forces
inexplicably went on heightened alert in and
around the village areas.\textsuperscript{235} Sporadic reports soon
came in that large numbers of Mexican army
troops were on their way toward the tiny villages,
accompanied by tanks and antipersonnel carri-
ers.\textsuperscript{236} On December 26, 1996, the EZLN
announced publicly their fear of an impending
"military action."\textsuperscript{237}

When reporters inquired of the Commander of
the 7th Military Region as to the sudden increase
in military presence, his only response was that
the military was committed to "maintaining" the
peace.\textsuperscript{238} The Mexican Secretary of State's
response to questions about the new troop
deployments was even less satisfying. He indicat-
ed that the military was only conducting "road
patrols." The Governor of Chiapas went so far as to
say that "the situation in Chiapas is normal."\textsuperscript{239}

Reports from independent observers and
Indians near the new Aguascalientes belied the
government's assertion that things were "normal"
and that the troop movements were only routine
road patrols.\textsuperscript{240} Around one Aguascalientes vil-
lage, Oventic, about ninety minutes outside of San
Cristobal de Las Casas, a whole battalion of
Mexican soldiers reportedly stood several hun-
dred feet from the village and assumed attack for-
mation.\textsuperscript{241} They were armed with assault rifles and
other heavy military machinery.\textsuperscript{242} On the other
side of their guns stood whole families of Indians
- men, women and children.\textsuperscript{243}

Violence is likely to get worse. There are
reports of the Mexican Army acquiring military

\textsuperscript{230} See supra note 168-169 and accompanying text.
\textsuperscript{231} See 10 More Arrests in Mexican Massacre, S.F. CHRON., Feb.
\textsuperscript{233} See False, que el EZLN ya sea en Acapulco, precosa Gobernanza, LA JORNADA, Jul. 3, 1996, at 1.
\textsuperscript{234} Sometime during the summer of 1995, thousands of
Maya Indians, at the behest of the Zapatista High Command,
began construction on four symbolic village encampments, each
given the name "Aguascalientes." Interview with Zapatista
Supporter, San Cristobal de Las Casas, Chiapas (Dec. 1995). They
each took their name from the town in central Mexico where
Emiliano Zapata and Pancho Villa, in 1914, convened a conven-
tion in which delegates "pledged to support Zapata's Plan of
Ayala, calling for the distribution of land to the peasant commu-
nities. LA BOC, supra note 3, at 175-76. One writer captured the
momentous significance of the "new" Aguascalientes movement:
"For the first time in Mexico's history, the Indians had summoned
the people of Mexico to discuss the fate of the nation on the
Indians' terms and on native soil." Id. at 176.
\textsuperscript{235} See Julio Cesar Lopez, Se Levantan Ya la Nuevas
\textsuperscript{236} See Videotape: Mexican Military Staging Area, San
\textsuperscript{238} Id.
\textsuperscript{239} Id.
\textsuperscript{240} Id.
\textsuperscript{241} Id.
\textsuperscript{242} Id.
\textsuperscript{243} Id.
vehicles that are specially designed for riot control and suppression of guerrilla warfare. Much of this equipment has been supplied by the U.S. in the wake of the Zapatista Uprising. For instance, just after the rebellion in 1994, the U.S. sent twenty-six military vehicles "equipped with water cannons" to Mexico. In addition, the U.S. has already supplied Mexico with 3,297 "Hummers," (armored infantry vehicles) which have been equipped for use with light machine guns and grenade launchers.

B. Long-Term Consequences

Given the increasing use of military and police force against Mexico's indigenous-peasantry, it seems likely that Mexico is poised to fulfill ex-President Salinas's goal of compelling "some two million families - about three-quarters of the nation's corn farmers [to] search for alternatives in other crops, reorganize their land holdings, associate with private capitalists, or become wage laborers." But integrating Indians into the country's urban-industrial market economy faces at least two formidable obstacles. First, it is virtually impossible for the Mexican market economy to absorb the millions of potentially displaced Indians. Second, there are social factors, akin to those confronting U.S. southern blacks as they moved from the rural South to the urban North, that will stunt any full and meaningful integration of Mexico's Indians.

As it stands now, Mexico has no formal integration plan for the displacement of its millions of Indians under NAFTA. Rather, Mexico expects that the increased agricultural and industrial exports predicted from free trade will fuel expansion, create more jobs, and thereby absorb any incidentally displaced citizens. There is one significant problem with this theory — it flies in the face of existing economic reality.

In the last several years, Mexico has increased its volume of trade in agricultural and industrial exports. Yet not only has the number of jobs fallen considerably, real wages for the remaining workers dropped. For example, between the years of 1983 to 1993, when Mexico began opening its markets to the U.S., Mexico's real GDP achieved steady annual growth. In fact, its volume of exports doubled from $25.95 billion to $51.88. Nonetheless, those years were marred by tremendous job losses and falling wages; between 1982 and 1993, the Mexican minimum wage fell by over 70 percent.

There thus seems to be a direct correlation between industry productivity and profit, on the one hand, and the increasing impoverishment of the Mexican work force on the other. This perverse economic reality undermines the argument that millions of Mexico's Indians can be successfully integrated, through free trade, into the market economy. The obvious question remains: what will become of Mexico's Indian population if U.S. corn continues to flood the Mexican market under NAFTA's tariff-free provisions.

One model might be that of the African-American. As African-Americans migrated out of the rural South, primarily during World War I and especially during and after World War II, they encountered two obstacles: 1) a racist and inhospitable temper in the urban sectors; and 2) a lack of training and job skills required for their new setting. Consequently, they became what Michael Harrington aptly termed the "Other America," poor, neglected, and channeled into what we now call the inner city.

244. Julio A. Montes, Mexican Armoured Vehicles, Jane's Intelligence Review, Jan. 1, 1996, at 44.
245. See id.
246. BARRY, supra note 16, at 47.
248. See id.
250. See Dombusch & Werner, supra note 100, at 294-295.
251. See id. at 295.
253. See Dombusch & Werner, supra note 100, at 295. Under NAFTA, the decline in jobs continues: "According to Mexican government figures, the unemployment rate doubled between September 1994 and September 1995. The number of workers registered at the Mexican Social Security Institute fell by 900,000 during the first eight months of 1995." No Laughter in NAFTA, supra note 224. "Adding to that figure all those workers who were not registered who have lost their jobs, business leaders estimate that over 1.5 million people have been left unemployed [in 1995]." Id.
254. See Dornbusch & Werner, supra note 100, at 294. Wages continue to plummet under NAFTA: "The Mexican Congress of Workers (CTM) reports that the purchasing power of the average wage has fallen by 54 percent this year. The CTM asserts that the real minimum wage in 1976 was 3.4 times that of 1995 and has characterized 1995 as 'the worst year we've had in our history.'" No Laughter in NAFTA, supra note 224.
Much the same experience may await Mexico's Indian population if they are economically and ethically cleansed from their lands. Like post-bellum African-Americans, Mexico's Indians lack the necessary training and job skills to effectively compete in the urban economy. In addition, racism directed against Indians in Mexico is deeply-rooted and widespread. They may thus face the one-two punch of poor preparation and racism in their forced bid to integrate.

But the situation may even prove to be worse for the Indians. Unlike post-bellum African-Americans, many Indians in Mexico speak only their native tongue. This then places a severe language barrier on their urban integration. It is, therefore, more accurate to say that indigenous peoples in Mexico will face three legions obstacles in their forced bid to integrate into the global economy: inadequate training, racism, and the language barrier. It is hard to see how any full and meaningful integration can be achieved in these circumstances by reliance alone on free-market exports.

VI. Solutions

The ghettoization of Mexico's Indian population is not inevitable under a free-trade regime. It is quite possible that by reforming NAFTA and rolling back certain provisions, the U.S. and Mexico can engage in free trade and at the same time provide for the sovereignty, dignity and economy of Mexico's indigenous-peasantry.

Conspicuously absent from NAFTA is the democratic process. Mexico's Indians had no say in the development of the terms of trade under this new treaty. The trade accord was simply put on a fast-track path and commandeered through to adoption by Mexico's 60-year old ruling party, the PRI. To U.S. citizens, this may seem appalling—the fact that the planned displacement of millions of families was decided upon without hearings, community input, nothing. Any attempts at NAFTA reform must therefore begin and end with democratization. Military intimidation and assassination of the indigenous-peasantry and political opposition groups must stop.

Beyond democratization, there are several broad areas where reform is also required:

First, the preamble in NAFTA requires change to reflect a more enlightened philosophy about development. Rather than focus purely on exports for regional prosperity, the new philosophy needs to link gross domestic product with a gross social product. Thus, when an indicator shows real economic trade growth, there should be a corresponding rise in a nation's standard of living. If this does not occur, there should be provisions to roll back or implement remedial measures to protect the living standards of NAFTA citizens. The power to effect these remedial measures should lay not just with individual governments, but with citizen groups as well.

Second, the NAFTA and future trade agreements of the Americas need to have a special section that addresses indigenous rights. Issues such as autonomy and meaningful participation in the free-trade process ought to be covered. In no situation should a consortium of governments simply decide to unilaterally change the productive relations of its native peoples.

Third, a Hemispheric Reconstruction Fund should be set up to deal with economic dislocation in the wake of free trade. These monies can be directed to the training, education, relocation and development of dislocated individuals and communities.

Fourth, Article 27 of the Mexican Constitution, covering land redistribution, rights and privileges, needs to be amended again. The amendments in 1992, ending the state commitment to land redistribution and permitting the privatization of ejidos, exposes vulnerable Indian communities to possible exploitation and, perhaps, expropriation of their lands. Article 27 should again mandate a constitutional commitment to Mexico's Indians in the form of land redistribution.

However, the land titling and registration aspects of the 1992 amendment may be something to retain. They impose a semblance of order on chaos in that disputes as to land boundaries can now be resolved by reference to government titling documents. Moreover, because the ambiguity surrounding ownership of ejido land is eliminated through the titling process, ejidatarios may be better able to seek assistance from lending sources, such as commercial banks, cooperatives and non-governmental organizations.

Finally, the Mexican government needs to financially re-commit itself to its rural poor. For instance, Indian communities require credit, techni-

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257. See Interview with Indian refugees, in San Cristobal de Las Casas, Chiapas (Mar.-Apr. 1994) (on file with author).
258. See LA BOTZ, supra note 3, at 23-24.
261. See generally BARRY, supra note 19, at 113-119.
cal assistance and irrigation systems. These are the types of public works programs that only governments can or are willing to provide. The knee-jerk notion that a country must uphold cuts in social spending, in order to remain globally competitive and credit worthy, simply must be abandoned.

VII. Conclusion

President Clinton has expressed hope that by the year 2005, a Free Trade Area of the Americas (FTAA) will be established. This will include the entire Western Hemisphere. However, once again, as in NAFTA, nowhere is there discussion about what role our Hemisphere’s native peoples will play. What, for example, will become of the Xicaque in Honduras; the Ngobe-Bugle of Panama; the Mapuche of Chile; or the millions of Maya spread across Central America? In Brazil, suicide rates among the Guaraní Ka'owá have reached alarming levels due to extreme poverty, loss of traditional religious practices, but, “above all,” due to lack of land. Will free-trade’s emphasis on land concentration exacerbate this situation?

As it stands, Latin America seems poised to integrate with the United States and Canada, irrespective of the wishes and concerns of the tens of million of Native Americans in our Hemisphere. The White House has already asked that Congress grant it the power to negotiate free trade with Chile and other Latin American countries on a fast-track basis.

Perhaps that is fitting. It was only five centuries ago, after all, when Europe’s steely advocate of multinational trade, by chance, first set eyes on the Western Hemisphere. And even then, full knowing that he stood amidst the protean stages of global economic integration, he could not help but ignore the human forms before him, instead delighting in their bounty. On that first encounter with the Arawak of the Bahama Islands, Christopher Columbus wrote:

They brought us parrots and balls of cotton and spears and many other things, which they exchanged for the glass beads and hawk’s bells. They willingly traded everything they owned. They were well-built, with good bodies and handsome features. They do not bear arms, and do not know them, for I showed them a sword, they took it by the edge and cut themselves out of ignorance. They have no iron. Their spears are made of cane. They would make fine servants. With fifty men we could subjugate them all and make them do whatever we want.