"Citizenship and Property Rights in Liberal Oaxaca"

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Conventional wisdom holds that Mexico's nineteenth-century liberal land reform was all but ignored throughout much of the southern state of Oaxaca, by state officials and Indian villagers alike.[1] Communal property did, after all, survive in many pueblos, and as a result most Oaxaqueño peasants did not share the same agrarian grievances that led their counterparts in central Mexico to join the revolutionary armies of the 1910s. The survival of communal property in Oaxaca was not, however, the result of inactivity on the part of state officials with respect to the 1856 Lerdo Law and related legislation issued by the central government: the period between the Reforma and the Revolution was marked by the promulgation of five different state laws mandating the privatization of communal land, numerous circulars clarifying or expanding upon these laws, frequent exhortations from officials in the Ministry of Government instructing the jefes políticos to ensure that the laws were carried out, and a complex struggle between Indian pueblos and state officials over the interpretation and constitutionality of the laws.[2]

In the course of this struggle, village leaders and their legal representatives negotiated with state officials over the types of communal property subject to privatization, the rights of individuals to purchase communal land over the objections of the pueblos, and the legal standing of the pueblos in litigation over land. Above all, pueblos insisted that the reform not be carried out until they had received favorable juridical decisions in their ongoing boundary disputes with rival pueblos and individual landowners. In the face of repeated state efforts to resolve these disputes by administrative fiats issued by the jefes políticos, the pueblos (or at least those who lost out in such decisions) insisted that the courts retain their jurisdiction in deciding competing land claims, thus perpetuating the litigation and legal injunctions that had so long been the hallmark of the Oaxaqueño peasantry.[3] The inability of state officials to terminate boundary

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[1]See, for example, Waterbury 1975, Berry 1981, and Dennis 1987.

[2]The 1856 Lerdo Law mandated the disentailment of most forms of property belonging to civil and ecclesiastical corporations. Property belonging to the institutions of the Catholic Church was nationalized in 1859, in the course of the civil wars unleashed by the liberal reforms. Most of the state and national laws, decrees, and circulars that followed the Lerdo Law dealt with the far more complex issue of privatizing the communal lands held by Mexico's Indian communities under corporate title.

[3]On the litigiousness of Oaxacan peasants during the colonial period, see Taylor 1972.

disputes limited the extent to which the reform could be implemented and thus the privatization of communal land remained quite partial in Oaxaca. Its alienation to non-villagers was, in the main, limited to the outlying regions of the state, where commercial agriculture boomed during the Porfiriato and communal land was most attractive to investors and speculators.[4]

This paper focuses on the struggle between the Indian pueblos and state officials over the terms of the nineteenth-century liberal land reform in Oaxaca, drawing on case material from the district of Etla, located in one of the central valleys near the capital city of Oaxaca. In particular, I look at the ways different actors in this struggle linked property rights to citizenship in a liberal political order, a dominant theme in the broader liberal project of social and political transformation. Much of the literature on nationalism stresses the role of political elites, the intelligentsia, and state programs and institutions in the construction of national identities. Important as these factors were in nineteenth-century Mexico, the Indian pueblos of Oaxaca were also active participants in debates over the rights and obligations of citizenship, as well as the institutional parameters of the liberal state. Whereas liberal state officials and intellectuals advocated a concept of citizenship based on economic individualism and political identification with the yet-to-be created nation-state, Indian villagers and their legal representatives continued to assert both economic and political rights as "sons of the pueblos," employing liberal discourse, laws, and institutions in doing so, and, in the process, limiting the privatization of communal land in the state and frustrating liberal efforts to replace communal and religious identities with a national one. The perpetuation of communal identities and claims, above all the ubiquitous boundary disputes between rival pueblos, would continue to frustrate both revolutionary state makers and neo-liberal reformers in the twentieth century.[5]

Making Mexicans Out of Indians: Liberal Discourse on Property Rights and Citizenship

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[4]For an overview of the reform's implementation in Oaxaca, see Esparza 1988 and 1990. Tuxtepec in the north, together with the districts of the isthmus and coast were the most affected by the reform, and particularly by provisions allowing for (or forcing) the sale of communal land to outsiders. Esparza's work (1991a and 1991b) in organizing and cataloging documents related to the reparto in the Archivo General del Estado de Oaxaca has greatly facilitated the study of nineteenth century agrarian conflicts in the state.

[5]Two important caveats are in order here. First, throughout Mexico, the land reform generated or exacerbated intense conflicts within villages, these conflicts involving factions defined by class, ethnicity, generation, kinship, residence, and long-standing animosities. This type of factional conflict is critical to an understanding of the politics of the reform at the local level (e.g. Purnell 1999b), but I will not touch on it much in this paper. In part, this is due to the type of documents I've looked at in this preliminary stage of a larger project: correspondence between the local authorities of the pueblos and state officials. It also reflects my interest in inter-pueblo disputes, by far the most common type of agrarian conflict in nineteenth century Oaxaca. In such disputes, pueblos tended to present a united front vis-a-vis rival pueblos and state officials, in spite of internal differentiation and conflict. The second and related caveat is that I'm interested in political discourse, and so I will employ the names that people used to refer to themselves and to others, on the grounds that these names reflect different claims and assumptions about the relationships between property rights, individuals, communities, and the state. I do want to recognize, however, that terms such as vecinos, comuneros, originarios, naturales, and indígenas obscure power relations and class differences as often as they express solidarity and communal identities.

Private property was central to liberal understandings of both citizenship and economic development: it was the small proprietor, freed from the constraints of communal life and religious dogma, who would provide the basis for economic prosperity and a liberal polity in nineteenth century Mexico. The division and privatization of the communal lands held by Mexico's Indian communities under corporate title (a process referred to as the reparto) would, in liberal thinking, foster the entrepreneurial ethos and productive use of resources so necessary to economic growth. It would also help create a new national identity that superseded and perhaps replaced communal and religious ties. Such a national identity, a sense of being Mexican, would be based on a common stake as a small proprietor in a capitalist economy, and common membership as a citizen in a liberal political order. Once the corporate identities and modes of economic, cultural, and political organization of the Indian pueblos were transformed through the privatization of communal land, Mexico could begin to assume its place among the modern and prosperous nations of the world.

Faith in the transformative potential of liberalism was particularly strong in Oaxaca, the native state of some of Mexico's most prominent liberals, including Benito Juárez and Porfirio Díaz. There was, after all, so very much to transform. Throughout the state, Oaxacan liberals, radicals and moderates alike, saw what they considered to be the worst legacies of the colonial era: a predominantly Indian population, corporate villages said to monopolize much of the state's most productive farmland while producing very little from it, and the chronic waste of minds, time, and resources through the drunkenness and debauchery that liberal elites associated with popular religious practice. So often frustrated in their efforts to create a new people out of the old ones, some liberals came to see large-scale European colonization as the state's only hope of salvation. But by and large, faith in the liberal project remained strong in Oaxaca: through the steady application of the liberal reforms, the lazy, disorderly, and drunken Indians of the pueblos would be transformed into hardworking and virtuous citizens of the Mexican Republic. With great dismay, Governor Gregorio Chávez noted in 1891 that little progress had been made with respect to the reparto, owing mainly to the "ignorance" of the Indians, who, "in spite of the clear and repeated explanations they have received as to the immense benefits to be had through the privatization of their communal lands, continue to manifest their indifference." But he declared that the reform would eventually be implemented and its many individual, social, and political benefits realized, pledging to the legislature that "this Government will not desist in its undertaking, and it will achieve the objectives it seeks, albeit at great sacrifices and enormous work."[6]

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[6]"Mensaje leido por el C. Gral. Gregorio Chávez, Gobernador constitucional del estado y contestación del C. Lic. Miguel Castro, Presidente del XVI Legislatura el dia 16 Septiembre 1891." Archivo General del Estado de Oaxaca (AGEO), Memorias Administrativas. Translations of Spanish sources are my own.

The transformation of Indians into citizens would require reforms on several fronts, since popular religiosity and communal land were seen as interwoven obstacles to the modernization of both men and Mexico. Liberals frequently attributed the poverty of the pueblos to the waste of resources on the frequent religious fiestas that characterized popular religious practice. As the jefe político of Ocotlán put it in 1872, the Indians are "corrupted by drunkenness, and by the custom of mayordomías and the superfluous expenses made in the name of religious functions...these are the causes of the impoverishment of the pueblos."[7] As governor, Benito Juárez complained that "the alcaldes and regidores, with very rare exceptions, appropriate [communal funds] for their own uses and to promote vices and customs that are pernicious to society." In order to prevent this, Juárez issued two laws, one in 1849 and the other in 1851, mandating that local authorities submit accounts of their revenues and expenditures for state approval, and limiting the communal sponsorship of religious practice to a single fiesta dedicated to the pueblo's patron saint.[8]

Apart from depleting local treasuries, popular religious practice was believed to be a source of disorder and sloth in the pueblos, preventing the Indians from applying themselves to their labor or assuming their proper role as citizens loyal and obedient to the liberal state. Only through a state-sponsored program of secular education would popular religiosity and its attendant evils be replaced by the virtues of citizenship. Having returned from a tour of Indian pueblos in the state in 1869, Governor Félix Díaz declared:

> [T]he instruction of all classes in society is the only way to regenerate the spirit of the pueblos, purging them of their vices and passions with sound doctrines...[Education] will weaken their customs, bring order to their unruly habits, and inspire in them a pure love for occupation and work, a profound respect for law and justice, a rational and dignified obedience of authority, and a pronounced affection for honor and virtue, the very qualities without which the edifice of a democratic republic cannot be sustained.[9]

Underscoring the connection between secularization, national identity, and economic development, Díaz continued: "We have an extremely urgent responsibility to civilize, protect, and elevate this race, and to convert it, through education, into the element that we so lack--an

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[7]Jefe político of Ocotlán, "Memoria que el ejecutivo del estado presenta al Congreso del mismo, 1872," AGEO, Memorias Administrativas. The term mayordomía refers to the sponsorship of religious practice, including the fiestas dedicated to individual saints.

[8]"Exposición que en cumplimiento del artículo 83 de la Constitución del Estado hace el gobierno del mismo al soberano Congreso, 1852" AGEO, Memorias Administrativas. These laws do not appear to have been widely implemented, since the Ministry of Government had to periodically reminded the jefes políticos of their existence. See, for example, circular 11 of 31 January 1862, Secretaría General del Gobierno (SGG), AGEO, Colección de Leyes y Decretos del Gobierno del Estado de Oaxaca, 1823-1911.

[9]"Memoria que el Gobernador del Estado de Oaxaca presenta al H. Legislatura del mismo, 1869," AGEO, Memorias Administrativas.

agricultural, manufacturing, industrial, and commercial people that will lift this state to the level of prosperity and modernity that is characteristic of true nations."[10]

Communal property, like religious practice, was viewed as an obstacle to economic and political modernization on several grounds. First, it prevented the Indian villagers themselves from being useful and productive members of society: individuals, private titles in hand, would be motivated to work harder and produce more, knowing that such efforts would benefit themselves and their families rather than being wasted on frivolous communal expenditures (most notably religious practice) or appropriated by unscrupulous local authorities.[11] Second, state officials believed that the pueblos held enormous tracts of land that, "lacking capital and a business spirit," they either could not or would not cultivate.[12] Once all of the eligible villagers received a plot of land through the reparto, the "surplus" could be sold to outside investors more likely to make productive use of it (sales to individuals were referred to as adjudicaciones in Oaxaca). As José Esperón, leading liberal, Minister of Government, and himself a large landowner, put it in 1862: "this state will never progress, nor will it prosper, if its vast territory remains as it is now--uncultivated--and this terrible state of affairs will continue until the lands possessed in common by the pueblos are turned into private property."[13]

State officials recognized, however, that communal property could not be privatized or sold until its legal ownership had been established. This required the resolution of the countless boundary disputes between rival pueblos and, less frequently, between pueblos and individual landowners. Many such disputes were centuries old, and most of them were the source of ongoing litigation and occasional outbursts of violence. Liberals tended to see these boundary disputes, like popular religious practice, as frivolous and wasteful obstacles to modernization, perpetuated by local authorities and their lawyers for their own personal gain. In 1878, Governor Francisco Meixueiro declared that boundary disputes must be cut short, for the good of the pueblos and of society at large: "without bringing any real benefit to the opposing pueblos," he noted, "they are, as a rule, a seedbed of discord and rivalries between them, and a source of

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[10]Ibid.

[11]As Governor Martín González put it in 1899, in explaining a recent expansion in agricultural production: "once hardworking men, both national and foreign, could appropriate for themselves the proceeds of their own labor, without facing obstacles, they have done so in large numbers and with great determination." Memoria administrativa presentada por el C. General Martín González, gobernador constitucional del estado de Oaxaca a la Legislatura del mismo, 1899." AGEO, Memorias Administrativas.

[12]Governor Francisco Meixueiro, Memoria administrative, 1878. Liberals frequently complained that the pueblos would not expand production because of their inherent backwardness. As noted by Cassidy (1981), however, neither villagers nor large landowners were interested in expanding production until the development of infrastructure made larger markets accessible.

[13]Circular 10, 27 January 1862, Secretaría General del Gobierno (SGG), AGEO, Colección de Leyes y Decretos del Gobierno del Estado de Oaxaca, 1823-1911. Very little arable land was uncultivated in the central valleys of the state. Some pueblos in more sparsely populated areas most likely did hold large tracts of arable land, given the amount that was alienated to outside investors and speculators towards the end of the century.

unending profit and exploitation for their patrons, who are not always guided by the best intentions. Without affecting the communal rights of the pueblos, and only regulating their exercise in order to reconcile those rights with the precious interests of society, a precise period should be set...for the definitive termination of this class of litigation."[14] Several state laws did precisely this, without any apparent impact on the number or intensity of such disputes.

The laws and circulars issued by the state government differ in several key respects from the disentailment laws issued by the national government (and other states), reflecting the central concerns of Oaxacan liberal elites with the "backwardness" of the state's predominantly indigenous population, the apparent extent of uncultivated land held by the pueblos, and the propensity of the pueblos to engage in protracted litigation in defense of their land claims. First, Oaxacan laws placed an upper limit on the value of the parcels distributed to village residents; any remaining land was to be considered "surplus" (the sobrante) and could be distributed to other pueblos that lacked enough land for their own reparto or sold to outside investors and landowners, either action arranged by the jefes políticos. A second and related difference was that Oaxacan laws extended far greater rights to non-residents than national ones in the matter of claiming and buying communal land. Both national and state laws allowed tenants to buy the communal land they rented from the pueblos over the objections of the latter. But state laws also stipulated that the jefes políticos should arrange the sales of any "surplus" land held by the villagers, and, at times, any land held by pueblos that refused to carry out the reparto. Finally, Oaxacan laws were unusually detailed in their treatment of boundary disputes, which had to be resolved before the reparto and adjudication of communal lands could be completed. Both national and state laws deprived the pueblos of their juridical personality with the respect to at least some of their land claims. Oaxacan laws went further, terminating most litigation between rival pueblos (but not between pueblos and individuals), and assigning the jefes políticos the role of resolving boundary disputes. The jefes políticos were provided with detailed, if sometimes ambiguous, instructions as to how to go about doing this, and while pueblos could appeal such decisions to the Ministry of Government, the latter's verdict could not be appealed. All of these provisions were the subject of vigorous contestation on the part of the pueblos which, in many cases, succeeded in either overturning, modifying, or ignoring them, the subject of the next section.

[14]Governor Francisco Meixueiro, Memoria administrative, 1878. As an added benefit, the governor noted, the disappearance of this type of litigation would reduce the attractiveness of legal careers, and Mexico's educated young men would apply themselves to more useful professions.

Citizens and sons of the pueblos: the politics of the reparto in the district of Etla

However much liberal elites promoted a concept of citizenship based on individualism, private property, and loyalty to the nation-state in-the-making, Oaxaqueño villagers continued to advance claims as the hijos de los pueblos, as members of particular communities whose rights to resources, above all land, were based on birth in and service to those communities. They did so, however, as citizens as well, employing the discourse, laws, and institutions of liberalism in defending communal land claims and identities. As a general rule, pueblos in the central valley district of Etla expressed three main concerns with respect to the liberal reparto: first, they wanted to maintain some if not all of their land as communal property; second, they wanted to limit the amount of land they were forced to alienate to outsiders or to individual claimants within the pueblos; and third, they wanted to keep or gain control over land disputed with other pueblos and individual landowners. In these efforts, the pueblos were aided by the complex and voluminous body of liberal land laws. At the national level, the 1856 Lerdo Law was followed by half a century's worth of circulars and decrees which attempted to clarify its often ambiguous terms. The major Oaxacan laws of 1859, 1862, 1864, 1890, and 1894 contradicted each other and the 1856 national law and related decrees in important respects.[15] Given this, the pueblos could, and often did, make quite credible claims as to what they were and were not required to do by law, obtaining legal injunctions (amparos) against the actions of the jefes políticos and other state officials, and initiating new litigation against rival pueblos and neighboring landowners.

State and national laws were contradictory on the question of which types of communal land were subject to privatization. Plots cultivated by individual families under longstanding use-rights (the tierras de común repartimiento) were clearly to be privatized, and both state and national laws stipulated that they should be allocated to their current occupants. For most of the period, the fundo legal or town site (which included public areas and buildings as well as houses and garden plots) was clearly exempt from privatization. The propios, lands rented out by the pueblos to raise funds for civil expenses and religious practice, were, in most interpretations of both national and state laws, to be sold to their current tenants, or auctioned off to whoever wished to buy them if the current tenants did not. What was least clear was the status of communal pastures (ejidos) and woodlands (montes). Article 8 of the Lerdo Law exempted the ejidos by name, as well as "lands dedicated to the public service of the towns to which they belong," a clause that could be interpreted more or less broadly. This language was dropped, however, when the law was incorporated into the Constitution of 1857. The state laws of 1862 and 1894 explicitly exempted the ejidos and montes from privatization, as long as they were subject to common usage; the more draconian law of 1890 explicitly included them, providing a

[15]All of the state laws and many of the national ones can be found in AGEO, Colección de Leyes y Decretos del Gobierno del Estado de Oaxaca, 1823-1911.

detailed definition of the terms "ejido" and "fundo legal" so that the former might be privatized and the latter preserved as communal property.

Many Etla pueblos were willing to privatize the tierras de común repartimiento: these were widely viewed to be a form of private property already, albeit one subject to considerable communal control, and their privatization need not alter existing patterns of use and access. At the end of 1856, the jefe político of Etla submitted a report on the implementation of the Lerdo Law in the district, indicating that anywhere between one and 69 parcels had been privatized in 26 communities; almost all of the properties were valued at less than 200 pesos, and the great majority at less than 100 pesos, suggesting that the property involved was cultivated land farmed by individual residents.[16] There was a great deal of resistance to the privatization of the ejidos and montes, however, and in their arguments before state officials, local authorities and their legal representatives carefully cited the laws and circulars which exempted such lands (the Lerdo Law and the state laws of 1862, 1864, and 1894), while ignoring those that required it (numerous national circulars and the state law of 1890). In the same report noted above, the jefe político reported that four pueblos had claimed that all of their lands were ejidos, and hence exempt from privatization under the terms of the Lerdo Law.

The issue of which lands were subject to privatization (and how to define different types of communal property) was of particular importance to the pueblos because of the rights granted to individuals under state law with respect to "surplus" communal land, and the provisions pertaining to the "denunciation" of undivided communal lands and lands without legal title under the national Lerdo Law of 1856 and the terrenos baldíos law of 1894. If land was not subject to privatization, it could not be claimed by individual residents or outsiders; if it was subject to privatization, and that privatization was not carried out, then it might well be sold as surplus land, unclaimed land, or land without legal title by the jefes políticos. Both national and state laws stipulated that tenants had the right to purchase any communal lands they rented from the pueblos, and this provision was widely applied in Oaxaca. National circulars intended to clarify the terms of the Lerdo Law generally protected the rights of the pueblos with respect to all unleased land, be it cultivated land, pasture, or woodlands, stipulating that it should be divided among the eligible residents of the pueblos.[17] The matter was a good deal more complex in Oaxaca, because state laws placed an upper limit on the value of parcels distributed to residents through the reparto (200 pesos under the 1862 law and 100 pesos under that of 1894), the

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[16]Etla jefe político (JP) to the SGG, 4 December 1856, AGEO, Repartos y adjudicaciones (RA), legajo 9, expediente 26, 1856.

[17]There is still considerable debate as to how much communal property was alienated through the application of the baldíos law of 1894. Conventional wisdom holds that this law led to the massive alienation of village lands to surveying companies, but Holden's more recent analysis (1994) strongly suggests that communal land claims were generally respected in the application of the law.

remainder to be considered surplus land subject to public auction or distribution to pueblos that had insufficient land for their own repartos.[18] State laws, much more clearly than national ones, also gave individuals the right to denounce and claim communal land that was not privatized within a certain time period.

Sales of communal land to non-residents were by no means always opposed, since they brought in much needed income. Rather, the key point of contention was who had the right to decide which lands were sold and under what conditions. In San Agustín Etla, for example, local authorities agreed to sell some land and water rights in 1883 to a textile merchant living in the city of Oaxaca. The land in question was not suitable for agriculture, they wrote, the sale would generate an annual income of 420 pesos, and the pueblo had sufficient lands for its members' needs.[19] Seven years later, however, local authorities opposed the sale of another parcel of communal land to an individual resident, Jacinto Ruiz, who denounced and claimed it as undivided communal land under the terms of the Lerdo Law.[20] Local authorities argued that it was not subject to adjudication on a number of legal grounds. First of all, the land in question was part of the pueblo's montes, which made it exempt from privatization under state law and hence not subject to denunciations:

> [I]n this pueblo, everyone is free to sow their crops where they want, and to clear new land without this giving them any special rights, because the montes belong to all of the vecinos and they all have equal rights to make use of them, and if it is possible to make denunciations it will be to the detriment of the majority of the population who are very needy people and who extract wood from the part of the monte that Señor Ruiz claims for himself.

Second, Ruiz wanted to clear the land in question, which would damage the woodland springs feeding into a nearby river, and local authorities reminded state officials that the government had issued orders against cutting wood if doing so would damage the water supply. Third, the site included a palenque where mescal was made by all of the villagers, and hence constituted property dedicated to the public service of the pueblo, and exempt from privatization under the terms of Article 8 of the Lerdo Law. Finally, local authorities summed up their opposition with

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[18]Miguel Lerdo de Tejada's well-known circular of 9 October 1856 stipulated that all cultivated plots valued at less than 200 pesos should be automatically distributed to their occupants without charge, unless those occupants explicitly gave up their rights to them. This provision was intended to prevent speculators and other non-villagers from denouncing such land under the terms of the Lerdo Law, which gave tenants and occupants three months to claim the land for themselves. It was not intended to place an upper limit of 200 pesos on the communal lands distributed under private title to community residents (Circular of 9 October 1856, Miguel Lerdo de Tejada, Secretario de Hacienda y Crédito Pública, Mexico City, AGEO, Colección de Leyes y Decretos del Gobierno del Estado de Oaxaca, 1823-1911.

[19]Escritura de adjudicación de unos terrenos y uso de agua a favor de José Zorrilla, San Agustín Etla, AGEO, Repartos y adjudicaciones, leg. 9, exp. 9.

[20]Jacinto Ruiz, San Agustín Etla, to JP, Etla, 2 June 1890, AGEO, RA, leg. 9, exp. 12.

reference to the rights of the hijos del pueblo: "We don't believe its just that a single vecino be able to take advantage of all of the benefits of the montes, monopolizing the land or making himself the absolute owner of that which belongs to all of the sons of the pueblo."[21]

State officials did authorize sales of communal land to individuals over the objections of the pueblos, particularly when those individuals claimed rights to the land as tenants. Local authorities often sought legal injunctions against these sales through the courts, and continued to occupy and exploit the land, with or without a favorable juridical decision. Such conflicts were made even more complex by the fact that lands rented to tenants by one pueblo might be claimed by another pueblo, generating litigation and often violence between pueblos, as well as between pueblos and those individuals that claimed the land as tenants. In one case, José Inés Díaz Ordaz, a prominent landowner and son of former liberal governor, claimed the right to purchase lands valued at 6666.65 pesos that his family rented from the pueblo of San Juan del Estado in 1857, in accordance with the terms of the Lerdo Law.[22] The pueblo attempted to block the sale through the courts, but was unable to do so, the Lerdo Law and related circulars being relatively clear on the rights of current tenants. The residents of the neighboring pueblo of San Pablo Huitzo also protested the sale, on the grounds that the land sold to Díaz Ordaz belonged to them and not to the pueblo of San Juan del Estado (this inter-village conflict in discussed further below). State officials generally agreed that San Juan del Estado had been declared the legal owner of the land in a previous court decision, but upheld the right of Díaz Ordaz to purchase it over the objections of the pueblo as a tenant.[23] If the residents of San Juan could not keep the land itself, they certainly wanted to collect the interest payments, and eventually capital, from its sale; they therefore entered into an agreement with Díaz Ordaz in 1873, in which Díaz Ordaz agreed to drop his lawsuit against the pueblo, while the pueblo agreed to support his possession of the land against the claims of San Pablo Huitzo.[24] In 1884, however, twenty years after the sale had been formally approved by state authorities, Díaz Ordaz complained that he was unable to make use of the land: the Indians of both pueblos, he wrote, continually invaded his property, extracted wood, stole his crops and livestock, planted ever larger extensions of land themselves, and generally acted as though they, rather then he, were the legitimate owners of the property.[25]

In another case, the residents of San Juan del Estado attempted to arrange a rental agreement with one Sr. Genaro Ruiz Orozco, with respect to a property called the Potrero de San

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[21]Acuerdo del ayuntamiento de San Agustín Etla, 9 June 1910, AGEO, RA, leg. 9, exp. 12.
[22]José Inéz Díaz Ordaz to SGG, 13 May 1863, AGEO, RA, leg. 9, exp. 22.
[23]Francisco Cruz, Síndico of San Juan del Estado to the Governor of Oaxaca, 24 February 1863, AGEO, RA, leg. 10, exp. 33.
[24]Agreement between José Inéz Díaz Ordaz and San Juan del Estado, 28 July 1873, Conflictos por límites de tierras, siglo XIX (CL), leg.57, exp. 10.
[25]José Inés Díaz Ordaz to Governor of Oaxaca, 9 July 1884, AGEO, CL, leg. 57, exp. 10.

Miguel, believing that such an agreement would bolster their claim of ownership over the counterclaims of San Pablo Huitzo. As local authorities explained to the jefe político in 1895:

> The land to be rented belongs to our pueblo, and, it being no longer possible to suffer more abuses and clandestine invasions by the vecinos of San Pablo, we have decided that once these lands are colonized [i.e. occupied by Ruiz Orozco] the abuses will end...None of the vecinos of this pueblo will be hurt by such a rental agreement but on the contrary will benefit because it will prevent the disastrous events that could occur as the result of deeds committed by the vecinos of San Pablo.[26]

The matter was eventually submitted to the governor, who was reminded by officials in the Ministry of Government that since San Juan did not have the juridical standing to either own land or arrange its rental, the property in question should be distributed to individual residents through a reparto, or sold at public auction if it constituted surplus land after such a reparto had taken place.[27] The rental agreement was approved anyway, and Ruiz Orozco took possession of the land, hiring the residents of San Juan del Estado to work it as had been previously arranged.[28] A year later, Ruiz Orozco claimed the right to buy the land as the tenant of undivided communal property. The residents of San Juan del Estado protested, claiming that the land should be divided up amongst themselves through a reparto. The Minister of Government in turn declared, "it is very strange that the Municipio in question is now opposing the adjudication of the property called Potrero de San Miguel, since the land has been rented to Sr. Ruiz for twenty years and is practically uncultivated, proof that it isn't needed by the vecinos of the pueblo because they have other lands for their own use." The jefe político was instructed to arrange the sale of the land through a public auction.[29] However, as discussed below, the auction was nullified by a legal injunction obtained by the pueblo of San Pablo, which managed to convince at least one judge of the merits of its legal claim to the lands rented to Ruiz Orozco.[30]

Generally speaking, the pueblos of the central valleys did not lose significant amounts of land to outsiders through the process of adjudication, in contrast to pueblos in the outlying regions of the state, especially in Tuxtepec and the districts of the isthmus and coast (Esparza 1988 and 1990). According to a 1902 report by the Etla jefe político, adjudications had occurred

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[26]Ayuntamiento of San Juan del Estado to JP of Etla, 24 September 1895, AGEO, CL, leg. 57, exp. 12.
[27]SGG to Governor of Oaxaca, 23 October 1895, AGEO, CL, leg. 57, exp. 12.
[28]Genaro Ruiz Orozco to Governor of Oaxaca, 16 July 1901, AGEO, CL, leg. 57, exp. 12.
[29]SGG to Governor of Oaxaca, 30 September 1896, AGEO, RA, leg. 9, exp. 25. Given that the rental agreement had been approved only the year before, it isn't clear how long Ruiz had occupied the land. The agreement may have been meant to formalize an existing situation to strengthen San Juan's case against San Pablo, or the Minister may have been misinformed. Either way, he clearly couldn't see the distinction made by the pueblos between renting land (a temporary measure) and selling it (a permanent one), since they would derive income from either transaction.
[30]Documents in AGEO, RA, leg. 9, exp. 25 and CL, leg. 58, exp. 4.

in only a handful of pueblos (as opposed to repartos): the villa of Etla had sold two properties valued at 3000 and 2000 pesos respectively; San Juan del Estado had sold three parcels, two of them valued at 600 pesos and one at 1500 (the property claimed by José Inés Díaz Ordaz, valued at 6666.65 pesos is not mentioned here); and San Pablo Huitzo had sold a property valued at 2500 pesos to Juan Baigts, one of district's largest landowners.[31] Not all of these sales were recognized as valid by the pueblos: in response to a 1908 request by the jefe político to provide data on adjudicated land, the ayuntamiento of San Juan Estado reported that no such sales had occurred, while that of San Pablo Huitzo did not bother to respond.[32] Ignoring half a century of state and national laws and decrees, meanwhile, the municipal president of Alatlahuca reported that no adjudications had taken place "since all of the vecinos of this pueblo possess lands of their own acquired under different types of titles, and the communal lands are owned by the same vecinos in common and are cultivated in corn and beans."[33]

The third major source of conflict over the terms of the liberal land reform concerned the issue of who had the authority to resolve the many boundary disputes between pueblos. Liberals correctly saw these disputes as one of greatest obstacles to the realization of their broader project: on the one hand, neither repartos nor adjudications could be carried out as long as the legal ownership of land was in question, and, on the other, such disputes were seen as reinforcing and perpetuating the very communal identities liberal wished to replace with a national (and to them more rational) one. The state-level disentailment laws of 1862 and 1890 transferred jurisdiction over boundary disputes from the courts to the jefes políticos and Ministry of Government. Reflecting the level of popular resistance to this measure (and undoubtedly the inability or unwillingness of the jefes políticos to resolve such disputes), jurisdiction was handed back to the courts in the laws of 1864 and 1894.

Briefly, the 1862 law stipulated that in disputes between pueblos (but not between pueblos and individuals), the jefe político should ascertain which pueblo had possession of the land on 13 February 1861, the date that the first disentailment law of 1859 was published in the state. The pueblos could provide the jefe with supporting documents and the testimony of up to five witnesses, and the jefe's decision was to be made within a matter of twenty days. That decision could be appealed to the Ministry of Government within eight days, but the Ministry's decision was not subject to appeal. Once boundary lines were established, the occupants of the lands assigned to each pueblo should be considered as members of those pueblo. If the pueblos did not accept the resolution of the dispute or the subsequent reparto of their lands, then their

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[31]"Relación de pueblos a quienes se les reconocen capitales por adjudicación de terrenos incluyendo nombres de adjudicatarios y valores de los capitales y réditos," District of Etla, 1902, AGEO, RA, leg. 2, exp. 17.
[32]Collection of municipal reports on adjudicated lands, 1908, AGEO, RA, leg. 10, exp. 4.
[33]Municipal president of Alatlahuca to JP, Etla, 5 September 1908, AGEO, RA, leg. 10, exp. 4.

property was to be sold at public auction. Finally, the pueblos retained their juridical standing only with respect to lands that were exempt from the reparto, meaning the ejidos, montes, and town sites. The 1864 law, issued by Porfirio Díaz in the midst of the civil war generated by the French invasion, returned jurisdiction over boundary disputes to the courts, and declared that the pueblos retained their juridical standing in all litigation initiated before the promulgation of the Lerdo Law in 1856. Any decisions already made by the jefes políticos must be reviewed by the courts, which were to be notified of any and all protests made by pueblos and individuals against the jefes. In 1890, the jefes políticos were once more assigned the role of resolving boundary disputes, and all litigation between pueblos was declared to be terminated, given that this law subjected all communal property with the exception of the fundo legal to disentailment. Finally, the 1894 law overturned that of 1890, declaring the 1864 law to be in effect and thereby returning jurisdiction over boundary disputes to the courts.[34]

It was in the course of conflicts over boundaries that pueblos made the most eloquent and effective use of liberal discourse, laws, and institutions. In so doing, they seldom won definitive control over disputed land, but neither did they lose it, the main result being the perpetuation rather than the resolution of boundary disputes and the frustration of the liberal project with respect to both land reform and the eradication of communal identities. Two of the conflicts between the pueblos of San Pablo Huitzo and San Juan del Estado are instructive in this respect.

As noted above, San Pablo Huitzo protested the 1857 sale of communal land to José Inés Díaz Ordaz by San Juan del Estado, on the grounds that San Pablo, rather than San Juan, was the legitimate owner of the land in question. Juan Antonio Sosa, the síndico of San Pablo, first claimed in 1863 that he and several other residents had purchased the land in question from the pueblo in 1856, prior to its adjudication to Díaz Ordaz, and that they, rather than Díaz Ordaz or the residents of San Juan, were currently in legal possession of it, as they had been on 13 February 1861. This gave them rights to the land on two grounds, under the terms of the Lerdo Law and the state law of 1862: the land had been properly adjudicated to them, and they were in possession of it on the critical date with respect to decisions rendered by the jefe político in matters related to boundary conflicts between pueblos. Should the jefe disagree with them, the decision was not even his to make: the 1862 laws stipulated that conflicts between individuals (Sosa and his partners) and pueblos (San Juan del Estado) should be decided by the courts, and that the jefe should simply protect the rights of those in possession of the disputed land (themselves) until a decision had been rendered by the courts. Furthermore, if this were not enough, they also claimed the land as vecinos of the San Pablo Huitzo whose ancestors had cultivated the same land since time immemorial, as the heads of poor families using the land to

[34]Reglamentos of 1862, 1864, 1890, and 1894, AGEO, Colección de Leyes y Decretos del Gobierno del Estado de Oaxaca, 1823-1911.

provide a subsistence, and as citizens supporting their local governments through the annual interest payments made on adjudicated properties. On these grounds, Sosa and his partners requested that the adjudication to Díaz Ordaz be nullified.[35]

The ayuntamiento of San Juan del Estado first requested and received copies of the various laws cited by Sosa and his associates, since the petition included a number of legal points with which they were not familiar.[36] Francisco Cruz, the síndico, then responded with the following legal argument. First, the lands in question had belonged to his pueblo since time immemorial:

> The pueblo of San Juan, which I represent, has possessed as its own these and many other lands since a period so ancient as to be lost in the obscurity of time. When the Spanish Crown, exercising in this region its [illegible word] right of conquest, wanted to sell to the pueblos that which belonged to them as property, under the name of a composición, our ancestors applied to the courts and received such a title.[37]

Second, the current dispute was one between pueblos, San Pablo Huitzo and San Juan del Estado, not one between a pueblo and individuals. According to Cruz, the vecinos of San Pablo began to challenge San Juan's ownership of the property in 1839, "even dispossessing my pueblo of some pieces of land that they cleared on the slopes of the woodlands to sow their wheat." In response, San Juan brought suit against San Pablo, charging it with dispossession, and in 1841 received a favorable decision from José María León, at that time the judge of the partido to which both pueblos belonged. San Pablo ignored this decision, and invaded even more of San Juan's land, leading to another lawsuit that again resulted in a decision favorable to San Juan in 1856. San Pablo had appealed this decision, but no further decision had been rendered by the courts. San Juan del Estado was thus the legal owner of the lands in question when the Lerdo Law was promulgated, and as required by that law, was forced to sell the land that the Díaz Ordaz family rented from the community. In cases where disputes were between pueblos, Cruz continued with reference to the disentailment law of 1862, the jefes políticos were to respect existing juridical decisions, such as that made in favor of San Juan in 1856. With respect to the

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[35]Juan Antonio Sosa and partners, San Pablo Huitzo, to the Governor of Oaxaca, 19 January 1863, AGEO, RA, leg. 10, exp. 33. In light of subsequent events, the sale they referred to was probably a simulated one, a common tactic designed to circumvent the terms of the Lerdo Law by titling communal land under the names of a few individuals while retaining de facto communal control and usage of it. The disentailment law of 1862 attempted to nullify these transactions, stating in article 24 that "the simulated sales and adjudications that many pueblos have arranged, with the objective of continuing to possess municipal lands in common, are not valid, as long as the simulation is proven in accordance with the provision of this legislation."

[36]Ayuntamiento of San Juan del Estado, testimony before the jefe político of Etla, 23 January 1863, AGEO, RA, leg. 10, exp. 33.

[37]Francisco Cruz, síndico of San Juan del Estado to the Governor of Oaxaca, 24 February 1863, AGEO, RA, leg. 10, exp. 33. This refers to the títulos de composición (settlement titles) that the Crown periodically required the pueblos (and other landowners) to obtain and pay for.

sales agreement cited by Sosa, Cruz referred the governor to the third clause in the document, which stipulated that the agreement would go into effect only if San Pablo won its appeal of the 1856 decision. Since San Pablo had not, the agreement was invalid. If the adjudication was illegal under existing laws, as claimed by Sosa, then the land should be divided among the vecinos of San Juan through a reparto; if the adjudication was indeed legal, then it was San Juan, and not San Pablo, that should receive the capital and the interest payments from the sale.[38]

State authorities apparently concurred with Cruz's argument, since the adjudication was not nullified. In 1872, however, the conflict flared up again, when Díaz Ordaz complained that several vecinos from San Pablo had invaded lands adjudicated to him by the pueblo of San Juan. This time, the local authorities of San Pablo tried a different argument, centering on the question of the jurisdiction of the courts in matters related to boundary disputes.[39] According to the municipal president, the jefe político of Etla had issued an order that prevented "the sons of my pueblo" from using land that belonged to them. He agreed that San Juan had sold Díaz Ordaz some land, but not all of the land that the landowner claimed, a good deal of which belonged to San Pablo. Díaz Ordaz, the municipal president continued, was trying to gain control over San Pablo's land through a simple order of the jefatura. "I respect and esteem, as I must, the orders of this Jefatura," he wrote, "but under no circumstances can my pueblo consent to dispensing with its rights." The residents of San Pablo had been and were in possession of the land, he concluded, and in any case the jefe político did not have jurisdiction in determining questions of ownership.[40] Antonio Sosa, as the síndico of San Pablo, reiterated the municipal president's argument a week later. Calling the jefe's order an arbitrary abuse of power, Sosa wrote, "with a stroke of his pen, he has proposed to deprive San Pablo of the use of its lands, when there exists a judicial authority which is the only authority that can and should be knowledgeable about this class of demands." How can the jefe order them not to cultivate the land, when he does not know who is its legitimate owner? "Or does he believe it is Sr. Díaz because Sr. Díaz assures him this is so? Never does the law simply accept a person's word."[41] State authorities were apparently unconvinced by these arguments, since Díaz Ordaz retained legal possession of the land. As noted above, however, he found himself unable to profit much from it, since vecinos from both pueblos continued to invade it and claim it as their own.

Local authorities made equally complex but indeterminate arguments with respect to San Juan del Estado's rental, and subsequent forced sale, of communal land to Sr. Genaro Ruiz Orozco. As noted above, the pueblo of San Juan had arranged this rental agreement in hopes of

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[38]Ibid.
[39]Since the 1864 disentailment law was then in effect, the courts did indeed have jurisdiction once more.
[40]Municipal president of San Pablo Huitzo to Governor of Oaxaca, 30 June 1872, AGEO, CL, leg. 58, exp. 1.
[41]Antonio Sosa, síndico of San Pablo Huitzo, to Governor of Oaxaca, 8 July 1872, AGEO, CL, leg. 58, exp. 1.

consolidating its claim to the land vis-a-vis San Pablo; Ruiz had agreed to hire residents of San Juan to work the land. The residents of San Pablo objected to the agreement, on the grounds that they were in both legal and physical possession of the land. Violence between the two pueblos erupted after the rental agreement was approved by state authorities: men from San Pablo first assaulted the men from San Juan who had been hired to work the land by Ruiz Orozco; the latter retaliated by sacking and burning down the houses built by San Pablo residents on the disputed land, and destroying a nearby cemetery.[42] Once Ruiz Orozco petitioned to buy the land as its tenant in 1896, both pueblos stepped up their legal maneuvers and attempted to overturn the sale: San Juan del Estado claimed that the land should be divided among the vecinos of the pueblo through a reparto, while San Pablo Huitzo claimed that state authorities were required to respect its possession of the land, as the current occupants, until a juridical decision had been rendered as to ownership. While they no longer had houses there, since these were burned down by Ruiz Orozco and the residents of San Juan in 1895, they still had fields under cultivation, and this constituted possession under current laws.[43] A year later, the Mexican Supreme Court recognized San Pablo's argument as valid, and granted the pueblo a legal injunction (amparo) which nullified the sale to Ruiz Orozco.[44] The jefe político of Etla then issued an order, prohibiting the residents of San Juan del Estado from using the land and recognizing the possession of San Pablo Huitzo.

The municipal president of San Juan Estado, in response, declared that the jefe's order was unconstitutional, since the amparo simply nullified the sale to Ruiz Orozco, without granting possession to San Pablo Huitzo, which had no pending litigation with either San Juan or Ruiz Orozco, no legal standing as a party to the dispute, and certainly no right to claim possession of the land based on the legal injunction. In usurping the authority of the courts, the jefe had violated the state constitution. Therefore, the state of affairs in effect at the time of the jefe's invalid order should be restored: Ruiz Orozco should be reinstated as tenant, pending the resolution of San Juan's petition to distribute the land to pueblo residents through a reparto. The jefe's action, the municipal president concluded, "speaking with all due respect, constitutes a despojo to the detriment of the Municipio I represent."[45]

The case became even more complicated over the course of the next several years, when Alejandro Audelo and several other individuals from San Pablo Huitzo claimed the land in dispute with San Juan as undivided communal land belonging to San Pablo and subject to denunciation and adjudication under the Lerdo Law.[46] The local authorities of San Pablo

[42]Documents in AGEO, CL, leg. 58, exp. 3 and RA, leg. 9, exp. 25.
[43]Vecinos of San Pablo Huitzo to JP of Etla, 5 April 1897, RA, leg. 9, exp. 25.
[44]JP of Etla to Minister of Government, 10 May 1898, RA, leg. 9, exp. 25.
[45]Municipal president of San Juan del Estado to Governor of Oaxaca, 16 May 1898, AGEO, RA, leg. 9, exp. 25.
[46]Alejandro Audelo and six others to the Governor of Oaxaca, 17 September 1898, AGEO, RA, leg. 10, exp. 35.

objected, on the grounds that many residents cultivated fields on the lands denounced by Audelo and the others, and the Ministry of Government instructed the jefe político to turn the matter over to the courts.[47] Meanwhile, residents from the neighboring pueblos of Telixtlahuaca and Jayacatlan began invading the land disputed by Ruiz Orozco, San Juan and San Pablo, claiming it as part of their own communal property.[48] In 1907, the jefe político conducted an inspección ocular of the boundaries with officials from the four communities in dispute. He reported that the procedure had been unsuccessful in that the pueblos could not come to an agreement on the boundaries between them, or on the location of private property held by individuals within the pueblos versus communal property held by the same pueblos.[49]

The persistence of Oaxaqueño pueblos in pursuing land claims against rival villages and individual landowners through legal injunctions and protracted litigation was one of the main reasons why liberal elites were unable to implement the many nineteenth century disentailment laws in much of the state. Much of the land in Etla remains both communal in title and subject to legal disputes between pueblos. Few communities in the district applied for ejidos under the revolutionary agrarian reform program, but many applied for and received a presidential resolution confirming and granting a new title to their communal lands (a process known as the reconocimiento y titulación de bienes comunales).[50] These resolutions, like the many court decisions that came before them, have by no means always ended the disputes between pueblos, which continue to be the dominant form of agrarian conflict in the state.

Conclusions

This brief study of the politics of the reparto in the district of Etla leads to three general observations about the liberal reform. First, what do we learn about the degree of popular support of and opposition to the liberal project of social and political transformation? For some time, the prevailing view on the liberal land reform was that it constituted a deliberate assault on the landed bases of Mexico's indigenous villages, and, as such, was uniformly if unsuccessfully resisted. Eyler Simpson (1937: 25), for example, writes that "the effect of the Reform on the vast majority of land holding villages was little short of disastrous." This view is echoed in the work of Donald Fraser (1972), T.G. Powell (1972), Jean Meyer (1972 and 1984), and John Tutino (1986). But Brian Hamnett's (1996) argument with respect to the Restored Republic

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[47]Alejandro Audelo to Governor of Oaxaca, 25 November 1898, and Minister of Government to Governor, 22 December 1898, AGEO, RA, leg. 10, exp. 35.

[48]Eleuterio Hernández and partners, San Pablo Huitzo, to JP of Etla, 26 June 1906, AGEO, CL, leg. 58, exp. 4.

[49]Report of the JP of Etla, 25 October 1907, AGEO, CL, leg. 58, exp. 4.

[50]See Arellanes 1988, Ornelas López 1988, and Segura 1988. Segura notes that 65,146 hectares of communal land were confirmed by presidential resolutions issued to Etla pueblos between 1940 and 1964, and that the census of 1960 indicated the existence of 380,748 hectares of communal land in the district.

holds for the entire second half of the nineteenth century as far as the liberal reparto is concerned: it is only at the local and regional levels, rather than the national one, that we can understand the political conflicts and socioeconomic transformations generated by the liberal reforms. More recent work on specific states, regions, and locales (including this paper) underscores the great diversity of popular responses to the state-mandated privatization of communal land, and the extent to which peasants and other popular groups participated in the construction of liberal discourse and institutions, and/or frustrated the achievement of the liberal agenda as conceived by elites.[51] Such research highlights how difficult it is to generalize about state-pueblo relations in liberal and Porfirian Mexico: popular responses to the land reform varied widely, depending on such factors as state level politics and legislation; intra-pueblo politics, most notably the existence and degree of factional conflict and internal differentiation; local repertoires and legacies of collective action and agrarian conflict; and the economic pressures and prospects faced by different participants in the process.

Second, the case of Oaxaca underscores the importance of what Gilbert Joseph and Daniel Nugent (1994) refer to as the "negotiation of rule" in liberal and Porfirian Mexico, as in revolutionary Mexico. The Oaxacan pueblos engaged in a complex process of negotiation with state officials, agreeing to privatize some land, refusing to privatize other land, and generally protecting and advancing their various communal claims through legal arguments, the instigation of litigation, and the pursuit of injunctions against the actions of state officials. Here, it is important to recognize the role played by the jefes políticos, often portrayed as the chief villains of the Porfirian era: such negotiations would have been impossible had not the jefes políticos, at least some of the time, tried to accommodate the interests and claims of the pueblos, and to mediate between contending factions involved in the reform process.[52] One of the most striking features of the documents on the reparto is the degree to which the jefes políticos were unable or unwilling to carry out the often ludicrous orders issued by the governor and the Ministry of Government in the city of Oaxaca. The jefes políticos could not resolve centuries-old border conflicts within a matter of twenty days, nor could they, in equally short order, provide detailed information on pueblo revenues, finances, land claims, and head counts, when the pueblos themselves refused to divulge this information.

Finally, the politics of the land reform in Oaxaca challenge a widely-held view about the role of the state in inter-pueblo conflict. Both Philip Dennis (1987) and James Greenberg (1989), among many others, argue that inter-pueblo conflict is functional for the state, since it divides the peasantry and prevents collective action along class lines, and that state officials have

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[51]See Mallon 1995, Thomson 1991a and 1991b, Monagahn 1990, Ducey 1997, Kourí 1996, and Purnell 1999a and 1999b.

[52]On this issue, see Falcón 1994.

therefore taken an active role in instigating and perpetuating boundary disputes. However true this may be for some locales and in some time periods (and both Dennis and Greenberg provide compelling evidence for pueblos in the districts of Etla and Juquila respectively), it does not always hold, and certainly did not hold in liberal and Porfirian Oaxaca. The implementation of the liberal project of social and political transformation required that the disputes between pueblos be resolved, and state officials dedicated a considerable amount of time, energy, and resources in attempting to do just that. It was in defending their communal claims against rival pueblos and individual landowners, and in insisting on their right to pursue these claims through the judicial system, that the pueblos succeeded in frustrating liberal objectives and limiting the implementation of the reform in most regions of the state. A similar dynamic is apparent in Oaxaca today, as inter-pueblo boundary conflicts, often the very same boundary conflicts, frustrate neo-liberal attempts to privatize ejidal and communal land.

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