

**NEW MODELS OF URBAN LAND REGULARIZATION IN MEXICO:
DECENTRALIZATION AND DEMOCRACY VS. CLIENTILISM**

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Prepared for delivery at the 1998 meeting of the Latin American Studies Association, The Palmer House Hilton Hotel, Chicago, Illinois, September 24-26, 1998. Announced in LASA program as: 'Land and democracy: new responses to illegal urban development in Guadalajara, Mexico'.

NEW MODELS OF URBAN LAND REGULARIZATION IN MEXICO: DECENTRALIZATION AND DEMOCRACY VS. CLIENTILISM

The regularization of illegal housing areas has long been a paradigm of urban governance in Mexico.¹ For almost three decades it has enabled the state to maintain its claim to govern the nation's cities in the face of two threats to the plausibility of that claim. First, regularization avoids the need for the state to acknowledge that it cannot or will not fulfill its Constitutional commitment to ensuring that Mexicans enjoy decent housing conditions. Tenure legalization and settlement upgrading are presented as a concession to the urban poor, the product of the state's benevolent paternalism towards its citizens. This overlooks the fact that the lack of affordable formal sector housing leaves the poor no option but to acquire land in an illegal settlement in order to build their own homes. Regularization enables the government to take the credit for a system of access to shelter operating largely outside state norms and policies.² The illegality of this process, however, undermines the state's ability to control and be seen to control the nature and direction of urban growth. Secondly, therefore, regularization masquerades as a strategy for regulating urban development. Government agencies respond to a 'need' for intervention created primarily by discourses originating within the state itself, which present legal tenure as a necessary condition for installation of services. In practice, the processes of upgrading and legalization have mostly operated independently. Regularization as practiced to date in Mexico might therefore be described as a form of governance by sleight of hand.

If the need for tenure legalization is to some extent artificial, however, there is nothing artificial about the political uses of the process. Regularization is often described as a process of social integration of the urban poor into the life of the city, but it is also - and even primarily - a process of *political* integration of the urban poor into a system of government dominated for many decades by the Partido Revolucionario Institucional (PRI). Regularization provides a vehicle for clientilistic practices delivering land titles and services in exchange for electoral support and social tranquillity. It demobilizes the political opposition presented by social movements and remobilizes social activism in pursuit of legal and infrastructural benefits along established channels leading to a renewal of government by the PRI.

To decry the political uses of regularization is not, however, to argue that legalization is in itself undesirable. It serves a useful purpose in increasing residents' security of tenure, protecting them against threats arising not so much, in practice, from government agencies as from other (would-be) residents, neighbors, unscrupulous tenants or disaffected family members.

This being so, is it possible to imagine a different model of regularization from that which has held sway until now? In an ideal world, of course, regularization would be unnecessary, since the poor would not be obliged to step outside the law to acquire land at below-market prices. Illegal land purchase means that services and property titles will not be available for years, and usually not without mobilization by residents to obtain these 'goods' in a clientilistic pact trading their civic rights for the satisfaction of immediate material needs. Given that illegal land acquisition is set to remain the main form of access to housing for the poor, however, is it possible to envisage a model of legalization that delivers the desired benefits without subjecting the beneficiaries to the risk of political manipulation?

This paper discusses recent attempts to construct alternative, 'democratic', models of land regularization in the city of Guadalajara. The key to the emergence of these new models is the combination of opposition government and decentralization policies placing greater emphasis on the municipality as the locus of urban governance. The new initiatives undertaken by municipal and State governments run since 1995 by the Partido de Acción Nacional (PAN) are as yet tentative and the results vulnerable to undercutting by traditional clientilistic practices. The paper describes the characteristic features of the new strategies, showing how they differ from the existing, anti-democratic, model of regularization in Mexico. In particular, I explore the nature of the relationship between decentralization and these new models of regularization, given that such high hopes are placed on decentralization as a key strategy for urban governance in the 21st century - the 'age of decentralization' (World Bank 1997).

The evidence on which this paper is based comes from interviews conducted in 1997-98 with municipal and State government officials in the Guadalajara Metropolitan Zone.³ I also refer to documents produced by the State of Jalisco's Procuraduría de Desarrollo Urbano (the office of the State's Attorney for Urban Development) and the Comisión de Regularización de Fraccionamientos y/o Subdivisiones created in 1996 in Tonalá, the poorest of the four municipalities in the Metropolitan Zone. The Commission for the Regularization of Subdivisions has not been reticent about its contribution to the emergence of a new model of regularization, promoting its experiences as a 'pilot program' for the regularization of private land throughout the State, and even for the regularization of *ejido* land (the responsibility of a federal agency, the Comisión de Regularización de la Tenencia de la Tierra, CORETT).⁴ There are, however, common elements in the responses to illegal settlement of *panista* administrations in the other peripheral municipalities of Guadalajara, Tlaquepaque and Zapopan.

THE 'ANTI-DEMOCRATIC' MODEL OF TENURE REGULARIZATION

I use this phrase to describe the existing system of land tenure regularization that has applied in Mexico since the 1970s, and which reached its apogee in the administration of Carlos Salinas de Gortari. I have described the workings of this model of regularization elsewhere (Varley 1993, 1996, 1998b) and do not wish to repeat the detailed arguments here. It is necessary only to outline the major characteristics of this model in order to bring out the contrast with the new models. The reasons for calling this existing model 'anti-democratic' are apparent from what has been said in the introduction to this paper, and will become more so.

My first observation about the existing model of regularization is that it is highly centralized. A key reason for this is that most regularization has taken place on *ejido* land, and the procedures to be followed have therefore been determined by the *federal* laws governing agrarian matters in Mexico. Illegal settlements on *ejido* land have been legalized by expropriation in favor of the federal regularization agency CORETT (the Commission for Land Tenure Regularization), and each expropriation has to be authorized by the President (Azuela 1989). Consequently, regularization has lent an agrarian logic, the logic of Mexican corporatism, to urban politics (Varley 1993).

Centralism increased dramatically during the Salinas presidency. After the shock of near-defeat for the PRI in the 1988 presidential elections, drastic measures were needed to ensure political continuity. Regularization played a leading role in the strategy adopted for this purpose: delivery

by the National Solidarity Program of a range of benefits to the rural and, to a greater extent than the rhetoric suggested, urban, poor.⁵ The centralism involved was apparent, for example, in the simultaneous adoption by most Mexican States of measures making regularization cheaper and more efficient, and the transfer of procedural improvements from 'urban' to 'agrarian' sector agencies which were traditional rivals (Varley 1996, Azuela & Duhau 1998). Central control of the program was deliberately publicized, with Salinas receiving petitions and handing out land titles as well as other benefits on a punishing schedule of weekly official visits to the provinces (Dresser 1991). The reason for all this frenetic activity and the high public profile of Solidarity is that the program was designed to reinforce the legitimacy of the Presidency as the key to ensuring political stability, even if this meant bypassing the PRI itself along the route (Dresser 1994, Knight 1994). It was spectacularly successful, reversing the electoral fortunes of the PRI in just three years - perhaps the most dramatic demonstration ever of the effectiveness of Mexican clientilism.

That the existing model of regularization is a centralized and anti-democratic one, reinforcing clientilism, does not mean that it is inefficient. Quite the opposite: the Salinas administration yielded an extraordinary improvement in the efficiency of regularization. It accounted for almost two-thirds of *ejido* expropriations since 1973 (when CORETT was set up), just over one-half of the total area expropriated, and four-fifths of the titles issued for individual properties (Varley 1998a, 1998b).

The efficiency of the existing model of regularization owes a great deal to its centralism, in the sense that the federal legislation establishes clear procedures and, if these procedures are correctly observed, an unanswerable case for *ejido* expropriations. This may well be why Mexico has what Antonio Azuela and Emilio Duhau (1998) describe as one of the world's leading regularization programs. Other Latin American countries have not developed such large programs. As Peter Ward (1998: 4) observes, governments are usually unwilling to regularize private land without the owner's consent: 'With the exception of Mexico, governments are reluctant to expropriate in the social interest'. What Ward fails to add is that Mexican State governments, legally responsible for regularization of private land, have also been generally reluctant to employ this method, although it is the most efficient one available, because expropriation of private land is a more complex matter. It is, therefore, the existence of the *ejido* that has enabled Mexico to have such a successful regularization program, and success in 'delivering the goods' to the residents of illegal settlements is needed if clientilism is to succeed in delivering continued electoral support for the party in government (Varley 1998a, 1996).

One of the noteworthy characteristics of regularization under Salinas, however, was its extension to encompass both private land - for which expropriation was now introduced⁶ - and even public housing projects. In the Federal District, rather more private than *ejido* land was expropriated from 1988 to 1994 (Varley 1998a). By demonstrating the feasibility of regularizing private land, Salinas may, unwittingly, have established a precedent for the emergence of alternative models of regularization by State and municipal governments controlled by opposition parties.

THE CHALLENGES FACING OPPOSITION GOVERNMENT IN GUADALAJARA

Eduardo López Moreno (1996: 436) rightly questions the reliability of statistics concerning the extent of illegal urban development in Guadalajara (or elsewhere, one might add). He estimates, nonetheless, that 1.23 of the city's 2.8 million inhabitants were living in illegal settlements in

1994, that is, 44 per cent of the population. Urban growth on *ejido* land accounted for 20.3 per cent of the built-up area in 1990 (Becerra Mercado 1997) and over 5,500 hectares had been expropriated by CORETT from *ejidos* belonging to the four municipalities of Guadalajara by the end of 1994.⁷ Subdivision of private land has also been of major importance in Guadalajara, although the existence of illegal settlement prior to the surge of urban growth onto *ejido* land in the 1970s has generally been overlooked by academics and government officials alike (Vázquez 1989, Varley 1989).⁸ Private subdivisions are particularly important in Tonalá, which has relatively little *ejido* land compared with the other peripheral municipalities.⁹ Although Tonalá accounted for only one-eighth of the built-up area of the Metropolitan Zone in 1995, it has over one-quarter of the city's illegal settlements (by area). Tlaquepaque and Zapopan each have a similar area occupied by illegal settlement, but both occupy a larger share of the built-up area. Tonalá is therefore the Metropolitan Zone municipality worst affected by illegal development (López Moreno 1996, Ramírez 1998). Elsewhere in the State, in extreme cases as much as 95 per cent of the 'urban' area in a given municipality suffers from problems of illegal tenure.¹⁰

In February 1995 the PAN gained power in all four municipalities of Guadalajara, as well as the State Governorship. The following year the coordinator of the Regularization Commission in Tonalá wrote a short report on the problem of illegal settlement facing the incoming administration.¹¹ For the previous 15 years, the government had neglected the problem, with the result that there were now over 80 illegal settlements in the municipality and over 70,000 families who had built their homes in these areas.¹² This was largely a product of the ease with which the regulations for 'Social Interest Subdivisions' (*Fraccionamientos de Objective Social*) established in the State Subdivision Law of 1984 had been manipulated by subdividers. Although the 'minimum norms' for low-income subdivisions were in principle a step in the right direction, making land more affordable to the poor (López Moreno 1996), the developers had simply failed to install services. They did so, 'in most cases, because of deals (*tratos*) made with the municipal authorities or straightforward corruption'. This accounted for a 'lack of political will on the part of previous administrations' to do anything about the problem of irregularity.

Opposition parties can be expected to blame PRI officials for the problems facing their incoming administrations, but there is little reason to doubt the truth of what was reported for Tonalá. The Regularization Commission has produced files on each illegal settlement setting out its history, supported by the available legal documents and interviews with residents and, in some cases, landowners. To quote two examples: former (PRI) Municipal Presidents and *Regidores* were involved in the development of Lomas del Manantial, a particularly problematic subdivision in the west of the municipality, and a former PRI *Regidor* and his daughter were the main developers of Colonia Flores Magón, further south.¹³

The proliferation of illegal settlement presents 'a serious drain on the municipality's economic resources', resources which could otherwise be used for the installation of infrastructure and introduction of services. As the Tonalá report continues:

The income foregone includes local property taxes (*impuesto predial*) and taxes on the transfer of ownership (2 per cent on the value of sale), income from property valuations and definition of boundaries, V.A.T. on notaries fees, tax on profits arising from land sales, income tax from the payment of honoraria, payments for cadastral registration, for building permits, for property alignment, and from official [house] numbers ...¹⁴

This graphic account of the impact on municipal finances of illegal urban development is echoed in the words of officials concerned with regularization in Tlaquepaque and Zapopan. In Tlaquepaque for example:

the problem is that since these areas are illegal they don't generate taxes, and there's no way we can provide them with services. There is no income from the *impuesto predial*, the only thing that really counts when we're talking about property matters, so we can't afford to install services.¹⁵

In Zapopan, 'the municipality has to face the worst part of the human settlement problem' as illegal subdivision causes 'damage to the municipal patrimony' (*daño patrimonial al municipio*).¹⁶

THE RESPONSE OF OPPOSITION GOVERNMENT TO ILLEGAL SUBDIVISION

In this section, I describe how the *panista* administrations in Guadalajara and the State of Jalisco have responded to the problem of illegal settlement, before going on to explain why I consider these to amount to the emergence of alternative models of regularization and to examine the role of decentralization in this context.

The creation of new institutions to respond to the problems of illegal settlement

As several people in Guadalajara have commented to me, the PAN administrations which came to power in 1995 had little understanding of urban matters. The *panistas* are characterized as people from the private sector with no experience of public administration (hardly surprising given the PRI's former monopoly of government in the State). Their ideology committed them to combating illegality in all aspects of public life and to running efficient, business-like, municipal governments, but they lacked the means to translate these general objectives into specific urban policies. They also lacked personnel and their first task was therefore to find suitable candidates to fill the vacancies in city government. This meant looking to people from outside the party, repeating a pattern observed in PAN governments, for example, in Chihuahua and Baja California (for this and other parallels, see Ward 1995, Rodríguez & Ward 1994).

The result was that people who were not necessarily PAN sympathizers were brought in to deal with the problems of illegal settlement in Guadalajara. Their arrival coincided, by no means accidentally, with the creation of new human settlements agencies within the municipal governments. In Zapopan, an architect and former trainee for the priesthood, with strong humanist and center-left intellectual tendencies, was appointed to head the Department de Asentamientos Populares created in May 1995, three months after the PAN won the elections. This was originally part of the planning department, but a year later, the head of the Department convinced his superiors to make it into a Sub-Directorate and later Directorate, giving him greater freedom to develop its work as he thought fit. In Tonalá, an alliance of opposition interests brought a long-time left wing social activist, described by a friend as 'one of the generation of '68' into the PAN administration. His earlier activities had included involvement in the civic movements protesting the inner-city explosions of 22 April 1994 and seeking compensation for its victims. The *panista* authorities employed him because of his professional expertise as a lawyer and persuasive vision of the role of regularization in urban governance, and he enjoyed the confidence of the Municipal President to the extent that he did not in practice have to answer to anyone else within the administration.

In May 1996 the Commission for the Regularization of Subdivisions was set up in Tonalá. Although it was housed in the offices of the Department of Public Works and Urban Development, which should have handed over its records on Tonalá's subdivisions, the Commission worked on its own and had to start from scratch when creating its files on each settlement. The lack of cooperation from other departments included an internal campaign against the Commission by the municipality's Legal Department (Ramírez 1998).

The early years of the *panista* governments in Guadalajara therefore saw people who were not party militants brought in to deal with the problems of illegal settlement. The creation of new agencies for this purpose was in part a product of their setting up their own 'teams', but it underlines the inadequacy of the existing institutional framework for responding to illegal subdivision of private lands within the peripheral municipalities.

The 'municipalization' of regularization

One of the first problems that the Tonalá Commission sought to address was its inability to act autonomously in the field of regularization. The existing process was almost entirely in the hands of the State government. Three technical authorizations had to be obtained from the State planning authorities before a regularization proposal could be submitted for formal State government approval enabling land titles to be issued for individual properties. Although the 1993 State of Jalisco Law of Urban Development emphasized procedural simplification and greater municipal involvement, the State authorities were still heavily involved in the process, particularly with respect to any subdivisions started under the 1984 Subdivision Law which remained in force. One reason for the State authorities' involvement in the process was that, in addition to the areas of land to be donated to the municipality for public services, the 1984 Law required subdividers to donate land and money to the State government for schools and a drainage system.¹⁷

The involvement of some State agencies in regularization was regarded as an obstacle to development of a more efficient process that would improve living conditions for the residents and strengthen municipal finances. The Tonalá Commission therefore persuaded the municipal president to put forward to the State governor a proposal that regularization should be '100% municipalized'.¹⁸ A pilot program in Tonalá would serve as the basis for developing a process of municipal regularization in the other 123 municipalities in Jalisco. In October 1996, the Tonalá government decreed the 'municipalization' of regularization within its jurisdiction, on the basis of a retroactive application of Article 12 of the 1993 Urban Development Law (giving the municipality the right to 'intervene in the regularization of land tenure') to all private subdivisions in Tonalá.¹⁹

These initiatives found an ally in the Procuraduría del Desarrollo Urbano.²⁰ They were favorably received by the State government, particularly after State officials came face to face with the problems associated with illegal subdivisions in a visit to one of the municipality's largest and most conflictive settlements.²¹

In September 1997, therefore, the State government passed a decree establishing the legal basis for permanent involvement of the municipality in the response to illegal subdivision of private land (Decreto No. 16,664, *Diario Oficial del Estado de Jalisco*, 25 September 1997). Regularization Commissions were to be set up in each municipality in the State, bringing together municipal

representatives and officials and the Procuraduría. The right to decide which settlements can be regularized was reserved for the Procuraduría (cutting out several State government departments that had been regarded as a source of delay).²² Most of the work, together with the final approval of inscription of a subdivision in the Public Property Register (allowing titles to be issued), however, is to take place at the municipal level.

Decree No. 16,664 also made it possible for the authorities involved in regularization to grant exemption from the requirements of a range of State of Jalisco laws, including the 1984 Subdivision Law, thus removing a potential source of delay in the regularization of particular settlements. In addition, it enabled individual properties to be incorporated into the municipal tax base whilst the process of regularization and service installation was still underway. Residents will generally have to bear much of the cost of servicing themselves.²³

Respect for the law and civic rights

The authorities working on the human settlements problem in Guadalajara are well aware that regularization of existing settlements is at best only part of the solution.²⁴ At the same time, they are taking other measures that can be considered part of the emerging models of regularization in a broader sense.

The first of these comprises efforts to avoid the further spread of illegal settlement. These efforts have been coordinated by a special commission of municipal and State representatives, which has been particularly concerned to anticipate and prevent land invasions.²⁵ The most problematic case they have faced concerns the southern side of the Cerro del Cuatro, a hill whose northern slopes had already been entirely occupied by illegal settlement housing approximately 150,000 people. Constant struggle over the profits to be made from the sale of adjacent areas has led to their invasion. These invasions, which have more to do with land speculation than immediate housing needs, have been repelled by the authorities.

The commission also wishes to create a special police department with specific responsibility for urban property matters and to put into effect provisions in the Penal Code penalizing fraudulent land sales. The law has never been effective in this respect: 'cases always fall through because the judges don't know enough about urban law'.²⁶ One aim is to prevent people accused of fraudulent sale of either *ejido* or private land from getting out on bail. The difficulties facing the authorities have been increased by subdividers forming an *Asociación Civil* to prevent individuals from being arrested. This device has been used, for example, by 'indigenous communities' (of dubious authenticity) and social movements in Tlaquepaque and Tonalá. Even where subdividers claim to be members of an *Asociación Civil*, they are now more frequently being sent to jail.

In Tonalá, the Regularization Commission has encouraged residents to make denunciations for fraud against subdividers and settlement leaders involved in land sales. The force with which the head of the Commission has pursued the subdividers - telling residents, for instance, that they would have to participate in the legal case against the vendors if they wanted to enjoy the benefits of regularization²⁷ - has led to fierce protests and counterclaims (*Siglo XXI*, 30 August 1997). The Commission's main objective, however, was not so much to win these legal cases as to teach residents to know and defend their legal and civic rights, so that in future they would less readily

let themselves be manipulated by those from whom they have acquired land or the leaders of residents' associations connected with the PRI.²⁸

The 'lack of civic culture' and failure to respect legal norms also concerns the director of human settlements in Zapopan:

people take a gamble on getting something for nothing, but in the long term it costs them more. We're in a stage of changing the way people think (*la etapa de la transición de credibilidad*). There's a real problem with people's lack of awareness...²⁹

To counter this, he wants to get university specialists in urban planning and continuing education to create a 'People's Center for Urban Planning' (*Centro Popular de Ordenamiento Urbanístico*) offering training for residents to become 'neighborhood inspectors'. Training would cover environmental, legal, planning and technical matters, but would aim above all to teach residents about their civic rights.

NEW MODELS OF REGULARIZATION

The *panista* administrations' response to the problems of illegal settlement in Guadalajara can be described as a search for new models of regularization. I use the plural 'models' to emphasize the 'municipalization' of the process, since not all municipalities react in the same way. The authorities in Tlaquepaque, for example, have adopted a more conventional approach. There are, however, common elements in different administrations' response to illegal settlement. What is more, the Tonalá program has played such an influential role in the emergence of a State regularization policy that we can compare the overall characteristics of the Jalisco model with the existing model described above (see Figure 1).

The 'anti-democratic' model uses clientilistic practices to deliver the 'goods' (titles and - separately - services) to the urban population in exchange for continued support for the PRI.³⁰ By contrast, the 'democratic' model tries to instill in the urban poor a civic culture reducing the likelihood that they will trade their civic rights for material benefits and tenure security. It seeks to 'deliver the goods' by efficient government operating in a 'culture of legality'.³¹ Any shortfalls in this respect are to be made good by citizens' defending their civic rights (and paying for what they receive), not by clientilistic deals when it comes to election time. The economic attractions of this model of regularization to opposition governments have already been discussed. Politically and ideologically, it is attractive because it offers the possibility of demonstrating that life without clientilism is possible, leaving people free to make their choice of governments on the basis of considerations other than material need. Since the opposition believes that its 'legal' model of governance is inherently a better one, it will logically expect to gain continued electoral support; but in any case the outcome of a 'democratic' model of regularization will be greater democracy. Both models, therefore, are self-reinforcing, and they are diametrically opposed to each other. Each seeks to demonstrate the inadequacies of the other in order to attain its own ends.

That the new models of regularization are intended to undermine clientilism (and therefore support for the PRI) is confirmed by those involved. In Zapopan, the aim is 'to break with clientilistic practices' (*romper con esquemas clientilistas*). In Tonalá, the head of the Regularization Commission constantly emphasized that 'urban development is politicized' (*se politiza la*

urbanización) by PRI governments promising to solve everything ‘with one wave of a magic wand’, creating ‘procedural flaws and conflicts of interest’ (*vicios e intereses*). By contrast, the new model will ‘put an end to this paternalistic system’ and ‘depoliticize [urban development] from a party-political point of view’ (not, note, in general: citizens demanding that governments respect their rights is a highly desirable process from the activist’s point of view).³²

PROSPECTS FOR THE FUTURE

There is an inherent instability in the ‘democratic’ model of regularization I have described. If it succeeds in promoting democracy, it will not necessarily be self-reinforcing, because beneficiaries may exercise their civic rights by voting for the PRI, thus re-entering the clientilistic circuit. In the 1997 elections, Tonalá was recovered by the PRI. The future of the Regularization Commission is therefore a matter for speculation. The PAN’s failure to retain Tonalá does not, however, mean that the new regularization model had been successful. For one thing, the Regularization Commission had only been operating for 18 months. In addition, as Ramírez (1998) argues, the opposition aroused by its battle with subdividers and settlement leaders connected with the PRI may have played a part in bringing about the PAN’s downfall in Tonalá.³³

Although the return of *priísta* government to Tonalá is unlikely to bode well for the local regularization program, the Procuraduría is actively pursuing the State program. Each municipality is now legally obliged to set up a regularization commission to cooperate with the State government. This is one of the most significant achievements of Decree No. 16,664. The threat of a possible change of government undermining the program was addressed by setting up a legal framework that would ensure some measure of continuity. As Rodríguez (1995: 171) argues, it is ‘a major achievement’ to get innovative processes of municipal governance off the ground, but ‘an even greater achievement to sustain [them] from one administration to the next’. Decree No. 16,664 makes it possible for municipalities wishing to undertake their own regularization program to do so, regardless of which party holds the State government. In addition, the Decree requires the Procuraduría to make a weekly report to the State Congress on the activities undertaken by each municipal commission. The Decree will therefore help the State legislature put pressure on the executive to keep the regularization program moving.

By September 1998, regularization commissions had been established in all but five of Jalisco’s 124 municipalities. They report that there are 1,620 illegal settlements on private land, occupied by over 200,000 families, in 70 municipalities. The Procuraduría holds files on 54 settlements, and two settlements - in Autlán, a municipality held by the PRI - are ready for regularization. This is more than the officials involved had hoped, because ‘the difficult bit is getting going’.³⁴

Caution is required, however, in assessing the prospects for the regularization program. Most municipal commissions are more likely to exist on paper than in practice, so much will depend on the willingness of the State government to make the program effective. In addition, we need to question how many settlements readily lend themselves to legalization. The results achieved by the highly motivated team in Tonalá are instructive. By the end of the administration, they had files on 83 illegal settlements, 74 of them on private land. Forty-five subdivisions had rapidly been classified as presenting major difficulties, and no action was taken in these cases. Only nine settlements had been the subject of formal decisions to proceed (Ramírez 1998). Given that this

was the product of less than two years' work, starting from scratch, it is no mean achievement; but it is evident that the settlements regularized were those presenting least difficulty.³⁵

I have argued elsewhere that a lack of technical capacity is a major barrier to the decentralization of regularization (Varley 1998a). The 'one-size-fits-all' approach to local government in Mexico means that municipal authorities with a very small tax base are meant to fulfill the same functions as major city governments (Dillinger 1994). Consequently, 'municipal governments seldom have ... the resources to embark on substantive works' and most still lack the administrative machinery to collect the *impuesto predial* themselves (instead, State governments charge a percentage for collecting the tax on their behalf) (Rodríguez 1997: 119, 133). How, then, are they to deal with either the cost or the technical difficulties of regularization?

As regards the cost: a 'Partial Urban Development Plan' (*Plan Parcial de Urbanización*) is supposed to be drawn up for each area regularized. This is the main reason why initially enthusiastic local authorities have shown 'resistance' to the State government's program: they do not see how they can afford to pay the cost of producing these plans. Given the long list of requirements for these plans - divided into 15 categories in Article 86 of the Urban Development Law - it is easy to see why.³⁶ The Procuraduría has sought to demonstrate that a Plan Parcial can comprise less than a dozen pages with highly generalized responses to a number of the legal requirements. However, it still has to be accompanied by a detailed map of the area, showing the current dimensions of each plot, and it is this that costs the most and presents the most scope for things to go wrong (Varley 1998a).

As regards the technical complexity: ironically, the settlements most in need of regularization are likely to be the most conflictive ones, particularly where there are rival claims to ownership of the area prior to subdivision. Yet these are the cases the authorities are most likely to defer. Furthermore, the problems of illegal settlement facing local governments are becoming increasingly complex. On the one hand, the transfer of *ejido* property to the private ownership of individual *ejidatarios* is leading to the appearance of 'new forms of illegality' (Melé 1994: 33; Jones & Ward 1998, Varley 1998a). These could outweigh the problems associated with subdivision of private land in the past. On the other hand, the tactics adopted by subdividers to avoid legal retribution are becoming more sophisticated. A variation on the 'Asociación Civil' device mentioned above is provided by two recent subdivisions in Tonalá, Granjas El Mirador and Las Jícamas (occupying over 80 hectares each). Purchasers are registered as co-owners of the entire area, such that each plot is owned in common by all of them.³⁷ This device is intended to conceal the subdivision that has actually taken place. By this means (plus, presumably, more 'traditional' ones), Las Jícamas has been registered in the Public Property Register without any municipal authorization whatsoever. The difficulties of trying to sort out such cases and ensuring that taxes are paid in these areas seems likely to deter all but the best-resourced and technically capable city governments.

In the most conflictive cases, the only way to deal with illegal settlements will probably be by an expropriation in favor of the State government. Expropriation is, however, a highly unpopular device, because it represents an imposition of authority from above - albeit in the public interest - and because owners want and are entitled to be compensated for their loss, even when they are responsible for creating the problem in the first place. It is feared by State governments because it creates 'bad' publicity and a drain on their resources in the form of compensation and legal costs occasioned by the *amparos* (judicial review cases) which landowners habitually bring when threatened with the 'loss' of their property (Varley 1998a).³⁸

CONCLUSION: THE ROLE OF DECENTRALIZATION

In conclusion, it is worth asking what role decentralization has played in the emergence of the new models of regularization described in this paper.

The discussion has centered on processes associated with PAN governments in Jalisco. However, a key enabling factor in these processes was the role in urban governance attributed to the municipality in the 1993 State Law of Urban Development (before the PAN came to power). This law was published on 13 July 1993, eight days before the Salinas government's new Human Settlements Law, and its wording echoes that of the federal legislation. It was, then, part of the paradox of a centralist strategy promoting decentralization in urban governance.

This strategy alone would not have been enough to bring about the new approach to regularization. The responsibility for legalizing settlements on private land already lay with State governments, but little had been done until the electoral shock of 1988 gave the Salinas government a reason to extend and intensify regularization by all available means in the National Solidarity Program (Varley 1998b).

It was, rather, the possibilities opened up by the new urban development legislation *as put into practice by opposition government* that led to the appearance of new models of regularization in Jalisco. Without democratization, decentralization would have achieved little in this respect as there was little need for municipal governments to worry about regularization under the old 'rules of the game'. They simply needed to sit tight, and sooner or later State or federal government funds for service installation would be forthcoming, providing that these were used to ensure continued support for the PRI. Opposition governments cannot rely on this system. They have therefore done all they can to raise revenue from sources under their own control, reversing the traditional reliance on federal redistribution of tax revenues (Rodríguez & Ward 1994, Rodríguez 1995, 1997). The need for this strategy is beautifully illustrated by events in the State of Puebla, where local elections are to be held in November. The larger municipalities, including the city of Puebla, are currently held by the PAN. In January this year, Manuel Bartlett, the *priista* Governor of the State, rushed through a law changing the way in which federal resources are assigned between municipalities (which normally depends on population size). The logic was superficially impeccable: the new formula would ensure that a greater share of resources went to the *poorer* municipalities. It was however no coincidence that the municipalities to lose resources were those governed by the PAN (*La Jornada* 29 January 1998).

The *impuesto predial* is the cornerstone in opposition governments' strategy to reduce their financial dependence on higher levels of government (Rodríguez 1997). As a result, the connection between tenure legalization, taxes and services, more of a fiction than a reality in *ejido* regularization, becomes a matter of considerable importance. The strategy adopted for regularization may seek to kill several birds with one stone, to break the vicious circle of clientilism, but the basic motivation is economic. This is not to say that all opposition government officials are prepared to abandon the old way of doing things (Ramírez Sáiz 1998). Conversely, PRI administrations in cities formerly controlled by the PAN have continued the financial strategies of their predecessors, and 'PRI-governed cities have also begun to demonstrate civic responsibility and effectiveness in responding to citizens' service needs' (Rodríguez 1997: 121).

Regularization of illegal settlement, then, allows the opposition to demonstrate to the citizenry the virtues of good, honest, governance. It is a far from easy strategy to follow when the cards are still heavily stacked in favor of the clientilistic model, but the pressure is undoubtedly on the PAN and PRD to show that they too can 'deliver the goods'. For, if the PRI has used decentralization to increase the legitimacy of its role in federal government - "let[ting] go" in order to hold on to the reins of power' (Rodríguez 1997: 141) - it also gives the opposition enough rope to hang itself.³⁹ If opposition government fails to live up to the high expectations created by emphasis on 'a culture of legality', the PRI can say 'we told you so: our way is the only way'.

In this context, it is worth noting that centralism can have its uses for opposition governments at the State or municipal level. If unpopular actions need taking, it is convenient if these are taken by the federal government, because local authorities can then deny responsibility for the measure. This applies, for example, to land expropriation.⁴⁰

In conclusion, I would argue that the emergence of new models of regularization in the State of Jalisco is a product of a close inter-dependence between the processes of decentralization and democratization - or, following Dennis Rondinelli's typology, of administrative and political decentralization (Rondinelli 1990). Some of the general enthusiasm for decentralization seems to me to be uncritical and even naive, suggesting that it is a route to democratization 'by the back door', as though undemocratic national governments will not notice the potential for challenges to their authority to arise if they allow cities to become accustomed to governing themselves. The experiences described in this paper suggest that, in this case at least, the processes have gone hand-in-hand. Without opposition government at the local level, the decentralization strategy instituted by the 1993 federal and State urban development legislation would probably have remained no more than a paper promise. Without decentralization, a regularization program is unlikely to have emerged from the municipal level, since the key element in the strategy to create a regularization program for private subdivisions was 'municipalization' of the process. Although control of the process remains in State hands, the initial demand from Tonalá was for '100% municipalization', going beyond what the centralist legislative initiative had envisaged. What the eventual outcome will be is difficult to predict. The danger is that the process will become 'routinized', avoiding difficult cases and losing the politically-inspired drive of the Tonalá initiative. There are no grounds for complacency in assessing the future of Jalisco's fledgling regularization program, but it at least demonstrates that committed local officials can now design and secure State approval for a new model of regularization, one that does not rely on governance by sleight of hand.

- ¹ I owe this phrase to comments made by Peter Ward at the workshop on ‘Comparative Policy Perspectives on Urban Land Market Reform in Latin America, Southern Africa and Eastern Europe’, Lincoln Institute of Land Policy, Cambridge, USA, July 1998; see Ward (1998). For more information on the arguments summarized in the introduction see Varley (1987, 1993, 1996, 1998b).
- ² This does not mean that the process takes place without any input from state agencies and officials. Illegal settlement is *not* an ‘anarchic’ process, but the logic of state intervention is not the logic of its own formal norms (Varley 1989). Furthermore, the way in which the process of illegal settlement takes place often reproduces the forms of the very legal norms which it is contravening (Azuela 1989).
- ³ The assistance of Maribel Blasco in some of these interviews is gratefully acknowledged. The Metropolitan Zone of Guadalajara, as defined by the Mexican government, now includes ten municipalities. I prefer to use the term for the four municipalities (Guadalajara itself, plus the peripheral municipalities considered here) which the Mexican authorities would describe as the Guadalajara conurbation.
- ⁴ ‘Desarrollo urbano en Tonalá’, Comisión de Regularización de Fraccionamientos y/o Subdivisiones, Tonalá, 1996 (mimeo).
- ⁵ Although Victoria Rodríguez (1997: 143) describes Solidarity as ‘one of the most effective decentralizing forces ever introduced in Mexico’, she also notes the paradox that Salinas ‘decentralized extensively ... [but] ended up being one of the most centralizing presidents in modern Mexico’. The balance of opinion is in favor of Solidarity’s promoting centralization rather than the opposite; see discussion (for regularization) in Varley (1996, 1998a) and, more generally for Solidarity, in Cornelius *et al.* (1994).
- ⁶ Strictly, *re*-introduced, since expropriation of private land had been used for similar purposes in the 1940s (Azuela & Duhau 1998).
- ⁷ Information on *ejido* expropriations from data base constructed by the author from publications in the *Diario Oficial de la Nación*, 1973-1994.
- ⁸ One reason for the failure to acknowledge the existence of illegal settlements is that for many years subdivisions were approved by the authorities even though they clearly did not meet the requirements of the State subdivision laws (Varley 1989, Ramírez Sáiz 1998).
- ⁹ Municipal officials in both Tlaquepaque and Zapopan report that 70 per cent of illegal settlements in their jurisdictions occupy *ejido* land.
- ¹⁰ ‘Propuesta operativa para agilización de trámites de fraccionamientos irregulares’, Mesa de Trabajo para la Regularización de Fraccionamientos y/o Subdivisiones en el Estado de Jalisco, 13 August 1996.

11 Source as note 4.

12 Less than ten per cent of the settlements recorded were *ejido* settlements; the rest were on private land (in some cases, in areas claimed as ‘communal’ property, but not legally recognized as such). By 1994, neither Tlaquepaque nor Tonalá had municipal inventories of illegal settlements (López Moreno 1996). The State planning department’s inventory of illegal settlements as of 1996 is inadequate in several respects (Ramírez Sáiz 1998).

13 Information from interviews with Martín Márquez Carpio, Comisión de Regularización de Fraccionamientos y/o Subdivisiones, Tonalá, August-September and December 1997. The story of Lomas del Manantial can be found in Ramírez (1998).

14 Source as note 4. Although the *impuesto predial* has been a municipal tax since 1984, not all of the sources of revenue listed here belong to the municipality; some belong to the State or the federal government, or they may be collected by the State (at a price) on behalf of the municipality. However, the formulae for federal and State revenue-sharing mean that in general the more revenue local governments can collect, the more they are likely to benefit from revenue-sharing (Rodríguez 1997).

15 Interview with Francisco Javier Celis Negrete, Dirección de Asentamientos Humanos, Ayuntamiento de Tlaquepaque, November 1997.

16 Interview with Juan Lanzagorta, Dirección de Asentamientos Populares, Ayuntamiento de Zapopan, August 1997.

17 Interview with Enrique Moreno Casillas, Director de Convenios y Regularización, Secretaría de Desarrollo Urbano, Gobierno del Estado de Jalisco, August 1997.

18 Source as note 4.

19 Article 14 of the Constitution forbids retroactive application of any law against the interests of any person or legally-recognized institution. However, the head of the Regularization Commission argued that retroactive application was permissible since it was not against the interests of the Tonalá community and municipality but rather to their advantage.

20 The Procuraduría was set up to ensure the correct application of the laws governing urban development. The designation of public attorneys to deal with different types of legal problem was a federal government strategy echoed, in this instance, at State level. The need for specialists in urban affairs to supplement established judicial systems is a product of the liberal legal tradition’s tendency to view the city as a mere collection of individual properties in private ownership and its inability or unwillingness to deal with the notion of ‘urban law’ (see Fernandes & Varley 1998 and, for Jalisco, Ramírez 1998).

21 Source as note 13.

22 Source as note 10.

- 23 Interviews with Gabriel Casillas Moreno, Procurador de Desarrollo Urbano, Estado de Jalisco, and Eduardo Moreno Santana, Coordinador de Zona del Programa de Regularización, Procuraduría de Desarrollo Urbano, August 1997 and September 1998.
- 24 The benefits of regularization under Decree No. 16,664 are limited to the settlements registered for this purpose within 135 days of its final publication in Jalisco's three major newspapers (in effect, this meant by late July 1998).
- 25 Sources as notes 15 and 16.
- 26 Source as note 16.
- 27 Meeting with residents from Lomas del Manantial, August 1997.
- 28 Source as note 13. Jorge Ramírez (1998: annexes, 21) describes this process as a '*pédagogie de la norme urbaine et civile*' teaching people about their '*droits du citoyen*'.
- 29 Source as note 16.
- 30 It is worth emphasizing that the lack of connection between tenure legalization and service installation applies to *ejido* land regularization, described by Martín Márquez Carpio as 'irregular regularization' (*regularizaciones irregulares*) precisely because it leaves local government to bear the costs of servicing. In 1995-96, this argument was used as the basis for an attempt to wrest authority for regularization of *ejido* land from the federal agency CORETT and transfer it to the State of Jalisco government and the Secretaría de Desarrollo Social (SEDESOL). In the end, those promoting this proposal for *Regularización urbana ejidal en 18 meses* could not resist the assertion of federal control over *ejido* regularization.
- 31 Other opposition parties share the emphasis on respect for the law. The phrase '*una cultura de la legalidad*' comes not from the PAN in Jalisco but from comments by René Arce, general secretary of the Partido de la Revolución Democrática in the Federal District, about the aims of the PRD government elected in the DF in 1997 (*Proceso* 13 September 1998).
- 32 Comments by Martín Márquez Carpio in a meeting of the Comisión de Regularización de Fraccionamientos y/o Subdivisiones to decide (*dictaminar*) on whether or not regularization of individual settlements in Tonalá could be approved, 16 December 1997.
- 33 The fact that Tonalá had had three different municipal presidents in three years cannot have helped the PAN's case for re-election.
- 34 Interview with Eduardo Moreno Santana, Coordinador de Zona del Programa de Regularización, Procuraduría de Desarrollo Urbano, September 1998.
- 35 Interview with Jorge Ramírez, August 1998.

- 36 'Resistance' could also be a product of differences between *priísta* municipalities and the *panista* State government, but no direct relationship between political affiliation and willingness to get involved is reported. Source as note 34.
- 37 Source as note 32. These may be recent developments by the Frente Popular Tonalteca, a social movement set up by José Alvarez Franco (Padre Patillas) which has been responsible for creating at least eight illegal settlements in Tonalá. Its leaders do not recognize the need for legality. Whilst this ideology resembles that of the 1970s Tierra y Libertad movement in Monterrey (Castells 1977), 'everything seems to indicate that [they] have been supported (and not merely tolerated) by former PRI administrations' and that their actions resemble those of 'any other illegal subdivider' (Ramírez 1998: 73, my translation).
- 38 The situation in Jalisco in this respect is unclear. Although a State government official reported that seven private subdivisions were in the process of being expropriated in 1997 he was vague as to their location; source as note 17.
- 39 The PRI's wish to see opposition administrations 'hang themselves' is demonstrated by the spoiling tactics widely employed by outgoing *priísta* administrations to create problems intended to make the opposition look incapable of governing.
- 40 In discussions between a recently-elected *panista* State government and a federal government agency responsible for intervention in *ejido* matters, the State government, whilst critical of the federal agency's record and plans, was unwilling to expropriate *ejido* land itself. Although the State representatives claimed they did not have the resources to do so, this was untrue, and they were clearly concerned about the response of 'social leaders' to any such State-level intervention, preferring that expropriation remain a federal attribute.

ACKNOWLEDGEMENTS

The research on which this paper is based was carried out to provide contextual material for the (UK) Economic and Social Research Council-funded project ‘Gendered housing: identity and independence in urban Mexico’ (1997-2000) on which I am currently engaged with Maribel Blasco, who helped me to carry out some of the interviews. The paper could not have been written without the assistance of Martín Márquez Carpio (Tonalá), Juan Lanzagorta (Zapopan), Francisco Javier Celis Negrete (Tlaquepaque) and Gabriel Casillas Moreno (Procurador de Desarrollo Urbano, Estado de Jalisco). I am extremely grateful to them for sharing their time, experience and ideas with me. I also wish to thank Daniel Vázquez, Esteban Wario, Eduardo López Moreno, Adriana Fausto Brito and Luis Felipe Cabrales for their long-standing commitment to sharing their understanding of land and housing questions in Jalisco with me. Jorge Ramírez deserves special thanks for travelling from Belgium to London the day after he submitted his Masters thesis to the Université Catholique de Louvain to further an exchange of ideas on tenure regularization that we started a year ago in Tonalá.

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