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THE PRIVATIZATION-NATIONALIZATION CYCLE: THE LINK BETWEEN MARKETS AND ETHNICITY IN DEVELOPING COUNTRIES

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And the end of all our exploring
Will be to arrive where we started
And know the place for the first time.
—T.S. Eliot[1]

Privatization has been the source of growing global exhilaration. By the early 1990s, "at least eighty-three countries were conducting some significant form of privatization,"[2] prompting commentators to describe the world-wide movement as "profound"[3] and "unprecedented"[4]—an "economic revolution."[5] Policymakers throughout the developing world have embraced privatization as the means to efficiency and productivity,[6] lower

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1. T.S. Eliot, Little Gidding, *in* The Complete Poems and Plays 1909–1950, at 138, 145 (1971).

2. Anna Gelpern & Malcolm Harrison, Ideology, Practice, and Performance in Privatization: A Case Study of Argentina, 33 Harv. Int'l L.J. 240, 240 (1992) (citing Helen Nankani, Techniques of Privatization of State-Owned Enterprises, 1 World Bank Technical Paper 89 (1988)).

3. Carlos E. Martinez, Early Lessons of Latin American Privatizations, 15 Suffolk Transnat'l L.J. 468, 468 (1992).

4. Rebecca J. Hanson, The Legal Framework for Privatization in Hungary, 23 Law & Pol'y Int'l Bus. 441, 441 (1992).

5. José Piñera & William Glade, Privatization in Chile, *in* Privatization of Public Enterprises in Latin America 19, 19 (William Glade ed., 1991) [hereinafter Privatization of Public Enterprises in Latin America]; see Robert A. Packenham, Freedom and Development in Latin America, 155 World Aff., Summer 1992, at 3.

6. See, e.g., Christopher Adam et al., Adjusting Privatization: Case Studies from Developing Countries 116–17, 163, 311 (1992) (discussing privatization aims of Jamaican and Sri Lankan governments); Oscar H. Vera Ferrer, The Political Economy of Privatization in Mexico, *in* Privatization of Public Enterprises in Latin America, supra note 5, at 35, 49 (discussing privatization goals of Mexican government).

prices,[7] economic development and modernization,[8] democracy,[9] equality,[10] justice,[11] maximization of social welfare,[12] and the elimination of social evils.[13]

According to former Argentine economics minister, Rogelio Frigerio, the influx of private capital, particularly foreign capital, "will allow us to increase production, the sole goal of any economic system. Greater production means more work and better salaries, full employment, an improved standard of living, that is to say, a solution to the social problem, both for the urban population and for the rural population."[14] Minister Frigerio's claims are notable because they describe not the privatization initiatives of the 1990s but rather those of the 1950s. This earlier "solution to the social problem" was followed by a return to statist economic policies in the 1960s, a renewed commitment to free enterprise, a swing back to nationalization in the 1970s, and only then by the latest round of Argentinian privatizations.[15]

The same grand promises, moreover, are invariably made by those championing nationalization policies. When the government of India called for the "optimisation of petroleum production,"[16] and "development, modernisation and expansion,"[17] the call was not for privatization, but for nationalization. Similarly, in 1935 President Lázaro Cárdenas of

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7. See, e.g., William Glade, The Contexts of Privatization, *in* Privatization of Public Enterprises in Latin America, supra note 5, at 1, 2 ("Governments have also felt the need to get the parastatal sector in hand so that . . . they may arrest inflation . . . .").

8. See, e.g., Mary M. Shirley, The What, Why, and How of Privatization: A World Bank Perspective, 60 Fordham L. Rev. S23, S24 (1992) (noting that privatization in Mexico is expected to free public resources for paving roads, "potable water, sewerage, hospitals, and education to the poor").

9. See, e.g., Adam et al., supra note 6, at 128–29 (noting that former Jamaican Prime Minister, Edward Seaga, sought to "democratize" through privatization).

10. See, e.g., id. at 214, 226–27 (noting that in Malaysia improvement of economic balance between races was a goal to be pursued through privatization).

11. In making the case for privatization, Mexico's former President, Carlos Salinas de Gortari, stated in his November 1989 State of the Union address: "[T]he focal point of state reform is to . . . resolve the dilemma between property to be managed or justice to be dispensed, between a more proprietary state or a more just state." Glade, supra note 7, at 17.

12. "The reality is that in Mexico a larger state has resulted in less capacity to respond to the social demands of our fellow citizens . . . . The size of the state was growing while the well-being of the people was deteriorating." Carlos Salinas de Gortari, First State of the Union Address (Nov. 1, 1989), quoted in Vera Ferrer, supra note 6, at 56.

13. See President Carlos Salinas de Gortari, Address at Port Authority of New York & New Jersey (Oct. 1, 1990), cited in Martinez, supra note 3, at 479 n.24 ("vender los bienes para eliminar los males").

14. Rogelio Frigerio, La Reforma Agraria, *in* El Problema Agrario Argentino 137, 156 (Arturo Frondizi ed., 1965).

15. See infra text accompanying notes 164–173.

16. 2 Nguyen Huu-Tru, Les nationalisations dans quelques pays d'Asie de tradition britannique: Inde - Sri Lanca - Birmanie 175 (1984) (reprinting speech by Indian Minister of Petroleum, K.D. Malaviya, during Parliamentary debates, Jan. 16, 1976).

17. Id. at 252.

Mexico predicted that nationalization would bring "justice for the worker"[18] and the "conver[sion of] Mexico from a poor country to a rich and prosperous nation."[19] But Cárdenas's nationalizations of the 1930s were followed by a privatization campaign in the 1940s and 1950s, then by renationalization, and now by the current Mexican privatization program that has received so much attention.[20]

The point is not that privatization, like nationalization, will fail to cure all social evils. All serious commentary acknowledges that. The point is more fundamental.

In the midst of a global privatization movement, and against the backdrop of the collapse of the former Soviet Union, the temptation is to regard the dismantling of the corporatist state as the culmination of a world-historical learning process. Privatization, according to the former prime minister of Jamaica, is "'irreversible . . . no power on earth can change it.'"[21] Or in the words of a World Bank official: "The present interest in privatization is no fad. . . . Lessons have been learned, . . . and today's strategies reflect these lessons."[22]

This Article challenges the prevailing assessment of the historical "lessons" of privatization. Whatever may be true of Eastern Europe and the former Soviet Union, the historical record does not support the notion that in the developing world privatization is "irreversible." Through the examination of two developing regions, Latin America and Southeast Asia, I identify in Part I a profound problem in the privatization field that has been ignored despite the voluminous literature.[23] Today's privatizations by no means represent the first effort to pursue free-market economic policies in Latin America and Southeast Asia. On the contrary, with few exceptions,[24] the countries of both these regions—despite all the differences among them—have been cycling back and forth between privatization and nationalization for as long as they have been independent.

18. Interview with President Cárdenas (Apr. 13, 1935), quoted in Alfredo B. Cuellar, Expropiación y Crisis en México 319 (1940).

19. Paul E. Sigmund, Multinationals in Latin America: The Politics of Nationalization 59 (1980) (quoting compulsory textbooks used in all Mexican schools following nationalization of oil companies by President Lázaro Cárdenas).

20. See infra text accompanying notes 58–141.

21. Adam et al., supra note 6, at 56 (quoting former Prime Minister, Edward Seaga, on the privatization of a Jamaican national bank).

22. Shirley, supra note 8, at S31–S32.

23. See, e.g., Adam et al., supra note 6; Roman Frydman & Andrzej Rapaczynski, Privatization in Eastern Europe: Is the State Withering Away? (1994); E.S. Savas, Privatization: The Key to Better Government (1987); Gelpern & Harrison, supra note 2; Alan S. Gutterman, Japanese Securities Markets: The Impact of Privatization and Deregulation of Japan's Public Enterprises, 12 U. Pa. J. Int'l Bus. L. 589 (1991); Shirley, supra note 8; Book Note, A "Four Warning," 107 Harv. L. Rev. 2105 (1994) (reviewing A Fourth Way? Privatization, Property, and the Emergence of New Market Economics (Gregory S. Alexander & Grazyna Sktapska eds., 1994)).

24. See infra notes 383, 582.

In Part II, I analyze the causes of this cyclicality, seeking to show that the cycle is determined by political and cultural as well as economic factors. After examining several alternative explanations, I propose a more comprehensive model that explains the privatization-nationalization cycle in light of the explosive role that nationalism plays in the developing world. The model addresses nationalism directed not only at Western (or other "imperialist") foreigners but also, equally significantly, at certain groups within a nation, typically identified ethnically, whom I call "foreigners within."

The argument in Part II is based on three principal claims. First, the postcolonial nations of the developing world are deeply divided along ethnic and economic lines. Second, free-market policies in these countries have historically resulted in the disproportionate prosperity of particular, ethnically identifiable groups. Third, on behalf of the disadvantaged majorities, ethnically charged—and therefore extremely potent—nationalist movements have repeatedly succeeded in overturning regimes championing private enterprise. The privatization-nationalization cycle cannot be understood without recognizing this fundamental tension between the forces of the marketplace and the forces of ethnic division.

Finally, in Part III, I discuss possible responses to the privatization-nationalization cycle. Signs are already observable in many of today's privatizing countries (including those of Eastern Europe)[25] of the same conditions that in the past led to nationalizations after previous periods of privatization. I suggest that breaking out of the privatization-nationalization cycle may require fundamental political and social innovations that go far beyond the narrow economic focus of today's privatizers.

American lawyers and academics today are being called upon to design and to implement legal institutions for the developing world on a scale unprecedented since decolonization. Thus far, those responding to this challenge have essentially addressed two questions: First, what is the most efficient end-state of any given privatized economy? Second, what are the best transition mechanisms needed to get there? And yet if the current efforts and opportunities are not to be squandered, a third problem must also be confronted: How can today's privatization programs be designed to avoid a swing back to nationalization tomorrow?

I. Historical Record

In this Part, I describe the repeated oscillation between privatization and nationalization that marks the postcolonial history of Latin America and Southeast Asia. By "privatization" I refer to the transfer of ownership or control of assets from the public to the private sector.[26] By "nationali-

25. See infra text accompanying notes 577–581.

26. For the purposes of this Article, transferring "control" of assets to the private sector includes the granting by a state of concessions, franchises, leases, and management contracts to the private sector. See Adam et al., supra note 6, at 6–7.

zation" I refer to the transfer of ownership or control of assets from the private sector to the government.[27]

A. *Latin America*

The colonial peoples of Latin America achieved independence from Spain and Portugal in a series of revolutions during the first half of the nineteenth century.[28] Following a period of political turbulence that included efforts at monarchical rule, most of the modern nation-states of Central and South America took their present shape by about 1880.[29] While political and economic conditions varied from country to country, in every case the newly emergent national governments embraced the institutions of late nineteenth-century economic liberalism: private property regimes generally accompanied by laissez-faire policies on wealth distribution and the vigorous promotion of capital investment.[30]

Again with considerable variation in the form and pace of change, these regimes were typically followed by a new burst of revolutionary activity that gave rise to the first Latin American nationalization programs. These programs themselves surrendered to a new phase of privatization and free enterprise, which was in turn succeeded by another series of nationalization programs. In many Latin American countries, the current round of privatizations is the fifth phase of a privatization-nationalization cycle. The postcolonial history of Mexico, whose current privatization program is considered among the most ambitious and successful in

27. Actual transfer of ownership or control of assets is not the only measure a state may take to broaden the scope of private or public sector activity. For example, a privatizing regime will often (but not always) abolish price and import controls, deregulate factor markets, and ease domestic and foreign capital restrictions; similarly, a nationalizing regime will often (but not always) reregulate industry, restrict capital flows, and create new state-owned enterprises such as public utilities or transportation projects. See, e.g., Adam et al., supra note 6, at 6–7, 215–19; Paul Cook & Colin Kirkpatrick, Privatisation in Less Developed Countries: An Overview, *in* Privatisation in Less Developed Countries 3, 3–4 (Paul Cook & Colin Kirkpatrick eds., 1988). Undoubtedly such measures could have been included in a looser definition of "privatization" and "nationalization" (respectively), but, following the more rigorous studies, see, e.g., Adam et al., supra note 6, at 6–7, I adhere to the stricter definitions given in the text. Although this narrower focus carries some danger of arbitrariness (the presence or absence of systematic regnlatory measures could be more important in a given case than isolated acts of nationalization or privatization), I believe the danger is more apparent than real. Actual privatizations and nationalizations (as defined) are the extreme, nodal points in the economic oscillations characteristic of postcolonial Latin America and Southeast Asia. They offer the most useful frames of reference in observing the cyclical shifts between private and state control that I intend to establish here. In any event, in the discussion that follows, I take note of the presence or absence of alternative economic measures where pertinent.

28. See Ronaldo Munck, Latin America: The Transition to Democracy 25 (1989).

29. See generally David Bushnell & Neill Macaulay, The Emergence of Latin America in the Nineteenth Century (1988) (discussing social, economic, and political development of Latin America in the 19th century).

30. See id. at 192–248; Munck, supra note 28, at 25–26.

Latin America,[31] is representative of this pattern.

1. *Mexico.*

(a) *Postcolonial Laissez Faire (1867–1910).* — Although Mexico achieved independence from Spain in 1821,[32] historians generally agree that 1867—the year French intervention ended and Archduke Maximilian of Hapsburg, whom Napoleon had made King of Mexico, was executed in Queretaro—marks the birth of modern Mexico.[33] The new state, however, was highly disaggregated. The majority of Mexico's inhabitants at the time were uneducated peasants, who lived in isolated communities and spoke a wide range of dialects. At the same time, the nation's wealth was concentrated in the hands of a few thousand large landowners, typically *criollos* (Mexican-born Spaniards).[34]

The economy was in a deplorable state. Mining, colonial Mexico's most dynamic industry, had never recovered from the destruction and chaos of the wars of independence.[35] The federal government was bankrupt, trade was sluggish, and foreign creditors were demanding full repayment of Mexico's debts.[36] Because of the country's political instability, "[i]t was virtually impossible to secure sorely needed infusions" of private capital, particularly from abroad.[37]

This era was dominated by the administration of Porfirio Díaz (1876–1880, 1884–1911). Díaz aggressively promoted private enterprise, a policy particularly welcomed by the *hacendados*, his wealthy landowning supporters.[38] Although Díaz called for "absolute respect for private property,"[39] he simultaneously ordered accelerated expropriation of land owned communally by Indian peasants "on the ground that their property titles were not clear."[40] The property thus appropriated was then

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31. See, e.g., Shirley, supra note 8, at S28.

32. For general histories of Mexico see, for example, Michael C. Meyer & William L. Sherman, The Course of Mexican History (1979) and Robert R. Miller, Mexico: A History (1985).

33. See, e.g., Preface to Modernization and Revolution in Mexico: A Comparative Approach, at vii (Omar Martínex Legorreta ed., 1989) [hereinafter Legorreta].

34. See Lorenzo Meyer, The Political Modernization of Mexico (1867–1940), *in* Legorreta, supra note 33, at 27, 29; Miller, supra note 32, at 117.

35. See Fernando H. Cardoso & Enzo Faletto, Dependency and Development in Latin America 40 (Marjory M. Urguidi trans., 1978); Meyer & Sherman, supra note 32, at 432.

36. See Bushnell & Macaulay, supra note 29, at 200; Friedrich Katz, The Liberal Republic and the Porfiriato, 1867–1910, *in* Mexico Since Independence 49, 51 (Leslie Bethell ed., 1991); Meyer & Sherman, supra note 32, at 432.

37. Meyer & Sherman, supra note 32, at 432.

38. See Katz, supra note 36, at 67.

39. Luis González, The Cultural Modernization of Mexico (1857–1958), *in* Legorreta, supra note 33, at 66, 71.

40. Cardoso & Faletto, supra note 35, at 106; see Katz, supra note 36, at 94–95. The chief legal basis for Díaz's expropriations was the Ley Lerdo, a law which, as early as 1856, had authorized the Liberals to "launch[ ] an all out assault" on land held communally by peasants and by the Catholic church. See id. at 49, 95. Such "conversion" of communal properties into private holdings "in the name of liberal ideologies" occurred not just in Mexico but in all the "highland republics"; by the turn of the century, "practically every

"sold cheaply" to private landowners, "politicians[,] and foreign speculators," all of whom profited tremendously during this period.[41]

The chief source of Mexico's growth during the *Porfiriato* was the foreign investment that Díaz courted with the promise of "definite and generous returns," tax exemptions, and protection in the courts.[42] "Between 1900 and 1910 the flow of foreign investment into Mexico assumed torrential proportions."[43] By 1911, "three-quarters of the mines belonged to foreigners,"[44] and the railway, banking, electricity, and oil industries—the heart of Mexico's modern economy—were all in the hands of foreign investors.[45] Moreover, apart from their land, the wealth of Mexico's ruling elites derived above all from their "role as intermediaries for foreign companies."[46] Socially and artistically, too, "there was a 'Europeanization' movement visible throughout the republic"; meanwhile, the Indians were "downgraded racially" in accordance with the "Survival of the Fittest" doctrine embraced by Díaz's *científico* advisors.[47]

In many ways Mexico's first extended liaison with private capital was an unprecedented success. Between 1877 and 1910, the country's gross domestic product more than tripled in real terms.[48] The growing national wealth created demands for massive transportation and public utility projects.[49] Ports were modernized, and a genuine banking system was developed.[50] Together with the revitalization of mining, "there was some industrial development: lead and copper foundries, an iron and steel plant in Monterrey, cotton and woolen textile factories, food products, and so forth."[51]

The industrial sector, however, could not meet growing domestic demand, and Mexico became increasingly dependent on imports, principally from the United States.[52] More important, the urban and industrial

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acre of high-quality land in Mexico, Guatemala, Ecuador, Peru and Bolivia was part of a white man's or mestizo's *hacienda*." Marvin Harris, Patterns of Race in the Americas 22 (1964).

41. Cardoso & Faletto, supra note 35, at 106.

42. Miller, supra note 32, at 267; see Berta Ulloa, Conflict Threatening Mexico's Sovereignty: The Continuing Crisis (1867–1940), *in* Legorreta, supra note 33, at 40, 51.

43. Katz, supra note 36, at 109.

44. Cardoso & Faletto, supra note 35, at 105; see also John M. Hart, Revolutionary Mexico 142–43 (1987) (stating that in 1910, "the Americans dominated the [mining] industry").

45. See Hart, supra note 44, at 140–41; Meyer, supra note 34, at 32. By the end of the *Porfiriato*, "foreign concerns exercised control over 130 of Mexico's largest 170 enterprises." Hart, supra note 44, at 178.

46. Katz, supra note 36, at 103.

47. Miller, supra note 32, at 263, 266.

48. See Meyer, supra note 34, at 32.

49. See Miller, supra note 32, at 269.

50. See Meyer, supra note 34, at 32.

51. Cardoso & Faletto, supra note 35, at 105; see Fernando Rosenzweig, Foreign Investments and the Growth of Manufactures in Mexico (1867–1940), *in* Legorreta, supra note 33, at 20, 22.

52. See Cardoso & Faletto, supra note 35, at 105.

progress of the *Porfiriato* "scarcely touched the majority of the people—the rural population."[53] Landownership grew highly concentrated: "By 1910 about eight hundred *hacendados* owned more than 90 percent of the rural land . . . and less than 3 percent of the agricultural population owned any land whatever."[54] Fittingly, during the 1910 commemoration of Mexico's one-hundredth anniversary of independence, the poor "were pushed off of the streets of the capital" so that foreign visitors "would receive the proper impressions of a prosperous Mexico."[55]

(b) *The Revolutionary Period (1910–1940).* — The Mexican Revolution began in 1910 and lasted three decades.[56] Between 1910 and 1920, war and rebellion laid the country to waste, as *haciendas*, mines, factories, and entire villages were destroyed; strikes proliferated; foreign hatred approached hysteria; and the economy fell into chaos.[57] A new constitution, ratified in 1917, declared that all property was subject to the public welfare; affirmed that all water and subsoil riches belonged to the state; and prohibited foreigners from owning land or obtaining concessions unless they waived protection of their governments.[58]

The election of General Lázaro Cárdenas to the presidency in 1934 was in many ways the culmination of the revolutionary process. Cárdenas glorified Mexico's Indian past and longed for a "society in which indigenous communalist values curbed the excesses of individualistic capitalism."[59] He conducted sweeping land reform, and during his six-year term virtually eliminated the *hacienda*.[60] In the cities, Cárdenas established the Mexican Workers Federation ("CTM"), which united the existing unions and brought together many laborers who were not organized at all. Backed fully by the state, the CTM embarked on a series of strategic strikes intended to improve the conditions of the working class.[61] A strike against the Mexican Light and Motive Power Company in 1936 became the first victory of the CTM against a foreign enterprise;

53. Miller, supra note 32, at 271; see Hart, supra note 44, at 174–75.

54. Miller, supra note 32, at 272.

55. Meyer & Sherman, supra note 32, at 496; see Miller, supra note 32, at 282.

56. A great deal has been written about the causes and significance of the Mexican revolutionary process, which, according to many commentators, was not a single revolution but numerous regional revolutions that occurred more or less simultaneously, see, e.g., James D. Cockroft, Intellectual Precursors of the Mexican Revolution, 1900–1913, at 5 (1968), and that reflected "very different, even contradictory, objectives." Jean Meyer, Revolution and Reconstruction in the 1920s, *in* Mexico Since Independence, supra note 36, at 201, 201.

57. See Hart, supra note 44, at 252–54; Miller supra note 32, at 283–85, 292–95.

58. See Miller, supra note 32, at 306.

59. Fredrick B. Pike, The United States and Latin America: Myths and Stereotypes of Civilization and Nature 272 (1992).

60. See Meyer, supra note 34, at 36–37. Along with land, Cárdenas "handed over arms to the peasants, uniting them in the first real national agrarian organization." Id. at 37.

61. See Moisés González Navarro, The Social Transformation of Mexico (1867–1940), *in* Legorreta, supra note 33, at 1, 12–13.

numerous other victories followed.[62]

A year later, in order to ensure Mexican control over the nation's railroads, "and to remove the threat of interference in their management by [British and North American] railroad bondholders," Cárdenas nationalized Mexico's railway system and placed management in the hands of the railroad union.[63] More dramatically, decrying the "innumerable outrages [and] abuses" by foreign oil companies that pursued "private, selfish, and often illegal interests" while relegating Mexicans to "misery, drabness, and insalubrity,"[64] Cárdenas, in a nationwide radio broadcast, announced his intention to nationalize the entire oil industry.[65] "From the bishops to the students of the National University, Mexicans rallied to the national cause . . . perhaps a quarter of a million paraded through the streets of the capital carrying mock coffins inscribed with the names of the fallen giants [such as] Standard, Huasteca, [and] Agnila."[66] The expropriated oil fields and refineries became Petróleos Mexicanos, or Pemex, a government-controlled monopoly.

To this day Cárdenas represents the promise of a "Mexico for the Mexicans."[67] By the end of his administration, the role of foreign capital had diminished substantially: in 1940 total direct foreign investment in Mexico was under 500 million dollars, less than one-quarter of most estimates for the 1920s.[68] "Of the four areas traditionally dominated by foreign capital—railroads, oil, mining, and electric power—foreign control had been eliminated from the first two. Foreign enterprise still controlled the mining and electric power industries . . . but even in those fields the amount of foreign capital had been reduced."[69]

Cárdenas's last two years in office brought "severe economic difficulty."[70] Several factors—among them, the expropriation of the oil industry, bitter counterattacks in the press by foreign companies, and retaliatory economic sanctions against Mexico—prompted the exodus of domestic as well as foreign investment capital.[71] Inflation continued to

62. See id. at 13.

63. See Harry K. Wright, Foreign Enterprise in Mexico 67–68 (1971); González Navarro, supra note 61, at 13.

64. Miller, supra note 32, at 320–21 (citing Mexico's Oil, A Compilation of Official Documents 878–79 (1940)).

65. See Wright, supra note 63, at 70. Whereas nationalization of the railways had been a possibility for some years, Cárdenas's expropriation of the oil industry came as a "spectacular" surprise. See Alan Knight, The Rise and Fall of Cardenismo, c. 1930–c. 1946, *in* Mexico Since Independence, supra note 36, at 241, 280. For a detailed description of the events leading up to the expropriation, see id. at 279–84.

66. Knight, supra note 65, at 282.

67. Miller, supra note 32, at 320.

68. See Wright, supra note 63, at 70.

69. Id. Foreign investment in manufacturing actually increased slightly during the Cárdenas era. See id.

70. Meyer & Sherman, supra note 32, at 606.

71. See id. at 606; Wright, supra note 63, at 70.

be a serious problem.[72] Moreover, Pemex, the new national oil company, was besieged with technical difficulties.[73] "As oil revenues declined, the national debt rose and confidence in the government lagged."[74]

In addition, a more profound political disintegration was threatening the revolutionary program. By 1940, many of the rural poor who, as a result of Cárdenas's agrarian reform, were now small landowners, no longer represented a revolutionary political bloc.[75] The newly strengthened labor unions, too, were splintering in pursuit of their various interests.[76] Meanwhile, Cárdenas faced increasing hostility from "private enterprise—above all, the nucleus of the national bourgeoisie based at Monterrey."[77] Thus, bankers and businessmen decried Cárdenas's "fantastic" pro-union policies and denounced the new excess profits tax as "an example of 'Hitlerite totalitarianism.' "[78] With a resurgence of "a growing aggressive, authoritarian right,"[79] it became clear that "[t]he relative national unity created by the revolutionary process was in jeopardy."[80]

(c) *Post-Revolutionary Privatization (1940–1958).* — In 1940, Cárdenas stepped down from the presidency. The election of Manuel Ávila Camacho "marked a watershed in Mexico's history." Stressing themes of national unity, Ávila Camacho promptly halted "expropriations of going concerns" and initiated private enterprise policies that lasted almost twenty years.[81] The main objective of the Mexican government during this period was to foster industrialization; its emphasis shifted markedly from nationalistic social reform back to the promotion of private investment, which increased dramatically in the forties and early fifties.[82] Although the greater part of this investment was domestic, the shift to free-market policies "was accompanied by a change in attitude toward foreign capital," beginning with measures by Ávila Camacho to settle international debts inherited from prior administrations in order "to improve the climate for foreign participation" in the economy.[83] By the end of

72. Between 1935 and 1940, food prices rose by 49%. See Knight, supra note 65, at 241, 290; Meyer & Sherman, supra note 32, at 606.

73. See Meyer & Sherman, supra note 32, at 606.

74. Id.

75. See Cardoso & Faletto, supra note 35, at 144.

76. See id.

77. Knight, supra note 65, at 273.

78. Id. at 274 (footnote omitted).

79. Id. at 293. The last few years of *Cardenismo* witnessed "a new nostalgia for the Porfiriato, evident in the cinemas's [sic] loving evocation of ranchero life." Id. (emphasis omitted).

80. Cardoso & Faletto, supra note 35, at 144.

81. Miller, supra note 32, at 323, 325; Wright, supra note 63, at 71.

82. See Wright, supra note 63, at 73–76; Vera Ferrer, supra note 6, at 35, 37–38.

83. Wright, supra note 63, at 71; see id. at 73. Pursuant to the Mexican-American General Agreement signed in 1941, claims of United States citizens against Mexico arising from land expropriations under Cárdenas's agrarian reform programs were settled in full for $40 million. In addition, procedures were established to settle the debt owed to United

the Second World War, Mexico was "on exceptionally good terms with the United States."[84]

Miguel Alemán, who succeeded Ávila Camacho in 1946, "was determined to continue and extend the process of import substitution industrialization that had started during the war."[85] It was Alemán's view that

> Private enterprise should have complete freedom and be able to count on support from the state, so long as it acts on behalf of the general interest. . . . [T]he state should guarantee the rights of businessmen to open centers of production and to multiply the country's industries, confident that their investments will be safe from the vagaries of injustice.[86]

Seeking to accelerate the rate of industrialization, Alemán openly invited foreigu capital to participate in Mexico's economic development. According to one commentator, "No Mexican government since Porfirio Díaz ha[d] welcomed foreigu investment so warmly."[87] During Alemán's administration, direct foreigu investment in Mexico rose sharply, from 575 million dollars in 1946 to roughly 730 million dollars by the end of 1952.[88]

The partial reprivatization of the petroleum industry was one of Alemán's most controversial initiatives, because the creation of Pemex had been the centerpiece of Cárdenas's nationalization program. Numerous private concerns, including American companies,[89] were permitted to drill for and extract petroleum during this period.[90] A smaller "number of contracts were executed with foreigu-owned companies for exploration and production."[91] Although the Mexican government continued to "own" the deposits at issue, the private companies were paid not in cash but in oil.[92]

States oil companies as a result of the 1938 expropriation of their oil properties. See id. at 71–72.

84. Peter H. Smith, Mexico Since 1946: Dynamics of an Authoritarian Regime, *in* Mexico Since Independence, supra note 36, at 321, 337.

85. Id. at 339.

86. Id. (quoting from a speech Alemán gave before the CTM (footnote omitted)).

87. Wright, supra note 63, at 73. At the same time, Alemán sought to "strengthen Mexico's own business class through a variety of protectionist measures" such as import quotas, tariffs and the devaluation of 1948, which "discouraged Mexican consumers from purchasing imported goods." Smith, supra note 84, at 321, 340.

88. See Wright, supra note 63, at 76. While directed increasingly at manufacturing after 1940, foreign private investment in Mexico remained concentrated in core sectors such as mining, electricity, transport, and communications until the late fifties. See id.

89. "In 1947, Alemán became the first Mexican president to visit the United States as head of state. During that visit he . . . invited American investment capital to participate in the offshore petroleum explorations of Veracruz and Tabasco." Miller, supra note 32, at 331.

90. See id.; Wright, supra note 63, at 127.

91. Wright, supra note 63, at 127.

92. See Miller, supra note 32, at 331; Wright, supra note 63, at 127. Another example of Alemán's private-enterprise policies concerned sulphur mining. Under the constitution of 1917, the Mexican government owned all "subsoil riches" and had the right to decree

The 1940s and 1950s were years of dynamic economic growth.[93] Mexico's nascent industrial development was spurred by World War II, which cut back the flow of imports from the United States.[94] The government's protectionist strategy further "stimulat[ed] local manufacturing and [created] a new cadre of prominent industrialists."[95]

By the time Adolfo Ruiz Cortines took office in 1952, however, profitable investment opportunities in the production of domestic goods were dwindling, and foreign demand for Mexican exports had begnn to decline.[96] In addition, the limitations of Mexico's import substitution strategy were becoming increasingly apparent.[97] Furthermore, population growth in Mexico started to take its toll: by the late fifties large numbers of rural poor were migrating to the cities, many to join the ranks of the urban destitute.[98] Although the economy continued generally to grow under Cortines,[99] by 1958 Mexico was due once more for change.

(d) *The Road to Renationalization (1958–1983).* — Even before taking office, Adolfo López Mateos (1958–1964) had championed the return to Mexican control of the national telephone company, Teléfonos de México.[100] Shortly after his inaugnration, he declared "himself to be 'on the extreme left within the Constitution.'"[101] Loyalty among the peasantry was strengthened by distributing "approximately 11.4 million hectares of land to more than 300,000 *campesinos*, an activist record that placed him second only to Cárdenas."[102] López Mateos "adopted a similarly populist posture toward labour, proposing in 1961 a measure to institute profit-sharing between workers and proprietors."[103] In addition, he extended

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that only state-owned companies could exploit mineral deposits (as Cárdenas had in the case, for example, of most petroleum reserves). Alemán declined to create a state-owned enterprise for the mining of the newly lucrative sulphur deposits in the Isthmus of Tehuantepec; instead he granted production rights to private concerns. See id. at 87–88, 136. By 1964, these private companies were "second only to the United States in sulphur production." Id. at 88.

93. See, e.g., Smith, supra note 84, at 321, 324. Between 1940 and 1960, gross domestic product in Mexico grew at an average real rate of 6.4% annually. See id.

94. See id.

95. Id.

96. See Wright, supra note 63, at 76.

97. See Smith, supra note 84, at 321, 325–36. Thus, although "[p]rotectionist policies helped local industry to displace foreign competition from the consumer market, . . . there was conspicuously less progress in the capital goods sector," and Mexico continued to import technology and heavy machinery in substantial quantities. Id. at 325 (emphasis omitted). Another, "and paradoxical, consequence of Mexico's [import substitution] strategy was widespread unemployment." Id. at 326.

98. See Meyer & Sherman, supra note 32, at 647.

99. See Smith, supra note 84, at 321, 324.

100. See Wright, supra note 63, at 80.

101. See Smith, supra note 84, at 321, 353. "The statement was shrewd and significant. It pre-empted any move on the radical wing of the PRI and isolated the anti-establishment left . . . who were presumed to be 'outside' the Constitution." Id.

102. Id.

103. Id.

social security coverage and established numerous welfare programs.[104]

In the petroleum industry, López Mateos closed a number of doors that his predecessors had opened. A "new petroleum law enacted in 1958 and a 1960 amendment to article 27 of the Constitution terminated existing concessions and provided that only the nation, through [Pemex], may operate in the industry."[105] Although contracts with private persons were still permitted, "compensation in the form of royalty payments out of production" was prohibited.[106] Moreover, "regulations were issued limiting foreign participation in [the petrochemical] industry to a minority role."[107] Soon thereafter, the mining industry too was "Mexicanized": the government passed a new mining law that prohibited the issuing of new mining concessions to foreigners or to foreign-controlled companies.[108]

López Mateos's most important presidential act "rivaled Cárdenas' expropriation of the oil industry."[109] In 1960, touting the slogan, "*La electricidad es nuestra*,"[110] López Mateos embarked on the nationalization of all foreign-owned power companies.[111] Although the Mexican government was careful to pay what seemed a fair price for the enterprises, the nationalizations were nevertheless a "source of great jubilation and pride on the part of the Mexican people."[112] Shortly afterwards, the López Mateos government acquired a controlling interest in the Mexican subsidiaries of Renault and American Motors.[113]

Despite such populist gestures, and the increased role of the state in the national economy, López Mateos continued generally "to support the business sector and to court foreign capital."[114] Indeed, during the administration of López Mateos, and that of his "competent but unglamorous" successor, Gustavo Díaz Ordaz (1964–1970), direct United States investment in Mexico actually increased, and the economy continued its path of strong growth.[115]

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104. See Miller, supra note 32, at 336–37.

105. Wright, supra note 63, at 127.

106. Id.

107. Id. at 80.

108. See id. at 83.

109. Wright, supra note 63, at 80.

110. "Electricity is ours."

111. See Miller, supra note 32, at 336; Wright, supra note 63, at 80–82.

112. Wright, supra note 63, at 83.

113. See Miller, supra note 32, at 336–37. The government "also purchased controlling shares in the motion-picture industry from long-resident U.S. millionaire William Jenkins." Smith, supra note 84, at 353.

114. Smith, supra note 84, at 354. No statutory limits on profit remittances were imposed; foreign investors were allowed "to repatriate their earnings at a predictable (and favourable) rate of exchange." Id.

115. Id. at 354, 356; see Wright, supra note 63, at 86. "Unquestionably the most significant single step taken in the early years" by President Díaz Ordaz "was the Mexicanization of the sulphur industry." Id. at 87. In 1967 the Mexican government, as part of a consortium of Mexican investors, acquired a controlling interest in the Pan

During the troubled administration of Luis Echeverría (1970–1976), "the role of the state, already large, expanded sharply."[116] New laws were passed to regulate the actions of foreigu enterprise.[117] Public spending poured into housing, education, and other development programs.[118] At the same time, the government bought out numerous (principally failing) private companies in the television, telecommunications, and financial sectors, and it nationalized the entire tobacco industry.[119] While specific estimates vary, sources agree that the total number of state-owned enterprises rose dramatically during Echeverría's regime, by some accounts from 86 to 740.[120]

In 1982, following three years of strong, oil-driven economic growth, the Mexican economy collapsed. Inflation approached 100%, gross domestic product decreased in real terms for the first time in decades, and total external debt "soared" to 87.6 billion dollars.[121] José López Portillo (1976–1982) responded by finding "a perfect scapegoat"; unexpectedly, "he accused the country's private banks of looting, of greed, and of disloyalty for their participation in the flight of Mexican capital in the amount of $22 billion."[122] In September 1982, López Portillo nationalized Mexico's entire private banking system and established stringent foreign exchange controls;[123] in one commentator's words, "These two government actions produced the worst confiict between the private and public sectors in over fifty years."[124] Between 1975 and 1982, the share of gross domestic product, total employment, and gross capital investment attributable to public enterprises generally increased, reflecting the growing

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American Sulphur Company, the last giant in the extractive industries still under foreign control. See id. By 1968, foreign investment was concentrated almost exclusively in manufacturing. See id. at 83, 87.

116. Smith, supra note 84, at 371.

117. See id.

118. See id.

119. See Mexico: A Country Study 75 (James D. Rudolph ed., 3d ed. 1985); Smith, supra note 84, at 371.

120. See Sol W. Sanders, Mexico: Chaos on our Doorstep 42 (1986); Smith, supra note 84, at 371.

121. See Vera Ferrer, supra note 6, at 42; see also id. at 43 (citing annual reports from various years).

122. Meyer & Sherman, supra note 32, at 685.

123. See Miller, supra note 32, at 351–52. Early in his administration, López Portillo had embraced "a series of economic policies designed to regain the private sector's confidence," including the relaxation of price controls on basic commodities, tax and investment concessions, and the reduction of state-owned enterprises. See Kevin J. Middlebrook, Political Liberalization in an Authoritarian Regime: The Case of Mexico, *in* Transitions from Authoritarian Rule: Latin America 123, 131 (Guillermo O'Donnell et al. eds., 1986). However, under López Portillo the total number of public enterprises in Mexico continued to increase, "albeit more slowly" than between 1972 and 1977. See Vera Ferrer, supra note 6, at 40.

124. Vera Ferrer, supra note 6, at 43.

importance of the public sector during that period.[125] At the same time, foreign direct investment fell dramatically.[126]

(e) *The Current Privatization Programs (1983 to the present).* — Promptly after taking office in December 1982, President Miguel de la Madrid (1982–1988) announced an economic restructuring program "designed to correct the public sector's financial disequilibrium."[127] Although few actual privatizations occurred during 1983 and 1984,[128] in February 1985 de la Madrid announced a more drastic program that called for "accelerated liberalization of the economy" and the "disincorporation" of numerous state-owned entities.[129] Between 1983 and 1987, the number of public enterprises fell from 1155 to 889; an additional 92 privatizations were concluded in 1988.[130]

Carlos Salinas de Gortari succeeded de la Madrid as president and carried his predecessor's liberalization and privatization policies much further. Between 1988 and 1994, the Mexican government sold or closed down at least 362 state-owned companies.[131] The Mexican government also announced its intention to privatize Mexico's ports and airports,[132] 170 television stations,[133] Pemex's secondary petrochemical plants,[134] the state-owned insurance company, several hotels,[135] a number of warehousing and natural gas concerns,[136] and dozens of cinemas. To date, and more importantly than the absolute figures, the country's telecommunications, steel, mining, automotive, pharmaceutical, and financial sectors are all back in the hands of private investors.[137]

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125. See id. at 41 (citing Secretaría de Programación y Presupuesto, Cuentas de producción del sector público (Mexico City, 1984 and 1987)).

126. See Roberto Newell Garcia & Luis Rubio, Mexico's Dilemma: The Political Origins of Economic Crisis 294 (1984).

127. Vera Ferrer, supra note 6, at 43.

128. Initially, the plan of the de la Madrid administration was not to sell off government enterprises but simply "to modernize them, to operate them efficiently and honestly, and to reduce their deficits." Id. at 43–44.

129. Id. at 45–46.

130. See id. at 47. Most of the entities privatized by de la Madrid, however, "were commissions and trust funds; and in the case of enterprises, the great majority were relatively small or had low operating levels." Id. at 48.

131. See Damian Fraser, Mexico Puts Last Companies on Sale, Fin. Times, Jan. 20, 1993, at 7.

132. See Kevin G. Hall, Mexico Discovers Difficulties of Privatizing Ports, J. Com., Mar. 10, 1993, at 8B; Craig Torres, Mexico Plans to Sell Four Firms as Part of Privatization, Wall St. J., Jan. 21, 1994, at A9.

133. See Kevin G. Hall, TV Privatization in Mexico Opens Doors for Trade, J. Com., Apr. 1, 1993, at 10A.

134. See Pemex Poised to Privatize its Petrochemical Plants, J. Com., Feb. 16, 1993, at 9A.

135. See Fraser, supra note 131, at 5.

136. See Charles W. Thurston, Mexico Hopes Privatization Will Yield $5 Billion in '93, J. Com., Mar. 4, 1993, at 1A, 10A.

137. See Final Prospectus of Teléfonos de México, S.A. de C.V. 56–57 (May 11, 1992) (on file with the Columbia Law Review); Charles H. Oppenheim, Mexico Won't Turn

The latest trend toward privatization in Mexico has once more been accompanied by a significant increase in foreign participation. The national telephone company is now partially controlled by affiliates of Southwestern Bell and the French national telephone company, and its shares (in the form of American depository receipts) are now widely held in the United States;[138] Pemex, amidst much controversy, is planning to sell its petrochemical plants to foreign as well as domestic investors; and foreign participation is being contemplated in the privatization of the railroad, insurance, television, and numerous other industries.[139] In 1993 foreign investment in Mexico totalled 15 billion dollars, 40 percent over the previous historical high; in the first four months of 1994, it rose to 5.2 billion dollars, an 89 percent increase over the same period a year earlier.[140] In addition, foreigners, principally from the United States, account for almost 20 percent of the total capitalization of the Mexican stock market and for more than half of its total trading volume.[141]

2. *Other Latin American Countries.* — A number of other Latin American countries follow the Mexican pattern very closely. For example, in Chile and Peru, two countries with significant participation in the recent privatization trend,[142] the privatization-nationalization cycle is also in its fifth oscillation. In both countries an extended period of post-independence economic liberalism[143] was followed by a phase of nationalism and nationalization beginning in the 1930s;[144] a return to privatiza-

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Back, Wall St. J., Oct. 26, 1993, at B9; Dianna Solis, Prolonged Slide in Silver Prices Comes as Mexico Seeks Foreign Prospectors, Wall St. J., May 1, 1991, at A12.

138. See Gregory Katz, Promise of Mexico's Phone System Remains Unfulfilled, J. Com., Mar. 23, 1993, at 12A; Mexico to End Holding in Telmex, Fin. Times, May 6, 1994, at 30.

139. See Paul Dykewicz, U.S. Insurers Scouting for Partners to Gain Entry to Mexican Market, J. Com., Aug. 19, 1993, at 10A; Damian Fraser, Mexican Government Changes Channels, Fin. Times, Mar. 9, 1993, at 19; Kevin G. Hall, Privatization Rumours Surround Mexican Rail, J. Com., Aug. 11, 1993, at 1A, 5A; Hall, supra note 133, at 10A.

140. See Foreign Investment Surges 89% in Mexico, J. Com., May 2, 1994, at 5A; Kevin G. Hall, Unrest Fails to Deter Investment in Mexico, J. Com., Feb. 7, 1994, at 3A.

141. See Anthony DePalma, Fortunes and Fear in Mexican Stocks, N.Y. Times, Apr. 12, 1993, at D1.

142. See, e.g., Glade, supra note 7, at 6–7; The Peru Business Report, N.Y. Times, Nov. 23, 1993, at A15 (advertisement for Peru's "sweeping" privatization program).

143. See, e.g., Magnus Mörner, The Andean Past 135, 164, 187 (1985) (discussing integration of the Andean countries in Latin America into the world economy); Munck, supra note 28, at 25 (discussing Chilean economy in the late nineteenth century); Rosemary Thorp & Geoffrey Bertram, Peru 1890–1977, at 37, 112 (1978) (discussing Peru's dynamic growth in 1890s).

144. See Mörner, supra note 143, at 199 (discussing "indigenist" brand of nationalism in Peru). In both Chile and Peru, the nationalism and statism of the thirties and forties were, by comparison to Mexico, relatively mild. Thus, although the Chilean government came to dominate the petroleum, nitrate, and finance industries during this period, mixed private-public enterprises were also encouraged, and "[p]lans to nationalize several companies were canceled on account of [United States] pressure." Barbara Stallings, Class Conflict and Economic Development in Chile, 1958–1973, at 31 (1978); see also William P. Glade, The Latin American Economies 432 (1969) (concluding that "public policy moved

tion some twenty years later (beginning in 1958 in Chile, and in 1948 in Peru);[145] another round of nationalization and antiforeign sentiment commencing in the sixties;[146] and a subsequent return to free-market policies.[147] Commencing in 1973 in Chile, General Pinochet undertook "a massive reprivatization program" that returned most of the companies nationalized during the Allende administration to the private sector.[148] Peru's latest reprivatization program contemplates the privatization of 220 state-owned entities, including Peru's largest mines and the state oil

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falteringly but clearly toward a new synthesis involving substantial economic activity and direction by the state" during period between 1927 and 1958 in Chile). Similarly in Peru, although the petroleum sector reverted back to state control between 1930 and 1948, see Thorp & Bertram, supra note 143, at 166–68, there was a "lack of whole-hearted commitment to an interventionist policy," id. at 190. See also Mörner, supra note 143, at 194 (concluding that attempts at greater state involvement in Peru in late part of 1930s "failed miserably").

145. In Chile, with the decline of populism, the regime of Jorge Alessandri (1958–1964) took significant measures to diminish the role of the state, including "return[ing] state economic activities to private capital." Cardoso & Faletto, supra note 35, at 148. Likewise, Peru's "flirtation with nationalistic and interventionist policies having come to a definitive end in 1948," there followed a twenty-year period of reprivatization (particularly of oil) and "total integration into the international system." Thorp & Bertram, supra note 143, at 205, 223; see also Mörner, supra note 143, at 194 (stating that there was a "return to laissez-faire" in Peru beginning in 1948).

146. In Chile, by the end of Eduardo Frei's presidency in 1970, the state had "assumed sole or majority ownership of forty-four companies." Piñera & Glade, supra note 5, at 20. "[S]tate ownership of corporations peaked" under President Salvador Allende (1970–1973), who nationalized approximately 250 to 350 private companies. See id. at 20–21.

In Peru, following a military coup in 1968, General Juan Velasco adopted several "drastic policy measures," including the expropriation, without compensation, of the International Petroleum Company's holdings and the nationalization of numerous mining companies, the fishmeal industry, foreign-owned banks, and Peru's huge agro-industrial sugar complexes. See Mörner, supra note 143, at 225; Julio Cotler, The New Mode of Political Domination in Peru, *in* The Peruvian Experiment 44, 54 (Abraham F. Lowenthal ed., 1975); Thorp & Bertram, supra note 143, at 205, 301. "The nationalist stance of the Junta" dealt "a severe blow" to both the domestic elite and foreign capital. See Mörner, supra note 143, at 225.

147. General Pinochet, who took over the Chilean government in 1973, championed the liberalization and "opening of the economy to foreign competition and foreign investment"; "[p]rivatization was seen as an integral part of this policy package," Piñera & Glade, supra note 5, at 21, although he continued the public ownership and management of the copper sector nationalized under Allende, see id. at 31. In Peru, President Fernando Belaúnde, upon his return to power in 1980, reversed Velasco's policy, calling for extensive privatization and "outward oriented economic expansion, led by free enterprise in alliance with foreign interests." Mörner, supra note 143, at 229.

148. Piñera & Glade, supra note 5, at 21. Although General Pinochet returned over 50 failing entities to government control, Chilean policy remained overwhelmingly pro-privatization throughout the Pinochet era. See id. at 22.

More recently, however, "[r]ight-wing and pro-privatization candidates Arturo Alessandri and José Pinera were soundly defeated by ruling party candidate Eduardo Frei, whom they had painted as a defender of big government and state monopolies." Gustavo González, Latin America: Privatization Fever Cools in 1993, Inter Press Serv., Dec. 22, 1993, available in LEXIS, News Library, Inpres File.

company.[149]

Brazil followed roughly the same pattern. During the First Republic (1889–1930), Brazil's economy became increasingly dominated by Europeans (chiefly the British) and by domestic coffee growers "who were intimately linked to the world markets" and who "slavishly copied European styles, words, customs, and tastes."[150] This period of "subservience" to foreign culture and capital[151] gave way to the military coup of 1930 and the ascendance of Getúlio Vargas.[152]

Declaring his government "profoundly nationalistic," Vargas oversaw the enactment of a constitutional amendment requiring "the progressive nationalization of mines, mineral deposits, and waterfalls or other sources of energy" and of industries "essential to the economic and military defense of the country."[153] With the imposition of the *Estado Novo* (New State) in 1937, the Vargas government began consolidating state control of the shipping, airline, banking, and steel industries.[154]

The military overthrew Vargas in 1945, and throughout the next five years, the "liberal internationalist" government of General Eurico Dutra "chose to ignore nationalism" and sought to promote development through private, particularly foreign, enterprise.[155] Vargas's re-election

149. See Alex Emery, Hard Times Persist for Peruvian Mines, Miners, L.A. Times (Orange County ed.), Jan. 19, 1994, at D8; Jane Holligan, Peruvian Telephone Sell-off Reflects Latin American Trend, UPI, Feb. 28, 1994, available in LEXIS, News Library, UPI File; The Peru Business Report, supra note 142, at A15; Peru Privatizations to be Completed in '95, J. Com., Mar. 25, 1994, at 5A; Peru to Privatize Oil Company, Wall St. J., Mar. 30, 1994, at A12.

150. E. Bradford Burns, Nationalism in Brazil 38, 73 (1968).

151. See id. at 62. Beginning in the 1850s, "the state found itself compelled to counter the reluctance of international capital to invest" in Brazil by granting to foreigners extremely favorable concessions and rate of return guarantees. Peter Evans, Dependent Development: The Alliance of Multinational, State, and Local Capital in Brazil 84 (1979). In addition, Brazil's coffee economy "placed it in the curious position of being an agricultural country that had to import food. While two-thirds of its total agricultural output was exported, it had to import," mostly from Great Britain, "large amounts of beans, rice, and all of the wheat it consumed." Id. at 59.

152. See Evans, supra note 151, at 85. Vargas governed Brazil for close to a generation, "first as chief of the provisional government (1930–1934), next as constitutional president elected by Congress (1934–1937), then as dictator (1937–1945), and finally as constitutional president elected by the people (1951–1954)." E. Bradford Burns, A History of Brazil 346–47 (3d ed. 1993). A brilliant politician, Vargas was known as "father of the poor" but managed also to keep the support of the ruling oligarchy, as well as "large[ ] numbers of the military, industrialists, politicians, and the middle class." Id. at 356, 370.

153. Burns, supra note 150, at 74, 82 (citations omitted).

154. See Evans, supra note 151, at 87. In 1941 the state steel company Companhia Siderúrgica Nacional ("CSN") was officially founded. The creation of CSN was primarily a response to European and North American domination of the steel industry. Thus, although "CSN was clearly a state enterprise, private Brazilian capital was never excluded." Id. at 87, 89.

155. Burns, supra note 152, at 388; Evans, supra note 151, at 91. One of Dutra's first steps "was to open bids to private Brazilian companies for the construction of refineries."

in 1950, however, represented the triumphal return of nationalist and statist policies. Under the slogan, "*O petróleo é nosso!*,"[156] Vargas created the state oil monopoly, Petrobrás, and a number of other government enterprises during his second administration.[157] In the early sixties, the electricity industry was nationalized.[158]

Another military coup in 1964 ushered in a brief phase of privatization.[159] However, by 1967 economic liberalism had again been discredited,[160] and during the next decade "the number of state enterprises increased more rapidly than in any previous era."[161] The tide turned again in 1979, and privatization became an explicit policy objective.[162] After the end of military rule in 1985, President José Sarney called for "significant enhancement of the privatization policy in Brazil," because " 'private initiative is the engine of economic development . . . [and] every time the state's penetration in the economy increases, our liberty decreases.' "[163]

Argentina too has oscillated between privatizing and nationalizing governments. Through the nineteenth and early-twentieth centuries, "unprecedented wealth" and political power became concentrated in the hands of a few landowning families and large foreign corporations.[164] Anti-American sentiment grew, with the "privileged and frequently monopolistic positions of the Swift, Armour, Wilson, Goodyear, and International Telephone and Telegraph companies" perceived by many Argentinians as a form of "*yanqui* aggression."[165] By 1935, "nearly half of

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Evans, supra note 151, at 90. The bids, however, were disappointingly low, because local companies had "difficulty getting foreign firms to sign long-term contracts assuring them of supplies of crude oil." Id. Thus, "the debate between those who wanted to let foreign firms in and those who wanted the state to take over began in earnest." Id. at 91.

156. "The oil is ours!"

157. See Burns, supra note 152, at 373; Burns, supra note 150, at 83, 88; Evans, supra note 151, at 91–92.

158. The American and Foreign Power Company was nationalized, and the state agency Electrobrás created, during the administration of João Goulart. See Burns, supra note 150, at 99; Evans, supra note 151, at 93.

159. Humberto Castello Branco, the first post-1964 military president, privatized the Fábrica Nacional de Motores (which was sold to Alfa Romeo) and the steel company owned by the state of Guanabara. See Evans, supra note 151, at 217.

160. Between 1964 and 1967, the economic performance of the Brazilian economy was "disastrous." See id.

161. Id. at 218. Foreign investment continued to increase during this period of "state entrepreneurship" under military rule. Many at the time accused the state of "serving as the 'handmaiden' of multinational expansion." Id. at 220 (citation omitted). Peter Evans argues that joint ventures combining state and foreign capital were "a new way of drawing the multinationals into a 'nationalist' schema of accumulation." Id. at 227.

162. See Rogério L.F. Werneck, The Uneasy Steps Toward Privatization in Brazil, *in* Privatization of Public Enterprises in Latin America, supra note 5, at 59, 63.

163. Id. at 63, 69; see Munck, supra note 28, at 137 (citation omitted). Recently, Brazil has been "forced to table . . . privatization plans due to political turmoil," including the "scandal that ousted President Fernando Collor" in 1993. González, supra note 148.

164. James R. Scobie, Argentina: A City and a Nation 143, 196 (1971); see Gary W. Wynia, Argentina in the Postwar Era 22–23 (1978).

165. Scobie, supra note 164, at 188.

the country's industrial capital came or was controlled from abroad."[166]

These conditions were followed by a powerful nationalist reaction[167] that culminated in the first major Argentinian nationalization program under Juan Perón (1946–1955, 1973–1974). Inciting hatred against foreign capitalists and the *estancieros*—the landed agricultural elite[168]—and stressing the state's responsibility to "the common good," Perón nationalized Argentina's foreign-owned railroads, gasworks, public services, and utilities.[169]

Following Perón's overthrow in 1955, Argentina entered an extended period of economic and political turbulence (including a brief return to power by Perón himself in 1973). The country vacillated between regimes advocating deregnlation, openness to foreign capital, and vigorous free enterprise, and regimes calling for greater state regulation, the expurgation of foreign capital, and an expanded state economic sector.[170] The present privatization efforts, begun in principle by Raúl Alfonsín (1983–1989)[171] and pursued more aggressively by the current president, Carlos Saúl Menem, include the return to private ownership of the national airline, railways, numerous utilities, and most banks.[172] Not all the transactions have gone smoothly. The privatization of Aerolineas Argentinas, for example, involved "a botched leveraged buyout" that

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166. Id.

167. See Wynia, supra note 164, at 37.

168. See Tomás R. Fillol, Social Factors in Economic Development: The Argentine Case 31, 78, 83 (1961); David Rock, Argentina 1516–1982, at 258, 286, 312 (1985); Scobie, supra note 164, at 222–23; Eldon Kenworthy, The Function of the Little-Known Case in Theory Formation or What Peronism Wasn't, Comp. Pol., Oct. 1973, at 17, 40, 42.

169. See Rock, supra note 168, at 258, 262–63, 283, 285; Scobie, supra note 164, at 235.

170. Perón's government had announced plans to privatize as early as 1953. See Glade, supra note 144, at 430. Under the presidency of Arturo Frondizi (1958–1962) foreign private capital, "in response to lavish inducements," poured into Argentina's oil, steel, chemical, automotive, and other major industries. Rock, supra note 168, at 328, 340; see Wynia, supra note 164, at 91. Indeed, Frondizi reversed his own "well-established nationalistic stance on the petroleum issue" when he "authorized the state petroleum company to contract foreign firms to extract Argentine oil." Id.

This period of openness to private capital, both domestic and foreign, was followed by a brief return under Arturo Illia (1962–1966) to statism and "a commitment to expunging foreign influence" from oil, Rock, supra note 168, at 345; a swing back to "efficiency" and the " 'denationalization' of Argentine industry and finance" under General Juan Carlos Ongonía (1966–1970), id. at 350; see Wynia, supra note 164, at 180; another phase of antiforeign sentiment (1970–1976), culminating again in Juan Perón's plans "to trim the influence of foreign corporations and to extend nationalization," Rock, supra note 168, at 361; and, with the coming to power of the junta of 1976, a return to free market policies, *privatización*, and "aggressive pursuit of foreign investment," id. at 368.

171. According to one commentator, little actual privatization occurred during Alfonsín's presidency in part because of "the private sector's ambivalence toward the entire privatization process." Javier A. González Fraga, Argentine Privatization in Retrospect, *in* Privatization of Public Enterprises in Latin America, supra note 5, at 87.

172. See id. at 93–97; see also Marcos Pipan, Argentina: North Meets South, 195 Railway Age, Feb. 1994, at 41 (discussing freight railroad privatization).

landed the airline in more than one billion dollars of debt and led eventually to its partial renationalization.[173]

In Uruguay, economic liberalism in the nineteenth century led to a "booming export economy based on beef and wool" controlled by a small class of "nouveaux riches."[174] This period of laissez-faire capitalism and growing foreign dependence ended in 1903 with the election of Don José Batlle y Ordóñez, who "used his two presidencies . . . to transform the country's political economy."[175] Batlle stressed "national reconciliation" and called for restraints on private (particularly foreign) economic power.[176] He and his Colorado party enacted sweeping social reforms and nationalized a number of railways, the electricity and insurance industries, and large portions of the financial sector.[177]

After the March 1933 military coup, *Batllismo* and nationalization gave way to a decade of free-market orientation and policies favoring the economic elite.[178] Thus, "state corporations were attacked in the Baltar Law of 1936," which stripped them of the right to establish monopolies and permitted international oil companies once again to supply the domestic market.[179] By 1942, however, *Batllismo* had been restored, and over the next twenty years, numerous, principally British-dominated, enterprises in the transportation and utility sectors were nationalized.[180]

The economic stagnation evident after the mid-fifties "dealt a blow to *Batllista* Uruguay which eventually was to prove fatal."[181] Commencing in 1958, with the electoral triumph of the Blanco party and "the arrival of a team of [International Monetary Fund] officials," Uruguay moved into a new phase of economic liberalism.[182] Free enterprise in Uruguay continues precariously today.[183]

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173. See Thomas Kamm, Bungled Buyout: Argentine Airline Sale Shows Privatization is Hardly a Cure-All, Wall St. J., May 20, 1993, at A1.

174. Charles G. Gillespie, Uruguay's Transition from Collegial Military-Technocratic Rule, *in* Transitions from Authoritarian Rule, supra note 123, at 173, 173.

175. Id.

176. While Batlle's "hostility towards foreign capital was not disgnised," his "relations with domestic capital were very different." M.H.J. Finch, A Political Economy of Urugnay Since 1870, at 207–08 (1981). The expansion of the state sector "occurred generally in response either to the failure of existing private capital in an industry, or to the development of a new industry. . . . Radical initiatives to displace existing private interests were rare." Id. at 210.

177. See id. at 210–11.

178. See id. at 17.

179. Id. at 217.

180. See id. at 212, 218, 221.

181. Id. at 235.

182. See id. at 237, 245, 252–53; see also Munck, supra note 28, at 31 (period after 1955 marked by increase in foreign investment and smaller role for the state as defender of national industry).

183. In the 1980s, lack of regulation of private capital and the courting of foreign investment led to "a speculative financial whirlwind" and heightened economic instability. Munck, supra note 28, at 72; see also Gillespie, supra note 174, at 173, 179. In November 1992, the privatization efforts of President Luis Alberto Lacalle slowed down "when 70

B. *Southeast Asia*[184]

By contrast to Latin America, most of Southeast Asia remained under colonial control until the 1950s. Even so, virtually every nation in the region has already been through at least two alternations—and in many cases more—between privatization and nationalization.

Malaysia's recent history is in many respects typical of the region, and its current privatization program is one of the most ambitious.[185] Accordingly, postcolonial Malaysia will be considered first in some detail, followed by a much briefer treatment of other Southeast Asian nations.

1. *Malaysia.*

(a) *Laissez Faire Under the Alliance Government.* — Following British colonial rule,[186] Malaysia became an independent state on August 31, 1957.[187] The so-called "Bargain of 1957," a careful compromise between indigenous Malay (or Bumiputra) interest groups and Chinese and Indian interest groups, shaped the political economy of Malaysia until 1970.[188] Essentially, this compromise—crafted by the Alliance coalition[189] and embodied in the Constitution—ensured Malays political control of the country,[190] while allowing the other ethnic groups to pursue

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percent of Uruguay's voters rejected in a referendum the privatization of the state-run telecommunications company." Only Vasp Seeks to Buy Into Uruguay Airline, Agence France Presse, Sept. 30, 1993, available in LEXIS, News Library, Non-US File; see also Holligan, supra note 149 (reporting that 1992 proposed privatization law in Uruguay was rejected by referendum).

184. In this Article, Southeast Asia refers broadly to the nations of southern and southeastern Asia.

185. See Adam et al., supra note 6, at 48; Privatisation, The Economist, Aug. 21, 1993, at 19.

186. Although British presence in Malaysia dates back to the late eighteenth century, the 1874 Pangkor Treaty established a system of British "residents" in Malaysia and marked the beginning of Great Britain's formal colonial rule. See Barbara W. Andaya & Leonard Y. Andaya, A History of Malaysia 107, 157 (1982).

187. Technically it was Malaya (composed of the states of the Malay peninsula) that achieved independence in 1957. See id. at 262. On September 16, 1963, the former British colonies of Singapore, Sabah, and Sarawek joined Malaya to form the Federation of Malaysia. See id. at 274. Singapore left the federation in 1965 to become an independent nation. See id. at 275. In this Article, "Malaysia" is used to refer both to Malaya and to the present day Federation of Malaysia, depending on the context.

188. See Adam et al., supra note 6, at 214.

189. The Alliance, a coalition between the major ethnic parties in Malaysia, was composed of (in order of dominance) the United Malays National Organization ("UMNO"), the Malayan Chinese Association ("MCA"), and the Malayan Indian Congress ("MIC"). See id. at 266–68; Donald L. Horowitz, Ethnic Groups in Conflict 401, 417 (1985).

190. To satisfy the Bumiputra, the constitution establishes Malay as the national language of Malaysia, and Islam as the state religion, and provides for the Yang di-Pertuan Agong ("Supreme Head of the Federation") to be elected from among the nine Malay heads of states comprising the Federation. See Frank H. Golay et al., Underdevelopment and Economic Nationalism in Southeast Asia 360 & n.21 (1969) (citing Federation of Malaya Agreement of 1948). Furthermore, while " 'the legitimate interests of other communities' " is recognized, see id. at 360, the constitution specifically safeguards the

their commercial interests under a laissez-faire economic system.[191]

Accordingly, up to 1970, government intervention in commerce and industry was insubstantial, and the small public sector comprised only a handful of state-owned enterprises in the transport, energy, communications, and utilities sectors.[192] Foreign domination of the corporate sector, left over from pre-independence Malaysia, lasted through the sixties, with more than fifty percent of the country's capital stock owned or controlled by foreigners, so that roughly seventy percent of all corporate profits accrued to foreign companies.[193]

Despite impressive economic growth in Malaysia between 1957 and 1970,[194] the Alliance government's laissez-faire economic policies served to reinforce certain structural inequalities inherited from Malaysia's colonial past. Thus, between 1957 and 1970, the Chinese, regarded as "cleverer" and "more industrious" by the British,[195] and historically recruited for tin mining and other commercial activities, strengthened their domination of the lucrative tin industry as well as their power in the manufacturing, trade, transportation, and communications sectors of Malaysia's economy.[196] The Indian population, traditionally assigned to work on the rubber estates, came to dominate Malaysia's plantation agriculture.[197] Meanwhile, the Malays, whom the British considered "lazy" but "good imitative learner[s],"[198] generally continued to occupy the lowest rung of society:[199] "the modified subsistence economy of rice and fish and squatter mixed farms, . . . an economy of poverty and chronic

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" 'special position of the Malays,' " see id. (citing Malay. Const. art. 153), by favoring Malays for positions in the public service, for scholarships and other educational privileges, and for business permits and licenses.

191. See Adam et al., supra note 6, at 214.

192. See id. at 216; Zainal A. Yusof, Distributional Policies and Programmes: The Malaysian Experience, *in* The Malaysian Economy Beyond 1990, at 343, 343 (Lee K. Hock & Shyamala Nagara eds., 1991). During the sixties, the Malaysian government was actively interventionist only in the agricultural sector. See id.

193. See Fong C. Onn, The Malaysian Economic Challenge in the 1990s: Transformation for Growth 109 (1989). Foreign dominance was particularly evident in the mining sector (excluding tin), where foreigners owned 84.5% of all assets. See id.

194. See Andaya & Andaya, supra note 186, at 282–83; Onn, supra note 193, at 131–35.

195. Horowitz, supra note 189, at 162; see Andaya & Andaya, supra note 186, at 136, 176.

196. See Horowitz, supra note 189, at 350–52.

197. See id. at 348.

198. Andaya & Andaya, supra note 186, at 176 (quoting Frank Swettenham, Malay Sketches 2–3 (1913)).

199. Malays also occupied high rungs of society. For example, there was (and still is) a Malay aristocracy and, by constitutional prescription, Malays continue to dominate the elite Malayan Civil Service by a ratio of four to one. See Horowitz, supra note 189, at 587, 654; Gordon P. Means, Malaysian Politics: The Second Generation 26 (1991). Conversely, not all Malaysian Chinese and Indians have been uniformly advantaged: To this day, for example, many Chinese in Malaysia remain poor vegetable farmers or soup hawkers. See Horowitz, supra note 189, at 148.

debt."[200]

The fragile coalition of ethnic interests under the Alliance government had virtually disintegrated by 1969. The non-Malay groups were fearful of total political and cultural "submersion by the Malays."[201] More importantly, there was growing resentment among the Malays—at least among the elites—of Chinese and Indian domination of the economy.[202] In 1970 roughly half of all households in Malaysia received incomes below the poverty line; of these households, about seventy-five percent were Malay.[203] Further, between 1957 and 1973, the mean income of the Chinese, more than twice that of the Malays to begin with, increased more rapidly than the income of all other ethnic groups in the country.[204]

Following the Kuala Lumpur race riots in 1969, "it became widely accepted (amongst the ruling Bumiputra) that economic discrimination was endemic and, if rapid economic advancement amongst the Bumiputra was to be achieved, broader state intervention would be required."[205] The predominantly Malay government quickly moved to establish a program of economic affirmative action toward the Bumiputra. This program was known as the New Economic Policy ("NEP"). For nearly two decades (1971–1990), one of its main objectives was "'national unity . . . expressed as the improvement of economic balances between the races.'"[206]

(b) *Growth of the Public Sector (1970–1980).* — In accordance with the NEP, the Malaysian government between 1970 and 1981 took dramatic measures to alter the distribution of corporate ownership.[207] In 1970, sixty-two percent of all corporate assets were owned by foreigners, thirty-four percent by Chinese and Indian Malaysians, and a mere four percent by the Bumiputra. The goal of the NEP was for Malays to own thirty percent of the corporate sector by 1990, with non-Bumiputra Malaysians

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200. T.H. Silcock, The Economy of Malaya 1 (1957).

201. Andaya & Andaya, supra note 186, at 279; see Means, supra note 199, at 3–4 (discussing campaign by non-Malays for uniform rights and pluralist cultural policies).

202. For a subtle treatment of the critical events, political interpretations, and policies that shaped this transitional period, see Donald L. Horowitz, Cause and Consequence in Public Policy Theory: Ethnic Policy and System Transformation in Malaysia, 22 Pol'y Sci. 249, 255–57 (1989).

203. See Andaya & Andaya, supra note 186, at 284 (statistic refers solely to Peninsular Malaysia).

204. See Onn, supra note 193, at 105–06.

205. Adam et al., supra note 6, at 216.

206. Id. at 214 (quoting the NEP); see also Means, supra note 199, at 23–25 (stating that NEP was promoted to non-Malays as means to calm ethnic hostilities through creation of just society). The other two goals were creation of employment opportunities and promotion of overall economic growth. See Adam et al., supra note 6, at 214.

207. Although the NEP embodied a broad range of socio-economic objectives affecting areas such as employment, housing, education, and the civil service, "the litmus-test was, and remains, the distribution of corporate asset ownership as the indicator of wealth distribution." Adam et al., supra note 6, at 214.

owning forty percent, and foreigners thirty percent.[208]

In pursuit of this goal, the government created a number of large public enterprises[209] to "channel federal and state funds to Bumiputra entrepreneurs"[210] and to "engage[ ] in business ventures with the intention of eventually relinquishing control to Malay private groups."[211] In addition, government agencies initiated direct share transfers to Bumiputra individuals and companies[212] through the acquisition of corporate shares on behalf of the Malay and indigenous peoples.[213] To prevent the resale of equity to non-Bumiputra, the government, relying on the concept of "ownership-in-trust," established a number of special investment trusts reserved exclusively for the Bumiputra.[214]

At the same time, many wholly Malaysian Chinese (or other wholly non-Malay) companies were subjected to what was effectively compulsory corporate restructuring. Commencing in about 1977, any company that sought expansion, new licenses to operate or to import goods, or development of new product lines was required to sell thirty percent of its existing shares to Bumiputra entities or to issue enough new Bumiputra shares so that the Bumiputra portion of total shares would be thirty percent. Companies subjected to restructuring generally did not have a choice about the Malay recipients of such shares. By 1980 the distribution of equity ownership in Malaysia had improved significantly but was still a long way off the original NEP target, being foreign ownership forty-three percent; other Malaysian forty-five percent; and Bumiputra twelve percent (of which seven percent was institutional).[215]

The redistributional aspects of the NEP aside, "its predominant effect [was] to assign an extremely broad role for government intervention in the [Malaysian] economy."[216] The 1970s, then, saw an unprecedented increase in government participation, primarily in the commercial, industrial, and service sectors, but also in the emerging oil and gas industries and in nontraditional areas such as manufacturing, construction, and ag-

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208. See id. at 214 (citing statistics provided by the Malaysian Permodalan Nasional Berhad ("PNB")).

209. For example, the Majlis Amanah Rakyat, or Council of Trust for Indigenous Peoples ("MARA"), encourages Bumiputra involvement in business management and transport, and PERNAS, the National Trade Corporation, provides import and export assistance to Bumiputra businessmen. See Onn, supra note 193, at 75–77.

210. Stephen B. Wickman, The Economy, *in* Malaysia: A Country Study 129, 145 (Frederica M. Bunge ed., 4th ed. 1984).

211. Andaya & Andaya, supra note 186, at 285.

212. See Adam et al., supra note 6, at 224.

213. See Andaya & Andaya, supra note 186, at 285; Means, supra note 199, at 27.

214. See Adam et al., supra note 6, at 224–25. Thus, the main task of the PNB, see supra note 208, was "to acquire a portfolio of shares in profitable companies (including those held by public sector agencies) to be held in trust for subsequent sale through the Amanah Saham Nasional (ASN), the national unit trust scheme open to all Bumiputeras [sic]." Onn, supra note 193, at 79.

215. See Horowitz, supra note 202, at 266–68; Adam et al., supra note 6, at 214.

216. Adam et al., supra note 6, at 215.

riculture.[217] Indeed, by the mid-1970s, Malaysia's public sector grew at a rate of over 100 enterprises per year and, by 1990, was one of the largest in the world, with more than 1,100 state-owned enterprises accounting for approximately twenty-five percent of the gross domestic product in Malaysia.[218]

Although Malaysia's gross domestic product grew at an impressive real rate throughout the seventies and eighties,[219] "the overall performance of the economy [was] only modest by regional standards."[220] When the NEP was introduced in 1971, Malaysia ranked second only to Japan among the Association of Southeast Asian Nations in terms of gross domestic product per capita.[221] By 1990, however, Malaysia had dropped below South Korea, Taiwan, Hong Kong, and Singapore, and it was only marginally above Thailand.[222]

According to many, Malaysia's growth was hampered by the NEP.[223] The overexpansion of the public sector not only crowded out private investment but also created "a huge class of [state-owned] companies whose managements were *de facto* acting independently of any effective shareholder control."[224] Further, the explosion of the public sector increased significantly the federal government's budget deficit, which was then financed by foreign loans.[225] Most importantly, while the standard of living in Malaysia generally rose during the first decade of the NEP, distribution of income actually deteriorated: between 1973 and 1979, the position of the poorest forty percent of the households in the country, principally Malays, improved more slowly than the rest of the population.[226]

By the early eighties there was general agreement that government intervention in the public sector had, with few exceptions, "failed to maintain the value of assets appropriated for the Bumiputra"[227] and that only if the value of those assets were maintained could the NEP's goals of wealth redistribution be realized. Restoring the value of Bumiputra assets became a priority with the election of Dr. Mahathir bin Mohammed in 1980, and the creation of new state-owned enterprises came to an abrupt

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217. See id. at 215, 216–19.

218. See id. at 215–16, 219 (citing World Bank, Malaysia Matching Risks and Rewards in a Mixed Economy Program: A World Bank Country Study (1989)). "[A]long with the proliferation of state organizations, went a four-fold increase in the size of the public bureaucracy, from 1970 to 1983." Horowitz, supra note 202, at 265.

219. See Andaya & Andaya, supra note 186, at 289. This growth stemmed in part from the discovery of oil and natural gas in the mid-1970s. See id.

220. Adam et al., supra note 6, at 215.

221. See id. at 215.

222. See id.

223. See id.

224. Id. at 216; see also Yusof, supra note 192, at 368 ("With rare exceptions, the record of public enterprises has been quite dismal.").

225. By the mid-eighties, Malaysia had a current account deficit of $1,722 million due largely to the servicing of foreign debt. See Onn, supra note 193, at 80.

226. See Means, supra note 199, at 46; Wickman, supra note 210, at 136–37, 143.

227. Adam et al., supra note 6, at 226.

halt.[228]

(c) *The Current Privatization Programs (1980 to the present).* — In 1983 Prime Minister Mahathir urged the nation to build a "Malaysia Incorporated" and embarked on a highly ambitious privatization program that continues to this day. Unlike most other developing nations, however, Malaysia's privatization program aims not only to encourage "private entrepreneurship and investment" in the development of the economy, but also to "contribute towards meeting the [equality] objectives of the [NEP]."[229] Although the privatization program is open to foreign and non-Bumiputra participation, ownership of privatized entities generally must be at least seventy percent Malaysian (as opposed to foreign), of which at least thirty percent must be owned by Bumiputra.[230] Thus, the privatization of various state-owned airline and shipping companies "consisted, to a large degree, of distribution of equity to the Bumiputra or their institutional representatives."[231] Moreover, a significant tranche of every public offering was reserved for Bumiputra individuals or public institutions acting on their behalf.[232]

Malaysia's privatization program has been heavily criticized. Evidence of the first seven years of privatization suggests that efficiency objectives were traded off against the affirmative action goals of the NEP.[233] Consequently, as of 1992, it was "difficult to conclude that the privatization process . . . [had] elicited any fundamental efficiency changes."[234]

In 1988 the government responded to criticism that privatizations were being conducted on an ad hoc basis by developing a "privatization master plan," which assessed the desirability and feasibility of privatizing 434 state-owned enterprises.[235] In December 1992 it designated an additional fifty-seven government operations to be privatized over a three-year period.[236] As a result, the national telephone company has passed into private hands, and numerous state-owned entities in the transportation, utility, and financial sectors (including Bank Bumiputra Malaysia, the country's second-largest financial institution) are expected to be privatized in the near future.[237]

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228. See id. at 216, 226.

229. James Craig, Privatisation in Malaysia: Present Trends and Future Prospects, *in* Privatisation in Less Developed Countries, supra note 27, at 248, 248 (quoting Economic Planning Unit, Government of Malaysia, Guidelines in Privatisation (1985)).

230. See Adam et al., supra note 6, at 228. These rules have been relaxed in some sectors in order to attract more foreign investment. See, e.g., infra note 239.

231. Id. at 255.

232. See id.

233. See id.

234. Id.

235. See Mohd. Sheriff b. Mohd. Kassim, Privatization: Performance, Problems and Prospects, *in* The Malaysian Economy Beyond 1990, supra note 192, at 183, 191.

236. See Malaysia Targets More Selloffs, Wall St. J., Dec. 17, 1992, at A15.

237. See Stephen Duthie, Bank Bumiputra Posts Profit Increase, Asian Wall St. J., Sept. 5, 1994, at A22; Malaysian Firm Agrees to Buy Airline Stake, J. Com., June 14, 1994, at

This shift to privatization in Malaysia has been accompanied by a significant increase in foreign participation. Since mid-1987, direct foreign investment, particularly from Singapore, Japan, and the United Kingdom, has surged.[238] In addition, many of the major privatizations pending are expected to be open to foreign as well as local bidders.[239]

2. *Other Southeast Asian Countries.* — In Pakistan, as in Malaysia, independence was followed by an extended period of free enterprise (1947–1971), in which the government gave broad incentives to private capital to foster industrialization.[240] During these years, the economy came to be dominated by a small number of Muslim capitalists, largely migrants from India, known as Muhajirs.[241] Many of the Muhajir businessmen belonged to minority Islamic sects; Memons, Chiniotis, Bohras, and Khoja Ismailis were and are among the more prominent.[242] By the late sixties, "it was commonly held that [twenty-two] families"—principally Muhajirs—"controlled perhaps 80 percent of private industrial assets"; the Memons, Bohras, and Khoja Ismailis alone, although comprising "less than 1 percent of the population, held more than 40 percent of privately owned firms."[243]

This period of free enterprise was followed by a "complete reversal" of policy under Prime Minister Zulfikar Ali Bhutto (1971–1977), who brought about the "wholesale nationalisation" of the industrial and other sectors of the economy.[244] This nationalization—directed in large part at the Muhajir industrialist families whose wealth was widely resented[245]—was part of Bhutto's attempt to unify the demoralized West Pakistanis

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2B; Pacific Watch: Malaysia: State to Sell Off 14 Entities, L.A. Times, Aug. 22, 1994, at D5; William Tuohy, Wiring the World: Britain's Private Line of Communication, L.A. Times, July 26, 1994, at H16.

238. See Kamal Salih, The Malaysian Economy in the 1990s: Alternative Scenarios, *in* The Malaysian Economy Beyond 1990, supra note 192, at 41, 50.

239. See Adam et al., supra note 6, at 259–60; Malaysia's Ailing Gas Plant to be Privatized, Reuters, May 24, 1991, available in LEXIS, News Library, Reuter File. Following regulatory changes in 1987, 100% foreign control is now permitted for any Malaysian company that "exports more than 80% of its products." Adam et al., supra note 6, at 260.

240. Between 1948 and 1958, several large government enterprises were created to promote economic development. However, the public industrial sector built up during this period operated "in close relationship with private industry," and the government remained committed to the principle of free enterprise. Riyaz Bokhari, Privatisation in Pakistan, *in* Privatisation in Developing Countries 145, 145 (V.V. Ramanadham ed., 1989).

241. See Hafeez Malik, Nationalism and the Quest for Ideology in Pakistan, *in* Pakistan: The Long View 271, 292–93 (Lawrence Ziring et al. eds., 1977).

242. See id. at 293 & n.34; P.A. Kluck, The Society and Its Environment, *in* Pakistan: A Country Study 65, 104 (Richard F. Nyrop ed., 5th ed. 1984).

243. Kluck, supra note 242, at 103–04; see Malik, supra note 241, at 293.

244. Bokhari, supra note 240, at 145; see Introduction, *in* Pakistan: A Country Study, supra note 242, at xix, xxii [hereinafter Introduction].

245. See William J. Barnds, Pakistan's Foreign Policy: Shifting Opportunities and Constraints, *in* Pakistan: The Long View, supra note 241, at 369, 375.

following the secession of East Pakistan (now Bangladesh).[246] Bhutto's nationalizations, however, "substantially slowed economic growth."[247]

Pakistan's current phase of "denationalization" began in 1977, immediately after General Mohammad Zia ul Haq, himself a Muhajir,[248] took power. Since 1983, when the government formally adopted privatization as a goal, numerous losing public enterprises have been either liquidated or returned to the private sector; these privatizations have occurred principally in the cement, marble mining, cigarette, hotel, textile, and financial industries.[249] Benazir Bhutto, who became Prime Minister for the second time in late 1993, "has continued the country's privatization program."[250]

Thailand[251] followed a similar pattern. From the mid-nineteenth century to roughly 1932, the economy was shaped by policies favoring private enterprise and large-scale foreign commerce.[252] Over the same period, the economy became dominated by a small, nepotistic group of military and bureaucratic elite on the one hand, and by increasing numbers of Chinese immigrants, on the other.[253]

Beginning in 1938, when Luang Phibunsongkhram (called Phibun) became prime minister, the government began nationalizing several important economic sectors.[254] This nationalization was directed principally at the country's economically powerful Chinese minority and was part of a series of anti-Chinese enactments.[255] Thus,

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246. See Surjit Mansingh, Historical Setting, *in* Pakistan: A Country Study, supra note 242, at 1, 57–59.

247. Introduction, supra note 242, at xxii.

248. See Darrel R. Eglin, The Economy, *in* Pakistan: A Country Study, supra note 242, at 131.

249. See generally id. at 139–42 (exploring general economic development of Pakistan and interplay between industrialization and Islamization); Iqbal Haidari, Privatisation: An Assessment: Pakistan, 24 Econ. Rev. 9 (1993).

250. John W. Anderson, Pakistan's Bhutto, Despite Progress, Haunted by Past, Wash. Post, Sept. 18, 1994, at A29, A31.

251. Thailand is unique among Southeast Asian nations in that it successfully evaded the direct colonial control of the Western powers. See, e.g., David K. Wyatt, Thailand: A Short History 181–90 (1984) (emphasizing the role caution played in foreign diplomacy with British authorities). See generally Milton Osborne, Southeast Asia 72–73 (1985) (noting that outstanding Thai rulers were largely responsible for Thailand's avoidance of colonial control); D.R. SarDesai, Southeast Asia: Past and Present 126 (2d ed. 1989) (observing that Thailand was able to survive colonial imperialism because of geography, diplomacy, and modernization). Nevertheless, Thailand's economic history has much in common with that of its neighbors. See generally Golay et al., supra note 190, at 267–340 (discussing economic nationalism in Thailand).

252. See Golay et al., supra note 190, at 270; Wyatt, supra note 251, at 183–85; Ng Chee Yuen & Norbert Wagner, Privatization and Deregnlation in ASEAN: An Overview, ASEAN Econ. Bull., Mar. 1989, at 209, 212.

253. See Golay et al., supra note 190, at 271; SarDesai, supra note 251, at 226.

254. See Golay et al., supra note 190, at 300–01; Wyatt, supra note 251, at 252–55.

255. See Wyatt, supra note 251, at 254.

> The government formed a state corporation to compete with Chinese in the rice trade and virtually took over the salt, tobacco, petroleum, and pork business. . . . A new revenue code sharply increased taxes on the commercial (i.e., Chinese) class, and all noncitizens were required to pay an alien registration fee. . . . [U]se of the Chinese language [in Chinese schools was limited] to two hours a week, and all the Chinese newspapers save one were closed down. . . . [S]ome of its acts of economic nationalization affected Western multinational corporations as much as they affected Chinese enterprise (for example, tobacco and petroleum). But no one was fooled. These were anti-Chinese measures, which, from Phibun's point of view and that of many other Thai, were necessary in order to give the Thai control over their own economy and society.[256]

Following the Second World War, the emphasis on "Thaification" through government enterprise shifted from nationalization of existing enterprises to the direct creation of public establishments.[257] Again, however, the establishment of state-owned enterprises was part of a larger campaign to create a "Thailand for the Thai."[258] The Government Organizations Incorporation Act (1953), which called for an active role for public enterprises, openly sought to transfer control of Thailand's commerce from Chinese to Thai hands.[259] Over the next quarter century, government enterprises proliferated; by 1986, the government controlled the nation's public utilities and transportation sectors as well as roughly sixty manufacturing establishments in the tobacco, liquor, timber, sugar, mineral, cement, pharmaceutical, textile, and other industries.[260]

In 1986, the Thai government launched its current privatization efforts "because of the increasing inability of state-owned enterprises to finance their own investments and their increasing reliance upon external debt-financing."[261] Although a number of entities in the paper, sugar, and airline industries have been transferred from state to private ownership, on the whole Thailand's privatization movement has not progressed smoothly.[262] However, relations between Thais and Chinese in Thailand have improved markedly in recent years.[263]

A number of countries in Southeast Asia embarked on nationalization programs immediately after achieving independence. Because the colonial economies in these states had been characterized mainly by free-trade and laissez-faire policies, the postindependence nationalization pro-

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256. Id.

257. See Golay et al., supra note 190, at 304.

258. Wyatt, supra note 251, at 254; see Yuen & Wagner, supra note 252, at 212.

259. See Golay et al., supra note 190, at 305; Wyatt, supra note 251, at 267.

260. See Golay et al., supra note 190, at 305; Yuen & Wagner, supra note 252, at 214.

261. Yuen & Wagner, supra note 252, at 216–17.

262. See id.

263. See Donald L. Horowitz, Democracy in Divided Societies, 4 J. Democracy 18, 19 (1993). Rates of intermarriage between Thais and Chinese are notably higher today than they were several decades ago. See id.

grams constituted an extreme shift away from a previously privatized economy, and may themselves be viewed as the first oscillation of a privatization-nationalization cycle. In all of these countries, the period of nationalization lasted roughly from independence until the mid-1970s, when the current phase of privatization began.

Burma (now Myanmar) exemplifies this pattern. During its colonial rule, Britain encouraged competition, private enterprise, and free trade,[264] a policy that favored not only British enterprise but also that of certain "nonindigenous" groups, particularly Burmese of Indian extraction.[265] During the 1930s and 1940s, the antagonism between the indigenous peoples and those who had profited from British colonial rule became extremely bitter.[266]

Promptly after independence, Prime Minister U Nu vowed to put an end to the country's "unfair, one-sided economic system," which favored British, Indian, and Chinese capitalists over Burmans.[267] To carry out his policy of "Burmanism," U Nu nationalized many major foreign-owned teak, cement, and sugar companies as well as the country's transportation, communications, and utilities sectors.[268] After a military coup d'état in 1962, both xenophobia and state intervention became much more extreme. The new government under Ne Win immediately banned all foreign journalists and missionaries, expelled the Ford, Fulbright, and Asia Foundations, and expropriated all large-scale industrial enterprises, including the British-owned Imperial Chemical Industries.[269] Following "the 1964 nationalisation of virtually all foreign (largely Indian and Chinese) and domestically-owned companies," there was "a mass exodus from the country" of the foreign capital that remained.[270] Approximately 15,000 enterprises passed into government hands between 1963 and 1972.[271]

The current phase of privatization in Burma can be dated to 1973 when, in a major shift of policy, the government announced that private investment would once again be allowed in more than 200 industries.[272]

264. See Golay et al., supra note 190, at 204.

265. See Martin Smith, Burma: Insurgency and the Politics of Ethnicity 43–46 (1991).

266. See Golay et al., supra note 190, at 204; Smith, supra note 265, at 43–46. "When Indians were attacked in Burma in the severe riots of 1938, the main victims were Indian Muslims, despite the fact that the landlord class in Lower Burma was heavily composed of Indian Hindus who had profited inordinately from the depression." Horowitz, supra note 189, at 121 (footnote omitted).

267. Golay et al., supra note 190, at 211 (quoting U Nu, Towards Peace and Democracy 3 (1949)).

268. See id. at 229–31.

269. See Donald M. Seekins, Historical Settings, *in* Burma: A Country Study 62 (Frederica M. Bunge ed., 1983); Smith supra note 265, at 201.

270. Smith, supra note 265, at 201.

271. See Seekins, supra note 269, at 61–63.

272. See id. at 143.

In 1975, large portions of the transportation industry were privatized.[273] In 1977, the Right of Private Enterprise Law was enacted to promote private investment by protecting various important sectors of the economy from nationalization.[274] In recent years, however, only limited privatization has been undertaken, primarily in the agricultural sector and in the mining and petroleum industries.[275]

Allowing for local differences, the same sequence—from a colonial, free-trade economy to postindependence nationalization, and subsequently to the current round of privatization—can generally be seen in India,[276] Indonesia,[277] and Sri Lanka.[278]

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273. See id.

274. See id.

275. See Burma: Economy Improves Considerably After Years of Decline, Bus. Am., Nov. 15, 1993, at 20, 21.

276. British free-enterprise and free-trade policies (which chiefly preserved India as a market for British manufacturing) gave way with independence in 1947 to the socialist government of Nehru (1947–1964). Over the next quarter century, Indira Gandhi nationalized numerous sectors of the economy, including the financial, insurance, shipping, coal, steel, and textile industries.

"In a major reversal of its earlier policy, the Indian Government" has in the last decade generally pursued a policy of economic liberalization. Indian Banks Crippled as 600,000 Strike Over Privatisation, Extel Examiner, Feb. 17, 1994, available in LEXIS, News Library, Extex File. India has recently called for privatization of its insurance, mining, petroleum, steel, and financial sectors and liberalization of its foreign investment legislation. See India May Open Up Its Insurance Market to Private, Foreign Firms, Official Says, BNA Int'l Trade Daily, Mar. 9, 1994, at 385, available in LEXIS, BNA Library, Intrad File; India to Sell More State-Owned Firms, Christian Sci. Monitor, Mar. 1, 1994, at 8.

277. Colonial laissez faire in Indonesia, which tended to favor the Chinese over the indigenous population, gave way with independence in 1949 to a period of "professed socialist ideals." Golay et al., supra note 190, at 118–19, 125–26. Although President Sukarno called immediately for nationalization and "indigenization" of industry, and although a few utilities were expropriated in 1953, it was not until 1957–1958, and again in 1964–1965, that large-scale nationalization of land (principally owned by the British and resident Chinese) and private enterprise (principally owned by the Dutch and, to a lesser extent, Chinese) took place. See id. at 125–26, 148, 158.

In 1965 Indonesia's new president, Suharto, "executed a drastic right turn in economic policy"; numerous entities seized by Sukarno were privatized and measures were enacted once again to encourage foreign capital. See id. at 199. Between 1965 and 1975, most of Indonesia's economic development stemmed from foreign enterprise, "and there was little growth in indigenous industries." M.C. Ricklefs, A History of Modern Indonesia Since c. 1300, at 284 (2d ed. 1993). More recently, the progress of privatization in Indonesia has been limited, reflecting a familiar ethnic dilemma: most of the businessmen in Indonesia with the resources and entrepreneurial skills to take over public enterprises belong to the country's resented Chinese minority, and "[e]ven foreign ownership would be more acceptable than privatization that primarily favours this ethnic group." Yuen & Wagner, supra note 252, at 220.

278. In Sri Lanka, under British laissez-faire policies, commercial plantation agriculture replaced subsistence farming as the mainstay of the economy. See Chandra R. de Silva, Sri Lanka: A History 158, 166–67 (1987). The expansion of the plantation sector led in turn to "increasing control of the economy by the colonial rulers" and by an emergent group of domestic elite, many of whom "belonged to the Christian or Tamil minority groups." Id. at 167, 187.

The Commonwealth of the Philippines was established in 1935,[279] and over the next two decades, it "experimented persistently with bureaucratic entrepreneurship and the public corporation."[280] Its goals were not only to industrialize, but also to "indigenize" the country by transferring control of the economy from Westerners and the economically powerful Chinese minority[281] to Filipinos.[282] Before and after the Second World War, the Philippine government brought under state control social services and utilities; by the early fifties it was operating the country's "railroads, hotels, electric power, gas and water works."[283] In addition, as "more direct manifestations of indigenism," it sought to participate directly in the cement, marble, pulp and paper, sugar, textile, footwear, yarn, and other manufacturing industries—many of which had been controlled disproportionately by the Chinese.[284]

This early period of nationalization gave way to "a radical change" in economic policy with the election in 1953 of Ramon Magsaysay (1953–1957), who in his presidential campaign had railed against the inefficiency and corruption of state-owned enterprises.[285] By the mid-1960s, Magsaysay had privatized or liquidated virtually all government-owned manufacturing enterprises.[286] The return of the Philippines to free enterprise ceased abruptly in 1972, when President Ferdinand Marcos (1965–1986) imposed martial law. Between 1972 and 1977, public enterprises once again increased dramatically in size and number.[287] However, most of the nationalizations that occurred during this period

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Sri Lanka achieved independence in 1947. Commencing in 1956, the government under S.W.R.D. Bandaranaike (1956–1959), and then under his widow, Sirima Bandaranaike (1960–1965, 1970–1977), nationalized enterprises in the plantation, transport, petroleum, and financial sectors. See id. at 251, 254–55, 269–70. This period of nationalization coincided with the government's championing of Sinhalese nationalism "at the expense of Tamils, Christians of all ethnic groups, and other minorities." Horowitz, supra note 189, at 383–84. In 1977, the new government of J.R. Jayawardene returned the country to policies encouraging free enterprise and foreign investment. See de Silva, supra, at 263, 270–71. In 1987 the government explicitly committed itself to privatization. See Adam et al., supra note 6, at 306.

279. See Golay et al., supra note 190, at 22. Spain's colonial rule of the Philippines ended in 1898 as a result of the Spanish-American War. The so-called American period that followed lasted until 1935. See id. For an appraisal of the history of the American period, see, e.g., William J. Pomeroy, An American-Made Tragedy: Neo-Colonialism and Dictatorship in the Philippines (1974).

280. See Golay et al., supra note 190, at 32.

281. Resentment against the Chinese dates back to Spanish colonial rule. In 1722, the Spanish king was informed that " 'The Sangleys (Chinese) have gained control of all the commerce in provisions and other supplies and of the mechanical trades.' " Id. at 21 n.1 (citation omitted).

282. See id. at 32.

283. Id. at 56.

284. See id.

285. See id. at 57.

286. See id. at 57–58.

287. The number of corporations owned or controlled by the state rose from just 35 in 1970 to 290 by 1985. See Yuen & Wagner, supra note 252, at 213.

were simply forms of political patronage, undertaken "'to bail out [Marcos's] cronies.'"[288]

This phase of "nationalization" under Marcos gave way to the present privatization efforts, initiated by Corazon Aquino (1986–1992) and continued by the current President, Fidel Ramos. Most recently, the government has accelerated privatization in the telephone, steel, electricity, paper, and oil industries.[289] In general, however, privatization in the Philippines has proceeded slowly, in part because of significant nationalist resistance to foreign participation.[290]

II. Causes of Cyclicality

For over a century, then, the nations of Latin America and Southeast Asia have oscillated from privatization to nationalization and back again. What might cause such cyclicality? In this Part, I examine several alternative explanations and conclude that these explanations, while useful, are incomplete. Building on them, I then propose a more comprehensive model that takes into account the crucial role that nationalism has played in the developing world. The model encompasses nationalism directed not only at external (Western or other "imperialist") foreigners but also at certain, often ethnically identifiable, groups within a nation, whom I call "foreigners within."

A. *Partial Explanations*

1. *The Exogenous Events Model.* — One view of the swings from privatized to nationalized economies in the two regions would trace their origin to certain massive events with worldwide consequences such as the Great Depression or the collapse of the Soviet Union. Under this view, there would be no true privatization-nationalization cycle in the sense of a self-generating alternation between two (temporary) equilibrium states. Instead, what might look like an endogenously generated cyclical pattern within developing countries would be explained as a response to exogenous, typically catastrophic events involving the developed countries, the "world superpowers," and so on.

It can hardly be doubted that world events have shaped the economies of developing countries in important respects, or that in some cases different parts of an entire developing region may respond at more or less the same time to international economic influences. For example, as

288. Zinnia F. Godinez, Privatization and Deregulation in the Philippines, ASEAN Econ. Bull., Mar. 1989, at 259, 263 (citation omitted); see Yuen & Wagner, supra note 252, at 213.

289. See Privatization in Philippines Earns 964 Million Dollars, Agence France Presse, Mar. 10, 1994, available in LEXIS, ASIAPC Library, AFP File; Caspar W. Weinberger, The Philippines: At Last, Some Reason for Optimism, Forbes, Nov. 22, 1993, at 35.

290. See Godinez, supra note 288, at 280–81; Yuen & Wagner, supra note 252, at 218.

noted above,[291] after attaining independence or political consolidation in the late nineteenth century, virtually every Latin American state adopted policies of economic liberalism, a phenomenon that may be linked to the extraordinary success of the United States economy and to the ideology of liberalism prevalent throughout Europe at that time.[292] Similarly, the Depression undoubtedly led to a greater willingness to question free-market policies in Latin America in the 1930s.[293] And, finally, the collapse of state-run economies in the late 1980s is surely responsible for at least some of the enthusiasm for privatization seen all over the developing world today.[294]

Nevertheless, the usefulness of this exogenous events model exhausts itself pretty quickly—if not in these three generalizations, then in others of similar thinness. The historical facts do not support any straightforward mapping of the privatization-nationalization swings in the developing world along a world-events chronology.

First, the shifts between nationalization and privatization in Latin America overlap only marginally with those in Southeast Asia. Moreover, even within each region, countries display considerable differences in the time at which either nationalization or privatization policies were adopted, as well as in the length of each policy phase. The first nationalization programs in Mexico and Urugnay began around 1910,[295] whereas Chile and Peru did not nationalize until the 1930s.[296] As for Argentina, no nationalization was undertaken until the late 1940s[297] (when Mexico was already reprivatizing). Further, these countries did not repudiate their early nationalization programs at the same time. The first round of reprivatization began in Mexico in 1940;[298] in Peru, in 1948;[299] in Chile and Argentina, in 1958[300] (by which time Mexico had already recommenced a nationalization program).[301]

Similarly, in Southeast Asia, in the late 1940s, newly independent Burma and Sri Lanka promptly embarked on nationalization programs

291. See supra text accompanying notes 35–55 (Mexico), 143 (Chile and Peru), 150–151 (Brazil), 164–166 (Argentina), 174 (Uruguay).

292. Cf. Bushnell & Macaulay, supra note 29, at 183, 187 (discussing effects of British economy and ideology of liberalism in Latin America); Liah Greenfeld, Nationalism: Five Roads to Modernity (1992) (discussing liberalism in England, France, Russia, Germany, and United States).

293. See, e.g., Andre G. Frank, Latin America: Underdevelopment or Revolution 384–85 (1969); Munck, supra note 28, at 25–26.

294. See, e.g., Yuen & Waguer, supra note 252, at 209–10.

295. See supra text accompanying notes 56–58, 174–177.

296. See supra text accompanying notes 143–144.

297. See supra text accompanying notes 167–169.

298. See supra text accompanying notes 81–83.

299. See supra text accompanying note 145.

300. See supra text accompanying notes 145, 170.

301. Cf. Frank, supra note 293, at 387 (calling for "further study" to understand differences in scope and timing of various post-Depression nationalist movements in Latin America).

that lasted approximately a quarter century. By contrast, Indonesia did not nationalize until the late 1950s but then returned to private enterprise within a decade.[302] Malaysia, meanwhile, maintained laissez-faire policies for some fifteen years after attaining independence in 1957; the expansion of the public sector commenced only in the 1970s.[303]

Without denying the influence of First World events and trends on Third World states, the variations in the timing of nationalization and privatization among developing countries suggest that these movements cannot be attributed solely to exogenous events. What needs to be explored are the conditions endogenous to developing countries that, in case after case, have brought about a recurring oscillation between economic extremes.

2. *The Idealism-Selfishness Model.* — Turning now to a "true" cycle model, a second theory would emphasize the parallels between privatization-nationalization cycles and another pattern of cyclical behavior long observed and recently studied in detail by Arthur M. Schlesinger, Jr., Albert Hirschman, and others.[304] This cycle involves the regular swings within a given society from periods in which individuals devote enormous energies to public issues and political change, to periods of respite, in which individuals are disillusioned with public ideals[305] and more interested in pursuing their private lives and material gain.[306]

A recurrent shift in social mood "between public purpose and private interest"[307] is not sufficient to explain the repeated alternation between privatization and nationalization in the developing world. First, in developing countries nationalization and privatization cannot, respectively, be equated with idealism and self-interest. Privatization movements, no less than nationalization movements, are invariably presented in idealistic, almost fervent, terms.[308] Against the background of an entrenched corporatist state, a privatization movement can seem as revolutionary as a nationalization movement: it too can be "liberating" and "heady"; it too can demand sacrifices from the people on behalf of the public good.[309]

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302. See supra note 277 and accompanying text.

303. See supra text accompanying notes 187–218.

304. See, e.g., Henry Adams, History of the United States of America During the Administration of Thomas Jefferson 123 (The Library of America 1986) (1903); Albert O. Hirschman, Shifting Involvements 3, 8 (1982); Arthur M. Schlesinger, Paths to the Present 93 (1949); Arthur M. Schlesinger, Jr., The Cycles of American History 25–48 (1986).

305. "People tire quickly of ideals," said Franklin D. Roosevelt. See Schlesinger, Jr., supra note 304, at 31 (footnote omitted).

306. Frantz Fanon's diagnosis of postrevolutionary conditions in formerly colonized countries suggests a similar conclusion. See Frantz Fanon, The Wretched of the Earth 47, 77, 121, 135 (Constance Farrington trans., 1963).

307. Schlesinger, Jr., supra note 304, at 27.

308. See supra text accompanying notes 2–15.

309. Cf. Hirschman, supra note 304, at 129 (observing that, particularly during periods of rapid economic growth, "total immersion in the private life" can also be

More fundamentally, if a mere mood-swing between private interest and public spiritedness accounted for the privatization-nationalization cycle, then every country where such sharp vacillations have been observed should also have undergone corresponding periods of privatization and nationalization. But this is not the case: America is the obvious counterexample.[310]

3. *The Narrow Economic Model.* — Most of the literature on privatization today adopts an exclusively economic perspective. According to this view, nationalization invariably brings a host of familiar economic evils, including capital flight; inefficient production, employment, and pricing decisions; excessive bureaucratization; and corruption.[311] Often, nationalizing governments are ultimately forced to borrow from abroad to reduce their enormous public deficits.[312] Eventually, rationality and economic necessity prevail, returning the country to the free-market policies from which it should never have departed.[313]

The importance of economic failure in bringing about the return to private-ownership policies cannot be seriously doubted. The problem is that an exclusively economic perspective cannot account for the privatiza-

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"liberating" and generate excitement "as heady as the one experienced during a protest demonstration").

310. The United States has undoubtedly alternated between periods of greater emphasis on free-market policies and periods of greater emphasis on governmental regulation. There have even been occasional acts of nationalization here, such as that involving the Tennessee Valley Authority. See generally C. Herman Pritchett, The Tennessee Valley Authority: A Study in Public Administration 317–24 (1943). But despite the well-observed swings between "private and public involvements" in America, see Hirschman, supra note 304, at 3, 8, 128–30; Samuel P. Huntington, American Politics: The Promise of Disharmony 85–87 (1981); Schlesinger, Jr., supra note 304, at 23, there has been no corresponding privatization-nationalization cycle here of anything resembling the scope or dimension of those observed in developing countries.

311. See, e.g., Glade, supra note 7, at 4, 15; William Glade, Toward Effective Privatization Strategies, *in* Privatization of Public Enterprises in Latin America, supra note 5, at 117, 121–22; Yuen & Wagner, supra note 252, at 213–14.

312. See, e.g., Glade, supra note 5, at 4; Yuen & Wagner, supra note 252, at 213–14.

313. The following is a characteristic account of the move from a nationalized to a privatized economy:

> During the 1960s and 1970s, there was reliance on government and considerable faith in what government could achieve. . . . The public enterprises . . . undermined the very objectives they were created to serve. Low fixed prices set to help lower income people led to enterprise deficits. The deficits in turn led to government bail-outs, financed either through taxes or inflation. Both taxes and inflation hit the poorer citizen harder than the rich. "Model" employment practices led to high wages . . . for public enterprise employees and entrenched labor forces who were often not employed productively. . . . Many public enterprises created secure, well-paying jobs for the few at the expense of the many.
>
> Developing countries have recognized the flaws in the earlier approach and are creating a new division of labor between the public and private sector.

Shirley, supra note 8, at S32; see also Adam et al., supra note 6, at 3 (noting that "the perceived superiority of the private sector in the provision of goods and services has become almost axiomatic").

tion-nationalization cycle. It does not explain why so many developing countries have returned to nationalization time and time again, although nationalization has repeatedly failed. At best, commentators suggest that nationalization comes about because of unfortunate "ideological" or "political" considerations that overwhelm the rational goal of economic efficiency.[314] At worst, the implication is that Third World leaders are so ignorant, self-serving, and incompetent that they keep making the same mistake.

To be properly grasped, the problems facing today's privatizing countries in the developing world must be studied within the context of the historical cycles described in Part I. Given the repeated extreme reaction against privatized regimes in the past, focusing exclusively on efficiency, growth, and other economic issues may prove to be a short-sighted strategy.

4. *The Pessimistic-Marxist-Immiseration Model.* — One simple way of deepening the economic perspective would be to construct a broadly Marxist narrative that interprets the reaction against free-market regimes in developing countries as a revolt of exploited labor against an exploitative capitalist class.[315] On this view, during periods of free enterprise, a few prosper while most of the populace is condemned to increasing immiseration.[316] The masses become increasingly unhappy with their plight and with outrages such as Porfirio Díaz's exclusion of the poor from Mexico City during the centennial celebration of Mexican independence.[317] There eventually comes a breaking point, when the proletariat (assisted by some elements of the bourgeoisie and the intellectuals) revolts. Nationalization follows, because the "struggle of the working class against the capitalist class . . . can only end in . . . the transfer of all the land, instruments, factories, machines[,] and mines to the whole of

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314. See, e.g., Savas, supra note 23, at 285–86; George Soros, Underwriting Democracy 36–39, 44, 54 (1991); Martinez, supra note 3, at 478; Eric S. Maskin, Auctions and Privatization, *in* Privatization: Symposium in Honor of Herbert Giersch 115, 117–18 (Horst Siebert ed., 1992) [hereinafter Privatization]; Moises Naim, Latin America: Post-Adjustment Blues, Foreign Pol'y, Fall 1993, at 133, 133.

315. Such a perspective underlies the writings of various authors associated with the Latin American *dependencia* movement that was prominent in the 1960s and 1970s. See generally Robert A. Packenham, The Dependency Movement: Scholarship and Politics in Development Studies 3 (1992). Most of the dependency writers, while critical of "certain features of Marxist thought," accepted "the basic concepts, methods, theories, and assumptions of Marxism," id. at 19, and called for the "fundamental transformation" of Latin American society, as exemplified by Cuba. See, e.g., Frank, supra note 293, at 273.

For a review of the *dependencia* literature, see, e.g., Cardoso & Faletto, supra note 35, at 102; Richard R. Fagen, The Transformation of Political Culture in Cuba 19 (1969); Richard R. Fagen, A Funny Thing Happened on the Way to the Market: Thoughts on Extending Dependency Ideas, 32 Int'l Org. 287 (1978); Gabriel Palma, Dependency: A Formal Theory of Underdevelopment or a Methodology for the Analysis of Concrete Situations of Underdevelopment?, 6 World Dev. 881 (1978).

316. See, e.g., Jean Waelbroeck, Comment on Douglass C. North, "Privatization, Incentives, and Economic Performance," *in* Privatization, supra note 314, at 21, 24–25.

317. See supra text accompanying note 55.

society for the organisation of socialist production."[318]

Here, however, the pessimistic Marxist account would depart from orthodox Marxism and instead join the conventional narrative according to which nationalization fails for familiar economic reasons. The proletarian revolution fails to produce utopian results; instead, nationalization brings with it capital flight and a period of economic decline that lasts until the need for progress and development once again triumphs in the form of privatization.

There is undeniably some truth to this account. Nationalizing leaders have repeatedly invoked the themes of impoverishment and exploitation to justify their programs.[319] On the other hand, it is not at all clear that the general population gets poorer, at least as an absolute matter, during free-enterprise periods. Indeed, most of the evidence suggests the contrary,[320] although the same evidence indicates that income disparities often increase (that is, the poor grow poorer as a relative matter).[321]

Even if it could be shown, however, that free-market policies in the developing world have made the poor poorer, the Marxist model would still be inadequate. The Marxist account suffers from a more fundamental weakness. It attempts in a sense to force the Third World into a First World ideological mold that does not in reality fit.[322] In particular, it overemphasizes the extent to which nationalization programs in developing countries have been based on socialist or communist ideals.

To be sure, in developing countries Marxist rhetoric has often accompanied nationalization, and occasionally there has been a full-fledged effort to eliminate private ownership of resources altogether.[323] In gen-

318. V.I. Lenin, On Workers' Control and the Nationalisation of Industry 9–10 (Progress Publishers, Moscow 1974).

319. See, e.g., supra text accompanying note 64; infra text accompanying notes 373–374.

320. See, e.g., Packenham, supra note 5, at 8. The economic consequences of privatization (as well as of nationalization) have been studied extensively elsewhere. See, e.g., Adam et al., supra note 6; The Promise of Privatization (Raymond Vernon ed., 1988); Ronald A. Cass, Privatization: Politics, Law, and Theory, 71 Marq. L. Rev. 449 (1988); Clayton P. Gillette, Who Puts the Public in the Public Good?: A Comment on Cass, 71 Marq. L. Rev. 534 (1988).

321. See, e.g., Mörner, supra note 143, at 189 (Ecuador, Peru, Bolivia); Scobie, supra note 164, at 175–76 (Argentina); Stallings, supra note 144, at 216–17 (Chile); Onn, supra note 193, at 105–06 (Malaysia). But see, e.g., Packenham, supra note 5, at 3.

322. Cf. Golay et al., supra note 190, at 126 (noting nationalization by Indonesian government in fifties and sixties "reflected the priority goal of indigenism rather than socialism"); Packenham, supra note 315, at 17 (noting *dependencia* movement was in part "an effort to criticize certain features of Marxist thought and practice which dependency writers regarded as vulgar, outdated, incomplete, or faulty" as applied to Latin America); United Nations Educational, Scientific and Cultural Organization, Race and Class in Post-Colonial Society 23, 30 (1977) [hereinafter UNESCO] (noting cultural and ethnic aspects of Latin American social system make it "much too complex" to be described as a "situation of class struggle in the Marxian sense").

323. Cuba, Vietnam, and to a lesser extent, Burma, see supra text accompanying notes 267–271, are examples.

eral, however, nationalization programs in developing countries—unlike those in the former Soviet Union, Eastern Europe, China, and to some extent Western Europe—have never sought to eliminate the institution of private property, nor to eradicate all economic classes.[324] On the contrary, in almost every case such programs have left the market system more or less intact outside of the nationalized industries.[325]

The proposition to be developed in the remainder of this Part is that in developing countries nationalization has been an expression far more of *nationalism* than of socialism; that nationalization has coincided with the endeavor, whether immediately after independence or in the wake of a free-enterprise regime, to abolish foreign control and so achieve national autonomy. The explosive role that nationalism has played in the Latin American and Southeast Asian political economies[326] is central to explaining the recurrence of the privatization-nationalization cycle in the developing world.

B. *Toward a Comprehensive Model: The Role of Nationalism*

The following is an attempt to construct a model of the privatization-nationalization cycle that starts from the premise that nationalism has been a driving force in bringing about the economic oscillations described in Part I. The point is not to detract from economic considerations but rather to integrate them with the cultural and political conditions that have led developing countries to adopt and then reject free-market regimes over and over again.

One preliminary note: according to some scholars, nationalism is best understood as an instrument used by elites to organize popular

324. See, e.g., Frank, supra note 293, at 270, 273 (criticizing land reforms by Cárdenas and other Latin American leaders for leaving in place "the existing social order").

325. See Jan Winiecki, The Political Economy of Privatization, *in* Privatization, supra note 314, at 71, 71; see also John Womack, Jr., The Mexican Revolution, 1910–1920, *in* Mexico Since Independence, supra note 36, at 128–29 (noting that in Mexico, as in Peru, Chile, and Argentina, the economic and social reforms of the 1920s "did not go nearly deep enough to break capitalist domination of production"). Thus, the land reform programs that were an important component of many Latin American and Southeast Asian nationalization movements did not abolish private property in land, but rather created a class of small landholding interests "with a vested interest in maintaining their new advantages." Frank, supra note 293, at 293; see also Cardoso & Faletto, supra note 35, at 128.

326. With respect to Latin America, see, for example, Douglas C. Bennett & Kenneth E. Sharpe, Transnational Corporations Versus the State: The Political Economy of the Mexican Auto Industry 20–21 (1985); Burns, supra note 150, at 3, 8–12, 72–89; Keith Coleman, Nationalisation: Beyond the Slogans 8 (1991); Finch, supra note 176; Katz, supra note 36, at 108, 121; and Theodore H. Moran, Multinational Corporations and the Politics of Dependence: Copper in Chile 3–15 (1974).

In the Southeast Asian context, see, for example, Golay et al., supra note 190; Joseph M. Grieco, Between Dependency and Autonomy: India's Experience with the International Computer Industry 139 (1984); Horowitz, supra note 189; William R. Roff, The Origins of Malay Nationalism 248 (1967).

movements.[327] In this view, "national identity is an artifact—the deliberate creation of political activists bent on mobilizing popular support."[328] While this account may well fit some of the developing world's nationalist movements, there have also been cases where nationalist leaders appear to have been following as much as inciting a people's nationalist fervor.[329] The model developed in this Article is intended to embrace various forms of developing-world nationalism, whether artifactual, spontaneous, or something in between.

There are two principal aspects to nationalism in developing countries: that directed at exogenous (Western or other "imperialist") foreigners and that directed at what I will call the "foreigner within."

1. *Nationalism Directed Against the External Foreigner.* — Professor Albert Hirschman, among others, has observed the repeated "alternation" in the developing world between "contact and insulation," in which a period of "openness to trade and capital of the developed countries" is "followed by a period of nationalism and withdrawnness."[330] Apart from stating that "[i]n the period of openness, crucial learning processes take place,"[331] Hirschman offers no explanation for why such alternations repeatedly occur. It is not difficult, however, to fill in the details.

Courted by leaders seeking badly needed investment funds,[332] the foreigner enters the scene of a developing country's economy with his capital and expertise. Depending on the country and circumstances, the foreigner might do several things, ranging from building railroads or

327. See, e.g., Benedict Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism 103 (rev. ed. 1991); John Breuilly, Nationalism and the State 29 (1982) ("[A] non-Western intelligensia can construct a new political identity from nationalist ideology" and use it for its own ends.); Ernest Gellner, Thought and Change 169 (1964); E.J. Hobsbawm, Nations and Nationalism Since 1780, at 11 (1990); Guyora Binder, The Kaplan Lecture on Human Rights: The Case for Self-Determination, 29 Stan. J. Int'l L. 223, 242 (1993).

328. Binder, supra note 327, at 242.

329. See, e.g., González Navarro, supra note 61, at 1, 2 (noting the "century-long tradition" of Indian peasant revolts leading up to the Mexican Revolution). But cf. Cardoso & Faletto, supra note 35, at 107 (stating that in Mexican Revolution "new bourgeois groups" enlisted "the peasants as allies in order to use them as an 'army' against the [*Porfiriato*] oligarchy").

330. Albert O. Hirschman, Introduction: Political Economics and Possibilism (November 1970), *in* A Bias for Hope: Essays on Development and Latin America (Westview 1985) (1971); see also Richard M. Buxbaum, The Role of Public International Law in International Business Transactions, *in* Public International Law and the Future World Order 16-1, 16-6 (Joseph J. Norton ed., 1987) (noting that "new investment, not to mention new trade, has followed" nationalization in various host countries, "in a few cases even for a third time after a second wave of reactions"); Leon Trotsky, Nationalized Industry and Workers' Management, *in* Writings of Leon Trotsky [1938–39], at 326 (Naomi Allen & George Breitman eds., 1974) (noting that in industrially underdeveloped countries the government "veers between foreign and domestic capital").

331. Hirschman, supra note 330, at 25.

332. I have arbitrarily chosen a period of openness and free enterprise as a starting point.

steel factories, to drilling oil or inundating the local population with Coca-Cola and fried chicken.[333] But one thing is clear: the foreigner is making a profit; otherwise, he would leave.

In these circumstances, foreigners will have considerable incentive for using their economic power to influence the local political actors who make the relevant decisions about their continuing presence in the country.[334] This may be an especially effective strategy given the lack of a tradition of democratic processes in Third World countries[335] and their concomitant tendency to develop a "predatory state"—a state "seeking to maximize its own utility (including income, perquisites, and power) and not necessarily the welfare of its citizens."[336]

The histories of developing countries are full of examples of foreign economic power dominating local governmental policies. For example, during the *Porfiriato* (1876–1880, 1884–1911), United States investors extracted from the government "special concessions with lower tax rates, . . . legislative modifications," and "ridiculously low or fictitious prices."[337] Similarly, in the Philippines, even after independence, United States corporations and individuals received special privileges in insurance, banking, construction, plantation import and export, and the exploitation of natural resources.[338] The same was true throughout the developing world: foreign capital was accompanied by foreign infiltration of local politics, whether through overt measures such as legislative enactments, or through bribery and patronage.[339]

This state of affairs has never lasted. At some point, the corruption of the political actors and institutions by foreign influence becomes locally insupportable. The presence of the "ostentatiously opulent" for-

333. For reasons familiar to developmental economists, foreign investment does not always promote the interests of the local population. Among other adverse effects, foreign investment may reinforce dualistic economic structures and exacerbate income inequalities; introduce inappropriate technologies of production; divert resources away from basic foodstuffs or utilities to the manufacture of more lucrative products; suppress domestic entrepreneurship; exploit local labor and resources; pursue short-term profit at the expense of longer-term objectives; undermine local cultures; and produce a net outflow of capital and profits. See, e.g., Michael P. Todaro, Economic Development in the Third World 438–39 (3d ed. 1985).

334. See id. at 439; Detlev F. Vagts, Transnational Business Problems 120–21 (1986).

335. See, e.g., Samuel P. Huntington, Political Order in Changing Societies 1–4, 28–32 (1968).

336. Deepak Lal, The Political Economy of Economic Liberalization, 1 World Bank Econ. Rev. 273, 277 (1987).

337. Ulloa, supra note 42, at 40–41. In Mexico today, foreign investors' "clout is growing" although often "behind the scenes, because it's politically risky for finance ministers to be seen heeding the suggestions of foreigners." Craig Torres & Thomas T. Vogel, Jr., Some Mutual Funds Wield Growing Clout in Developing Nations, Wall St. J., June 14, 1994, at A1.

338. See Golay et al., supra note 190, at 45–46; David J. Steinberg, The Philippines: A Singular and a Plural Place 110–11 (3d ed. 1994).

339. See Adam et al., supra note 6, at 21.

eigner,[340] who seems not only to be extracting the nation's riches for himself, but also to have the nation's leaders in his pocket, provokes an extreme reaction. What happens next depends on each particular country: the old government may undergo a sudden and convenient conversion, a new government "for change" may be elected, or there may even be an armed revolution. In any event, the host government attempts to reclaim political control by nationalizing.

Intense antiforeigner sentiments have in fact been voiced by nationalizing leaders throughout Latin America and Southeast Asia. After Porfirio Díaz's "capitalist brand of modernity,"[341] President Cárdenas captured the sentiment of the disillusioned populace when he asked:

> In how many of the villages bordering on the [foreign-owned] oil fields is there a hospital, or school or social center, or a sanitary water supply, or an athletic field, or even an electric plant fed by the millions of cubic meters of natural gas allowed to go to waste?
>
> What center of oil production, on the other hand, does not have its company police force for the protection of private, selfish, and often illegal interests? . . .
>
> Who is not aware of the irritating discrimination . . .? Comfort for the foreign personnel; misery, drabness, and insalubrity for the Mexicans. Refrigeration and protection against tropical insects for the former; indifference and neglect, medical service and supplies always grudgingly provided, for the latter; lower wages and harder, more exhausting labor for our people.[342]

Similar antiforeigner rhetoric accompanied the nationalization programs of Perón in Argentina,[343] Batlle y Ordóñez in Uruguay,[344] Allende in Chile,[345] Sukarno in Indonesia,[346] and U Nu in Burma.[347]

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340. Fanon, supra note 306, at 96.

341. González Navarro, supra note 61, at 72; see also Michiko Tanaka, The Peasants and the Nation-State in Japan, Mexico, and Russia (1860–1940), *in* Legorreta, supra note 33, at 78, 108 (describing Díaz's system as one of "absolute private ownership and positivist liberal policies").

342. Miller, supra note 32, at 320–21 (citing Mexico's Oil: A Compilation of Official Documents 878–79 (1940)).

343. See Rock, supra note 168, at 262–63 (noting that Perón returned the railroads, power plants, and telephones to wholly Argentine ownership, promising a New Argentina founded on " 'social justice, political sovereignty, and economic independence' ").

344. See Finch, supra note 176, at 207 (stating that in nationalizing foreign railroads Batlle expressed widespread national "hostility towards foreign capital" and "British imperialism").

345. See Moran, supra note 326, at 147, 153 (noting that, upon the nationalization of the Anaconda, Kennecott, and Cerro copper companies, Allende stated, "The recovery of Basic Resources is a sovereign decision reflecting the feelings of all Chilean people . . . .").

346. See Golay et al., supra note 190, at 188 (noting that in nationalizing Dutch business concerns Sukarno appealed to a "deep reservoir of anti-Dutch sentiment").

347. See id. at 211 (quoting Prime Minister U Nu); infra text accompanying notes 373–375.

The difficulty, of course, is that nationalization eliminates not only the foreigner, but also the foreigner's capital. After an initial period of antiforeigner euphoria, the nation's economic problems grow increasingly severe. The consequence: the nationalized, economically "independent" country moves into an economic crisis that can only be addressed by resorting once again to foreign capital and expertise. Lessons of foreign domination from previous generations are subordinated to the demand for development and modernization, which are suddenly discovered to be bound up with notions of freedom and justice.[348] "In our country, the problem shared by the industrial and the agricultural sectors is insufficiency of capital," wrote Argentina's President, Arturo Frondizi, a generation ago.[349] "The foreign investor is critical to our plans," declared Philippine President Corazon Aquino in 1987, "we need foreign investment and we have set the climate for it."[350]

The dangers of foreign domination posed by privatization in the developing world have not been ignored entirely by those involved in today's privatization programs.[351] Taking such dangers into account will not, however, completely account for either nationalism in the developing world or its role in driving the privatization-nationalization cycle. After all, not every country that has experienced severe dependence on foreign capital has been locked into a privatization-nationalization cycle.[352]

A more complete model would recognize the way in which certain internal conditions prevalent throughout the developing world (but not, interestingly enough, in Singapore)[353] make nationalism a particularly problematic political ideology; moreover, such a model would recognize that nationalization programs in the developing world are never directed exclusively at external foreigners, but also, and sometimes primarily, at "the foreigner within."

2. *Internally Directed Nationalism.* — For the postcolonial countries of the developing world, nationalism is a profoundly problematic proposition. All countries, to a greater or lesser extent, bear the burden of holding together a diverse population within an overarching political organization. But if every nation is to some extent an "imagined political community,"[354] or if nationhood always requires individuals to have "for-

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348. See supra notes 9–11.

349. Arturo Frondizi, El Programa Agrario del MID, *in* Frondizi, supra note 14, at 33, 41. President Frondizi cited as additional problems Argentina's lack of heavy industry and a weak infrastructure. See id.

350. Godinez, supra note 288, at 267.

351. See, e.g., Adam et al., supra note 6, at 49–50, 77, 91; Frydman & Rapaczynski, supra note 23, at 198–200; Winiecki, supra note 325, at 71, 75.

352. Singapore, postwar Japan, and Germany are counterexamples that come immediately to mind.

353. See infra note 383.

354. Anderson, supra note 327, at 15–16; see also Hobsbawm, supra note 327, at 10 (stating that "nationalism comes before nations"). Nationalism, it has been said, presents

gotten many things,"[355] still in the postcolonial nation, the imagination must work harder, and the amnesiac quality of nationhood is far more pronounced. "[T]he first thing colonial rule denies a people is their history."[356] Consider, for example, the emergence of the modern state of Burma (now Myanmar):

> [T]he new Republic of the Union of Burma which came into being on 4 January 1948 bore little resemblance to any nation or state from the historic past. The power and authority of the Burman kings and the central courts at Ava and Mandalay had been destroyed. The economic hub and the political centre had moved to Rangoon. . . . And the institutions of political power bequeathed to the new nation were an ill-fitting suit of clothes modelled on the loose pattern of British parliamentary democracy.[357]

Even more significantly, the new Burma included "thousands of square miles of rugged hill tracts and loosely independent mini-states, covering over 40 per cent of the total land area. These [mini-states] were also home to diverse ethnic minority peoples . . . ."[358] Thus, once the struggle

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itself as "the awakening of nations to self-consciousness," but in reality always "invents nations where they do not exist." Gellner, supra note 327, at 168.

355. Anderson, supra note 327, at 16, 158 (quoting Ernest Renan, Qu'est-ce qu'une nation?, *in* 1 Euvres Complètes 892 (1947–61) (" 'Or l'essence d'une nation est que tous les individus aient beaucoup de choses en commun, et aussi que tous aient oublié bien des choses.' ")).

356. Smith, supra note 265, at 27.

357. Id.

358. Id. Similar political histories surround the post-colonial, national liberation movements of the entire Third World. See Anderson, supra note 327, at 157; Bushnell & Macaulay, supra note 29, at 22 (noting that the transformation of former colonial empires into new sovereign nations in Latin America was quite superficial and that often there were "much greater cultural and socioeconomic contrasts" within a single nation than across nations); see also Milton Osborne, Southeast Asia: An Illustrated Introductory History 213 (3d ed. 1985) (noting that Indonesia, Laos, Malaysia, and Singapore "are quite clearly modern creations").

If Anderson is correct, Indonesia provides an extreme illustration of an "invented" nation:

> Some of the peoples on the eastern coast of Sumatra are not only physically close . . . to the populations of the western littoral of the Malay Peninsula, but they are ethnically related, understand each other's speech, have a common religion, and so forth. These same Sumatrans share neither mother-tongue, ethnicity, nor religion with the Ambonese . . . . Yet during this century they have come to understand the Ambonese as fellow-Indonesians, the Malays as foreigners.

Anderson, supra note 327, at 120–21. Moreover, Bahasa Indonesia, the "national language" adopted in the 1920s, although commonly ascribed to "a putative ancestor in the Riau Islands," in fact evolved from *dienstmaleisch* ("administrative-Malay"), which in turn "belonged typologically with 'Ottoman' and that 'fiscal German' which emerged from the polyglot barracks of the Hapsburg empire." Id. at 132–33.

Not all imperialists were Western. It was China that originally conquered, geographically defined, and named Viet Nam. "That today's Vietnamese proudly defend a Viet Nam scornfully invented by a nineteenth-century Manchu dynasty reminds us of . . . the imaginative power of nationalism." Id. at 158.

for independence has been won, the postcolonial nation has few cultural, political, or historical resources by which to hold its stratified populace together.[359]

Under these conditions, nationalism is necessarily problematic, and a nationalist nationalization movement doubly so. Nationalization, proclaiming itself in the name of the interests and destiny of the nation as a whole, is obliged to suppress the profound cleavages dividing the populace. At the same time, however, nationalization intensifies these divisions because it invariably takes from one group of nationals for the sake of another. The economic and political contest to which expropriation gives rise fractures the nation along all the fault lines that lie below the thin nationalist veneer.

The terrain on which this contradiction plays itself out most dramatically is that of race or ethnicity. I will discuss Southeast Asia and Latin America in turn.

(a) *Southeast Asia.* — Throughout Southeast Asia (as well as in Africa and the Caribbean), developing countries are marked by "the number and seriousness of cleavages along linguistic, religious, and racial-tribal lines."[360] The "permeative character" of these cleavages is reflected "in the segmented organizational structure of ethnically divided societies."[361] Thus, capital, labor, and political parties "are often organized on ethnic lines,"[362] and ethnic minorities tend to live and marry among themselves, much as Jews did in Eastern Europe, Russia, and elsewhere.[363]

More crucially, during periods of laissez faire or free enterprise, it is invariably the case that one ethnic minority (sometimes more) performs, or is perceived as performing, disproportionately well in these countries.[364] As a result, nationalization and other policies of economic na-

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359. See Hirschman, supra note 330, at 14; Yuen & Wagner, supra note 252, at 220.

360. Hirschman, supra note 330, at 14; see Horowitz, supra note 189, at 6 (discussing the "long reach of ethnic affiliations").

361. Horowitz, supra note 189, at 7–8.

362. Id. at 8–9. This Article follows Horowitz in adopting "an inclusive conception of ethnicity that embraces differences identified by color, language, religion, or some other attribute of common origin." Id. at 41. Horowitz and others have argned that ethnicity is best understood "as a form of greatly extended kinship":

> The whole matter has been put nicely by Joshua A. Fishman. Kinship, he says, "is the basis of one's felt bond to one's own kind. . . . It is the basis of one's dependency, sociability and intimacy with them as a matter of course." And, concludes Fishman, "ethnicity may be the maximal case of societally organized intimacy and kinship experience." The ethnic tie is simultaneously suffused with overtones of familial duty and laden with depths of familial emotion.

Id. at 57, 59–60 (footnote omitted).

363. See, e.g., Zygmunt Bauman, Modernity and the Holocaust 36 (1989); cf. Lynn Pan, Sons of the Yellow Emperor 129, 132–37 (1990) (discussing the "Jews of the East").

364. See, e.g., Horowitz, supra note 189, at 147–49, 166–71. Over the years, numerous theories have been offered to explain this phenomenon. Many have emphasized that colonizing powers followed the strategy of "divide and rule," thus ensuring that successful indigenous entrepreneurs "were relative rarities" and that economic control, to the extent it was not monopolized by the colonizer, lay "with a

tionalism have gone hand in hand with racial or ethnic hatreds—hatreds often overshadowing even the national resentment against "Western imperialists."

In Malaysia, for years after independence the ruling Bumiputra condoned Britain's continued presence in mining and finance, rather than permitting citizens of Chinese and Indian descent to increase their stakes in the economy.[365] Moreover, the dramatic expansion of the Malaysian state sector in the seventies was directed expressly at improving the lot of the "indigenous" nationals relative to the "nonindigenous" Chinese and Indians.[366]

In Indonesia, despite centuries of colonization by the Dutch, the emergence of Indonesian nationalism at the turn of the century resulted directly "from the suddenly increased impingement of aggressively competitive Chinese entrepreneurs upon the interests of the vestigial Javanese merchant class."[367] Not surprisingly, Sukarno's sweeping nationalizations in the late fifties and sixties aimed not just at eradicating the Dutch presence but also at narrowing the economic gap between "true" Indonesians and the country's hated Chinese minority.[368] Indeed, through nationalization and other measures of economic nationalism, Sukarno "indigenized" much of the Chinese-dominated financial sector;[369] sixty percent of Indonesia's foreign trade; mining and most of the modern industrial sector; and the greater part of Indonesia's importing trade, including the lucrative, Chinese-controlled batik and rice sectors.[370]

In Sri Lanka, Prime Minister Sirimavo Bandaranaike's radical expropriations of land and industry between 1970 and 1977 were part and parcel of the government's "Sinhala Only" program, which openly placed

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politically impotent class of pariah [nonindigenous] businessmen—Lebanese, Indian, and Arab in colonial Africa, Chinese, Indian and Arab in colonial Asia." Anderson, supra note 327, at 116; see also Gellner, supra note 327, at 103–06.

Others have stressed the importance of social "networking" among certain ethnic minorities. See, e.g., W.L. Cator, The Economic Position of the Chinese in the Netherlands Indies 61–62 (1936) (arguing that overseas Chinese "clearly discriminate" in granting credit); Golay et al., supra note 190, at 181 (noting that Chinese in Indonesia and elsewhere "organized themselves into an informal monopolistic structure, based on dialect groupings"); Pan, supra note 363, at 132 (stating that "there was no network like the network of Chinese connections, which joined market to market through clan or family").

365. See Golay et al., supra note 190, at 346.

366. See supra text accompanying notes 201–206 (discussing the NEP).

367. George M. Kahin, Nationalism and Revolution in Indonesia 67 (1952).

368. See Golay et al., supra note 190, at 158, 181, 191–95; supra note 277.

369. See Golay et al., supra note 190, at 137, 193. In addition to owning two of Indonesia's major commercial banks, the Chinese largely controlled the informal money market. See id. at 137.

370. See id. at 166, 193. Despite his "indigenization" campaign, Sukarno was criticized by ethnic Indonesians for his "protective attitude to the Chinese minority," perhaps reflecting the gradual rapprochement under Sukarno between Indonesia and the People's Republic of China. See id. at 197–98.

the interests of "true" Sri Lankans over those of "Tamils, Christians of all ethnic groups, and other minorities."[371] Mrs. Bandaranaike's nationalizations were accompanied by other acts of economic nationalism, such as college admission quotas discriminating against Tamils and, following the expropriation of domestic and foreign-owned plantations, the exclusion of non-Sinhalese from land redistribution policies.[372]

In Burma, fear and hatred of "foreign infiltration"[373] have marked the country since independence. For U Nu, the country's first prime minister, independence meant putting an end to

> this unfair, one-sided economic system. The wealth of Burma has been enjoyed firstly by the big British capitalists, next the Indian capitalists, and next the Chinese capitalists. Burmans are at the bottom, in poverty, and have to be content with the left-over and the chewed-over bones and scraps from the table of foreign capitalists.[374]

Nationalization was an important means of "Burmanizing" the economy.[375] In the sixties and seventies, General Ne Win's expropriations of over 15,000 enterprises reflected a larger anti-"alien" campaign and expressly targeted not just Westerners but also Indian and (to a lesser extent) Chinese proprietors, many of whose families had lived in Burma for generations.[376]

In Thailand, the nationalist movement early in this century was directed "neither [at] the United Kingdom, which controlled 90 per cent of Siam's trade, nor [at] France, which had recently made off with easterly segments of the old realm," but rather at resident Chinese—referred to by one Thai king as the "jews of the orient."[377] Again, the Thai nationalization program initiated in 1953 was a "countermeasure" against the growing economic dominance of the local Cbinese,[378] and coincided with other acts of economic nationalism, such as the slashing of the Chinese immigration quota, the imposition of harsh new naturalization laws, and exorbitant alien registration fees.[379]

371. Horowitz, supra note 189, at 383, 683; see de Silva, supra note 278, at 241–42; A. Jeyaratnam Wilson, Politics in Sri Lanka 1947–1979, at 134 (2d ed. 1979).

372. See de Silva, supra note 278, at 241–42.

373. Golay et al., supra note 190, at 215 (quoting Editorial, The Nation, June 7, 1961, at 4).

374. Id. at 211 (quoting U Nu, Towards Peace and Democracy 3 (1949)).

375. Burmanism was also carried out "by direct competition of the State with alien enterprises, by giving economic advantages to Burmese nationals vis-à-vis aliens, and by measures to limit the number of alien residents." Id.

376. See Golay et al., supra note 190, at 209; Smith, supra note 265, at 200–01; supra text accompanying note 271.

377. Anderson, supra note 327, at 94–95; Golay et al., supra note 190, at 268 (noting the presence in Thailand "of a substantial alien minority displaying superior entrepreneurial talents").

378. See Golay et al., supra note 190, at 299–306; Yuen & Wagner, supra note 252, at 212.

379. SarDesai, supra note 251, at 226.

In short, ethnicity has been a repeated factor in Southeast Asian nationalization programs. Throughout this region, nationalization has been directed not only at Western foreigners but also at the foreigner within, and this double targeting is reflected in the familiar nationalist slogans—for example, "Malay-Malaysia,"[380] "Thailand for the Thai,"[381] and "Filipino First"[382]—that have invariably accompanied nationalization movements.[383]

(b) *Latin America.* — In Latin America, the "transformation of the former colonial empires into a host of new sovereign nations" was in many ways as "artificial" as in Southeast Asia.[384] On the other hand, at least three profound differences between Latin American and Southeast Asian society are significant for a comparative analysis of the impetus toward nationalization. First, in Latin America, intermarriage (as well as concubinage and polygamy) has been common from the beginning of the colonial era.[385] "No part of the world," as one commentator puts it, "has ever witnessed such a gigantic mixing of races as the one that has been taking place in Latin America and the Caribbean since 1492. In

380. See M. Nazrul Islam, Problems of Nation-Building in Developing Countries: The Case of Malaysia 71 (1988).

381. Wyatt, supra note 251, at 254.

382. See Golay et al., supra note 190, at 63.

383. Although not discussed in this Article, Singapore provides an interesting exception to the general Southeast Asian pattern and merits greater exploration elsewhere. Singapore was part of British Malaya until its expulsion in 1965 and thus shares its prenationhood history with Malaysia. See SarDesai, supra note 251, at 257. Upon gaining independence, the Singapore government, although highly interventionist, never pursued a program of radical nationalization. Rather, its goal from the outset was to create a mixed economy in which "the state . . . initiated many risk-taking ventures in partnership with the private sector . . . ." Yuen & Wagner, supra note 252, at 212.

The basic structure of Singapore's mixed economy has changed little since independence. Indeed, Singapore has been lauded both as " 'an example of free market economic success' " (Margaret Thatcher) and as an example of "positive, productive state interventionism" (John Kenneth Galbraith). SarDesai, supra note 251, at 259. Moreover, while the current government is planning to privatize some industries, it intends simultaneously to increase the state's role in other sectors. See Yuen & Wagner, supra note 252, at 216. It is beyond the scope of this Article to explain the absence of extreme swings between privatization and nationalization in Singapore. Worth noting, however, is that Singapore differs from other Southeast Asian countries in this striking respect: the country has always been dominated both politically and economically by a single ethnic majority, the Chinese, who comprise roughly 70% of the population. See SarDesai, supra note 251, at 13.

384. Bushnell & Macaulay, supra note 29, at 22. Indeed, the authors write, "If one had asked an Indian of southern Mexico . . . what 'nation' he lived in, the answer . . . would no doubt have been Zapoteca, Guahibo, or another Indian ethnic division, not some such abstract entity as Mexico or Colombia." Id. Further, the same holds true for all of Spain's American colonies: The spatial fortuity of Madrid's military conquests determined the original shaping of the various administrative units, each of which, "under the influence of geographic, political and economic factors," took on over time "a self-contained character." Anderson, supra note 327, at 54.

385. See Magnus Mörner, Race Mixture in the History of Latin America 25–26 (1967) [hereinafter Race Mixture].

fact, it is impossible to determine the racial status of most Latin Americans without a genetic and anthropometric investigation."[386] In part because ethnic and racial lines in this region are not starkly drawn, Latin America has been able to avoid the extreme ethnic animus and violence seen in Southeast Asia.

Second, throughout Southeast Asia economic and political power are divorced, with a *politically powerful majority* characteristically contending against an *economically dominant minority*.[387] By contrast, in Latin American countries the elite landowning class has historically held both economic and political power.

Third, as a result of the preceding two factors, Latin American nationalization movements have historically had a powerful anti-elitist or anti-aristocratic component absent from those of Southeast Asia. Latin American nationalization has involved the attempt, at least rhetorically and sometimes actually, to overturn a relatively rigid social hierarchy in which a small landholding and to some extent hereditary elite dominated not only the economy but also the politics of the rest of the country.[388]

Thus, by contrast to Southeast Asia, nationalization has often required significant political upheaval in Latin America. It has typically required an expropriation of *political power* as well as material resources from the class against which nationalization is directed. Hence the importance of populist political movements in Latin American nationalization campaigns—Cárdenas's in Mexico, Perón's in Argentina, Vargas's in Brazil, and Batlle y Ordóñez's in Uruguay—in which new, popular political bases were established to offset the political control formerly exercised by a narrow, aristocratic oligarchy.

Despite such differences, a similar core dynamic operates in both Southeast Asian and Latin American nationalization programs. That is, in Latin America too, nationalization has been a means by which certain groups, in the name of a superordinate national identity, try to reclaim resources from other groups identified as foreigners. The latter include not just external, "imperial" foreigners, but also the foreiguer within—the aristocratic elite.

The "foreignness" of the Latin American elite has been a recurrent theme for Latin American writers, scholars, and politicians since indepen-

386. Id. at 1.

387. Again, Singapore is an exception. See supra note 383.

388. See, e.g., Miller, supra note 32, at 292 (Mexico); UNESCO, supra note 322, at 28–29, 195–97 (Bolivia); Fredrick B. Pike, The Problem of Identity and National Destiny in Peru and Argentina, *in* Latin American History: Select Problems 173, 207, 218 (Fredrick B. Pike ed., 1969) (Argentina); id. at 179 (Peru). To say that Latin American nationalization movements have been anti-aristocratic is not to say that they have been Marxist. On the contrary, the anti-aristocratic element of Latin American nationalization explains why it has never been a rigorously anticapitalist movement, but rather one in which middle classes, workers, rural poor, and even entrepreneurs could all enthusiastically join together. See, e.g., Mörner, supra note 143, at 200; infra text accompanying notes 434–438 (discussing Argentina under Perón).

dence—not least because of the propensity of the well-to-do to define themselves through European (and later American) cultural habits.[389] During the *Porfiriato* in Mexico, for example, "theatres were built where opera singers brought in directly from France and Italy would warble for the well-to-do," and "[a]mongst the chic, it was a point of pride to be Gallic in terms of food, women, dress, and drink."[390] According to one estimate from Ecuador, in 1900–1913 the outflow of money that enabled the rich to travel or live abroad "equaled the service on the foreign debt."[391] Today, too, a mark of distinction throughout the upper echelons of Latin American society continues to be having been educated abroad, owning foreign cars, having a surname traceable to colonial roots and, in the main, pursuing "a European life-style."[392]

The perceived foreignness of the Latin American elite has not been solely a cultural matter. Numerous Latin Americanists have called attention to the ties between the landholding classes and foreign capital.[393] Fernando Henrique Cardoso and Enzo Faletto refer to traditional landowning elites in Latin America as "the main sustaining force for foreign interests"[394]; Paul Baran condemns them as allies of foreign enterprise "dedicated to the defense of the existing feudal-mercantile order"[395]; Andre Gunder Frank castigates the *criollos* who, he says, have been noth-

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389. Diplomat and novelist Gilberto Amado, in his História da Minha Infância, gives us the following description of aristocratic life in late nineteeth-century Brazil:

> [E]verything was imported. . . . Men's clothing for a tropical climate was made of English cloth suitable for life in the unheated homes of an English winter. I asked myself: how did they stand the heat? The ladies . . . used slippers of heavy wool as if they were in Siberia. . . . When I look at a photograph of José do Patrocínio, I note the collar of twill, and I ask myself how he could stand, during the abolitionist campaign, to give his speeches in the Recreio Dramático with that pressure on his body. Imagining the rivers of sweat pouring down, I sweat with him.

Burns, supra note 150, at 38 (quoting novelist Gilberto Amado).

390. Luis González, supra note 39, at 69–70; see Katz, supra note 36, at 71.

391. Mörner, supra note 143, at 180. The darker side of the elite's adulation of Europe has been a corresponding determination to destroy primitive" indigenous culture. See Burns, supra note 152, at 253–54. Illustrative of a strong, nineteenth-century sentiment among certain members of the Latin American intelligentsia was Argentine Domingo Faustino Sarmiento's influential book, Civilización y Barbarie, which depicted "Argentine cities as a kind of funnel through which European civilization passed on its mission to tame the interior." Id. at 253.

392. See, e.g., Patricia Kluck, The Society and Its Environment, *in* Bolivia: A Country Study 49, 69 (Rex A. Hudson & Dennis M. Hanratty eds., 3d ed. 1991).

393. See, e.g., Katz, supra note 36, at 103–05, 113; Mörner, supra note 143, at 159; Rock, supra note 168, at 312; Scobie, supra note 164, at 246–47. Certainly, the interests of the domestic elite and foreigners have not always coincided. See Finch, supra note 176, at 193 (noting conflict in turn-of-the-century Urugnay between domestic capital class and foreign capital); Scobie, supra note 164, at 187–88 (noting resentment by Argentinian elite against westerners during the depression).

394. Cardoso & Faletto, supra note 35, at 27.

395. Paul A. Baran, The Political Economy of Growth 195 (1957).

ing but "minor partners of North American imperialism"[396]; and many others as well have denounced the " 'anti-nation inside the nation.' "[397]

In these respects, the perceived foreignness of the Latin American aristocracy differs from that of Southeast Asian ethnic minorities. The Latin American foreigner within has been identifiable—as a matter of historical continuity, cultural habits, and economic connections—with the imperialist, First World foreigner in a way that (for example) the Chinese in Malaysia have not. Nevertheless, ethnicity has played a more significant role in defining the Latin American foreigner within than one might think.

Although the "mestization" of Latin America might suggest a readiness to transcend racial boundaries, its effect has been rather to establish a more complex structure of color consciousness.[398] Throughout Spanish America, the so-called *sociedad de castas*

> was created by transferring to the New World the hierarchic, estate-based corporative society of late medieval Castile and imposing that society upon a multiracial, colonial situation. This colonial reality was characterized, first, by the dichotomy between conquerors and conquered, masters and servants or slaves, and, second, by the miscegenation between these opposite groups. Hence it was inevitable that social stratification and social status would become closely related to the division into ethnic groups. The location of the existing ethnic groups within the hierarchic social structure gave rise to what a Chilean student has ingeniously called *"pigmentocracy." People were classified in accordance with the color of their skin, with the white masters occupying the highest stratum.*[399]

The disdain of a "pure"-blooded elite[400] for the "colored" masses is a deeply ingrained feature of the history of every modern Latin American nation.[401] In Mexico, for example, mixed-blooded mestizos were for years prohibited from owning land or joining the army or clergy.[402] In Peru, even intellectuals believed that "the Indian is not now, nor can he

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396. Frank, supra note 293, at 240.

397. Packenham, supra note 315, at 9; see, e.g., Palma, supra note 315, at 899–904.

398. See Harris, supra note 40, at 36–40.

399. Race Mixture, supra note 385, at 54 (citing Alejandro Lipschütz, El Indoamericanismo y el Problema Racial en las Américas 75 (2d ed. 1944)) (emphasis added).

400. The notion that Spanish blood is "pure" or "white" is ironic. "[T]he Iberian Peninsula itself was anything but ethnically homogeneous. A long series of peoples had succeeded each other on Iberian soil, merging genetically as well as culturally: Iberians, Celts, Phoenicians, Greeks, Carthaginians, Romans, Visigoths, Jews, Arabs, Berbers, Gypsies, and medieval slaves of different origins." Id. at 13.

401. Latin America was greatly influenced by "specious racial doctrines imported from Europe," including Joseph A. de Gobineau's Essai sur l'Inegalité des races humaines, which attested to "the superiority of the northern European," and Gustave Le Bon's classification of "all mankind into superior and inferior races." Burns, supra note 152, at 316.

402. See Race Mixture, supra note 385, at 43, 60, 99; UNESCO, supra note 322, at 27.

ever be, anything but a machine."[403] In Chile, the victory in the War of the Pacific (1879–1883) "was sometimes attributed to the 'whiteness' of the Chileans, as compared with the 'Indians' of Bolivia and Peru."[404]

A popular Argentinian author wrote in 1903 that mestizos and mulattos were both "impure, atavistically anti-Christian; they are like the two heads of a fabulous hydra that surrounds, constricts and strangles with its giant spiral a beautiful, pale virgin, Spanish America."[405] Brazil, meanwhile, has been described "as a hell for Negroes."[406] And throughout Latin America, landowners preferred their daughters to marry penniless *peninsulares* (arrivals from Spain), rather than wealthy *criollos* (American-born Spaniards),

> for, if nothing else, the fact of being born in the Old World was reasonably good proof of being pure white. That could not quite be taken for granted even among the wealthiest members of the colonial aristocracy, whose ancestors had been living for years alongside not just the Indians but also the blacks . . . .[407]

Ethnicity remains a pervasive feature of Latin American society. Mexico, Bolivia, Ecuador, Peru, and the countries of Central America are still characterized by fundamentally pigmentocratic social structures.[408] Even in Brazil, which saw large waves of immigration from Europe early this century,[409] there remains "an ideal racial ranking gradient, in which whites occupy the favorable extreme," and color continues to be "one of the criteria of class identity."[410] Similarly, in Chile, not just the upper, but also the middle classes, "[p]riding [themselves] on [their] whiteness," consist "by and large [of] believe[rs] in the inferiority of Indians and mixed bloods."[411]

The *ressentiment* engendered by Latin American racism, always interwoven with the struggle between rich and poor, has been a powerful engine of revolutionary change throughout the region. In countries with significant Indian populations, the revolutionary periods were repeatedly characterized by efforts to champion Indian culture and to make the percentage of Indian blood in one's veins a mark of status.[412] "The only true Peru is Indian Peru," said nationalist leader, Luis Valcárcel in 1927.[413] At

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403. Mörner, supra note 143, at 181 (quoting "a Peruvian intellectual of great reputation, Alejandro Deustua").

404. Race Mixture, supra note 385, at 141.

405. Id. at 140 (quoting Carlos O. Bunge, who "had many readers at the time").

406. Id. at 72.

407. Bushnell & Macaulay, supra note 29, at 5.

408. See, e.g., Harris, supra note 40, at 38, 96; Mörner, supra note 143, at 257; Pike, supra note 59, at 107–08.

409. See Race Mixture, supra note 385, at 133–34; infra note 432.

410. Harris, supra note 40, at 60–61.

411. Fredrick B. Pike, Chile and the United States, 1880–1962, at 36, 289–92, 444–45 (1963).

412. See Race Mixture, supra note 385, at 142–43.

413. Pike, supra note 388, at 182 (footnote omitted).

the same time, particularly in countries with smaller Indian populations, the mixed-blooded mestizo was also glorified. The mestizo became "the treasury of all the previous races, the final race, the cosmic race,"[414] "the symbol of the original affinity among men."[415] Meanwhile, in Brazil and the Caribbean, nationalists embraced "Afro-Latin Americanism." As one writer declared, "[t]he Negro *is* the people in Brazil."[416]

Nationalization movements in Latin America have long been fueled by such ethnically tinted nationalism—a nationalism framed against the background of an elite class celebrating its whiteness and allying itself with foreign (first European and later American) cultures. Throughout Latin America, nationalizers have mobilized support for their movements not only with class-based rhetoric, but also with appeals to ethnicity and national identity, seeking in most cases to preserve the white/non-white dichotomy but to reverse its polarity. Indigenism[417] "became a main ingredient in a new, more authentic brand of nationalism" that sought to redress "the immense gap between the light-skinned descendants of the victors and the dark-skinned descendants of the vanquished."[418]

Thus, in Mexico from 1920 to 1940, nationalizing leaders fomented the revolutionary spirit by championing Indian causes (most saliently through land reform) and glorifying Indian culture.[419] These leaders were supported by the "artistic, literary, and scholarly communities," who awakened "the consciousness of the new social order" with their murals, novels, poetry, and musical compositions.[420] During Cárdenas's administration, "indigenist action became more vigorous."[421] The government established a Department of Indian Affairs in 1936 and the Instituto Nacional de Antropología e Historia three years later.[422] While exalting "indigenous communalist values," Cárdenas assailed "the excesses of individualistic capitalism"[423]; his nationalizations targeted not only Americans, but also the (almost exclusively white) *hacendados* with their links to

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414. Race Mixture, supra note 385, at 1 (quoting Mexican philosopher José Vasconcelos, Raza Cósmica (1925)); see also Miller, supra note 32, at 312 (in *The Cosmic Race,* Vasconcelos "predicted a brilliant destiny for [Mexicans] because of their multicultural heritage stemming from a blend of blood and traditions").

415. Pike, supra note 388, at 183 (footnote omitted) (quoting Peruvian historian José Varallanos).

416. Race Mixture, supra note 385, at 147 (quoting Brazilian Guerreiro Ramos).

417. Also known as "indianism," indigenism in the Latin American context refers to an ideology of promoting (and often glorifying) the interests and culture of American Indians. See id.

418. Mörner, supra note 143, at 199.

419. See Meyer, supra note 56, at 207–09, 256–57; Miller, supra note 32, at 309. Cárdenas was himself the grandson of a Tarascan Indian and "made much of the Indian question" in his original campaign for president. Meyer, supra, at 267.

420. Meyer & Sherman, supra note 32, at 614; see id. at 614–22.

421. Race Mixture, supra note 385, at 143; see Meyer, supra note 419, at 267–68.

422. See Meyer & Sherman, supra note 32, at 621; Meyer, supra note 419, at 267–68.

423. Pike, supra note 59, at 272.

foreign capital and their European cultural pretensions.[424]

In Peru, "[c]hauvinist nationalism" also served as "an excellent political tool" for nationalizing leaders seeking to bridge the country's "wide ideological and social cleavages."[425] In the 1920s and 1930s, and again in the 1960s, nationalist leaders joined "[t]he glories of the Inca past . . . with the Indian misery of the present" to foment "anti-oligarchy, anti-clerical, pro-Indian and worker revolutionary ideas."[426] These movements were simultaneously Marxist, nationalist, and deeply ethnic in character: "Our economy, our political organization, our social architecture, our literature and our art, the forms of our lives must be ours, created by us and for us . . . *we believe in and feel the creative potential of our [Indian] race*."[427] Again, Peruvian nationalizations in this century were directed not just at "imperialists" abroad but also at the Spanish-blooded, "Paris-obsessed" internal elite.[428]

In Bolivia, as early as 1909, *indigenistas*, such as novelist-historian Alcides Argúedas, were "condemn[ing], in stark colors, the exploitation of the Indians by their various oppressors."[429] Some thirty years later, the revolutionary party, Movimiento Nacionalista Revolucionario ("MNR"), mobilized the largely mestizo middle class with slogans like, "The land to the Indians, the mines to the State."[430] After the MNR seized power in a bloody coup in 1952, the government aimed its drastic—and economically disastrous—nationalization and land reform programs at the *criollo*—"illustrious-blooded" *hacendados* and mine owners—in an attempt to reverse the ethnically-based "disdain that [had] imbued society" at every level since the colonial period.[431]

Not surprisingly, in the nationalization movements of countries such as Argentina, Uruguay, and parts of Brazil and Chile, in which Indian populations were largely extinguished and in which the "enormous waves" of European immigrants came to be a majority early this century,[432] ethnicity has played a more erratic role. While in every case the idea of an internal foreigner remained an organizing force, at times na-

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424. See, e.g., Hart, supra note 44, at 252; Meyer, supra note 34, at 36–37; Miller, supra note 32, at 319; Meyer, supra note 419, at 259–62.

425. Mörner, supra note 143, at 200.

426. Id. at 185, 196.

427. Id. at 202 (emphasis added) (quoting intellectual leader José Carlos Mariátegui).

428. Id. at 187; see id. at 199, 202.

429. Id. at 196–97.

430. Id. at 205.

431. Id. at 69; see José Havet, The Diffusion of Power: Rural Elites in a Bolivian Province 30–42 (1985); Mörner, supra note 143, at 221–22; Xavier Alhó, From MNRistas to Kataristas to Katari, *in* Resistance, Rebellion, and Consciousness in the Andean Peasant World, 18th to 20th Centuries 382 (Steve J. Stern ed., 1987).

432. Previously mainly mestizo, the temperate zone of southern South America received most of the twelve million European immigrants . . . mainly from Italy, Spain, Portugal, [and Germany] . . . who arrived in Latin America between 1850 and 1930. . . . Since Argentina, Uruguay, and the south of Brazil formerly were very sparsely populated, the enormous waves of newcomers soon outnumbered

tionalizing leaders, like Chile's President Allende, have sought to define this foreigner within using exclusively class-based terms.[433] Nevertheless, in many of these "Europeanized" countries, nationalizing leaders have sought to harness this ethnic component and the *ressentiment* it generates in ingenious ways.

Without doubt, Perón's appeal to the "shirtless masses"[434] was first of all an economic, even quasi-socialist appeal.[435] But when Perón called on these masses, together with the middle-class sons of Italian, German, Irish, and Portugnese immigrants to join together as the "true Argentinians," he was appealing to something more. These assorted groups were "true Argentinians" precisely in opposition to the aristocratic *estancieros*, whom Perón accused of attempting to "sabotage" the nation.[436] With his extensive nationalization campaign targeting not just *yanquis* but aristocratic *oligarcas* as well, Perón was able, perversely, to scapegoat the "old ruling elite" while at the same time "presenting himself as the promoter of native values."[437] In a strange reversal, the "pure" blood of the elite became an impure blood, explicitly associated with for-

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> the original population, although they gradually adopted at least part of the criollo tradition and also the language of the land.

Race Mixture, supra note 385, at 133–34.

433. Allende's economic minister described the government's program as providing a role for "the vanguard of the working class to organize an alliance of classes that will embrace all *anticapitalist* sectors. Here, too, we are discussing the *unification* of the people as a whole, *while defining at the same time who are the enemies of the people.*" Patricia Santa Lucia, The Industrial Working Class and the Struggle for Power in Chile, *in* Allende's Chile 128, 133 (Philip O'Brien ed., 1976) (emphasis added) (quoting 1971 report of Minister Pedro Vuskovic to the Inter-American Committee for the Alliance of Progress). Similarly, Allende called for unity against an aristocratic foreiguer within: "We seek the unity of all those sectors which to varying degrees, are exploited by the *property-owning minority who occupy the centers of power.*" Id. at 130 (emphasis added) (quoting a speech given by President Allende to workers on May 21, 1971). In fact, this "property-owning minority" was at least in part an ethnic minority: the highly insular elite identifiable by—and identifying itself through—the "purity" of its bloodline and the longevity of its "old family" lineage. See Pike, supra note 411, at xxii. It seems, however, that Allende's Popular Unity party never explicitly exploited this ethnic dimension.

434. Rock, supra note 168, at 263.

435. Unlike Allende, however, Perón refused to define the enemy in socialist terms. Perón declared before the Argentine stock exchange in 1944: "Businessmen [*señores capitalistas*]: Don't be afraid of my unionism [*sindicalismo*]. Never has Capitalism been firmer than now. . . . What I want to do is to organize workers through the state . . . . In this way revolutionary currents endangering capitalist society in the postwar can be neutralized." Rock, supra note 168, at 257 (footnote omitted).

436. See Fillol, supra note 168, at 83–84; Scobie, supra note 164, at 219; Kenworthy, supra note 168, at 40. On the polyclass nature of Perón's support, see id. at 25.

437. Fillol, supra note 168, at 83–84; see id. at 31. According to Kenworthy, Perón subjected the agricultural elite "to economic policies that drained their wealth," and, further, used outright force "to seize several bastions of high society: converting the newspaper *La Prensa* into a Peronist organ, . . . opening resorts to the lower class, and burning the Jockey Club and the cathedrals." Kenworthy, supra note 168, at 40, 43. Kenworthy argues that Perón directed his hostilities not only at the traditional agricultural elite, but also at the modern industrial elite. See id. at 43.

eignness,[438] while the genuine blood of true Argentina ran rather in the veins of the bastard masses and polyglot newcomers.

Another interesting variation is found in Brazil, where slavery was more extensive than in most of Spanish America.[439] Brazilian intellectuals of the early twentieth century purported to repudiate racism as "yet another European effort to subjugate their country by an insidious mental colonization."[440] Calling for the "nationalization of commerce," condemning foreign influence, and decrying "the economic and political monopoly" of the wealthy plantation and ranch owners (*fazendeiros*), these new nationalists formulated a counter-conception of the unique "Brazilian culture and race" in which miscegenation played a crucial and positive role:

> [I]t is easy to discern the immense influence the Negroes had in the formation of the Brazilian people. . . . The mixing of the races modified relations between master and the slave, relaxed our customs, and produced the mulatto who constitutes the majority of our population and to a certain degree the most beautiful part of our race.[441]

Getúlio Vargas, "a master manipulator of the increasingly complex forces in Brazilian society," was eventually able to harness this rising nationalism to support his nationalization and industrialization policies.[442]

To summarize, in Latin America as well as in Southeast Asia, nationalization movements have been organized and powerfully motivated by nationalist ideologies targeting not only external foreigners, but also resident groups depicted as foreigners within. And although more intermittently and often more obscurely in Latin America than in Southeast Asia, ethnicity has played a significant role in defining this nationalism, in mobilizing popular support for it, and in turning its divisive energies inward.

3. *Cyclicality.* — I have addressed so far the repeated shifts in developing countries from privatizing to nationalizing regimes. The foregoing analysis, however, also sheds light on the shift back from nationalization to privatization. As discussed earlier, the economic failures of nationalization in developing countries have surely played a dominant role in bringing about a return to free-market policies.[443] But nationalization has also unravelled ideologically and politically throughout the developing world.

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438. See id. at 83–84.

439. See Race Mixture, supra note 385, at 72.

440. Burns, supra note 152, at 319–20.

441. Id. at 319; see also id. at 327, 341–42 (describing attempts by Brazilian intellectuals to rid themselves of European influence).

442. Id. at 356. Although "[h]is government acquired a decidedly populist cast," Vargas "tried not to antagonize the rural oligarchy. Land reform, for example, was neither an interest nor a goal of his government. He managed to offer something to both the elite and the masses." Id. at 367–68.

443. See supra text accompanying notes 311–314.

If nationalization were directed solely at external foreigners, the nationalist ideology underlying it might exert a unifying force throughout an entire society. But to the extent that nationalization turns inward, overtly or covertly targeting internal minorities, it fractures the nation in the same gesture that is meant to unify it. This phenomenon has unfolded differently in the Southeast Asian and Latin American contexts, but the same self-consuming process is observable in both regions.

As we have seen, in the countries of Southeast Asia, nationalization has typically occurred under the aegis of leaders attempting to define the nation in terms of a single, "true" ethnicity. In these countries, however, there simply is no "true" national ethnicity. For example, in Malaysia the Malays actually comprise only about fifty percent of the nation's total population.[444] In Sri Lanka, the hated "intruder" Tamils (Ceylon and Indian) comprise roughly twenty percent of the population; moreover, "[t]he Ceylon Tamils, who arrived, on average, perhaps a thousand years ago, can hardly be regarded as immigrants, even though the Sinhalese arrived, on average, earlier."[445] In Burma, which comprises over 100 ethnic subgroups, each speaking a different langnage, the census itself is so contested that no certain data exist.[446] Even according to government figures, "native Burmans" make up less than two-thirds of the population, and among these "Burmans," there are numerous "distinctive dialects and local sub-groups" to which "loyalties still run very deep."[447]

Under these conditions, an ethnic group seeking to capture the nation's resources and identity for itself has a number of paths it might pursue. For example, it could try to secede, rejecting the existing national boundaries and claiming a certain territory as its own; it could try to expel the other ethnic groups; or it could try to exterminate those groups. These violent strategies, however vicious, involve no internal contradictions. But a nationalism that simultaneously seeks to forge the nation's identity in terms of a single ethnicity and yet to retain the boundaries and populace bequeathed to the nation by its colonial past is almost incoherent.

For a startling illustration of this incoherence, consider the remarks of Burma's President Ne Win, who nationalized virtually every industry in an attempt to "Burmanize" the economy:

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444. Even the widely accepted notion that Malays are "the original" Malaysians is misleading. Although the largest, Malays are only one of several indigenous peoples, most of whom do not share a common language, religion, or culture. Nor are the Malays the people with the longest history in Malaysia; on the contrary, the true aborigines, such as the semi-nomadic "negritos" and the "proto-malays," were themselves displaced and marginalized by the politically dominant Malays. See Andaya & Andaya, supra note 186, at 2–4; SarDesai, supra note 251, at 9–10. In addition, "a good many Chinese can trace their roots in Malaysia much further back than the roots of fairly recent Indonesian immigrants who are assimilated to the Malay identity." Horowitz, supra note 189, at 203.

445. Horowitz, supra note 189, at 203.

446. See Smith, supra note 265, at 30.

447. See id. at 30–31.

> Today you can see that even people of pure blood are being disloyal to the race and country . . . . If people of pure blood act this way, we must carefully watch people of mixed blood. Some people are of pure blood, pure Burmese heritage . . . . Karen, Kachin and so forth, are of genuine pure blood. But we must consider whether these people are completely for our race, our Burmese people: and our country, our Burma.[448]

By exalting people "of genuine pure blood," of "pure Burmese heritage," Ne Win was manifesting a sad but familiar pathology: he himself was of mixed Burman-Chinese ancestry.[449] But Ne Win's vision of "our race," "our country, our Burma" was a doomed fantasy in a political as well as personal sense: there was no "Burma," and there has never been a "Burmese people," that did not include multiple, contending ethnicities. And not only multiple ethnicities: the "Burmese people" invoked by Ne Win were similarly riven by religious, political, and economic rivalries. It is no surprise, then, that Ne Win's nationalization program, which expressly targeted Indian and Chinese proprietors and which encouraged the "Burmese people" to identify nationhood with bloodline, precipitated the country into a long period of interethnic warfare.[450] The ethnically driven nationalization movements in Indonesia[451] and Sri Lanka[452] met similar fates.

By contrast, Latin American nationalizers have not sought to define the nation as belonging to or consisting of a single "pure" ethnicity. Instead, they have attempted to mobilize an interclass and interethnic nationalism defined in opposition to the aristocractic elite. Consequently, as observed above, Latin American nationalizers and nationalists have been able to celebrate the virtues of the mixed-blooded mestizo (or of bearing some portion of Indian blood in one's veins) in a fashion that could not contrast more sharply with Ne Win's suspicion of Burmese with "mixed blood."

On the other hand, the embarrassment of Ne Win's own mixed-bloodedness has its counterpart in the conspicuous fact that the leaders of Latin America's nationalization regimes have themselves almost invariably been much more closely affiliated with the elite than with the Indian or mestizo peasants in whose name they often acted. In fact, despite important differences, Latin American nationalization has been afflicted with the same disintegrative inner logic that has undermined the nationalization movements of Southeast Asia.

If Latin American nationalizers had dismantled the class and ethnic divisions of their societies—through whatever radical measures—their

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448. Id. at 37 (footnote omitted) (quoting speech of Ne Win (Dec. 11, 1979)).

449. See id.

450. See, e.g., Golay et al., supra note 190, at 212–13, 262–64; Smith, supra note 265, at 202–06, 219–23.

451. See Osborne, supra note 358, at 194–95; C.L.M. Penders, The Life and Times of Sukarno 180–83 (1974).

452. See de Silva, supra note 278, 254–268.

programs would have been coherent. But this has never been the case. On the contrary, nationalizing Latin American regimes have, in almost every case, left intact the largely pigmentocratic class structures that marked this region long before independence. In these conditions, the "nation" in whose name nationalization occurred has been a fiction that cannot long be sustained.

This has been the fate of nationalization programs throughout Latin America. In Mexico, for example, political disintegration followed on the heels of the initial success of Cárdenas's nationalization programs. The entrepreneurial segments of the economy, still in place despite the nationalization of key industries,[453] grew increasingly hostile to Cárdenas's anticapitalist and pro-Indian rhetoric.[454] At the same time, antigovernment dissent and internal conflict broke out among the trade unions,[455] as the "classless society" promised by *Cardenismo* failed to materialize.[456] Finally, by 1940, the largely Indian rural poor, despite (or perhaps because of) Cárdenas's land reform programs, no longer represented a bloc supportive of the once-revolutionary government.[457] On the contrary, confronted by the same basic social hierarchy that existed before, this group became just one class among several demanding satisfaction of their interests, which they had been taught to view as the interests of the "nation."[458] In short, "[t]he relative national unity created by the revolutionary process" had broken down.[459]

Similarly, in Chile, Allende's nationalization movement, although much more self-consciously Marxist, during its short life remained an abortive effort to forge a coalition among workers, small agrarian interests, and what was called the petty bourgeoisie. Similar "multi-class alliances," forged in opposition to a largely hereditary elite, were attempted by almost all of Latin America's nationalizing regimes. As Barbara Stallings puts it,

> Such an alliance may be possible in a society with abundant and increasing resources, and where class conflict is muted, but these conditions did not prevail in Chile—nor do they in most other Third World countries. [These] regimes succeeded in implementing their models for a short period of time, but then the internal contradictions of the alliances reached such a stage that "caretaker" governments were all that were possible.[460]

Perón's Argentina is yet another vivid example of this process. The echelons of society that Perón united against the *estancieros* by no means

453. See supra text accompanying notes 324–325.
454. See Miller, supra note 32, at 320.
455. See id.; Knight, supra note 65, at 291.
456. See Knight, supra note 65, at 318.
457. See Cardoso & Faletto, supra note 35, at 144.
458. See Knight, supra note 65, at 290–93.
459. Cardoso & Faletto, supra note 35, at 144.
460. Stallings, supra note 144, at 231.

constituted a "monolithic class."[461] In these circumstances, Perón's nationalism—a nationalism that began by identifying those Argentinians who had prospered under the previous regime as "antinational"[462]—as foreigners within—was far too thin to keep the rival parties from turning against each other. Thus Perón's nationalization regime eventually disintegrated into a contest among the rival blocs—labor, military, rural, and a burgeoning state bureaucracy—whose conflicts grew increasingly intense, who each understood that the "nation" properly belonged to them, and whom Perón could not possibly satisfy all at once.[463]

In both Southeast Asia and Latin America, the nationalism that makes nationalization possible proves insufficient to sustain the nationalized regime. Nationalization begins as an attempt to rid the postcolonial nation of foreign elements, and to reclaim for the nation economic and political power. But the "nation" on whose behalf nationalization makes its claims is deeply problematic, and nationalization itself heightens the divisions that make it so. In Southeast Asia, the rhetoric of unity is a thin veneer over bitter religious, ethnic, political, and economic rivalries. In Latin America, the nationalized sector, founded on a unity of all against a supposedly pure-blooded elite, co-exists in uneasy tension with the free-market sector of contending economic interests and a society in which whiteness of skin continues to play a marked role in the apportionment of political, economic, and social status.

As the economic results of nationalization worsen and the intranational divisions—racial, economic, political, and cultural—grow increasingly intense, there ceases to be a "nation" that can be recognized as the owner of the nationalized resources. Instead, the latter appear as exactly what they (often) are: an enormous cache of wealth presided over by incompetent or corrupt politicians, ultimately up for grabs, and sought by every organized interest group—including the state itself—in what is called the "nation."[464] Once this stage has been reached, a nationalist nationalization movement is no longer tenable, and privatization becomes the obvious attractive alternative.

The new privatizers promise to eliminate the inefficiencies and corruption of state ownership and to bring renewed prosperity.[465] Additionally, they promise a new, genuine national unity in contrast to the false national unity proclaimed by the nationalizers. Thus, the Camacho regime in Mexico, which immediately succeeded Cárdenas's administra-

461. Kenworthy, supra note 168, at 25.

462. Id. at 40.

463. See, e.g., Rock, supra note 168, at 305; Scobie, supra note 164, at 223.

464. See, e.g., Adam et al., supra note 6, at 216, 226; Penders, supra note 451, at 181; Francisco E. Thoumi, Privatization in the Dominican Republic and Trinidad and Tobago, *in* Privatization of Public Enterprises in Latin America, supra note 5, at 99, 104–05.

465. See, e.g., John Barham, Argentina Scours the World for Investors, Fin. Times, Aug. 22, 1991, at 23; Andrew Hurst, Deregulation in Latin America May Cut Corruption, Reuters, Mar. 18, 1991, available in LEXIS, World Library, Allwld File.

tion, rested its privatizing policies expressly on a platform of "national unity" and the need to prevent further national disintegration.[466] By stabilizing the contest among the various social groups, and by calling for the participation of each in a nationwide process of wealth creation, privatization is to bring about true national harmony as it brings about prosperity.[467]

As we know, however, privatization—despite its frequent economic successes—reintroduces into the developing country a dependence on foreign capital and expertise that gradually proves difficult to bear. At the same time, the ethnic and economic rivalries to which nationalization was in part a response are not in reality smoothed over in a new national project of cooperative joint enterprise. Instead, the old divisions reappear and worsen. The same ethnic minorities that previously prospered under a free-market regime tend to do so again, and economic disparities invariably increase.[468] In privatized Southeast Asia, race riots against the Chinese were common; in privatized Latin America, there are renewed populist revolts against a wealthy, foreign-linked elite.[469] Thus the privatized regime leads back to the same nationalist urges—both against the enemy without and the enemy within—that underlay the nationalization programs to begin with.

III. Possible Responses to the Privatization-Nationalization Cycle

In this Article, I have argued that many of the states of Latin America and Southeast Asia today returning their economies to private hands have, since independence, oscillated between free enterprise and nationalization, an oscillation fueled by nationalistic and ethnic forces as well as economics. How might today's privatizers—in particular, American lawyers and legal academics desiguing and implementing privatization pro-

466. See Miller, supra note 32, at 320–21. Similarly, Pinochet and Suharto insisted that their respective coups against the nationalization regimes in Chile and Indonesia aimed not only to rescue the economy, but also to restore unity to a country being torn apart by factional violence (a goal apparently to be achieved by mass killing where necessary). See, e.g., Brian Loveman, Chile: The Legacy of Hispanic Capitalism 310–11, 350–52 (2d ed. 1988); Golay et al., supra note 190, at 199–200; Osborne, supra note 358, at 195–96; SarDesai, supra note 251, at 239.

467. Privatizers throughout the developing world today justify their policies by reference to the social fragmentation accompanying the preceding nationalization regimes. See, e.g., Adam et al., supra note 6, at 226–27; Piñera & Glade, supra note 5, at 17, 26; cf. Robert S. Leiken, Routes of Region's Modernization Transcend Mexico's Woes, Wall St. J., Jan. 6, 1995, at A13 (asserting that with privatization and other market reforms "a different sort of nationalism has emerged" in Latin America, "one which stresses national opportunity rather than historical dependency and welcomes relations with the U.S.").

468. See Yuen & Wagner, supra note 252, at 220.

469. See, e.g., Patrick J. McDonnell, The Roots of Rebellion, L.A. Times, Mar. 6, 1994, Magazine, at 30; Opening Shots: Revolt in Mexico, The Nation, Jan. 31, 1994, at 111; James Pinkerton, Talks with Rebels Enrage Landowners, Houston Chron., Jan. 23, 1994, at A1.

grams—respond to this cycle? Obviously, there is no special formula for ending the privatization-nationalization cycle. The forces driving the cycle may be too strong or too delicate to be controlled by any measures realistically available. At best, actual "solutions," to the extent any exist, would have to vary across regions, countries, and industries and would require carefully tailored research and innovations going far beyond the narrow economic focus of today's privatization programs. The following discussion includes a sketch of possible concrete measures that might be undertaken, but the efficacy of such measures (either singly or in combination) remains in considerable doubt.

Generally speaking, three basic responses are possible: (1) doing nothing; (2) designing regulations compatible with today's privatization programs aimed at anticipating a nationalistic backlash; and (3) undertaking structural political and legal reform. I will consider each approach in turn.

A. *The Invisible Hand*

Several reasons might be offered for doing nothing in response to the privatization-nationalization cycle. For example, Professor Hirschman has suggested that "[i]n order to maximize growth the developing countries could need an appropriate alternation of contact and insulation, of openness to the trade and capital of the developed countries, to be followed by a period of nationalism and withdrawnness."[470] Periods of openness to foreigners allow "crucial learning processes [to] take place . . . [that] come to fruition only [when] contact is interrupted or severely restricted . . . . *Thus both contact and insulation have essential roles to play, one after the other.*"[471]

Hirschman was referring in these passages specifically to foreign investment, but the broader cycle identified here (of which the vacillation in favor of and against foreign capital is a part)[472] might be considered in a similar light. Thus the historical oscillation between privatization and nationalization in developing countries could be understood as being part of a difficult, halting, but nonetheless "essential" learning process. If this were so, the appropriate response might be to allow the cycle to run its course.

Even an advocate of this position would have to agree that the repeated oscillation between privatization and nationalization involves certain unrecoupable losses. Each swing entails the considerable transaction costs of negotiation, economic and legal restructuring, and bureaucratic reorganization.[473] To these costs must be added the unquantifiable but

470. Hirschman, supra note 330, at 25.

471. Id. at 25–26 (emphasis added).

472. See supra Part II.B.1.

473. Cf. Glade, supra note 7, at 1, 5 (noting "the process of privatization is not without cost" and advocating "institutional mechanisms that reduce transaction costs"). Today, the fees paid by governments of developing countries to foreign (usually American)

potentially enormous costs associated with the destruction and violence that in many cases accompany such swings.[474] Further, each episode of nationalization makes future privatization more expensive,[475] each episode of privatization makes future nationalization more expensive,[476] and alternating between the two jeopardizes the already precarious legitimacy of the governing institutions.[477]

More fundamentally, history indicates an astonishing lack of any dialectical progress in the repeated vacillations from privatizing to nationalizing regimes and back again. Indeed, throughout Latin America and Southeast Asia, the cycle has reflected not advance, but stagnation; not education, but the replay of ignorant enmities and massacres; not more justice, but the juggling of rhetoric while the rule of privilege for a few and destitution for the rest remains constant. In sum, rather than following an upward spiral, as Hirschman might have hoped, the privatization-nationalization cycle has been pendular and unrelentingly unprogressive.

Another, related means of justifying a do-nothing approach is to invoke the invisible hand of the market. Most American lawyers and scholars currently implementing and writing about privatization in the developing world take this approach. Under this view, the task facing today's privatizers is to institute an efficient marketplace, stripping away as much governmental intervention as possible, and letting the market thereafter

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accountants, investment advisors, and lawyers in connection with a single privatization can be in the millions of dollars. See Wendy Cooper & Harvey D. Shapiro, The Privatization of Privatization, Institutional Investor (Int'l Ed.), Oct. 1991, at 87, 89; see also Saul Hansell, Latin Finance Comes in from the Cold, Institutional Investor, Aug. 1991, at 79, 80 (describing "[g]old rush atmosphere" in Latin America and "gangs" of American investment bankers "hustl[ing] for financings, privatizations and merger deals").

474. Thus, in Burma General Ne Win's nationalization program was accompanied by the extirpation, and in some cases extermination, of the Indian, Chinese, and other "entrepreneurial" minorities. See Golay et al., supra note 190, at 250–65; Smith, supra note 265, at 219–23. In Mexico, Cárdenas's nationalizations represented the culmination of a revolution that had wreaked havoc and bloodshed for over a decade. See supra text accompanying notes 56–80. In Chile, General Pinochet's free-market vision went along with notorious brutality, beginning with the assassination of Salvador Allende. See Robert Corrigan, Chile: From Pariah to Economic Powerhouse, Investors Daily, Aug. 28, 1991, available in LEXIS, News Library, US File.

475. See Adam et al., supra note 6, at 11. "Open-door" governments trying to attract wary domestic and foreign investors often end up underpricing entities, providing "deal sweeteners" or selling off "crown jewels"—at the expense of "the underlying fiscal, efficiency, private sector and capital market objectives." Id. at 55, 57.

476. Privatizing governments hoping to attract foreign and domestic investment typically enact or amend foreign investment laws to protect investors against expropriation. See, e.g., Golay et al., supra note 190, at 236–37. In ensuing periods of nationalization, such laws often become the basis of extremely costly litigation and settlement procedures. See, e.g., Wright, supra note 63, at 71–73.

477. See, e.g., Huntington, supra note 335, at 1–4, 28–32. Professor Horowitz has noted in a related context: "To have failed once makes things more difficult the next time. To have failed twice makes the next time problematic altogether." Donald L. Horowitz, Democracy in Divided Societies, 4 J. Democracy 18, 37 (1993) [hereinafter Democracy in Divided Societies].

take care of itself.[478]

The difficulty here is that in the developing world, there may be more than one invisible hand at work. Rational economic self-interest is not the only, and perhaps not the strongest, fundamental motive operating within developing societies. As I have stressed throughout, ethnic and national self-interest (or "group-interest") has been equally potent. Alongside the universalistic rationality supposed by the market, there is also the irrationality imposed by ethnic hatreds and desperate nationalisms that in some cases have existed for hundreds of years. This is the invisible hand that steers societies not toward cooperation and prosperity, but toward bloodshed and ruin.

A third argument in favor of ignoring the cycle is that this time things are different. The collapse of the Soviet Union (one might argue) has finally and thoroughly discredited nationalization; in addition, changes in the local economies of developing countries, such as a larger and better-educated middle class, will make these countries more receptive to privatization. After all, if eighty-three countries are privatizing,[479] *something* must be different.

That "everyone is privatizing"[480] is hardly a guarantee of privatization's success. In the 1930s, nationalization and other quasi-socialist policies swept various parts of the world, only to give way to swings to the opposite economic extreme. Moreover, the collapse of the Soviet Union, if it has discredited anything, has discredited socialism; but as I have argued throughout, nationalism, not socialism, has been the primary force driving developing countries to nationalize.[481] Further, I have precisely tried to show that while there have obviously been social and economic changes in the developing world since the last round of privatizations—history never repeats itself exactly—things today are not *that* different. Ethnic hatred and nationalism still flourish, and today's privatization programs display an all-too-familiar blindness to these phenomena.

A final reason for doing nothing about the cycle might be that there is nothing to be done—at least by lawyers. After all, I observed earlier that the forces driving the cycle may overwhelm any practical efforts to arrest them. In any event, it might be said, it is not the place of lawyers implementing a privatization program to try to arrest the cycle. Whether representing a private party or a government, the lawyer's job is to facilitate the transaction, not to introduce obstacles that might encumber the privatization process.

Obviously, no legal reform is going to bring nationalism, ethnic hatred, and class conflict to an end. Nevertheless, it remains the case that

478. See supra text accompanying notes 311–313.

479. See supra text accompanying note 2.

480. " 'Everybody has come to the conclusion that privatization is the thing to do.' " Cooper & Shapiro, supra note 473, at 87 (quoting Eamonn Butler, director of London's Adam Smith Institute).

481. See supra text accompanying notes 326–329.

American lawyers—both practitioners and academics—are today being paid to design the fundamental legal and economic institutions of the developing world to an extent unprecedented since decolonization.[482] This task creates not only an enormous opportunity[483] but also a certain responsibility. To the extent that privatizing lawyers focus exclusively on short-term efficiency solutions, they will fail to serve their clients' best interests. Today's privatizers, for the sake of the long-term stability of their own programs, ought at least to try to adopt measures designed to anticipate the forces that have led so often to the overthrow of free-market policies. To such measures I now turn.

B. *Re-regulation*

A more thoughtful response to the privatization-nationalization cycle would involve regnlatory measures aimed at anticipating nationalistic backlash. "[A]lthough privatization is normally associated with deregulation,"[484] there is no reason in principle why strong privatization programs could not be accompanied by regulatory measures addressing the cycle in various ways. "Re-regulation," as a few commentators have recoguized, may be an essential element of successful privatization plans in the developing world.[485]

Even for these commentators, "re-regulation" of developing-world privatization principally means enacting laws "to strengthen the operation of the capital market,"[486] to curb monopolistic behavior,[487] and "[t]o ensure that newly privatized companies meet acceptable levels of operational efficiency."[488] Such proposals miss the larger point. According to my model, to have any chance of long-term success, privatizers

482. See David M. Trubek, Back to the Future: The Short Happy Life of the Law and Society Movement, 18 Fla. St. U. L. Rev. 4, 21–23 (1990); Virginia Citrano, Shrinking Governments Fatten City Firms, Crain's N.Y. Bus., Jan. 11, 1993, at 11; Cooper & Shapiro, supra note 473, at 87.

483. Professor Horowitz, writing about the connection between ethnic conflict and democracy, has observed:

> [M]ore than a few provision merchants from the United States have sold ready-made constitutional clauses to Africans, Asians, and East Europeans eager for their talismanic value, even though they had been fashioned for the conditions of American democracy rather than their own. As the recent wave of democratizations now runs its course, it is not too soon to say that a major opportunity for constitutional planning for interethnic accommodation has largely been lost. . . . This is a serious foreign policy failure for the United States and for the Western world more generally.

Horowitz, Democracy in Divided Societies, supra note 477, at 18, 35.

484. Glade, supra note 7, at 1, 5.

485. See, e.g., Glade, supra note 7, at 5; Martinez, supra note 3, at 489, 505; Naim, supra note 314, at 133; cf. Frydman & Rapaczynski, supra note 23, at 46–64 (discussing possibility of re-regulation in Eastern Europe).

486. Glade, supra note 7, at 5.

487. See id.

488. Martinez, supra note 3, at 505.

must also confront the core, often explosive, role nationalism has played in driving developing countries back to nationalization.

Various kinds of regulations compatible with today's privatization programs are possible. I will consider four main areas of regulation below.

1. *Ownership Restrictions.* — One important regulatory strategy lies in restricting the ownership of privatized entities. Where nationalism has been directed principally against external foreiguers, this strategy would include restrictions on foreign investment. Where nationalism has been directed at internal foreigners as well, this strategy might also include minimum ownership requirements (set-asides) for certain groups within the country.

Foreign investment regulation, although currently in place in many developing countries,[489] runs counter to the thrust of today's commentary as well as to the instincts of today's privatizers. Indeed, existing foreigu ownership restrictions are invariably regarded as obstacles to successful privatization. As commentators have noted, "The prospect of too little rather than too large capital inflows is the worrisome prospect,"[490] and one should "do everything possible to get foreigners involved, that is foreign banks, foreign managers and foreign owners."[491]

There is no point debating whether private capital should play a significant role in the developing world: it clearly will. Nor is there any point debating whether foreign capital is helpful or harmful: it is clearly both.[492] The challenge is to structure the influx of private capital in general, and foreign capital in particular, in such a way as to avoid an eventual nationalist reaction against it.

Privatizing lawyers ought to take a more measured view of ownership restrictions. Prevalent though they are, the foreigu ownership restrictions in developing countries were virtually without exception enacted by previous nationalizing regimes.[493] As a result, ownership restrictions

489. In many Latin American and Southeast Asian countries, foreign investment laws prohibit foreigners from owning over 49% of enterprises in certain industries. See, e.g., Golay et al., supra note 190, at 190, 195–96 (discussing Indonesian Foreign Investment Law of 1958); Wright, supra note 63, at 95–150 (discussing Mexican laws restricting foreign investment).

490. Ulrich Hiemenz, Comment on András Inotai, "Experience with Privatization in East Central Europe," *in* Privatization, supra note 314, at 183, 184; see also Martinez, supra note 3, at 489 ("Some of the required measures include the elimination of restrictions on trade, foreign exchange and foreign investment.").

491. Holger Schmieding, Alternative Approaches to Privatization: Some Notes on the Debate, *in* Privatization, supra note 314, at 107; see also Adam et al., supra note 6, at 50; David B. Hodgins, Mexico's 1989 Foreign Investment Regnlations: A Significant Step Forward, But Is It Enough?, 12 Hous. J. Int'l L. 361, 375 (1990).

492. It is by now standard for introductory economic development or international law textbooks to include a chapter on the "pros and cons" of foreign capital in developing countries. See, e.g., Todaro, supra note 333, at 400–07; Vagts, supra note 334, at 114–23.

493. See, e.g., Burns, supra note 150, at 81–82; Golay et al., supra note 190, at 190, 215; Wright, supra note 63, at 95–150.

have almost never been thoughtfully integrated into a privatization program. On the contrary, viewing such restrictions as misguided holdovers from a defunct economic philosophy, privatizers have generally sought to undermine them. The incentive for doing so is obvious. Dazzled by the prospect of massive capital influx, privatizers have time and again undertaken to abolish or to relax such restrictions, or, alternatively, to grant "special dispensations" that eventually rendered them nugatory.

Indeed, this is precisely what many developing governments—advised by foreign investment bankers and lawyers—are seeking to do today. In Mexico, for example, a recently enacted foreigu investment regulation[494] creates a general presumption that 100% foreign ownership of privatized entities is permissible in the absence of special limitations.[495] And even where Mexican law provides such special limitations, the government has found ways around them. For example, while the Mexican Constitution "reserves the public service of electricity production to the state," President Salinas procured legislation in December 1992 declaring many forms of electricity production to be "private service."[496] Foreign investors are reportedly "jumping" at this invitation, and if current plans are realized, within twelve years almost half of Mexico's electricity may be supplied by private American firms.[497]

At the same time, the Mexican government has entered into highly complex financing transactions to bypass constitutional restrictions on foreign ownership in the oil industry. Although the Mexican Constitution prohibits private investment, Mexican or foreign, in the oil refining sector,[498] foreign lenders "will hold title to a refinery soon to be built in Salina Cruz . . . until the $1.4 billion construction loan is repaid," at which time ownership will revert to Pemex.[499] According to Pemex's chief financial officer, " 'This will be the first refinery within Mexico not owned by Pemex.' "[500] Further, "foreigners will lend $300 million to Pemex under a new procedure, supervised by Citibank, that comes closer than in the past to pledging Mexican oil as collateral"—"a practice out-

494. See Ignacio Gómez-Palacio, The New Regulation on Foreign Investment in Mexico: A Difficult Task, 12 Hous. J. Int'l L. 253, 259 n.30, 260 n.32 (1990) (citing and quoting Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, D.O. (May 16, 1989)).

495. The new regulation, personally issued by President Salinas, see id. at 255, was intended to "coincide with the requirements of NAFTA" and is part of "the recent trend making foreigu direct investment a more vital part of the Mexican economy." Stephen Zamora, The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement, 24 L. & Pol'y Int'l Bus. 391, 413 n.75, 414 (1993).

496. Dianna Solis, Foreigu Investors Jumping at Mexico's Invitation to Help Boost Power Capacity, Wall St. J., May 17, 1993, at A13.

497. See Martin Langfield, Mexico Relaxes Rules on Electricity Investment, J. Com., June 18, 1993, at 10B; Solis, supra note 496.

498. See Constitución política de los Estados Unidos Mexicanos art. 27.

499. Louis Uchitelle, Pemex: Mexico's Hesitant Oil Giant, N.Y. Times, Mar. 4, 1993, at D1, D6.

500. Id. (quoting Ernesto Marcos, chief financial officer).

lawed after Mexico nationalized the industry in 1938."[501]

Similarly, Brazil's privatizing government enacted new legislation that, while nominally preserving foreign ownership restrictions during the privatization process, permitted subsequent transfers of control to foreigners after the privatization transaction had been completed.[502] The Peruvian government recently enacted "wide-open free market rules and a straightforward mining code" that, by one account, has "spurr[ed] an international gold rush by prospectors into Peru."[503] In Uruguay, the government tried to do much the same thing in 1993, but failed, running up against intense popular opposition.[504] And in Argentina, the 1989 Public Sector Reform Law[505] temporarily "declare[d] a state of emergency for all public entities . . . and suspend[ed] legal action against the state for two years."[506] This law, viewed as "a legal masterpiece," authorized the president to modify the legal status of state entities and to enforce "equal treatment for domestic and foreign investors . . . without further approval from the Congress."[507]

The same phenomenon can be seen in Southeast Asia. In Burma, privatizers "desperate for foreign cash"[508] enacted new legislation eliminating foreigu ownership restrictions in many sectors and easing them in others.[509] Philippine President Corazon Aquino, while acknowledging the foreign ownership restrictions in the Philippine Constitution, nonetheless set an important tone when she declared in 1987, "Our policy, let me repeat, is . . . one of equality towards Filipinos and foreigners who wish to invest in the future of this country."[510]

Subverting or abolishing foreign ownership restrictions, although potentially lucrative in the near term, is a shortsighted strategy. These laws were enacted for a reason and should not be done away with casually. A case in point is Argentina's recent privatization of its national airline, Aerolineas Argentinas. The new "emergency" laws[511] enabled the Argentinian government to sell Aerolineas Argentinas to a consortium

501. Id.

502. See Werneck, supra note 162, at 63.

503. The Peru Business Report, supra note 142.

504. See Douglas Feiden, Overseas Operators: Telephone Privatization Plans Could Boost Service, Costs, Crain's N.Y. Bus., July 19, 1993, at 14; Only Vasp Seeks to Buy Into Uruguay Airline, supra note 183.

505. Ley 23.696 Reforma del Estado–Emergencia administrativa–Privatizaciones y participación del capital Privado, Anales de Legislación Argentina (1989).

506. See Fraga, supra note 171, at 94.

507. Id.

508. Ben Barber, Burmese Junta Reforms Economy, But Not Rights, Christian Sci. Monitor, Dec. 2, 1993, at 7.

509. See Burma: Economy Improves Considerably After Years of Decline, There Is Some Hope for Better Bilateral Relations, Bus. Am., Nov. 15, 1993, at 20, 21–22.

510. Godinez, supra note 288, at 267.

511. President Menem has issued "more than 240 emergency decrees, 10 times as many as all of his predecessors under the 1853 constitution." Jack Epstein, Brazil's Economy Lagging Behind, S.F. Chron., Feb. 28, 1994, at A8.

dominated by Spain's national airline, Iberia, sparking a "nationalistic backlash to 'a new Spanish colonization' and ideological hostility to privatization."[512] This "botched" privatization, in which fifty-one percent of the shares allegedly came under Spanish control, was followed in short order by "the partial re-nationalization" of the airline.[513]

A related problem concerns the privatization of sectors that are particularly sensitive for historical reasons: for example, the teak industry in Burma, the oil industry in much of Latin America, and the mining of precious metals throughout the developing world.[514] Attempting to privatize these sectors indiscriminately, particularly without restrictions on foreign ownership, would be foolhardy. For example, as noted above, the Mexican government is again seeking ways to accomplish the "unthinkable": privatizing the oil sector.[515] Indeed, the government has already offered its secondary petrochemical plants for sale to foreigners, and it is now considering privatization of its oil pipelines.[516] Likewise, Peru is urging foreign investors to "dig in on [the] new Andes gold-rush"; according to a recent full-page advertisement, United States-based Newmont Mining, "the first foreign investment start-up in Peruvian mining for 20 years, . . . is racking up a million dollars a week in profits" at the Yanacocha gold mine.[517] In Burma, too, the long-xenophobic government has announced its "goal to attract foreign investment" to explore "Burma's treasure chest of mineral wealth" as well as its natural gas and oil reserves.[518] While such familiar attempts to court foreign capital at almost any price might well promote short-run growth in the mining and oil industries, they are certain sooner or later to spur the same sort of nationalist reaction observed in the past.

Ownership restrictions may be relevant in addressing inwardly directed nationalism as well. In Latin America, where backlash against "internal foreigners" has assumed an anti-aristocratic form,[519] the aim of such restrictions would be to prevent reconcentration of ownership in the hands of "a small . . . European and mixed blood" elite.[520] There are

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512. Kamm, supra note 173, at A1; see Gelpern & Harrison, supra note 2, at 251–52. Iberia also acquired significant stakes in both the Venezuelan and Chilean national airlines. See Kamm, supra note 173, at A1.

513. Kamm, supra note 173, at A1, A11. In 1992 the Argentine government increased its share ownership in Aerolineas Argentinas from 5% to 43%. See id. at A11.

514. See Golay et al., supra note 190, at 158–60, 229; Miller, supra note 32, at 320–21.

515. Uchitelle, supra note 499, at D1; see Debra Beachy, Mexico Said to Be Considering Privatization of Oil Pipelines, J. Com., Aug. 24, 1993, at 6B.

516. See Beachy, supra note 515, at 6B; Pemex Poised to Privatize Its Petrochemical Plants, supra note 134, at 9A; Uchitelle, supra note 499, at D1.

517. The Peru Business Report, supra note 142, at A15. Newmont Mining's chief executive officer is quoted as saying, "Never before have we got this kind of enthusiasm and support from a government." Id.

518. Burma, supra note 509, at 21.

519. See supra text accompanying notes 388–397.

520. Tim Golden, Rebels Determined 'to Build Socialism' in Mexico, N.Y. Times, Jan. 4, 1994, at A3.

various ways to accomplish this. One straightforward step would be to limit the number of shares purchasable by any single person or family. In Jamaica, to address "the intense opposition" of the People's Nationalist Party to the privatization of the National Commercial Bank ("NCB"), the government imposed "a 7.5% limit on the total shareholding to be acquired by any individual" and priced the public issue "conservatively."[521] "[T]his strategy was successful in attracting a large number of new players into the equity market . . . ."[522]

A more ambitious strategy would involve so-called *capitalismo popular* ("popular capitalism") sales, in which small local investors are encouraged to participate in the privatization process through government subsidies.[523] In Chile's partial privatization of Empresa Nacional de Electricidad ("Endesa"), the country's largest utility company, small investors were offered "fifteen years of interest-free loans on 95 percent of the investment (with a 30 percent discount if payments were made on time) and tax breaks."[524] Thus far, no countries in Latin America other than Chile have considered seriously the possibility of privatizing through *capitalismo popular*.[525]

Also instructive here are the "mass privatization" programs currently being undertaken in the former Soviet Union and Eastern Europe. Generally speaking, these programs contemplate a distribution, through vouchers, of shares in the privatizing company to the local population.[526] Although the use of vouchers may not be appropriate or necessary in Latin America, where an existing capital market is already in place, the underlying notion of "popularizing privatization" may be equally important.

Once again, regulations such as these would run counter to the pure free-market philosophy currently in fashion. Measures to disperse share ownership invariably reduce the proceeds received by the privatizing government.[527] In Jamaica's case, "the promotion of wider share ownership . . . reduced NCB's potential efficiency by locking in a sub-optimal level of management monitoring (resulting from the free-rider problem in information collection implicit in a widespread shareholding)."[528] Moreover, "mass privatization" programs of the sort now being attempted in Eastern Europe are difficult to implement; they have, for example, significantly delayed the privatization process in countries like Poland and the former Czechoslovakia.[529]

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521. Adam et al., supra note 6, at 54.
522. Id.
523. See, e.g., Piñera & Glade, supra note 5, at 22, 31–32.
524. Id. at 22.
525. See id.
526. See generally Roman Frydman et al., The Privatization Process in Central Europe (1993).
527. See Adam et al., supra note 6, at 54–55.
528. Id. at 54.
529. See Schmieding, supra note 491, at 97, 106.

Nevertheless, privatizers who ignore the issue of ownership distribution do so at their peril. Ominously familiar is the recent charge by a Mexican columnist that "[t]he booty of privatization has made multimillionaires of 13 families, while the rest of the population—some 80 million Mexicans—has been subjected to the same gradual impoverishment as though they had suffered through a war."[530] Nor is it coincidental that the leaders of the fierce resistance that took place at Chiapas early in 1994 framed their struggle as "the timeless one of poor Indians against 'the rich,'" and declared repeatedly that "[t]he people must rule Mexico."[531]

In Southeast Asia, where nationalism has been directed against distinct ethnic minorities, the situation is more complicated and perhaps more intractable. One intriguing approach here would be to tie privatization to measures distributing ownership to indigenous groups that historically have been disadvantaged during free-market periods. Such measures would include share set-asides for the relevant ethnic or racial groups. As described earlier, a program of this sort is currently in place in Malaysia. Consistent with affirmative action policies adopted during the previous nationalizing government, ownership of privatized entities must be at least seventy percent Malaysian (as opposed to foreign), of which at least thirty percent must be owned by Bumiputra.[532]

Such set-asides are not only costly in terms of short-term efficiency, as commentators like to point out,[533] but morally controversial as well. There is a genuine danger that they will serve only to legitimize and encourage bigotry. In America, a quota limiting corporate ownership by successful minorities—say, Jews or Asians—would surely prompt horri-

530. Anthony DePalma, Mexico Sells Off State Companies, Reaping Trouble as Well as Profit, N.Y. Times, Oct. 27, 1993, at A1, A8 (quoting from Alvaro Cepada Neri's column in La Jornada). In the same vein, even as privatization in Mexico was resulting in hundreds of thousands of layoffs, Fortune magazine ranked one of the new Mexican owners of Telmex the sixty-eighth wealthiest person in the world. See id.

In Chile and Argentina too, the popular consensus is that "the benefits of record growth rates and lucrative privatization deals have not trickled down very far." Epstein, supra note 511, at A8. By at least one account, in Argentina "unemployment is at a historic high, the gap between rich and poor is growing, and growth is restricted to Buenos Aires and three other industrial cities." Id.; see Paula Green, Argentina Squeezes Its Middle Class, Christian Sci. Monitor, Dec. 29, 1993, at 2.

531. Golden, supra note 520, at A3.

532. See Adam et al., supra note 520, at 228.

533. "The linking of privatization and the New Economic Policy will . . . make the progress of the privatization programme even more difficult, as it reduces the chances of finding entrepreneurs with the capital as well as the managerial and technical skills to run the privatized companies." Yuen & Wagner, supra note 252, at 220. As a result of the NEP affirmative action policies, "asset ownership is broad, [but] assets are systematically underpriced and risks massively underwritten by public sector institutions, thereby compromising the underlying fiscal, efficiency, private sector and capital market objectives of . . . [Malaysia's privatization] programme." Adam et al., supra note 6, at 57.

fied protest.[534] But our instinctive aversion to policies that discriminate on the basis of ethnicity may not graft cleanly onto Third World societies. Whatever one thinks of set-asides in advanced countries, in the socially-riven nations of Southeast Asia, where extermination has at times been commonplace,[535] such second-best solutions may be the best options available. The Chinese in Malaysia, for example, might well prefer to be limited to seventy percent ownership of privatized enterprises than to have their assets appropriated in a subsequent round of nationalization.[536]

More important, indigenous ownership requirements may be a means of forcing representatives of deeply antagonistic groups into positions of economic alliance and interdependence. In Indonesia, for example, little seems to have changed since the extermination of one-half million Chinese two decades ago[537]: it is still the view on the streets that "[e]ven foreign ownership would be more acceptable than privatization that primarily favours [the country's minority Chinese] ethnic group."[538] Although state-dictated joint ventures are hardly exemplars of racial harmony, they may be one way to initiate a process of interracial accommodation.

Whether directed at the external or internal aspect of nationalism, ownership restrictions are prey to circumvention problems. A strong regulatory framework would have to be in place to police secret transfers, or front-man schemes such as the "Ali-Baba" arrangements in Malaysia (less prevalent today), in which Chinese businessmen collude with Bumiputra front men who "have no role in the enterprise beyond collecting a fee for

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534. It should be observed, however, that the Malaysian program still allows Chinese and Indian ethnic minorities to be majority owners and arguably is more analogous to an affirmative action program for disadvantaged ethnic groups.

535. See, e.g., Golay et al., supra note 190, at 199–200 (noting that furious anti-Chinese drive during Suharto's regime was punctuated by frequent and violent rioting); Osborne, supra note 358, at 195–96 (noting that at least 250,000 Chinese were killed during Indonesian upheaval of 1965–1966).

536. One might view indigenous ownership requiremeuts as a form of security for the targeted minority. For example, in Malaysia, the Bumiputra minority owners of privatized entities are "hostages" of the Chinese majority owners: because they are "of value" to the Bumiputra government and community, they are a way of securing the government's "promise" to perform its part of the privatization "contract"—by not turning around and renationalizing. See Anthony T. Kronman, Contract Law and the State of Nature, 1 J.L. Econ. & Org. 5, 12–15 (1985); Oliver E. Williamson, Credible Commitments: Using Hostages to Support Exchange, 73 Am. Econ. Rev. 519 (1983).

537. See Golay et al., supra note 190, at 200; SarDesai, supra note 251, at 244.

538. Yuen & Waguer, supra note 252, at 220 (citing Indonesia Business Digest (1987)). Indonesia's current Research and Technology Minister, B.J. Habibie, who many think will eventually succeed Suharto as president, " 'appeals to indigenous Indonesian professionals, who would like to take control of the industrial and technological side of the economy they feel is too dominated by the Chinese.' " Raphael Pura, Technology Guru Stands Out in Indonesia, Wall St. J., Nov. 21, 1994, at B6D (quoting Islamic leader Abdurrahman Wahid). The ethnic Chinese in Indonesia fear that Habibie would encourage a return to more extreme economic nationalism. See id.

the use of their name."[539] As discussed below,[540] the kind of accountable administrative structure necessary to this task might not be feasible in developing countries without thoroughgoing institutional reform. Nevertheless, today's privatizers should regard ownership restrictions not as antithetical to the goals of privatization but as integral to an enduring privatization program.

2. *Rate, Service, and Product Regulation.* — In addition to regulating ownership, developing states should consider requiring private and, in particular, foreigu investors to bring tangible and prompt benefits to the local population. To be effective, these requirements would have to be enumerated in detail, perhaps as part of the terms of sales agreements or operating licenses. Moreover, such requirements should be easily enforceable, either by penalty or, in egregious circumstances, by revocation.

The regulations governing the new owners of Teléfonos de México ("Telmex") are useful here. Under both the relevant telecommunication laws and the purchase agreement, the new owners of Telmex—subsidiaries of Southwestern Bell and France Cables & Wire and a Mexican investment bank—must comply with the terms of a detailed operating concession. The concession in turn requires Telmex "to expand, improve and modernize its telephone network" in ways specifically intended to benefit Mexican consumers.[541] In particular, Telmex must increase the number of lines in service by a specified annual percentage, expand telephone service to sparsely populated (and hence unprofitable) rural areas, increase the density of public telephone booths, and "reduce the maximum waiting time for installation of telephone service . . . to six months by 1995 and to one month by the year 2000."[542] Telmex is also required to comply with a rate cap, which beginning in 1997 "will be adjusted downward periodically to pass on the benefits of increased productivity to the Company's customers."[543]

While a few commentators have pressed for performance standards in the context of developing country privatizations, once again the suggested measures have been directed at ensuring "operational efficiency."[544] By contrast, some or all of the regulations I am proposing will likely be less than optimally efficient from the short-run perspective. Their costs, moreover, may be passed along to Mexican telephone users or, ultimately, to Mexican taxpayers. The point, nevertheless, is to avoid the spectacle of a privatized company—particularly a public utility or

539. Horowitz, supra note 189, at 666.

540. See infra Part III.C.

541. Final Prospectus of Teléfonos de México, S.A. de C.V., supra note 137, at 38.

542. Id.

543. Id. at 37. To be sure, such requirements are not always met. See Gregory Katz, Promise of Mexico's Phone System Remains Unfulfilled, J. Com., Mar. 23, 1993, at 12A. Still, the penalties prescribed for noncompliance exert significant financial pressure on newly privatized companies to do so. See, e.g., Final Prospectus of Teléfonos de México, S.A. de C.V., supra note 137, at 38–39.

544. Martinez, supra note 3, at 505.

public carrier—now in the hands of foreigners and a few wealthy domestic elite, reaping enormous profits without conferring corresponding benefits on the general populace. Waiting for the trickle down is not sound strategy in the developing world. The benefits of privatization must be spread as widely as possible, as quickly as possible, and as visibly as possible.

3. *Environmental Regulations.* — For similar reasons, privatizing governments would be well advised, at least in certain industries, to build environmental regulations into their programs. Charges of "ecological colonialism" have become increasingly prevalent in recent years.[545] Examples are plentiful of local backlash against developed nations "exporting pollution" to the developing world.[546] If today's privatizers wish to guarantee a (externally directed) nationalist reaction, they would do well to oversee the construction of a foreign-owned petrochemical plant sending a steady stream of income north and pollutants south.

4. *Regulations Protecting Labor.* — It is well known that privatization programs, in trying to redress the inefficiencies and excesses of state-ownership, often result in significant layoffs, as well as in reductions in pensions and other benefits.[547] Moreover, low-wage labor is one of the most attractive features for foreign capital in the developing world. These circumstances make the handling of labor a delicate and volatile aspect of privatization programs.

One-sided solutions in favor of labor—for example, flatly prohibiting worker dismissals or requiring high severance payments—are problematic. Not only do they undercut potential efficiency gains, but they also run the risk of stymieing privatization efforts altogether. The costs of appeasing labor "could reduce the firm's potential profit levels to the point at which ownership is not worthwhile" to any prospective buyers at all.[548]

At the same time, labor cannot be viewed as an irritating obstacle to privatization to be dismissed as quickly and costlessly as possible. For ex-

545. Soviet Ties Venture to Pollution Control, Chi. Trib., July 10, 1989, at 2C (quoting Valentin Katasonov, Soviet economist).

546. The 1984 Bhopal gas leak that killed nearly 3,000 Indian citizens provides perhaps the most dramatic example of such local reaction. In 1987, the government of India filed criminal charges (including homicide) against Union Carbide and certain employees in response to public outrage at an anticipated civil settlement. See, e.g., Paul Richter, India Accuses Carbide of Homicide in Bhopal Deaths, L.A. Times, Dec. 2, 1987, at 14. In Latin America, local resentment and retaliation against the foreign businesses that have ravaged the Amazon rain forests are also well documented. See, e.g., Roger D. Stone, The Nature of Development 75–77 (1992) (describing deforestation of Amazon rain forest). For other examples, see Merrill Goozner, Court Hands Japan Environmental Setback, Chi. Trib., July 14, 1992, at 4 (Japanese mining venture shut down by Malaysian court because company's radioactive waste poisoned local villagers); Marlise Simons, Concern Rising Over Harm from Pesticides in Third World, N.Y. Times, May 30, 1989, at C4 (noting recent gains by environmentalists to limit export of pesticides to third world).

547. See, e.g., L. Gray Cowan, Privatization in the Developing World 38–39 (1990).

548. Id. at 41.

ample, those who argue that worker participation should be rejected "for good and well-known reasons of efficiency"[549] are taking a dangerously ahistorical view. The squalid conditions of labor surrounding foreign-owned plants galvanized nationalization movements in the past,[550] and signs of similar resentment are already present today. In the last few years, there have been strikes by workers in Uruguay, the Philippines, and elsewhere protesting privatization.[551] Indeed, in Thailand hostile "[t]rade union leaders of Thai state enterprises have even set up a 'watch-dog' committee in order to monitor any move" toward privatization.[552] Under these conditions, it is important for today's privatizers to avoid the appearance and reality of foreign investors (whether external or internal) exploiting the local laboring populace.

Among the measures to be considered here are minimum wage, maximum hour, and worker safety regulations—of the sort that investors routinely accept in the developed world but are eager to dispense with in developing nations. Another possibility is including labor in the privatization process. In connection with the Telmex privatization, a percentage of the company's shares was allocated to a trust for the benefit of Telmex employees.[553] And in the case of a few small companies, full employee buyouts have been possible; Chile's Empresa Chilena de Computación e Informática, for example, was privatized through a sale to its employees.[554] Meanwhile, many commentators have advocated job retraining for employees laid off as a result of privatization,[555] "educational campaigus" to enlighten labor "on the meaning of privatization,"[556] and unemployment insurance.[557]

C. *Structural Reform*

The ultimate goal of the various regulatory measures discussed above is to disperse the benefits of privatizations to an extent far greater than has been done in the past. Such measures, however, while perhaps necessary to arrest the cycle, may well be insufficient to do so. The longstanding social divisions, governmental corruption, and lack of political accountability common to developing countries can undermine the best-laid regulatory schemes. Absent far more systematic institutional reform,

549. Schmieding, supra note 491, at 97.

550. See supra text accompanying note 342.

551. See Craig Dunlap, Uruguay Port Strike Enters Second Week, J. Com., Dec. 13, 1991, at B12; Yuen & Waguer, supra note 252, at 219.

552. Yuen & Wagner, supra note 252, at 219.

553. See Final Prospectus of Teléfonos de México, S.A. de C.V., supra note 137, at 34–35.

554. See Piñera & Glade, supra note 5, at 29.

555. See Cowan, supra note 547, at 45 (noting that retraining should be carefully targeted at meeting specific prospective employment needs).

556. Id. at 42.

557. See Maskin, supra note 314, at 118 (advocating unemployment insurance rather than "the inefficient device of requiring firms to employ a certain number of workers").

the forces that have driven the privatization-nationalization cycle for a hundred years will likely persist. Although such reform extends well beyond the scope of this Article, let me briefly outline the principal issues here.

The critical arena for institutional reform in the developing world is the state itself. Lawyers and economists working on privatizations in the formerly socialist countries have uniformly recognized the need for thoroughgoing "institutional reform" because of the lack of a market system and of anything but the most rudimentary framework for holding and transferring private property.[558] By contrast, the relatively well-established capital, equity, and commercial markets of the developing world[559] have given rise to an impression among today's privatizers that fundamental institutional reform is unnecessary—that privatization is "revolution" enough.[560] In fact, while the developing nations may require less economic restructuring than the formerly socialist states, they are in need of at least as much political restructuring.[561]

While American lawyers and economists working on developing-world privatization usually presuppose a " 'technocratic framework', which assumes a benevolent and well-informed government, with altruistic policymakers maximizing some social utility function subject to 'normal' (that is, resource and technological) constraints,"[562] some commentators have stressed that these assumptions are particularly misleading in the developing world. Time and again, the governments of developing nations have become personal fiefdoms for individual leaders. Even with respect to the more advanced governments of Latin America, more thoughtful commentators have recognized that the idea of a "technocratic" state is less apt than that of a "predatory state."[563]

If privatization is not going to degenerate into privateering in the developing world, reform of the predatory state will eventually be necessary. Such reform is more than a matter of creating a reliable electoral process. While many of today's commentators reflexively call for a reduction of the state apparatus and a minimum of state intervention in the private sector, this developed world agenda is not wholly suited to developing nations. These nations require what Professor Theda Skocpol calls "state-building"[564] even as they relinquish state ownership. There will have to be a functioning and accountable bureaucracy, capable of enforcing the regnlatory frameworks essential to the distribution of privatiza-

558. See Frydman & Rapaczynski, supra note 23, at 168–77; András Inotai, Experience with Privatization in East Central Europe, *in* Privatization, supra note 314, at 163, 163; Winiecki, supra note 325, at 71–73.

559. See Winiecki, supra note 325, at 73.

560. See Piñera & Glade, supra note 5, at 19.

561. See Winiecki supra note 325 at 73–75.

562. Id. at 73; Lal, supra note 336, at 276–77.

563. See Winiecki, supra note 325, at 73.

564. Theda Skocpol, States and Social Revolutions 291 (1979).

tion's benefits. To the extent that such regulations simply become another opportunity for rent-seeking,[565] so will privatization itself.

In addition, the introduction of much more sophisticated social security, tax, and unemployment programs may be another crucial ingredient of political reform, because of the potential for such programs to ease the transition to privatization and to redistribute the benefits thereof. Elaborate social welfare programs would probably be fiascos in the developing world given the existing administrative conditions. Yet they may be necessary if privatization is to endure.

In the Southeast Asian context, the problems of structural reform go beyond state-building. The cbaracteristic Southeast Asian fissure between political and economic power, with an indigenous majority holding the former and a resented "entrepreneurial" minority holding the latter, will create profound strains for any privatization program. I have suggested above that the prospect for breaking out of the privatization-nationalization cycle may well be bleaker in Southeast Asia than in Latin America.[566] The more nationalism is bound up with hatred among genuinely distinct ethnic groups—the more it is rooted in the hysteria of tribalism or racism—the more intractable it is likely to be.

All the more reason, therefore, why today's privatizers must think carefully about integrating economic reform with broader social and political reform. Specialists addressing ethnic conflict have over the years considered solutions ranging from partition or secession,[567] "on the frequently spurious ground that it will create ethnic homogeneity,"[568] to international integration, on the ground that it will create greater heterogeneity.[569] Others have argued persuasively that while proposals such as partition or secession have a dramatic, visionary quality to them, they are also unrealistic.[570] Professor Donald Horowitz proposes "measures to contain, limit, channel, and manage ethnic conflict, rather than to eradicate it or to aim at either a massive transfer of loyalties or the achievement of some consensus."[571] His proposals include "alter[ing] ethnic balances and alignments" through federalism and territorial design or using "electoral innovation . . . as a vehicle for ethnic accommodation."[572] Implementing such "structural half-measures" with any hope of success would require intensive study and innovations going far beyond the efficiency-oriented focus of today's privatizers.

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565. See Winiecki, supra note 325, at 73–74.

566. See supra note 532 and accompanying text.

567. See, e.g., Robert A. Dahl, Polyarchy 121 (1971); Nathaniel H. Leff, Bengal, Biafra and the Bigness Bias, Foreign Pol'y, Summer 1971, at 129, 135–39.

568. Horowitz, supra note 189, at 592.

569. See id.

570. See, e.g., id. at 599.

571. Id. at 599–600.

572. Id. at 613, 629.

The analysis of cyclicality set forth in Part II and the possible responses thereto discussed in this Part may well have applications beyond the context of Latin America and Southeast Asia. Many of the developing nations of Africa (for example, Kenya, Nigeria, and Chad) and the Caribbean (for example, Jamaica and the Dominican Republic) have committed themselves—in rhetoric if not yet in practice—to privatization.[573] These nations have much in common with those of Latin America and Southeast Asia. They are all postcolonial, "underdeveloped" countries, in many cases with a similar historical background.[574] More significantly, these countries are marked by the same kind of grave "cleavages along linguistic, religious, and racial-tribal lines" that characterize Latin American and Southeast Asian nations.[575] Economically successful but "politically impotent" Lebanese, Indian, and Arab minorities have long been targets of resentment throughout Africa and the Caribbean.[576] These regions are almost certainly prey to the same nationalization-privatization cycle described here.

Nor are the lessons of this Article limited to the developing world. The nationalist model of privatization and nationalization I have advanced will be relevant wherever the forces of the marketplace favor particular, ethnically identifiable groups, and wherever an ethnically charged nationalism can be harnessed by leaders seeking to overturn a free-market regime. Although this Article has not addressed Eastern Europe and the former Soviet Union,[577] many of the countries in these regions—the former Yugoslavia offers perhaps the saddest example—are as riven by ethnic hatreds as the nations of Southeast Asia.[578] Indeed, throughout the former communist bloc, many of the targets of ethnic cleansing have been groups that historically have prospered disproportionately during periods of free enterprise.[579] Here, too, the privatization-nationalization cycle observable in developing countries, while perhaps not directly applicable,[580] may nonetheless hold important lessons.[581]

573. See, e.g., Adam et al., supra note 6, at 102-03, 107-75, 323-51 (Jamaica and Kenya privatization case studies).

574. For example, many of the nations of the Caribbean, like those of Latin America, were Spanish colonies that achieved independence in the nineteenth century. See, e.g., Anderson, supra note 327, at 48-53; Bushnell & Macaulay, supra note 29, at 3-12.

575. Hirschman, supra note 330, at 14; see Democracy in Divided Societies, supra note 477, at 18, 21-22.

576. See Anderson, supra note 327, at 116.

577. Many of these countries, struggling with inchoate market systems, lack of investment capital, food shortages, and so on, might also be labeled "developing" countries.

578. See, e.g., Democracy in Divided Societies, supra note 477, at 23-25.

579. See, e.g., William Pfaff, Invitation to War, Foreign Aff., Summer 1993, at 97, 103.

580. As noted above, the nationalization programs pursued by the countries of Eastern Europe and the former Soviet Union since the Second World War were principally driven by socialism, serving as a vehicle for a full Marxist overhauling of the economy. See supra text accompanying notes 315-325. This feature differentiates these nations from

IV. Conclusion

I have argued in this Article that many of the developing countries of Latin America and Southeast Asia currently privatizing have, since independence, looked to private-enterprise regimes as a cure for their social and economic problems, only to lurch back to nationalization in a burst of nationalist, and often ethnically charged, reaction.[582] Moreover, Latin America and Southeast Asia are not the only regions likely to be subject to the privatization-nationalization cycle.[583]

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those of Latin America (with the exception of Cuba) and Southeast Asia (with the exception of Cambodia, Laos, and Vietnam) enough to require a separate analysis.

China, too, while now experimenting with forms of privatization, has a history and social structure so different from the regions I have discussed as to merit a separate exploration. I briefly observe here that China differs from the nations of Southeast Asia in at least three noteworthy respects. First, China is not a postcolonial nation; indeed, it is a quintessentially imperialist nation. See Anderson, supra note 327, at 158–63. Second, as in the former Soviet Union and Eastern Europe, nationalization in China was part of a thoroughgoing rejection of a market system. See, e.g., Jacques Gernet, A History of Chinese Civilization 663–68 (1982). Finally, with "the vast majority of the population" (approximately 19 out of 20 people) belonging to the "Han" people, id. at 12, China is not nearly as ethnically stratified as the Southeast Asian nations, although animosities along north-south, mainland-overseas, and provincial lines may have interesting implications that should be explored elsewhere. To the extent that nationalism in China has had an ethnic component, it has, as in the United States, been targeted at politically and economically impotent non-Han minorities, such as Tibetans, Uighurs, and Miao. See John K. Fairbank, China 23–25 (1992); Gernet, supra, at 13.

581. There may also be countries for which my model has little if any relevance, at least at the moment. For example, I have not focused on privatizing countries in the developed world, such as France, Great Britain, or Spain, not because these countries have clearly avoided cyclicality—they may not have. Cf. Douglass C. North & Barry R. Weingast, Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Centnry England, 49 J. Econ. Hist. 803 (1989) (discussing episodes of nationalization in seventeenth-century England); John M. Veitch, Repudiations and Confiscations by the Medieval State, 46 J. Econ. Hist. 31 (1986) (discussing property rights of individuals in medieval Europe). Rather, I have not discussed developed Western countries here because the nationalist model of privatization and nationalization I have proposed most clearly applies to postcolonial nations deeply divided along ethnic and economic lines.

582. A few countries in Latin America and Southeast Asia were not discussed in this Article. Cuba, after following a historical pattern initially similar to other Latin American nations—a long period of economic liberalism followed by the nationalization of foreign-dominated industries—under Fidel Castro turned toward Soviet-style communism quite distinct from the others. See generally Conflict and Change in Cuba (Enrique A. Baloyra & James A. Morris eds., 1993); Cuba (Leslie Bethell ed., 1993). The same is true of the Southeast Asian nations, Vietnam, Cambodia, and Laos. Although geographically, historically, and sociologically similar to their neighbors—as elsewhere in Southeast Asia, the Chinese historically dominated the economies of Vietnam, Cambodia, and Laos and were much resented by the "indigenous" populations—these countries ultimately followed a starkly different historical course, for reasons that are beyond the scope of this work. See, e.g., Osborne, supra note 358, at 158–63, 181–85; SarDesai, supra note 251, at 177–85, 189–92.

583. See supra text accompanying notes 573–581.

Two overarching forces seem to drive this phenomenon: markets and ethnicity. Ultimately, the point of this Article is that these two powerful forces may be in deep tension with one another. In fact, contrary to received wisdom, market solutions in developing countries appear actually to aggravate ethnic hatreds, which in turn subvert market solutions.

It is by now commonplace to recognize that a free market has both a utopian and dystopian aspect.[584] Montesquieu wrote, "wherever there is commerce, manners are gentle."[585] And Thomas Paine: "The invention of commerce . . . is the greatest approach towards universal civilization that has yet been made."[586] Against this eighteenth-century vision, there has long been a counter-vision vilifying markets as promoting selfishness, rampant egoism, a culture of instantaneous gratification, and so on.[587]

What has been overlooked in this debate about the effect of the market on individual relations is its effect on the relations among ethnically differentiated—or differentiable—groups. Here the dichotomy of civility versus egoism is inapposite. Where a free market produces groups of victors and losers defined or definable along ethnic lines, private enterprise may result in a deep exacerbation of volatile social divisions, even if it enhances cooperative civility within each rival group. In such a society, the operation of the market cannot be regarded as creating a new sort of individual, whether civilized or egoistic. It rather entrenches the most ancient sort of individual—the one who identifies himself with his tribe or race, perceiving all others as aliens and enemies—and the most ancient sort of group relations.

584. See generally Albert O. Hirschman, Rival Views of Market Society and Other Recent Essays 105–06 (1986).

585. Charles L. Montesquieu, The Spirit of the Laws 338 (Anne M. Cohler et al. trans. & eds., 1989) (1768).

586. Thomas Paine, The Rights of Man 234–35 (Henry Collins ed., 1969).

587. See, e.g., Samuel T. Coleridge, 6 The Collected Works of Samuel Taylor Coleridge: Lay Sermons 169–70 (R.J. White ed., 1972); Fred Hirsch, Social Limits to Growth 117–18, 137–51 (1976); see generally Karl Marx & Frederick Engels, The Communist Manifesto (Frederick Engels ed., Int'l Publishers 1948) (1848).