

Theorizing Revolutionary Property: Mexico’s Tardive Turn towards Léon Duguit and the Social Function of Property

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I. INTRODUCTION

This study addresses how, why, and when Léon Duguit's concept of the social function of property became associated with the Mexican Constitution of 1917's famous provision on property, Article 27.¹ Even the most complete

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¹ For Duguit, see M.C. Mirow, *Léon Duguit*, in GREAT CHRISTIAN JURISTS IN FRENCH HISTORY 358–71 (Olivier Descamps & Rafael Domingo eds., 2019). For Duguit's theory of property as a social function, see M.C. Mirow, *The Social-Obligation Norm of Property: Duguit, Hayem, and Others*, 22 FLA. J. INT'L L. 191 (2010). See generally LÉON DUGUIT AND THE SOCIAL OBLIGATION NORM OF PROPERTY: A TRANSLATION AND GLOBAL EXPLORATION (Paul Babie & Jessica Viven-Wilksch eds., 2019). For Article 27, see generally M.C. MIROW, LATIN AMERICAN CONSTITUTIONS: THE CONSTITUTION OF CÁDIZ AND ITS LEGACY IN SPANISH AMERICA 206–10 (2015); E.V. NIEMEYER, JR.,

studies of Article 27 have skirted the question of the adhesion of this French socio-legal theorist's paradigmatic reconceptualization of property to the famed Mexican article.² As explained here, more than twenty-five years after the promulgation of Article 27, this provision became commonly associated with the name Léon Duguit. This article examines Mexico's tardive scholarly turn to Duguit as a theoretical basis of Article 27. It provides a history of the introduction of Duguit's work and his theory of the social function of property to the Mexican constitutional discourse on property.

For decades, historians of the development and spread of the social function of property in Latin America have attributed the Mexican Constitution of 1917 as the source from which later constitutions in the region adopted this concept of property. In addition, scholars have constructed a line of intellectual influences from Léon Duguit's seminal lecture on the social function of property in Argentina in 1911 to the many Latin American constitutional texts that define property this way and their resultant agrarian reform programs.³

It is historically inaccurate to place the Constitution of 1917 at the beginning of a trajectory of the dissemination of Duguit's social function of property. While the Constitution of 1917 made radical and path-breaking changes to Mexican property and led to a revolutionary program of nationalization of resources and land reform, its developments in this area were unique to Mexico and the historical and political moment of the Mexican Revolution. When key provisions on property in the Constitution of 1917 were drafted and promulgated, they were not influenced by European trends in the

REVOLUTION AT QUERÉTARO: THE MEXICAN CONSTITUTIONAL CONVENTION OF 1916–1917 165 (1974); STANLEY F. SHADLE, ANDRÉS MOLINA ENRÍQUEZ: MEXICAN LAND REFORMER OF THE REVOLUTIONARY ERA 134–65 (1974).

² NIEMEYER, *supra* note 1, at 134–65; SHADLE, *supra* note 1, at 60–111.

³ Thomas T. Ankersen & Thomas Ruppert, *Tierra y Libertad: The Social Function and Land Reform in Latin America*, 19 TUL. ENVIRON. L.J. 69, 95–96, 100–01 (2006) (explaining “The 1917 Mexican Constitution and Duguit’s idea of social function were born of the same social ferment, and Article 27 of the Mexican Constitution served as an inspiration in Europe”); AGUSTÍN PARISE, OWNERSHIP PARADIGMS IN AMERICAN CIVIL LAW JURISDICTIONS: MANIFESTATIONS OF SHIFTS IN THE LEGISLATION OF LOUISIANA, CHILE, AND ARGENTINA (16TH–20TH CENTURIES) 199–200 (2017) (“starting with the 1917 Mexican Constitution, the Duguitian idea was soon welcomed by other constitutions of Europe and of American Civil Law Jurisdictions”); 4 CONGRESO DE LA UNIÓN, LOS DERECHOS DEL PUEBLO MEXICANO: MÉXICO A TRAVÉS DE SUS CONSTITUCIONES 579 (1978) (claiming the broad influence of the Constitution of 1917 on subsequent Latin American constitutional provisions related to property and natural resources).

Thorsten Keiser’s study of the “social” in Mexican law is more circumspect; although he notes “social elements” in Article 27, he argues for a broader notion of the circulation of ideas rather than direct reception. Thorsten Keiser, *Social Conceptions of Property and Labour – Private Law in the Aftermath of the Mexican Revolution and European Legal Science*, 20 RECHTSGESCHICHTE 258 (2012). Although not explaining the change he summarizes, Keiser correctly states the core argument of this study: “The article about property in the Constitution of 1917 (Art. 27) was later identified with the formula ‘social function of property.’” *Id.* at 269 (emphasis added). See also GABRIEL ONDETTI & BENJAMIN DAVY, SELECTIVE DIFFUSION: DUGUIT AND THE SOCIAL FUNCTION OF PROPERTY IN LATIN AMERICA AND EUROPE 7–8 (2018) (presenting to the XXXVI International Congress of the Latin American Studies Association, Barcelona, Spain, noting that the Constitution of 1917 was not a common source for diffusion of the social function of property).

social function of property. As Thorsten Keiser correctly reads from Article 27: “The first paragraph does not mention the word ‘social’ even though the constitution is reputed to be a sort of archetype of social property law.”⁴ Thus, while the Constitution of 1917 marks an important step in social constitutionalism, it does not reflect the conscious adoption of property as a social function or the ideas of Léon Duguit.⁵

Nonetheless, the substantive similarity of these purely Mexican approaches to broader European trends enunciating the social function of property permitted later theorists, professors, and jurists to attribute Mexican constructions of constitutional property to the works of European thinkers such as Léon Duguit. This connection was first made in the 1930s. It then developed into a canonical myth about the origins of the property provisions of the Mexican Constitution of 1917 and their relationship to the broader European trends at the beginning of the twentieth century.

Stepping out of chronological order, I wish to begin this article with two moments, or snapshots, in the history of Mexico’s social function of property. The body of this article attempts to fill in the developments in legal thought that led from one point to the other. The first is a brief notation on the famous Article 27 of the Constitution of 1917. The second is a series of quotes from a law student’s *licenciado* thesis at the Autonomous National University of Mexico (“UNAM”) written in 1964. These will serve as two milestones on Mexico’s road towards Duguit.

A. Article 27

Article 27 is the core provision on property in the Mexican Constitution of 1917. Drafted by Andrés Molina Enríquez and later reworked by the committees of the Constituent Congress of Querétaro in 1916–1917, Article 27 provided for the fundamental ownership of property by the Mexican State and a vision of property limited or moderated by the perceived needs of Mexican revolutionary society. Large estates were to be divided into smaller agricultural plots and distributed to farmers. Property held by religious or civil corporations was limited. Small landholders and population centers would receive equitable allocations of needed land and water. Oil, coal, hydrocarbons, and minerals were subjected to regulatory regimes. Only Mexicans could directly own land and water; the Constitution prohibited churches from owning land. Restitution of land taken from Indigenous groups would be made through communal holdings.⁶ The entire provision was hastily debated in an afternoon and a candlelit evening without the usual electricity. It was passed

⁴ Keiser, *supra* note 3, at 264. The comparison with the Chilean Constitution of 1925, eight years after the Mexican Constitution, could not be more striking. President Alessandri extensively quoted Léon Duguit before the Constituent Congress. M.C. Mirow, *Origins of the Social Function of Property in Chile*, 80 FORDHAM L. REV. 1183, 1183–84, 1200–05 (2011).

⁵ Abelardo Levaggi, *50 Años de Presencia de la Constitución Mexicana de 1917 en la República Argentina (1917–1967)*, 41 REVISTA DE INVESTIGACIONES JURÍDICAS 225, 228 (2017).

⁶ M.C. MIROW, *LATIN AMERICAN CONSTITUTIONS: THE CONSTITUTION OF CÁDIZ AND ITS LEGACY IN SPANISH AMERICA* 210 (2015).

unanimously.⁷ A scholar of the Constituent Congress leading to the Mexican Constitution of 1917 calls Article 27 “the convention’s most singular achievement.”⁸

The social content of its text has been lauded since its promulgation. Mexican politician and constitutional scholar Emilio O. Rabasa wrote of this article: “Undoubtedly, Article 27 together with Article 123 were the greatest contributions of a social character made by the Constituent Congress of 1917.”⁹ Similarly, another scholar recently expressed, “The text of Article 27 has an exceptional symbolic value because it has been for decades the privileged place to define revolutionary nationalism, that is to say, the concrete, juridical articulation of the nation, the state, and the revolution.”¹⁰

The opening paragraphs of Article 27 as approved, read:

The property of the lands and waters lying within the limits of the national territory corresponds originally to the Nation, which has had and has the right to transfer the ownership of them to individuals, constituting private property.

The Nation shall have at all times the right to impose on private property the limitations that the public interests dictate, such as the right to regulate the enjoyment of natural resources, susceptible to appropriation, to make an equitable distribution of the public wealth and to care for its conservation. With this object, necessary means shall be created for the breaking up of large estates, for the development of small properties, for the creation of new centers of agricultural populations with the lands and waters required for them, for the development of agriculture, and for the avoidance of the destruction of natural resources and the damages that property may suffer to the prejudice of society.

⁷ *Id.* “In December 1991, the Salinas administration oversaw the revision of Article 27 of the 1917 Constitution to eliminate the land-reform mandate.” SHADLE, *supra* note 1, at 108.

⁸ NIEMEYER, *supra* note 1, at 165. See also NIEMEYER, *supra* note 1, at 233, stating “[a]bove all, Article 27 contained a formula for the solution of a pressing agrarian problem. To the delegates this was the cardinal feature of the whole constitution. This is what they had come to Querétaro to write[.]”

⁹ EMILIO O. RABASA, EL PENSAMIENTO POLÍTICO Y SOCIAL DEL CONSTITUYENTE DE 1916–1917 112 (1996) (“Indiscutiblemente, el artículo 27 junto con el 123 fueron las más grandes aportaciones de carácter social que realizó el Constituyente de 1917”).

¹⁰ “El texto del artículo 27 tiene un valor simbólico excepcional porque ha sido, durante décadas, el lugar privilegiado para la definición del nacionalismo revolucionario, es decir, la articulación concreta, jurídica, de la nación, el Estado y la Revolución.” Fernando Escalante Gonzalbo, *El lenguaje del artículo 27 constitucional*, in EN BUSCA DE MOLINA ENRÍQUEZ: CIEN AÑOS DE LOS GRANDES PROBLEMAS NACIONALES 230 (Emilio Kourí ed., 2009).

Expropriations may only be made by reason of public utility and with indemnification.¹¹

Under this provision, property was no longer a constitutionally protected right but was now subject to limitations (*modalidades*) that were to direct the State in dividing large estates, developing small landholding, creating agricultural centers, developing agriculture, conserving natural resources, and impeding harms to property contrary to society.¹² The structure and coverage of Article 27 were extensive and detailed with approved text reaching nearly 2,500 words.¹³

B. A Law Student Wrote in 1964

In 1964, law student José Rodolfo Mijares Gómez wrote his *tesis profesional* (professional thesis) to obtain his *Licenciado en Derecho* (Licentiate in Law), the typical first law degree in Mexico, in the Law Faculty of the UNAM.¹⁴ Writing a thesis was (and still is) a common part of undergraduate legal education in Mexico and many Latin American countries. Often part of

¹¹ The direct Spanish article states:

La propiedad de las tierras y aguas comprendidas dentro de los límites del territorio nacional, corresponde originariamente a la Nación, la cual ha tenido y tiene el derecho de transmitir el dominio de ellas a los particulares, constituyendo la propiedad privada.

La nación tendrá en todo tiempo, el derecho de imponer a la propiedad privada, las modalidades que dicte el interés público, así como el de regular el aprovechamiento de los elementos naturales, susceptibles de apropiación, para hacer una distribución equitativa de la riqueza pública y para cuidar de su conservación. Con ese objeto se dictarán las medidas necesarias para el fraccionamiento de los latifundios; para el desarrollo de la pequeña propiedad; para la creación de nuevos centros de población agrícola con las tierras y aguas que les sean indispensables; para el fomento de la agricultura; y para evitar la destrucción de los elementos naturales, y los daños que la propiedad pueda sufrir en perjuicio de la sociedad.

Las expropiaciones sólo podrán hacerse por causa de utilidad pública y mediante indemnización.

ANDRÉS MOLINA ENRÍQUEZ, *LA REVOLUCIÓN AGRARIA EN MÉXICO 500–01* (1985) (Mirow's emphasis added in English translation).

¹² EMILIO RABASA ESTEBANELL, *EL DERECHO DE PROPIEDAD Y LA CONSTITUCIÓN MEXICANA DE 1917*, 152 (José Antonio Aguilar Rivera ed., 1917).

¹³ NIEMEYER, *supra* note 1, at 135.

¹⁴ José Rodolfo Mijares Gómez, *El concepto de la propiedad como función social*. (Tesis que para obtener el título de Licenciado en Derecho [Licentiate Thesis, National Autonomous University of Mexico Faculty of Law] (México: UNAM Facultad de Derecho eds., 1964). Mijares Gómez held numerous political and public offices and local positions in the PRI. He served as the director of a local school. He was known as a great orator and an old-guard supporter of the PRI. He died at the age of 80 in February of 2020. Ramón Betancourt, *Café Político*, EL HERALDO DE SALTILLO (Feb. 11, 2020), <https://www.elheraldodesaltillo.mx/2020/02/11/cafe-politico-88/>.

the final stages for completing a degree, a thesis usually requires the compilation of works and ideas from various established authors in the field of the particular question examined. Mijares Gómez's thesis, *El concepto de la propiedad social* (The Concept of Social Property), was the usual work of a diligent law student. He repeated the received wisdom and quoted passages from the *maestros* of the field—the accepted story of the Constitution of 1917 and its Article 27 as the first American constitutional iterations of the social function of property. This idea is repeated and affirmed throughout the work. The following three passages selected in this Article illustrate this point. Mijares Gómez's thesis reflected the accepted wisdom on the relationship between Article 27 and León Duguit's theory of the social function of property:

Constitutional Article 27 received the influence of the epoch's social thought. León Duguit had given a series of lectures in Buenos Aires, Argentina, on the social function of property, ideas that the Constituent Congress of Querétaro would use in its rush to present a concept of property of land without the old trappings of individualism of earlier times.¹⁵

In another portion of the work, he wrote:

León Duguit, whose thought influenced the Constituent Congress of Querétaro's determination of property as a social function, in a series of lectures on the transformations of private law given in Buenos Aires, was perhaps one of the most notable thinkers who would treat the topic of the social function of property.¹⁶

And finally, Mijares Gómez again wrote:

The position of Duguit transformed the law of property, substituting the liberal, individualist structure with a social system; the same right of liberty, as an absolute subjective right, was transformed into a right of [the] liberty-social function. Thus, our constitution picked up the social function concept of agrarian property, with a humanist dose that recognizes as well small property holdings as the *ejido*.¹⁷

¹⁵ “El artículo 27 constitucional recibió la influencia del pensamiento social de la época. León Duguit había dictado una serie de conferencias en Buenos Aires, Argentina, sobre la función social de la propiedad, ideas que el Constituyente de Querétaro, utilizara en su afán de presentar un concepto de la propiedad de la tierra, sin el viejo ropaje del individualismo de otros tiempos.” Mijares Gómez, *supra* note 14, at 111.

¹⁶ “León Duguit, cuyo pensamiento influyó en la determinación que el Constituyente de Querétaro dió a la propiedad como una función social, en un ciclo de conferencias sobre las transformaciones del Derecho Privado, dictadas en Buenos Aires, Argentina, quizá sea uno de los más destacados pensadores que haya tratado el tema de la función social de la propiedad.” Mijares Gómez, *supra* note 14, at 170.

¹⁷ “La posición de Duguit transformó el derecho de propiedad, sustituyéndose la estructura liberal individualista por un sistema social; el mismo derecho de libertad, como derecho subjetivo absoluto,

These passages reflected the received wisdom that Léon Duguit established the social function of property in his lecture in Buenos Aires in 1911, the Mexican Constitution adopted it in 1917, and it spread throughout Latin America over the next few decades.

Indeed, a scholar exploring the relationship between Duguit and Article 27 would expect to find exactly what Mijares Gómez described as the received wisdom on the topic by historians of property in the region. This common knowledge repeated in Mijares Gómez's conclusions is wrong. It is a much more complicated story, but one in which Léon Duguit makes a surprisingly late entrance.

With these two points of reference in mind, this study investigates the extent to which the works of Léon Duguit influenced the drafting of Article 27 of the Mexican Constitution of 1917. Duguit's famous enunciation of the social function of property appeared in a series of lectures in Buenos Aires in 1911 and were then quickly published afterward in French and Spanish.¹⁸ The timing reflects that drafters of Article 27 in 1917 read Duguit's work of 1911. Nonetheless, no evidence exists for such appropriation or influence. Instead, Article 27 was the product of purely internal and Mexican concerns reflected in a long line of legislation and thinking about agrarian reform. Article 27 did not reflect new French or European thinking about the social function of property. How, then, did Léon Duguit come to the general understanding of Mexican legal culture around Article 27 and property as a social function?

In the 1930s, Mexican sociologists aware of the works of Charles Gide and Léon Duguit began to assert the similarity between these thinkers and the overall substantive trajectory of Article 27. Moreover, they found these sociological works better theoretical justifications than the historical justifications proffered by the drafters of Article 27. By the 1930s, the time had come to theorize the revolutionary property of the Mexican Constitution of 1917, and Mexican constitutional thought on the property was reconceptualized to fit into the line of French thinkers and the broader stream of European and world trends. This shift in the underlying theory also

fue transformado en derecho de libertad función social. Así nuestra Constitución recoge el concepto función social de la propiedad agraria, con una dosis humanista que reconoce tanto la pequeña propiedad como el ejido." MIJARES GÓMEZ, *supra* note 14, at 173. The term *ejido* here is untranslatable. It refers to a form of communal land ownership originally dedicated for exclusive use of indigenous peoples. OSCAR CRUZ BARNEY, *HISTORIA DEL DERECHO EN MÉXICO* 519 (2d ed., 2004). In the period after the Constitution of 1917, *ejidos* were communal farmlands resulting from the breakup of large estates. "In accordance with Article 27, lands registered as part of an *ejido* could never be alienated; they were considered to be the permanent property of a local group or community: the residents of the *ejido*." STEPHEN ZAMORA ET AL., *MEXICAN LAW* 437 (2004). For *ejidos* generally and their eventual dilution under Mexican law in 1992 *see id.* at 435–40; *see also* M.C. MIROW, *LATIN AMERICAN LAW: A HISTORY OF PRIVATE LAW AND INSTITUTIONS IN SPANISH AMERICA* 221–22 (2004).

¹⁸ M.C. Mirow, *The Social-Obligation Norm of Property: Duguit, Hayem, and Others*, 22 *FLA. J. INT'L L.* 191–226 (2010); *see generally* LÉON DUGUIT AND THE SOCIAL OBLIGATION NORM OF PROPERTY: A TRANSLATION AND GLOBAL EXPLORATION (Paul Babie & Jessica Viven-Wilksch eds., 2019).

supported moves to remove constitutional impediments to the permanence of agrarian redistribution in the late 1920s and early 1930s.

The constitutional text and Duguit's theory of the social function of property slowly melded in the academy in the 1940s, particularly through the works of one of Mexico's great sociologists, Lucio Mendieta y Núñez. By the mid-1960s, the transformation was complete. Article 27 was praised as the first constitutional text enshrining the social function of property as put forth by Duguit, whose influence was anachronistically assigned to the drafters. Duguit became linked to Article 27 in Mexico's professional and academic legal psyche.

This journey begins in Part II with the antecedents to Article 27 and the political and intellectual influences in the text of Article 27. Part III describes the drafting of Article 27 in the Constituent Congress of 1916–1917. Part IV examines the characterization of Article 27 as an emanation of the “social function.” Part V reveals the tardive association of Article 27 with Duguit by Mexican theorists of property who brought the revolutionary concepts of property from the Constitution of 1917 into the general stream of European and Latin American thought. The article ends with some concluding thoughts in Part VI about the surprising intellectual path of this subsequent appropriation of Duguit and why it is important to understand Mexican law and regional changes related to property.

II. ANTECEDENTS TO ARTICLE 27 AND THE CONSTRUCTION OF REVOLUTIONARY PROPERTY

After Mexican independence from Spain in 1821, Mexican constitutions adopted the prevailing nineteenth-century paradigm of property, the classical liberal ideal of an absolute right to private property over which the individual had complete and unfettered discretion to act. Beginning in 1910, Mexican revolutionaries sought a new relationship between agricultural workers and land. The confiscation of land in the mid-nineteenth century from Indigenous groups that communally held land was perceived as a great injustice to be remedied by the Revolution. Large, landed estates (*haciendas* and *latifundios*) were viewed as institutions perpetuating poverty and agricultural underproduction. Even before the Constituent Congress of 1916–1917, revolutionaries proposed wide-sweeping reforms.

A. Liberal property

Like most mid-nineteenth-century constitutions, the Mexican Constitution of 1857 was steeped in a classical liberal, absolute characterization of property. The Constitution of 1857 did not set out a general constitutional definition of property. The liberal position was reflected in the Constitution's text on property.¹⁹ Expropriation was justified only based on public utility (*utilidad*

¹⁹ José Gamas Torruco, *La Constitución de 1857 y el Orden Jurídico en 1917*, in MÉXICO EN 1917: ENTORNO ECONÓMICO, POLÍTICO, JURÍDICO Y CULTURAL 182–83 (Patricia Galeana ed., 2017).

pública) and through appropriate legal action.²⁰ Article 27 of the Constitution of 1857 reads:

The property of persons cannot be occupied without their consent, unless by reason of public utility and previous indemnification. The law shall determine the authority that ought to make an expropriation and the requirements with which this shall be verified. No civil or ecclesiastical corporation, whatever its character, denomination, or object, shall have the legal capacity to acquire property or to administer on its own real property, except for buildings destined immediately and directly to the service or object of the institutions.²¹

This provision on property reflected both the liberal view of property as an absolute right held by the owner and Mexico's recent political settlement against the church and its economic, social, and political power. Reforms in Mexico against the church in the first half of the 1850s were incorporated into the Constitution of 1857.²² Although harsher than many other liberal provisions and constitutions in Latin America, the Mexican provisions were consistent with the anti-clericalism of liberalism.²³ The characterization of property as an absolute right under liberalism was a common feature of liberal property regimes in Latin America in the nineteenth century.²⁴ This idea ran through the nineteenth century, was picked up in the liberal reforms of the period, and served as a cornerstone of President Porfirio Díaz's platform of development and economic growth at the beginning of the twentieth century.²⁵

B. Mexico's construction of revolutionary property

Land ownership was a central theme of the Revolution, and revolutionary ideas of property, especially the redistribution of land through agrarian or land reform, were advanced by revolutionary forces.²⁶ Indeed, Emiliano Zapata, one of the leaders of the Mexican Revolution, has been labeled "the strongman of

²⁰ M.G. VILLERS, *EL ARTÍCULO 27 DE LA CONSTITUCIÓN MEXICANA DE 1917*, at 27 (1925).

²¹ "La propiedad de las personas no puede ser ocupada sin su consentimiento, sino por causa de utilidad pública y previa indemnización. La ley determinará la autoridad que deba hacer la expropiación y los requisitos con que ésta haya de verificarse. Ninguna corporación civil ó eclesiástica, cualquiera que sea su carácter, denominación ú objeto, tendrá capacidad legal para adquirir en propiedad ó administrar por sí bienes raíces, con la única excepción de los edificios destinados inmediata y directamente al servicio ú objeto de la institución." *CONSTITUTION OF 1857* Feb. 5, 1857, art. 27., <https://web.archive.org/web/20120523013917/http://www.juridicas.unam.mx/infjur/leg/conshist/pdf/1857.pdf> (Mex.).

²² J. LLOYD MECHAM, *CHURCH AND STATE IN LATIN AMERICA: A HISTORY OF POLITICO-ECCLESIASTICAL RELATIONS* 359–364 (Univ. of N.C. Press 1966).

²³ MIROW, *LATIN AMERICAN CONVENTIONS*, *supra* note 1, at 182–86.

²⁴ PARISE, *supra* note 3, at 129–83.

²⁵ DANIEL MORENO, *RAÍCES IDEOLÓGICAS DE LA CONSTITUCIÓN DE 1917*, at 96 (2d ed. 1973).

²⁶ Mirow, *supra* note 18, at 219–25.

agrarian reform.”²⁷ Land reform was also part of Francisco Villa’s revolutionary platform.²⁸ With the constitutionalization of revolutionary principles related to land and its distribution in mind, delegates at the Constituent Congress noted that the challenges of Mexican landholding were deeply rooted in the classical liberal notions of property.²⁹ These included absolute dominion and control and a protected individual right to property.³⁰ From the revolutionary standpoint, these ideas had to be overturned or limited.

The agrarian question for Mexicans was eminently practical and specific to Mexico, its political struggles, and the success and moderation of the Revolution.³¹ Keiser succinctly concludes that “The Mexican Constitution of 1917 was a product of autonomous law making.”³² Drafts of agrarian reform laws and the writings of proponents of land reform indicate the practical, political, and immediate thought that was applied to such questions. The core motivation was the Mexican experience and the Revolution. Indeed, the debates of the Constituent Congress surrounding Article 27 contain no references to theories of property, European treatises, or Duguit.³³ There was

²⁷ MORENO, *supra* note 25, at 99; *see also*, HELGA BAITENMANN, MATTERS OF JUSTICE: PUEBLOS, THE JUDICIARY, AND AGRARIAN REFORM IN REVOLUTIONARY MEXICO 76–107 (2020); Ley Agraria Zapatista [LAG], Comité Coordinador para la Celebración del Primer Centenario del Natalicio del General Emiliano Zapata Salazar, Diario Oficial de la Federación [DOF] 26-10-1915.

²⁸ JOSÉ GAMAS TORRUCO, *La Constitución de 1857 y el Orden Jurídico en 1917, in* MÉXICO EN 1917: ENTORNO ECONÓMICO, POLÍTICO, JURÍDICO Y CULTURAL 198 (Patricia Galeana, ed., 2017); *see also*, PARTIDO REVOLUCIONARIO INSTITUCIONAL, FRANCISCO VILLA LEY AGRARIA 7–18 (1976).

²⁹ MORENO, *supra* note 25, at 96; NIEMEYER, *supra* note 1, at 134–37.

³⁰ MORENO, *supra* note 25, at 96; NIEMEYER, *supra* note 1, at 134–37.

³¹ Keiser, *supra* note 3, at 266.

³² Keiser, *supra* note 3, at 269; *see generally*, Javier Garcíadiego, *¿Por qué, Cuándo, Cómo y Quiénes Hicieron La Constitución de 1917?*, 66 HISTORIA MEXICANA 1183–1270 (2017).

³³ MIGUEL ANGEL PORRÚA, DERECHOS DEL PUEBLO MEXICANO: MÉXICO A TRAVÉS DE SUS CONSTITUCIONES 198–99 (2016); 2 ESTADOS UNIDOS MEXICANOS, DIARIO DE LOS DEBATES DEL CONGRESO CONSTITUYENTE 731–813 (Querétaro, 29 de enero de 1917, 1922). The provision that might have most clearly led to such discussion, the second paragraph of Article 27 reading “The Nation shall have at all times the right to impose on private property the limitations that the public interest dictates,” received no comments on its reading for debate. 4 CONGRESO DE LA UNIÓN, LOS DERECHOS DEL PUEBLO MEXICANO: MÉXICO A TRAVÉS DE SUS CONSTITUCIONES 661 (1978); 2 ESTADOS UNIDOS MEXICANOS, DIARIO DE LOS DEBATES DEL CONGRESO CONSTITUYENTE 1063–79 (Querétaro, 29 de enero de 1917, 1922). In contrast, the provisions prohibiting foreign or ecclesiastical ownership were discussed at greater length. 4 CONGRESO DE LA UNIÓN, LOS DERECHOS DEL PUEBLO MEXICANO: MÉXICO A TRAVÉS DE SUS CONSTITUCIONES 670–80 (1978); 2 ESTADOS UNIDOS MEXICANOS, DIARIO DE LOS DEBATES DEL CONGRESO CONSTITUYENTE 793–800 (Querétaro, 29 de enero de 1917, 1922); NIEMEYER, *supra* note 1, at 94–97, 146–52.

Considering the importance of agrarian reform to the Revolution, it is surprising that the provisions of Article 27 did not produce extended debate. Niemeyer provides three reasons. First, many delegates were already supportive of the provisions. Second, only a few copies of the provisions had been circulated to the delegates, so some delegates probably did not appreciate the importance of the proposal. Third, by this point in the Congress, many delegates were exhausted and unable to contribute to the debates. NIEMEYER, *supra* note 1, at 158.

little room for theory or comparative work.³⁴ Of the 220 delegates to the Constituent Congress, 62 were lawyers, but their legal training would have occurred decades before Duguit's work on social property.³⁵

A key figure in Article 27 as an autonomous legal development was Andrés Molina Enríquez, who "systematized a land-reform ideology in pre-Revolutionary Mexico in his 1909 book, *Los grandes problemas nacionales*."³⁶ Molina Enríquez argued that state intervention was necessary for Mexican economic progress attainable only through the redistribution of large, landed estates called *haciendas*.³⁷ Although he obtained a law degree from the Instituto de Toluca in 1895 and worked as a notary, Molina Enríquez mainly led a life of politics centered on land reform.³⁸ He championed land reform through successive post-revolutionary governments and political parties during the drafting of the Constitution of 1917 and until his death in 1940.³⁹

According to Molina Enríquez, ever since the efforts of the early nineteenth-century revolutionary leader Father José María Morelos, land reform in Mexico had four goals: (1) to provide sufficient agricultural production to feed the population; (2) to feed the population at as low a cost as possible; (3) to increase the number of productive small farms to benefit the maximum number of families; and (4) to foster production throughout Mexico's racial heterogeneity and to include the entire population in this process.⁴⁰ Land reform, in Molina Enríquez's view, was linked to specific Mexican goals and challenges.

Molina Enríquez also quickly realized that classical liberal notions of property were incompatible with these practical goals of redistribution.⁴¹ Indeed, he wrote, "[t]here is no other remedy than to *jump over the right of individual private property*."⁴² The solution was to subjugate private property to the State, as expressed in the first paragraph of Article 27.⁴³

³⁴ See, e.g., PASTOR ROUAIX AND JOSÉ INÉS, NOVELO, ESTUDIO SOBRE LA CUESTION AGRARIA 4–22 (1914) (making the unusual comparative comment that the proposed draft was a variant of the agrarian system of New Zealand).

³⁵ NIEMEYER, *supra* note 1, at 39, 42.

³⁶ SHADLE, *supra* note 1, at 1.

³⁷ SHADLE, *supra* note 1, at 2, 12, 21–25.

³⁸ SHADLE, *supra* note 1, at 15–20.

³⁹ See generally SHADLE, *supra* note 1.

⁴⁰ ANDRÉS MOLINA ENRÍQUEZ, LA REVOLUCIÓN AGRARIA EN MÉXICO 499 (1985).

⁴¹ *Id.*

⁴² "No había más remedio que *saltar sobre el derecho de la propiedad particular privada*." *Id.* (Molina Enríquez's emphasis).

⁴³ ANDRÉS MOLINA ENRÍQUEZ, ESBOZO DE LA HISTORIA DE LOS PRIMEROS DIEZ AÑOS DE LA REVOLUCIÓN AGRARIA DE MEXICO, DE 1910 A 1920, at 185 (3rd ed. 1936) (reiterating the same language as in Molina Enríquez's LA REVOLUCIÓN AGRARIA EN MÉXICO).

Molina Enríquez published *Los grandes problemas nacionales* (*Grand National Problems*) in 1909.⁴⁴ The book criticized large landholding, *latifundios*, and other aspects of property and landholding in Mexico.⁴⁵ This book closely examined the social situation of landholding, the distribution of land, the breaking up of large estates, small property holding, and the racial aspects of production and ownership. It did not engage with any theory about property, and of course, it pre-dated Duguit's work on the social function of property and its dissemination.⁴⁶ Furthermore, Molina's conclusions were gathered from the close observation of Mexican society and its workings. Molina Enríquez was not a member of any sociological or historical school of thought.⁴⁷ Commentators on his decades of work in agrarian reform do not note any influence of Léon Duguit.⁴⁸ Nonetheless, he is one of the primary actors in the story of the Mexican social function of property.

C. Agrarian reform on the state and national level before Querétaro and the Constitution of 1917

Even before Molina Enríquez's work, Mexico advanced programs of land reform during the Revolution.⁴⁹ Molina Enríquez attempted a grassroots revolution in 1911 with his Plan de Texcoco. He proclaimed himself the leader of Mexico and sought to establish a coalition of revolutionary military and civic leaders to govern. Land reform was central to the Plan, but it was widely criticized as a political and legal failure.⁵⁰ In autumn 1911, Molina Enríquez was sentenced to and served about a year in prison for this failed coup.⁵¹

With greater success in 1913, the State of Durango enacted the first agrarian reform law in Mexico. Tracking the constitutionally required language, the drafter of the legislation, Pastor Rouaix, asserted the "public utility" of redistributing land to agricultural collectives.⁵² The following year,

⁴⁴ ANDRÉS MOLINA ENRÍQUEZ, *LOS GRANDES PROBLEMAS NACIONALES* (reprt. 1978) (1909).

⁴⁵ MORENO, *supra* note 25, at 97.

⁴⁶ MOLINA ENRÍQUEZ, *LOS GRANDES*, *supra* note 44, at 151–99.

⁴⁷ ALFONSO SÁNCHEZ ARTECHE, *MOLINA ENRÍQUEZ: LA HERENCIA DE UN REFORMADOR* 21–25 (1990).

⁴⁸ AGUSTÍN BASAVE BENÍTEZ, *Estudio Introductorio*, in ANDRÉS MOLINA ENRÍQUEZ: *CON LA REVOLUCIÓN A CUESTAS* 26 (Agustín Basave Benítez ed., 2001).

⁴⁹ OSCAR CRUZ BARNEY, *HISTORIA DEL DERECHO EN MÉXICO* 867–874 (2d ed., 2004) (showing the nineteenth and early twentieth century antecedents of agrarian legislation); 4 CONGRESO DE LA UNIÓN, *LOS DERECHOS DEL PUEBLO MEXICANO: MÉXICO A TRAVÉS DE SUS CONSTITUCIONES* 580–639 (1978) (showing antecedent agrarian legislation addressed regional or national concerns but did not reflect the adoption of a social function of property).

⁵⁰ AGUSTÍN BASAVE BENÍTEZ, *Estudio Introductorio*, in ANDRÉS MOLINA ENRÍQUEZ: *CON LA REVOLUCIÓN A CUESTAS* 15–16 (Agustín Basave Benítez ed., 2001).

⁵¹ SHADLE, *supra* note 1, at 45–59, 113–15.

⁵² MORENO, *supra* note 25, at 97; JORGE SAYEG HELÚ, *PÁGINAS DE LA REVOLUCIÓN MEXICANA* 231–32 (1996).

Rouaix brought abandoned lands and church properties held by civil corporations under agrarian regimes.⁵³

The first national law of agrarian reform was the Agrarian Reform Law of January 6, 1915, enacted under President Carranza.⁵⁴ In its most basic form, this law invalidated transfers of land from towns, Indigenous settlements, congregations, or communities that violated the Law of Confiscation of Church Property (the “Ley Lerdo” of June 25, 1856).⁵⁵ It also voided surveys that deprived such collectivities of their ownership of property from 1867 to 1915.⁵⁶ The law established a National Agrarian Commission to implement its provisions.⁵⁷ Written by Carranza’s minister of finance, Luis Cabrera, the legislation bears the stamp of Molina Enríquez, according to Stanley F. Shadle.⁵⁸ Cabrera and Molina Enríquez knew each other, and Cabrera acknowledged the influence of Molina Enríquez’s thought and *Los grandes problemas nacionales* in his understanding of the need for and nature of land reform.⁵⁹

In addition to *Los grandes problemas nacionales* and his contributions to the Agrarian Reform Law of 1915, Molina Enríquez left other traces of his thought on agrarian reform. For example, he left a clear account of his underlying philosophy of agrarian reform a few years before the drafting of Article 27 in a letter from jail dated October 30, 1911.⁶⁰ In this context, he mentions his long-standing interest in and study of agrarian reform dating back over two decades.⁶¹ Importantly for our purposes, Molina Enríquez noted the relationship to agrarian reform and the socialization of objective rights. In response to a critique of his Plan’s expropriation of estates larger than a certain size, he stated:

Property exists for societies, not societies for property. Societies have a material and objective existence; property is only a subjective notion. As such, the limits of property should not go further beyond where the vital necessities of society require. I

⁵³ JORGE SAYEG HELÚ, PÁGINAS DE LA REVOLUCIÓN MEXICANA 234–35 (1996).

⁵⁴ JOSÉ GAMAS TORRUCO, *La Constitución de 1857 y el Orden Jurídico en 1917*, in MÉXICO EN 1917: ENTORNO ECONÓMICO, POLÍTICO, JURÍDICO Y CULTURAL 200 (Patricia Galeana ed., 2017); MORENO, *supra* note 25, at 97; *see also* BAITENMANN, *supra* note 28, at 108–161.

⁵⁵ *See* GAMAS TORRUCO, *supra* note 54, at 200; LUCIO MENDIETA Y NÚÑEZ, LAS DESVIACIONES DE LA REFORMA AGRARIA 13 (1972).

⁵⁶ GAMAS TORRUCO, *supra* note 54, at 200; MENDIETA Y NÚÑEZ, *supra* note 55, at 13–14.

⁵⁷ SHADLE, *supra* note 1, at 69.

⁵⁸ SHADLE, *supra* note 1, at 68.

⁵⁹ SHADLE, *supra* note 1, at 68–69; JORGE SAYEG HELÚ, PÁGINAS DE LA REVOLUCIÓN MEXICANA 238–240 (1996) (observing that Pastor Rouaix’s agrarian reforms for Durango were the principal influence).

⁶⁰ ANDRÉS MOLINA ENRÍQUEZ, FILOSOFÍA DE MIS IDEAS SOBRE REFORMAS AGRARIAS. CONTESTACIÓN AL FOLLETO DEL SR. LIC. D. WISTANO LUIS OROZCO, in ANDRÉS MOLINA ENRÍQUEZ: CON LA REVOLUCIÓN A CUESTAS 431–44 (Agustín Basave Benítez ed., 2001).

⁶¹ *Id.* at 434.

could discuss much about this with Mr. Orozco, confident to defeat him completely, because the sociologist will always defeat the jurist. Such that societies instinctively limit and even do not recognize property when treating its own conservation.⁶²

This is the closest contemporary statement to an assertion of the social function of property by Molina Enríquez I have found. He offered it without citation and as a justification for the expropriation of large estates. It does, interestingly enough, indicate Molina Enríquez's alignment with a sociologist's approach rather than a jurist's approach in the context of this debate. Furthermore, the statement indicates that Molina Enríquez was aware of an extant discourse that moved conceptions of property from objective rights to subjective notions.

The Constituent Congress of 1916–1917 met in an atmosphere charged with a desire for agrarian reform and with many antecedents. Some antecedents were failed plans by individual revolutionary leaders such as Emiliano Zapata and Francisco Villa, mentioned earlier. Other antecedents include the works of Molina Enríquez and Pastor Rouaix, as well as the Agrarian Reform Law of 1915. There was a rich Mexican body of material for the delegates of the Constituent Congress to consider in their work on the new constitution.

III. DRAFTING AND JUSTIFYING ARTICLE 27

Although Article 27 was not the first legislation effecting agrarian reform in Mexico, its provisions provided remedies for defects found in the Agrarian Reform Law of 1915. For example, it protected smaller landholders from assertions that their land should be properly transferred to communal groups.⁶³ It also provided that land beyond that necessary for private ownership should be open for sale and distribution to other small landholders.⁶⁴ And Article 27 did not repeal the Agrarian Reform Law of 1915, whose provisions continued in effect and were incorporated into the Constitution after its promulgation.⁶⁵

⁶² “La propiedad existe para las sociedades, no las sociedades para la propiedad. Las sociedades tienen existencia material y objetiva: la propiedad es sólo una noción subjetiva. Siendo así, los límites de la propiedad no deben ir más allá de donde las necesidades vitales de la sociedad lo exijan. Podría yo discutir mucho tras esto con el señor licenciado Orozco, seguro de derrotarlo completamente, porque siempre el sociólogo derrotará al jurista. Pues bien, las sociedades por instinto limitan y hasta desconocen la propiedad al tratarse de su propia conservación.” ANDRÉS MOLINA ENRÍQUEZ, *FILOSOFÍA DE MIS IDEAS SOBRE REFORMAS AGRARIAS. CONTESTACIÓN AL FOLLETO DEL SR. LIC. D. WISTANO LUIS OROZCO, LAS DERROTAS DE DEGOLLADO* 9–10 (1911); BASAVE BENÍTEZ, *supra* note 48, at 437–38.

⁶³ MENDIETA Y NÚÑEZ, *supra* note 55, at 17.

⁶⁴ *Id.* at 18.

⁶⁵ *Id.*; NIEMEYER, *supra* note 1, at 155, 160–61.

The first draft of the text that became Article 27 was submitted to the Constituent Congress by President Carranza and was found to be defective because it did not sufficiently embody the revolutionary ideals of the delegates.⁶⁶ Pastor Rouaix, head of the National Agrarian Commission, and Molina Enríquez, a member of the same Commission, found the proposed language deficient.⁶⁷ At the urging of Pastor Rouaix, Carranza appointed a kind of unofficial *ad hoc* committee to draft new text for Article 27.⁶⁸ With the assistance of Rafael de los Ríos, José I. Lugo, and J. Natividad Macías, the chief drafter Molina Enríquez prepared the new language.⁶⁹ Shadle argues persuasively that the draft was an expansion of the substantial work Molina Enríquez had already undertaken on a draft water law for Mexico in 1905.⁷⁰ Molina Enríquez presented his draft to the committee on January 14, 1917.⁷¹ After various revisions, the version of Article 27 put forth by the committee substantially revised the language initially proposed by Carranza.⁷² This new draft became the basis for discussion and was roundly debated and substantially reworked by Rouaix and others over the next ten days.⁷³

The draft of the committee went forward to the Constituent Congress with the signatures of several prominent delegates a few days later.⁷⁴ Nonetheless, the text was still not ready for debate before the Congress as a whole. In a statement signed by five other deputies, the language was amended on January 29, 1917.⁷⁵ This final amendment to the text added language—important for our purposes—including a general statement at the beginning of

⁶⁶ MORENO, *supra* note 25, at 98; NIEMEYER, *supra* note 1, at 134–36; SHADLE, *supra* note 1, at 71–72; *see also* GAMAS TORRUCO, *supra* at note 54 (describing Carranza’s draft of Article 27 and its adherence to liberal principles of property).

⁶⁷ SHADLE, *supra* note 1, at 70.

⁶⁸ *Id.* at 71.

⁶⁹ MORENO, *supra* note 25, at 99; NIEMEYER, *supra* note 1, at 137. There were approximately 20 members of the drafting commission of Article 27. *See* Garciadiego, *supra* note 32, at 1252 (providing a photo and names of 18 individuals who collaborated on the article); *see also* PASTOR ROUAIX, GÉNESIS DE LOS ARTÍCULOS 27 Y 123 DE LA CONSTITUCIÓN POLÍTICA DE 1917 124–25 (2016); *see also* NIEMEYER, *supra* note 1, at 178–79 (providing a photo and names of 13 individuals who collaborated on the Rouaix draft of the article).

⁷⁰ SHADLE, *supra* note 1, at 73–75.

⁷¹ MORENO, *supra* note 25, at 99.

⁷² GAMAS TORRUCO, *supra* at note 54.

⁷³ NIEMEYER, *supra* note 1, at 140–41; SHADLE, *supra* note 1, at 72. Niemeyer provides a parallel text in the English translation of Rouaix’s proposal of January 25, 1917, and the version, approved by the convention on January 30, 1917, of Article 27. *See* NIEMEYER, *supra* note 1, at 250–62.

⁷⁴ MORENO, *supra* note 25, at 99–100 (stating that those who subscribed to this draft of the committee were Pastor Rouaix, Julian Adame, Lic. D. Pastrana J., Pedro Chapa, José Alvarez, José N. Macías, Porfirio Castillo, Federico E. Ibarra, Rafael L. de los Ríos, Alberto Terrones B., S. de los Santos, Jesús de la Torre, Silvestre Dorador, Dionisio Zavala E., A. Enríquez, Antonio Gutierrez, Rafael Martínez de Escobar, and Rubén Martí).

⁷⁵ MOLINA ENRÍQUEZ, LA REVOLUCIÓN AGRARIA EN MÉXICO, *supra* note 40, at 495, 498 (stating that the five deputies were General Francisco J. Múgica, Dr. Alberto Román, Prof. Luis G. Monzón, Lic. Enrique Recio, and Lic. Enrique Colunga).

paragraph 2 of Article 27. This addition provided that the nation has the right “to impose on private property the limitations the public interest dictates.”⁷⁶ It also extended restrictions on the ability of the church to hold natural resources and included language for the creation of a commission to break up large estates.⁷⁷

The article was debated on January 29, 1917. It was approved by the Constituent Congress in the early morning hours of January 30.⁷⁸ Luis T. Navarro, a deputy from Puebla, objected that the first paragraph was not sufficiently radical; nothing assured that land would be distributed to smaller landholders.⁷⁹ Juan de Dios Bojórquez, a deputy from Sonora, recognized what was at the core of Article 27 and observed that land was the most important question of the Revolution.⁸⁰

Indeed, many saw land and agrarian reform as the central questions of the new Constitution. Comparing the work on Article 27 to the debates on labor, Pastor Rouaix stated:

If the presentation of the fifth article of the draft of the Primer Jefatura produced an intense commotion in the Chamber for finding it insufficient to satisfy popular anxieties, Article 27, referring to land property and the rights of the possessor caused greater upset among the delegates because it only contained changes of secondary interest concerning the current article of the Constitution of 1857, without attacking any of the vital questions whose resolution demanded a revolution that had been provoked and pushed by the necessity of a complete renovation of rural property . . . the resolution of the agrarian problem was of more urgent and of greater necessity for the country than the resolution of the labor problem, as in that resolution was linked not only the prosperity of the working classes but also the organic Constitution of the nationality itself in its fundamental basis, which is the land, the universal mother that gives life.⁸¹

⁷⁶ MORENO, *supra* note 25, at 100 (“De imponer a la propiedad privada las modalidades que dicte el interés público.”).

⁷⁷ MORENO, *supra* note 25, at 101.

⁷⁸ SHADLE, *supra* note 1, at 72.

⁷⁹ MORENO, *supra* note 25, at 102–03.

⁸⁰ MORENO, *supra* note 25, at 102.

⁸¹ “Si la presentación del artículo 5o del proyecto de la Primer Jefatura produjo una intensa conmoción en la Cámara por encontrarlo insuficiente para satisfacer las ansias populares, el artículo 27, que se refería a la propiedad de las tierras y los derechos del poseedor, causó mayor desconuelo entre los constituyentes, porque sólo contenía innovaciones de interés secundario sobre el artículo vigente de la Constitución de 1857, sin atacar ninguna de las cuestiones vitales cuya resolución exigía una revolución que había sido provocada e impulsada por la necesidad de una renovación absoluta de la propiedad rústica . . . la resolución del problema agrario era de más

Despite the lack of interventions on this important topic and the scant time dedicated to its text before approval, in reviewing the debates of the deputies, one notes the lack of references to academic or professional works on the topic of property. There is scarcely a mention of how monumental the shift in property rights was under the new Article 27. Mexico's entrenched economic powers, its classical liberals, and national and foreign investors subjected this new provision and its approach to property to harsh criticism.⁸² Mexico's Supreme Court and its liberal justices impeded the effective implementation of agrarian reform based on Article 27 for more than a decade by granting property owners actions for constitutional redress (*amparo* actions) for the expropriation of their property.⁸³

Even a revolutionary Constituent Congress needed some theoretical or historical justification for these changes to property. One constitutional avenue for expropriation and redistribution of land was through an assertion that the reallocation was in the public interest or public utility. The term “public interest” was well-established in Mexican constitutional thought on property before the Constitution of 1917.⁸⁴ “Public utility,” as found in the Constitution of 1857, was an established term in Mexican constitutional law when it was again employed in the Constitution of 1917. As a requirement for the expropriation of property with compensation, “public utility” was understood as having a social component. For example, within a decade after the constitution, in 1926, Villers wrote:

Cases of public utility are determined not only enumerating the class of lands or objects that should be the subject of expropriation but also the general needs felt by society that

urgencia y de mayor necesidad para el país, que la resolución del problema obrero, pues, en aquél estaba vinculada, no sólo lo prosperidad de las clases trabajadoras, sino la constitución orgánica de la nacionalidad misma en su base fundamental, que es la tierra, la madre universal que da la vida.” MORENO, *supra* note 25, at 97–98.

⁸² See e.g., RABASA ESTEBANELL, *supra* note 12, at 13 (This text is known as the “estudio fantasma” or ghost study of Rabasa as coined by Charles A. Hale); José Antonio Aguilar Rivera, *La imposición legal de la tiranía: Emilio Rabasa, el derecho de propiedad y la Constitución de 1917* [The Legal Imposition of Tyranny: Emilio Rabasa Estebanell, the Right to Property and the Constitution of 1917], in EMILIO RABASA ESTEBANELL, *EL DERECHO DE PROPIEDAD Y LA CONSTITUCIÓN MEXICANA DE 1917*, at 104–31 (José Antonio Aguilar Rivera ed., 2017) (explaining that other lawyers and politicians allied with the liberal school criticized the article); *Id.* at 85–104 (discussing jurists Emilio Rabasa Estebanell, Querido Moheno, and Jorge Vera Español's criticisms of Article 27); FRANCISCO VIESCA LOBATÓN ET AL., *EL ARTÍCULO 27 CONSTITUCIONAL (CONSTITUCIÓN DE 1917) DICTÁMEN DE LA COMISIÓN NOMBRADA POR EL PRIMER CONGRESO NACIONAL DE INDUSTRIALES* [Article 27 (Constitution of 1917) Opinion of the Committee Appointed by the First National Congress of Industries], at 78–80 (1917) (asserting that the drafters were influenced by socialist thought and sought a radical change in the system of government); RABASA ESTEBANELL, *supra* note 12, at 187 (calling the new constitution “radically socialist”).

⁸³ TIMOTHY J. JAMES, *MEXICO'S SUPREME COURT BETWEEN LIBERAL INDIVIDUAL AND REVOLUTIONARY SOCIAL RIGHTS, 1867-1934*, at 75–100 (2013). See also, BAITENMANN, *supra* note 28 (exploring the role of the judiciary in revolutionary agrarian reform and the implementation of the reform programs of Emiliano Zapata and Venustiano Carranza).

⁸⁴ HUMBERTO E. RICORD, *INTRODUCCIÓN JURÍDICA A LA REFORMA AGRARIA MEXICANA* 102–8 (1972).

should be fulfilled through the taking of the individual property.⁸⁵

Twenty years later, the same general connection between public utility and social interest is found in the work of jurist and admired law professor at National Autonomous University of Mexico, Oscar Morineau. Writing on Article 27, he stated:

The regulation of everything related to private property—its origin, expropriation by reason of public utility and limitations to which it is subject in view of the social interest—concentrated in the first three paragraphs of Article 27 was not accidental.⁸⁶

Just a few years after the promulgation of the Constitution, Molina Enríquez wrote about the content of Article 27. In 1922, he stated that although the new text was to address social conditions, his justifications were practical and based on the need for reform arising from the Revolution. Indeed, he repeated the justification of historical ownership of all real property by the sovereign.⁸⁷ There is no recognition on Molina Enríquez's part in 1922 of adopting a new understanding of property, and no mention of rejecting absolute rights in property or adopting property as a social function. He does, however, state that the "social nature of property" (*naturaleza social de la propiedad*) is expressed in the national ownership of land and territorial waters.⁸⁸ One also finds his reference to the "social interest" (*interés social*) of breaking up large estates.⁸⁹ Despite these passing mentions of the social aspects of his topic, he mostly appealed to continuity as justification: "[n]one of the juridical elements that make up Article 27 were new or unknown at the moment the said article was written."⁹⁰ In addition to this assertion of continuity, when Molina Enríquez listed the underlying principles of the Constitution and Article 27, the social function of property did not appear.

⁸⁵ "Los casos de utilidad pública se determinan no sólo enumerando la clase de terrenos u objetos que deben ser materia de expropiación, sino las necesidades generales sentidas por la sociedad que deben llenarse con la privación de los bienes particulares." M.G. VILLERS, *EL ARTÍCULO 27 DE LA CONSTITUCIÓN MEXICANA DE 1917* 28 (1926).

⁸⁶ "La reglamentación de todo lo relativo a la propiedad privada—su origen, expropiación por causa de utilidad pública y modalidades a que está sujeta en vista del interés social, concentrada en los primeros tres párrafos del artículo 27, no fue accidental." OSCAR MORINEAU, *LOS DERECHOS REALES Y EL SUBSUELO EN MÉXICO* 210 (1946).

⁸⁷ ANDRÉS MOLINA ENRÍQUEZ, *El espíritu de la Constitución de Querétaro*, in *EN EL ARTÍCULO 27 DE LA CONSTITUCIÓN FEDERAL, BOLETÍN DE LA SECRETARÍA DE GOBERNACIÓN* 375–91 (1922), in *EL PENSAMIENTO MEXICANO SOBRE LA CONSTITUCIÓN DE 1917: ANTOLOGIA* (Jaime M. del Arenal Fenochio ed., 1987); see also Keiser, *supra* note 3, at 264–65.

⁸⁸ MOLINA ENRÍQUEZ, *El espíritu*, *supra* note 87, at 386.

⁸⁹ MOLINA ENRÍQUEZ, *El espíritu*, *supra* note 87, at 386.

⁹⁰ "Ninguno de los elementos jurídicos que componen el Art. 27 era nuevo ni desconocido en el momento de que dicho artículo se elaboró." MOLINA ENRÍQUEZ, *El espíritu*, *supra* note 87, at 378.

Instead, one found notions of Revolution, national will, the new Constitution as collectivist, and a sense of continuity with the Constitution of 1857.⁹¹

Additionally, the evidence we have indicates that Mexican delegates, legislators, and commentators were not aware of the theoretical advances undertaken elsewhere in Europe and Latin America. For example, writing in 1921, J.J. Orozco's analysis of Article 27 focused exclusively on the political and social conditions of Mexico. There was no attempt to read theory into the text of the article.⁹² Fifty years later in 1972 and reflecting on the drafting process of 1917, Mendieta y Núñez stated, "The lack of antecedents on the topic in the law of other countries made the Mexican legislator an improviser who after many years could not, nor was not able to, find the definitive formulation of the basic reglementary laws of the agrarian precepts of constitutional Article 27."⁹³

In sum, at the time of Article 27's drafting, delegates of the Constituent Congress were focused on land, Revolution, the breaking up of large, landed estates, the distribution of lands to smaller farmers and Indigenous communities, and the national ownership of essential swaths of property in the nation. They were not aware of or focused on trends regarding the social function of property, and the work of Léon Duguit was either unknown or very distant from their thoughts and activities. Léon Duguit's formulation of the social function of property was neither a foundation of nor ancillary theoretical support for Article 27. Why was the law student Mijares Gómez mistaken about this when he wrote in 1967? We now turn to Mijares Gómez's assumption as the standard interpretation of Article 27's relationship to the thought of Léon Duguit and other writers on the social function of property.

IV. THE "SOCIAL FUNCTION" OF PROPERTY

Reviewing the debates associated with the drafting and adoption of Article 27, one is left with the impression that the process and text responded to practical concerns about landholding in light of a successful revolution. Most of the drafters rejected appeals to history and prior colonial or republic legislation. There was no mention of works by political, social, or legal theorists. This was a new endeavor, unhindered by past works and unassociated with greater jurisprudential trends in Europe or the Americas. This was a revolutionary work. In this light, it is not surprising that Léon Duguit and his social function of property are not mentioned once. Similarly, although likely on some delegates' minds, the social doctrine of the Catholic Church and the

⁹¹ MOLINA ENRÍQUEZ, *El espíritu*, *supra* note 87, at 389–91.

⁹² J.J. Orozco, *Consideraciones acerca del Artículo 27 Constitucional por el Lío*, in *LEY AGRARIA* 25, 25–33 (1921).

⁹³ "La falta de antecedentes de la materia en el Derecho de otros países, hizo del legislador mexicano un improvisado que a lo largo de muchos años, no pudo ni ha podido hallar la formulación definitiva de las leyes reglamentarias básicas de los preceptos agrarios del artículo 27 constitucional." MENDIETA Y NÚÑEZ, *supra* note 55, at 19–20.

encyclical *Rerum Novarum* (1891) would have provided significant support for Article 27, but were, of course, taboo sources considering the anti-clericalism of the Revolution.⁹⁴

The intellectual origins of Article 27 are also clouded by professional animosity and infighting between the drafters over credit for the final text.⁹⁵ One of the primary participants in this debate, Pastor Rouaix, carefully recounted in 1945 the process of drafting and approving the article.⁹⁶ His in-depth study of the processes' persons and events focuses on Mexico's political and social needs. There is no theoretical discussion of the nature of property. In over 70 pages on the genesis of Article 27, Léon Duguit is not mentioned once. Indeed, to the extent foundations were presented for Article 27, Pastor Rouaix criticized the scholarly justifications offered by Molina Enríquez, which were based on Mexico's legal inheritance from Spain:

Mr. Molina Enríquez was one of the most erudite Mexican lawyers on the colonial legislation and most tied to the juridical tradition, so that in his expositive discourse he sought the foundation of the innovative provisions of Article 27 in the absolute right of property that has been attributed to the Kings of Spain over the lands, waters, and accessions of the colonies as a consequence of the discovery and conquest of them and of the divine origin of their authority. Surely, if we the delegates who formed the article had been disposed with sufficient time to write an exposition, we would not have taken as legal support of our reforms the law of conquest which had not been more than a spoliation to the supreme degree and that exactly the effects of which the popular Revolution that we represented at that time attempted to uproot and destroy: it would not have sufficed the consideration that a state, as representative, director, and organizer of the human conglomerate that forms a nationality, has innate faculties and rights superior to those that each inhabitant may have individually and therefore without the artificial support of unjust traditions, has had and has sufficient authority to impose on private property the modalities, limitations, and restrictions that social utility requires, which is much higher than individual interests.⁹⁷

⁹⁴ M.C. Mirow, *Rerum Novarum: New Things and Recent Paradigms of Property Law*, 47 U. PAC. L. REV. 183, 183–97 (2016).

⁹⁵ PASTOR ROUAIX, GENESIS DE LOS ARTÍCULOS 27 Y 123 DE LA CONSTITUCIÓN POLÍTICA DE 1917 130–35, 221 (1945); *see also* DJED BORQUEZ [JUAN DE DIOS BOJÓRQUEZ], CRÓNICA DE CONSTITUYENTE 231–32 (1938); JORGE SAYEG HELÚ, PÁGINAS DE LA REVOLUCIÓN MEXICANA 252 (1996); SHADLE, *supra* note 1, at 4.

⁹⁶ ROUAIX, *supra* note 69, at 125–95.

⁹⁷ ROUAIX, *supra* note 69, at 203 (“El señor Molina Enríquez fue uno de los abogados mexicanos más eruditos en la legislación colonial y más apegados a la tradición jurídica, por lo que en su discurso expositivo buscó el fundamento de las disposiciones innovadoras del artículo 27 en el

Thus, Pastor Rouaix challenged not only Molina Enríquez's claim to authorship of Article 27, but also his justification of Article 27 as an extension of pre-Revolutionary royal dominion of land.⁹⁸ For Molina Enríquez, basing Article 27, as he had with a draft federal water law of 1905, on Mexico's succession to the Spanish crown's right to all property was an essential facet of his proposals for land reform.⁹⁹ Nonetheless, from Pastor Rouaix's perspective, Molina Enríquez was wrong about the foundational source of the State's power to impose restrictions on private property.¹⁰⁰ The source was the Revolution, not the continuity of royal rights inherited by the Mexican State.¹⁰¹

In another aspect of this shift, the common use of "social utility" expanded to other iterations of the "social," including the idea of "social function." Shortly after the promulgation of the constitution, drafters and scholars begin to refer to similar turns of phrases capturing this idea. By the 1930s, in reviewing his contribution to Article 27, Molina Enríquez wrote:

Once the social nature of the property over the lands and waters of the territory of the Nation was established as the point of departure, the constitution divided such property between the superficial or superior level and the inferior or underground level, declaring that the latter remained under the dominion of the Nation.¹⁰²

derecho absoluto de propiedad que se habían atribuido los reyes de España, sobre las tierras, aguas y accesiones de las colonias, como consecuencia del descubrimiento y conquista de ellas y de origen divino, de su autoridad. Seguramente, si los diputados que firmamos el artículo hubiéramos dispuesto de tiempo bastante para redactar la exposición, no hubiéramos tomado como apoyo jurídico de nuestras reformas el derecho de conquista, que no había sido más que un despojo en suprema escala y que precisamente, eran sus efectos los que trataba de arrancar y destruir la Revolución popular que representábamos en aquellos momentos: nos hubiera bastado la consideración de que un Estado como representante, director y organizador del conglomerado humano que forma una nacionalidad, tiene facultades y derechos ingénitos superiores a los que individualmente puede tener cada uno de los habitantes y por lo tanto sin el apoyo artificial de tradiciones injustas, ha tenido y tiene autoridad bastante para imponer a la propiedad privada las modalidades, limitaciones y reglamentos que exija la utilidad social, la que está muy por encima de los intereses particulares.”).

⁹⁸ KEISER, *supra* note 3, at 265; SHADLE, *supra* note 1, at 75 (designating Molina Enríquez as “the intellectual author of Article 27”); SHADLE, *supra* note 1, at 72 (explaining “[a]lthough Molina Enríquez never claimed credit for writing Article 27, his ideas clearly guided the Rouaix committee’s hasty revision.”).

⁹⁹ SHADLE, *supra* note 1, at 25–26. In 1922, Molina Enríquez relied on this foundation of Article 27 to rebut claims that the provision was tied to socialist or communist legal thought. *Id.* at 91.

¹⁰⁰ ROUAIX, *supra* note 69, at 144.

¹⁰¹ *Id.*

¹⁰² ANDRÉS MOLINA ENRÍQUEZ, *La Revolución Agraria de México, (1932–1936)*, in ANDRÉS MOLINA ENRÍQUEZ: PRECURSOR DE LA REFORMA AGRARIA 121, 160–66 (Antonio Huitron ed., 1959), (“Una vez fijado el punto de partida de la naturaleza social de la propiedad sobre las tierras y aguas del territorio de la Nación, la Constitución dividió dicha propiedad entre la del suelo superficial o superior, y la del suelo inferior o subsuelo, declarando que esta última quedaba bajo el dominio de la Nación.”).

This mention, however, does not constitute a substantive notion for additional analysis or discussion. Thus, “social” terms were in use but not as central concepts of a constitutional theory of property. These views squared with a general sense of social rights present in Mexican legal thought before the Revolution and during the Constituent Congress of 1916–1917.¹⁰³ It was in this general sense of social rights that commentators aligned Article 27 with ideas of the social.¹⁰⁴ This thought similarly was incorporated into the opinions on agrarian law in Mexico’s Supreme Court in the early 1920s.¹⁰⁵

Other authors in the 1930s and 1940s developed this idea of the “social” further through commentary on private law and the Mexican Civil Code of 1928. As the constitutional principles of property enunciated in the Constitution of 1917 were codified into civil law, commentators explicating the code mentioned modern civil law’s turn to the “social.”¹⁰⁶

By 1928, the European notion of the social function of property had reached scholars and drafters in Mexican civil law. The first part of the code’s introductory comments (*Exposición de Motivos*) is a general essay on the socialization of law with the apparent aim of transforming the previous civil code into a “private social code.”¹⁰⁷ The introductory comments specifically address property:

Treating property, the Commission separated itself from the individual tendency that was pervasive in the Roman law, in the Napoleonic legislation, and to a large part our Civil Code, and accepted the progressive theory that considers the right to property as the means to fulfill a truly social function. As such, property was not considered an individual right of the owner but as a mutable right that ought to adjust to the social necessities to which it is preferably called to respond.¹⁰⁸

¹⁰³ JAMES, *supra* note 833, at 42–44.

¹⁰⁴ *Id.* at 44–45.

¹⁰⁵ *Id.* at 80 (citing a personal communication with a distinguished historian of the Mexican Revolution, Javier Garciadiego Dantán, in May 2004, James indicates that justices may have been influenced by Duguit’s work. Referring to the social utility and aims of property, James writes: “By 1921 these ideas were neither new nor revolutionary. They had been widely disseminated by, among others, the well-known French jurist Léon Duguit, whose writings now shared a prominent place in the curriculum at the National School of Jurisprudence in Mexico [after 1951 the Faculty of Law, UNAM], thanks to the work of Manuel Gómez Morin.”).

¹⁰⁶ Keiser, *supra* note 3, at 259.

¹⁰⁷ IGNACIO GARCÍA TÉLLEZ, *Exposición de Motivos*, in MOTIVOS, COLABORACIÓN Y CONCORDANCIAS DEL NUEVO CÓDIGO CIVIL MEXICANO 14, 19 (1932) (comprising the drafting commission was Ignacio García Telléz, Fernando Moreno, Francisco H. Ruiz, and Rafael García Peña).

¹⁰⁸ *Id.* at 30 (“Al tratar de la propiedad se separó la Comisión de la tendencia individualista que campeaba en el Derecho Romano, en la legislación napoleónica y en gran parte de nuestro Código Civil vigente, y aceptó la teoría progresista que considera el derecho de propiedad como el medio de cumplir una verdadera función social. Por tanto, no se consideró a la propiedad como un derecho individual de propietario, sino como un derecho mutable que debe modelarse sobre las necesidades sociales a las cuales está llamado a responder preferentemente.”).

Commentators quickly noted the connection to Duguit's thought. Spanish professor of civil law, José Castan Tobeñas, wrote in 1930 that the drafters of the Mexican Civil Code would have gone much further down the path of the social function of property were it not for the influence of a more restrained Mexican bar:

The early draft, more advanced and innovative, established, in agreement with the ideas of Duguit and other modern laws (1), that the owner has the duty to exercise this right so that a social benefit was obtained (art. 816), and has, furthermore, the obligation to make his property productive (art. 818); but with reason the Mexican bar emphasized the inconveniences of these requirements, so amorphous and so difficult to make effective.¹⁰⁹

Draft provisions were ready to incorporate notions of the social function of property directly into the new civil code. Scholars of the civil law first noted this connection when they sought to move revolutionary property from Article 27 into effective code provisions for the Nation.

Thus, private law theorists on Mexico's Civil Code of 1928 had contemporaneously incorporated a notion of the social function of property. Such ideas were in circulation, and there is evidence that Mexican codifiers were influenced by an Italian school of solidarity and the Italian jurist Francesco Cosentini.¹¹⁰ The introductory comments mention that in their drive for modernity, drafters were guided by "reputable European scholars" (*reputados tratadistas europeos*).¹¹¹ This was, however, more than ten years after the promulgation of Article 27.¹¹² Furthermore, the incorporation of the social function of property in the code was more limited than one might think. The theory's application was limited to discussions of farmland (*fincas rústicas*) because the owner had to put the land to socially useful production.¹¹³ Other provisions on property in the Civil Code of 1928 were more in line with

¹⁰⁹ José Castan Tobeñas, *El Nuevo Código Civil Mexicano: Un Ensayo de Código Privado Social*, 1 REVISTA GENERAL DE DERECHO Y JURISPRUDENCIA 68–69 (1930). ("El primitivo Proyecto, más avanzado e innovador, establecía, de acuerdo con las ideas de Duguit y de algunas leyes modernas (1), que el propietario tiene el deber de ejercitar ese derecho de manera que se obtenga un beneficio social (art. 816), y tiene, además, la obligación de hacer productiva su propiedad (art. 818); pero con razón puso de relieve la Barra mexicana los inconvenientes de esas exigencias, tan poco concretas y tan difíciles de hacer efectivas.").

¹¹⁰ Keiser, *supra* note 3, at 261; see also José Ramón Narváez Hernández, *El Código Privado-Social. Influencia de Francesco Cosentini en el Código Civil Mexicano de 1928*, 16 ANUARIO MEXICANO DE HISTORIA DEL DERECHO 201–226 (2004).

¹¹¹ Keiser, *supra* note 3, at 263.

¹¹² Keiser has found a reference to Duguit in an edition of the Mexican Civil Code from 1923. *Id.* at 269 (citing CÓDIGO CIVIL 151 (ed. Eduardo Palleres, 3d ed., Mexico, 1923) (misspelled in cited text as "Diguit").

¹¹³ Keiser, *supra* note 3, at 270.

individual ownership of property, although the earlier assertion of the prior civil code that property was “inviolable” was excised from the new code.¹¹⁴

More effective exercises of agrarian reforms in the early 1930s also played a part. The movement was to “socialize” the *amparo* action, which was traditionally associated with the protection of individual constitutional rights such as the rights of property owners.¹¹⁵ *Amparo* actions had held up redistribution of land under the Agrarian Reform law of 1915, Article 27, and an agrarian regulatory law of 1922.¹¹⁶ “As of January 1925, more than 1,400 *amparos* filed against agrarian reform were pending before the Supreme Court.”¹¹⁷ Judicial resistance to effective agrarian redistribution was beaten down through laws and constitutional amendments. In 1927, a new agrarian code opened up the classes of communities that could seek redress under agrarian law from an earlier restrictive list.¹¹⁸ An amendment in 1928 restructured the membership of the Supreme Court and in turn, its openness to agrarian reform.¹¹⁹ As Timothy James writes:

This successful 1928 amendment to the judicial provisions of the 1917 Constitution “packed” the Court (enlarging its membership to fourteen). . . . Although the justices retained lifetime tenure, the reform itself had purged the previous membership of the Court and only a few of the old justices were reappointed.¹²⁰

In 1931, an amendment to the Agrarian Reform Law of 1915 “completely barred those adversely affected by the redistribution of land from seeking redress in the courts.”¹²¹ Agrarian reform could proceed without a Supreme Court watching over the individual property rights of former owners.

With a new civil code and changes in the agrarian law, the very late 1920s and early 1930s seem to have been the turning point towards a definition of property more amenable to state redistribution. James writes: “In several articles published between 1929 and 1932, Rodolfo Reyes saw in the Court’s new agrarian jurisprudence an example of the increasing ‘socialization’ of the *amparo* suit . . . which he saw both a positive and necessary adjustment to the times.”¹²² The more property was characterized as a social function, the greater power Mexican administrative agencies had to shift ownership to others without traditional concerns for the rights of individual property owners.

¹¹⁴ *Id.* at 270.

¹¹⁵ JAMES, *supra* note 83, at 96–100.

¹¹⁶ *Id.* at 81.

¹¹⁷ *Id.* at 89.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 78.

¹²⁰ *Id.* at 93.

¹²¹ JAMES, *supra* note 83, at 76.

¹²² *Id.* at 96.

Aligning with the practical concerns of agrarian reform, theorists also turned to ideas of the social function of property. Lucio Mendieta y Núñez, the doyen of Mexican sociology, employed the language of “social function.” His works were influential in the field as professors and students sought to understand the doctrinal underpinnings of Article 27. In 1932, he wrote, quoting the French economist Charles Gide, as follows:

Only that if the ultimate basis of the right of property is no longer the bastion of individualism, the individual is no longer the owner for himself but for society. Property is converted in a more august and at the same time more literal sense of that word into a *social function*. Thus, it will stop being absolute in the old Roman sense of the word, but only in the way in which sovereignty over things and the right of free disposition are indispensable to extract the best part of these things.¹²³

From this newly imposed theoretical basis, Mendieta y Núñez offered a new doctrinal interpretation to eclipse Molina Enríquez’s historical basis for agrarian reform. Continuing from the quote from Gide establishing property as a social function, Mendieta y Núñez asserted:

Now then, if property is a social function, it is undebatable that the vigilance of this function corresponds to the State, and its intervention in the equitable allocation of land and in the benefits of natural resources, is a necessary consequence of this. . . . In the modern theory of the right of property and in the theory of the goals of the State, thus one finds a “superior principle of justice” that the constituents sought in the colonial legislation to base the precepts of Article 27. In effect, without the necessity of investing the State with an absolute right of property over the lands and waters that are found within the limits of the national territory, it is undoubted that it has eminent domain over them and that property being a social function, it is empowered to exercise the necessary vigilance over it and to intervene directly so that this social function is carried out in a satisfactory manner.¹²⁴

¹²³ “Sólo que, si tal el último fundamento del derecho de propiedad, ya no es baluarte de individualismo; el individual ya no es propietario por sí mismo sino para la sociedad. La propiedad se convierte en el sentido más augusto y más literal a la vez de esta palabra, en una *función social*. Dejará pues de ser absoluta en el antiguo sentido romano de la palabra, pero solo en la medida en que la soberanía sobre las cosas y el derecho de libre disposición sean indispensables para sacarle el mejor partido de esas cosas.” MENDIETA Y NÚÑEZ, EL SISTEMA AGRARIO CONSTITUCIONAL EXPLICACIÓN E INTERPRETACIÓN DEL ARTÍCULO 27 DE LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, EN SUS PRECEPTOS AGRARIOS [The constitutional agrarian system explanation and interpretation of Article 27 of the Political Constitution of the United Mexican States, in its agrarian precepts] 26 (1st ed. 1932) (citing CHARLES GIDE, CURSO DE ECONOMÍA POLÍTICA 519 (2d ed. 1916)).

¹²⁴ “Ahora bien, si la propiedad es una función social, es indiscutible que corresponde al Estado la vigilancia de esa función, y su intervención en el reparto equitativo de la tierra y en el

Bolstering this work, he cited a study by Fernando González Roa that traced the Thomist origins of the social function of property and expanded on this theme in the second edition of the work in 1940.¹²⁵

Thus, by the early 1930s, Mendieta y Núñez rejected Molina Enriquez's proffered historical justifications for Article 27 based on royal and national sovereignty. Instead, Mendieta y Núñez suggested a new underlying theory of Article 27. With this newly-asserted foundation for Article 27, Mendieta y Núñez tied this article into the then-existing line of European and Latin American constitutions that explicitly adopt the social function of property as conceived by Duguit.¹²⁶ Mendieta y Núñez's new doctrinal basis for Article 27 was given wider circulation by the publication of an expanded second edition of this work in 1940.¹²⁷

Mendieta y Núñez was not the only respected Mexican scholar in the 1930s to theorize that the revolutionary property of Article 27 was linked to notions of the social function of property. In 1938, Oscar Rabasa Llanes studied the State's power of expropriation within the petroleum industry. While not at the core of his study, the "social function" of property served as part of his analysis of Article 27 as he refuted the foundations asserted by Molina Enríquez:

It is inconceivable that the constituent Congress of Querétaro, that incorporated the ideology of the Mexican Revolution into the text of the Fundamental Law, would have wanted to go back to prior legislation, but completely to the contrary, it is understood that it wanted to move forward in the ideological terrain. It attempted to erase the classic concept that established the right of property as an absolute, unlimited power, substituting it with the concept that recognizes private property as a social function, in such a way that private property is not the exclusive right of an individual but a right subordinate to the collective well-being. And if this is so, it is inconsistent to suppose that the Constitution of 1917 wanted

aprovechamiento de los elementos naturales, es su necesaria consecuencia. . . . En la moderna teoría sobre el derecho de propiedad y en la teoría de los fines del Estado, se encuentra entonces ese "principio superior de justicia" que buscó el constituyente en la legislación colonial, para fundar los preceptos del artículo 27. En efecto, sin necesidad de investir al Estado de un derecho de propiedad absoluto sobre las tierras y aguas que se encuentran dentro de los límites del territorio nacional, es indudable que tiene sobre ellas el dominio eminente y que siendo la propiedad una función social, está capacitado para ejercer sobre ella la vigilancia necesaria y para intervenir directamente a fin de que esa función social se cumpla de una manera satisfactoria." MENDIETA Y NÚÑEZ, (1st ed. 1932), *supra* note 123, at 26–27.

¹²⁵ MENDIETA Y NÚÑEZ, (1st ed. 1932), *supra* note 123 at 30 (citing Fernando González Roa, *La Propiedad jamás ha sido inmutable*, BOLETÍN DE LA SECRETARÍA DE GOBERNACIÓN, 129; LUCIO MENDIETA Y NÚÑEZ, EL SISTEMA AGRARIO CONSTITUCIONAL EXPLICACIÓN E INTERPRETACIÓN DEL ARTÍCULO 27 DE LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, EN SUS PRECEPTOS AGRARIOS [The constitutional agrarian system explanation and interpretation of Article 27 of the Political Constitution of the United Mexican States, in its agrarian precepts] 51–53 (2d ed. 1940).

¹²⁶ MENDIETA Y NÚÑEZ, (1st ed. 1932) *supra* note 123 at 31–35.

¹²⁷ MENDIETA Y NÚÑEZ, (2d. ed. 1940) *supra* note 125.

to step backwards towards the Constitution of [18]57 that it abrogated.¹²⁸

While Mendieta y Núñez moved the foundations of property under the Mexican Constitution of 1917 towards the concept of “social function,” Molina Enríquez held firm to the historical justification of agrarian reform. In 1936, Molina’s five-volume study of agrarian reform in Mexico repeated his justification based on sovereign power inherited from Spain and the idea of a reversion of public powers held by and exercised by the Nation. Molina Enríquez made no reference to the social function of property.¹²⁹ Nonetheless, Mendieta y Núñez’s view of the social function as the basis of property under the Constitution of 1917 would be adopted by Mexican scholars and expanded to indirect and direct references to León Duguit and his work on the social function of property.

V. LÉON DUGUIT

Beginning with respected scholars Mendieta y Núñez and Rabasa Llanes, the French theorist León Duguit entered the discourse of the social function of property in Mexico decades after the Constitution of 1917. For example, in the early 1940s, a standard treatise on civil law in Mexico by Rafael Rojina Villegas linked the work of Duguit to Article 27 and Mexico’s social function of property. This was a true turning point in the association of Duguit with Article 27 and the Civil Code of 1928. Rojina Villegas discusses Duguit and his theory of property for more than six pages.¹³⁰ This in-depth treatment of Duguit and the social function of property begins with tying Duguit directly to Article 27 and the code:

Modern law has its doctrinal antecedents as in its legislative expression, among us, in constitutional Article 27 and the civil code of [19]28. One of the authors who in our view has put forth

¹²⁸ “No se puede concebir que el Constituyente de Querétaro, que incorporó en el texto de la Ley fundamental la ideología de la Revolución mexicana, haya querido retroceder respecto de la legislación anterior, sino todo lo contrario, se comprende que quiso avanzar en el terreno ideológico. Pretendió borrar el concepto clásico que estableció el derecho de propiedad como una facultad absoluta, intocable, sustituyéndolo por el concepto que reconoce la propiedad privada como función social, de tal manera que la propiedad privada no fuese derecho exclusivo de un individuo, sino un derecho subordinado de bienestar colectivo. Y si esto es así, es una inconsecuencia suponer que la Constitución de 1917 haya querido dar un paso atrás respecto de la Constitución de 57 que abrogó.” Tania Rabasa Kovacs, *Prefacio: Encuentros y desencuentros intergeneracionales en torno al derecho de propiedad en México* [Preface: Intergenerational encounters and disagreements around property rights in Mexico] in *EL DERECHO DE PROPIEDAD Y LA CONSTITUCIÓN MEXICANA DE 1917* [The right to property and the Mexican Constitution of 1917] 27 (Rabasa Emilio Estebanell ed., 2017) (citing OSCAR RABASA LLANES, *ESTUDIO CONSTITUCIONAL SOBRE LA EXPROPIACIÓN DECRETADA CONTRA LAS COMPAÑÍAS PETROLERAS EN MÉXICO* [Constitutional study on the expropriation decreed against oil companies in Mexico] 122 (1938)).

¹²⁹ 5 ANDRÉS MOLINA ENRÍQUEZ, *ESBOZO DE LA HISTORIA DE LOS PRIMEROS DIEZ AÑOS DE LA REVOLUCIÓN AGRARIA DE MÉXICO (DE 1910 A 1920)* [Outline of the History of the First Ten Years of the Agrarian Revolution in Mexico (from 1910 to 1920)] 186–89 (1936).

¹³⁰ RAFAEL ROJINA VILLEGAS, *DERECHO CIVIL: BIENES, DERECHOS REALES Y POSESIÓN* [Civil Law: Property, Real Rights and Possession], 101–08 (1942).

the best critique of the individualist doctrine, and at the same time has formulated a concept of property that is in agreement with the new orientations of law, is León Duguit, who studied the transformations undertaken by different juridical institutions of private law since the Code Napoleon and gave lectures in 1911 in the University of Buenos Aires, addressing such transformations.¹³¹

Rojina Villegas summarizes the main points of Duguit's argument that rights, including the right to property, are not innate or inalienable individual rights, but are rather claims that arise out of society and are therefore subject to the limitations that society wishes to impose on them.¹³² Applying this perspective to property, Rojina Villegas writes: "[i]t remains then explained how the right of property, in the theory of Duguit, is a social function and not a subjective, absolute, inviolable right anterior to society and the State that the juridical norm cannot touch."¹³³ The treatise writer ties Duguit's reconceptualization of property to the work of Auguste Comte:

Duguit reproduces almost word-for-word this concept of Comte, considering property is a social function, that is, that it is fundamentally more than a right, [it is] a duty, although this appears contradictory. If property is a social function adds Duguit, it is no longer considered an absolute right because the law may limit it in accordance with the necessities that interdependence demands; nor may wealth be employed without principally social ends.¹³⁴

Rojina Villegas's next observation is to tie this theory directly to Article 27: "[f]or this reason Article 27 declares that the nation has at all times the right to impose on private property the limitations that the public interest dictates,

¹³¹ "El derecho moderno tiene su antecedente doctrinal, como en su expresión legislativa, entre nosotros, en el Artículo 27 Constitucional y el código civil de 28. Uno de los autores que en nuestro concepto ha expuesto mayor la crítica a la doctrina individualista, y al propio tiempo ha formulado un concepto de propiedad que está de acuerdo con las nuevas orientaciones de derecho, es León Duguit, quien estudió las transformaciones sufridas por diferentes instituciones jurídicas del derecho privado a partir del Código de Napoleón, y sustentó unas conferencias en 1911 en la Universidad de Buenos Aires, tratando tales transformaciones . . ." ROJINA VILLEGAS, *supra* note 130, at 101-02.

¹³² ROJINA VILLEGAS, *supra* note 130, at 102-05.

¹³³ "Queda, pues, explicado cómo el derecho de propiedad, en la tesis de Duguit, es una función social y no un derecho subjetivo, absoluto, inviolable, anterior a la sociedad y al Estado y que la norma jurídica no pueda tocar." ROJINA VILLEGAS, *supra* note 130, at 105.

¹³⁴ "Casi textualmente reproduce Duguit este concepto de Comte, para considerar que la propiedad, es una función social, es decir, que fundamentalmente es, más que un derecho, un deber, aunque parezca contradictorio. Si la propiedad es una función social agrega Duguit, ya no puede considerarse ni como un derecho absoluto, porque la ley podrá limitarlo de acuerdo con las necesidades que la interdependencia imponga; ni la riqueza podrá ser empleada sino para fines principalmente sociales." ROJINA VILLEGAS, *supra* note 130, at 107.

as well as to regulate the exploitation of natural resources.”¹³⁵ And again tying Duguit directly to Article 27, Rojina Villegas writes concerning the protection absolute property has enjoyed against state interference:

This aspect of the juridical impossibility to interfere remains completely discarded in the theory of Duguit, that is, in our view, the theory that inspired constitutional Article 27, and that may serve us to develop, at least in our law, the modern concept of property. If property is a social function, the law may intervene placing obligations on the owner. . . .¹³⁶

Rojina Villegas found several instances of such limitations on property in the new code.¹³⁷ Thus, by 1942, the historical justifications for Article 27 proffered by Molina Enríquez during and after the drafting of Article 27 had been abandoned for a new theory of property expounded in Duguit’s work. I have quoted Rojina Villegas’s treatise extensively because it marked a redefining and concretizing moment in the underpinnings of Article 27 as scholars theorized revolutionary property. This was a shift that began in the late 1920s, developed through the 1930s, and was solidified by the 1940s. Duguit, Article 27, and the Civil Code of 1928 were bound together in theoretical harmony.

In 1964, Julio Moya García, like his classmate Mijares Gómez mentioned above, wrote his licentiate’s thesis at UNAM on the social function of property in agrarian law. Moya García, like his classmate Mijares Gómez, was certain of a link between Article 27, the social function of property, and the work of León Duguit. Moya quoted and paraphrased Rojina Villegas’s work at length to assert the close connection of Article 27 to Duguit’s understanding of the social function of property:

The modern concept of the right of property in our country has its legislative antecedent in constitutional Article 27 and in the Civil Code of 1928; the master Rojina Villegas in his work *Bienes, Derechos Reales y Posesión*, pages 94 to 108 states: “one of the authors who in our view has best criticized the individualist doctrine, and at the same time has formulated a concept of property that is in agreement with the new orientation of law is León Duguit, whose study of the transformations undertaken by different juridical institutions

¹³⁵ Por esto declara el Art. 27 constitucional que la nación tiene en todo tiempo el derecho de imponer a la propiedad privada las modalidades que dicte el interés público, así como regular el aprovechamiento de los elementos naturales . . .” ROJINA VILLEGAS, *supra* note 130, at 107.

¹³⁶ “Este aspecto de imposibilidad jurídica para intervenir, queda completamente desechado en la teoría de Duguit, que es, en nuestro concepto, la que inspira el Art. 27 constitucional, y que puede servirnos para desarrollar, por lo menos en nuestro derecho, el concepto moderno de propiedad. Si la propiedad es una función social, el derecho sí podrá intervenir imponiendo obligaciones al propietario . . .” ROJINA VILLEGAS, *supra* note 130, at 107.

¹³⁷ ROJINA VILLEGAS, *supra* note 130, at 109.

of private law since the Napoleonic Code, and presented in lectures in 1911 in the University of Buenos Aires, addressing such transformations.”¹³⁸

Several pages later in the same text, after setting out the main arguments of Duguit’s lecture on the social function of property in 1911, this work invokes the formulation that “property is a social function.” (“*la propiedad es una función social.*”)¹³⁹ With punctuation that does not indicate where the words of Rojina Villegas ends and those of the student begin, the text moves closer and closer to ascribing Duguit’s work on the social function of property as the foundational theory of property for Article 27. After noting the impossibility of legal interference with an absolute right to property under classical liberal notions, the text states:

This aspect of the juridical impossibility to interfere remains completely discarded in the theory of Duguit, that is, in our view, the theory that inspired constitutional Article 27, and that may serve us to develop, at least in our law, the modern concept of property.¹⁴⁰

Moya García linked Duguit to Article 27 even more clearly in a passage that follows:

Agrarian property that is highly regulated in Article 27 of our Constitution, as it is in its regulatory legislation, is characterized by the ideas of León Duguit, that is that agrarian property under our legislation is considered as a social function.¹⁴¹

¹³⁸ As stated in a *tesis* by Julio Moya García:

El concepto moderno del derecho de propiedad en nuestro país tiene su antecedente legislativo en el artículo 27 Constitucional y en el Código Civil de 1928; el maestro Rojina Villegas en su obra *Bienes, Derechos Reales y Posesión*, Pág. 94 a 108 expone: ‘uno de los autores que en nuestro concepto has expuesto mejor la crítica a la doctrina individualista, y al propio tiempo ha formulado un concepto de propiedad que está acuerdo con las nuevas orientaciones del Derecho, es León Duguit, quien estudió las transformaciones sufridas por diferentes instituciones jurídicas del derecho privado a partir del Código de Napoleón, y sustentó unas conferencias en 1911, en la Universidad de Buenos Aires, tratando de tales transformaciones.

Julio Moya García, *La Función Social de la Propiedad en Materia Agraria* [The Social Function of Property in Agricultural Matters] 44 (1964), (Tesis para obtener el título de Licenciado en Derecho, Universidad Nacional Autónoma de México [Licentiate Thesis, National Autonomous University of Mexico]) (on file with the Library of The University of Texas).

¹³⁹ MOYA GARCÍA, *supra* note 138, at 47.

¹⁴⁰ “Este aspecto de la imposibilidad jurídica para intervenir, queda completamente desechado en la teoría de Duguit, que es en nuestro concepto, la que inspira el artículo 27 Constitucional, y que puede servirnos para desarrollar, por lo menos en nuestro derecho, el concepto moderno de propiedad.” MOYA GARCÍA, *supra* note 138, at 48.

¹⁴¹ “La propiedad agraria que se regula tanto en el artículo 27 de nuestra Carta Política, como en sus leyes reglamentarias, está caracterizada por las ideas de León Duguit, o sea que la propiedad

During the 1960s, numerous other student theses melded the notions of property expressed in Article 27 with the work of Léon Duguit. For example, Ramiro Rangel Rosaldo's thesis of 1965 addressed Duguit's theory of property at length.¹⁴² Rangel Rosaldo concluded:

This aspect of the juridical impossibility to intervene remains completely discarded in Duguit's theory, which is in our opinion what inspired constitutional article 27: If property is a social function, the State may intervene, placing obligations on the owner, not only of a negative character as already sketched out in Roman law but also of a positive character.¹⁴³

Similarly, in 1972, Humberto Ricord's study of agrarian reform broadly surveys European social thought with the implication that it was somehow related to the historical process of Mexican land reform and drafting Article

agraria de nuestra legislación es concebida como una función social." MOYA GARCÍA, *supra* note 138, at 49.

¹⁴² Ramiro Rangel Rosaldo, *Instituciones y diversos tipos de propiedad agraria en la colonia y su influencia en el artículo 27 constitucional* [Institutions and Various Types of Agricultural Property in the Colony and Their Influence on Article 27 of the Constitution] 96–99 (1965) (Tesis que para obtener el título de Licenciado en Derecho, UNAM Facultad de Derecho [Licentiate Thesis, National Autonomous University of Mexico Faculty of Law]). Very similar assertions are found in other theses of the 1960s. *See, e.g.*, Gustavo Araujo Arriaga, *Aspecto Jurídico y Social de la Propiedad* [Legal and Social Aspect of Property] 75 (1961) (Tesis que para obtener el título de Licenciado en Derecho, UNAM Facultad de Derecho [Licentiate Thesis, National Autonomous University of Mexico Faculty of Law]); Francisco Giacobello Núñez, *Contenido Social de la Constitución de 1917* [Social Content of the Constitution of 1917] 173, 196 (1962) (Tesis que para obtener el título de Licenciado en Derecho, UNAM Facultad de Derecho [Licentiate Thesis, National Autonomous University of Mexico Faculty of Law]); Alejandro Martínez Gómez, *Influencia de la Reforma Agraria Mexicana en la Transformación del Derecho de Propiedad sobre la Tierra* [Influence of the Mexican Agricultural Reform in the Transformation of Land Property Rights] 134 (1963) (Tesis que para obtener el título de Licenciado en Derecho, UNAM Facultad de Derecho [Licentiate Thesis, National Autonomous University of Mexico Faculty of Law]); Alfredo González Montes de Oca, *Naturaleza Jurídica de la Propiedad Agraria* [Legal Nature of Agricultural Property] 90 (1964) (Tesis que para obtener el título de Licenciado en Derecho, UNAM Facultad de Derecho [Licentiate Thesis, National Autonomous University of Mexico Faculty of Law]); Raul Ernesto Molina Duarte, *Los Límites de la Pequeña Propiedad y su Importancia en la Política Agraria del País* [The Limits of Small Property and its Importance in the Country's Agricultural Policy] 136–139, 218–219 (1964) (Tesis que para obtener el título de Licenciado en Derecho, UNAM Facultad de Derecho [Licentiate Thesis, National Autonomous University of Mexico Faculty of Law]).

¹⁴³ As written by Ramiro Rangel Rosaldo:

Este aspecto de imposibilidad jurídica para intervenir, queda completamente desechado en la teoría de Duguit, que es en nuestro concepto la que inspira el artículo 27 constitucional: Si la propiedad es una función social, el Estado sí podrá intervenir imponiendo obligaciones al propietario, no sólo de carácter negativo, como ya lo esbozaba el derecho romano, sino positivo también.

Ramiro Rangel Rosaldo, *Instituciones y diversos tipos de propiedad agraria en la Colonia y su influencia en el artículo 27 constitucional* [Institutions and Various Types of Property in the Colony and Their Influence on Constitutional Article 27] 96, 98 (1965) (Tesis que para obtener el título de Licenciado en Derecho, UNAM Facultad de Derecho [Licentiate Thesis, National Autonomous University of Mexico Faculty of Law]).

27.¹⁴⁴ Ricord generally describes Duguit's ideas of the socialization of law and mentions his writings on both public and private law.¹⁴⁵ Specifically citing Duguit's theory of the social function of property, Ricord, however, correctly noted, "But these formulas of Duguit still have not materialized in any legal or constitutional text in 1917."¹⁴⁶ Ricord cannot stop with this accurate description; the Constitution of 1917 must, somehow, reflect the social function of property. Students and scholars had been making this assertion for decades. On the same page of his work, after noting several constitutions after 1919 that specifically defined property as a social function, Ricord wrote, "[b]roadcast and categorically constitutionalized, the idea of the social function of private property, *Mexican legal doctrine years after 1917* has seen in the third part of Article 27 a concrete expression of this social function."¹⁴⁷ Ricord then quotes a passage from Mendieta y Núñez that equates the public interest requirement of the constitution to an expression of the social function of private property.¹⁴⁸

Ricord also notes that the work of Martha Chávez P. de Velázquez adopts the same view:

Dr. Martha Chávez P. de Velázquez has stated that "there is no doubt that what abounded in the commission and in the entire Constituent Congress the idea to consecrate the Right of Property with a social function is in the part of the draft approved without discussion, that says according to the original text that 'the Nation shall have at all times the right to impose on private property the limitations that public interest requires,'" and the same author adds that "in all existing opinions it is noted that although inspired by originally diverse doctrines, all of them tend and coincide in giving the concept of property as social function."¹⁴⁹

¹⁴⁴ RICORD, *supra* note 84, at 40–47.

¹⁴⁵ RICORD, *supra* note 84, at 43–44.

¹⁴⁶ RICORD, *supra* note 84, at 110. "Pero esas fórmulas de Duguit aún no se habían plasmado en ningún texto legal o constitucional en 1917."

¹⁴⁷ RICORD, *supra* note 84, at 110 (emphasis added) ("Difundida y constitucionalizada categóricamente la idea de la función social de la propiedad privada, *la doctrina jurídica mexicana*, años después de 1917, ha visto en el aparte tercero del artículo 27 una expresión concreta de esa función social.").

¹⁴⁸ RICORD, *supra* note 84, at 110.

¹⁴⁹ RICORD, *supra* note 84, at 110–11 (citing MARTHA CHÁVEZ P. DE VELÁZQUEZ, *EL DERECHO AGRARIO EN MÉXICO* [AGRICULTURAL LAW IN MEXICO] 315–16 (1964):

La Dra. Martha Chávez P. de Velázquez ha considerado que 'en donde no cabe lugar a dudas, de que campeaba en la Comisión y en todo el Congreso Constituyente la idea de consagrar el Derecho de Propiedad con función social, es en la parte del proyecto aprobado sin discusión, que dijo desde ese texto original, que "la Nación tendrá en todo tiempo el derecho de imponer a la propiedad privada las modalidades que dicte el interés público", y agrega dicha

Students like Moya García and Mijares Gómez, writing in the mid-1960s and early 1970s, echoed the shifts in the Mexican legal academy of this period towards theories of the socialization of law as an academic discipline. Dr. Héctor Fix Zamudio and Dr. Sergio García Ramírez both published extensively on the topic in the 1960s.¹⁵⁰ These works pulled the practical revolutionary drafting of the Constituent Convention into the broader intellectual trends of early and mid-twentieth-century European legal theory.

In retrospect, even Molina Enríquez noted that a paradigm shift away from the general acceptance of the classical liberal notion of absolute property was underway. A new idea of property was evolving. Criticizing inviolable property rights, Molina Enríquez wrote:

Royal power having hardly disappeared with independence, the Spaniards and creoles in fact increased those large estates with the plunders from the indigenous people. And to avoid all kind of reclamations on the juridical supposition that all *possession* assumes a right of *property*, they constructed rights of all their effective possessions, that is to say, of all their encroachments, as inviolable, all the way to the very laws of expropriation.¹⁵¹

Thus, beginning in the late 1920s and early 1930s, scholars discovered a new underlying concept of property in the text of Article 27. This view was solidified in the 1940s. By the 1960s, the fabricated links between León Duguit, property as a social function, and Article 27 had become so strong that this relationship was common legal knowledge.

VI. CONCLUSION

Article 27 of the Mexican Constitution of 1917 was an autochthonous response to national political and social conditions. Despite the accepted fiction of Duguit's direct intellectual influence on the language of Article 27, nothing in the work of the article's drafters or in the debates indicates an awareness of Duguit's writings or thought. Mexican views of Article 27 were gradually theorized and pulled the article into a broader stream of world thought on property.

autora que 'en todas las opiniones expuesto se notó, que aunque inspiradas en doctrinas originariamente diversas, todas ellas tendían y coincidían en darle al concepto de propiedad, una función social. . . .'

¹⁵⁰ RICORD, *supra* note 84, at 44–52.

¹⁵¹ ANDRÉS MOLINA ENRÍQUEZ, LA REVOLUCIÓN AGRARIA EN MÉXICO [THE AGRARIAN REVOLUTION IN MEXICO] 498 (1985):

Apenas desapareció con la Independencia el Poder Real, los españoles y los criollos ensancharon de hecho esos latifundios con despojos de los pueblos indios; y para evitarse toda clase de reclamaciones sobre el supuesto jurídico de que toda *posesión* supone un derecho de *propiedad*, erigieron los derechos de todas sus *posesiones* efectivas, es decir, de todas sus usurpaciones, en *inviolables*, hasta para las mismas leyes de expropiación.

By the 1960s, as illustrated by student theses, Duguit's close link to Article 27 had been cemented in the legal minds of Mexico. Article 27 was no longer just the national product of a political and social revolution, the Mexican Revolution—it had been theorized to fit into a wider discourse on property. Article 27 was no longer the culmination of a domestic revolution. It was the starting point of an international movement in the constitutionalizing of property as a social function. Article 27 was viewed as revolutionary and seminal in the world's understanding of property after the work of Duguit. This was a useful and persistent myth.

The true story, however, of Duguit's association with Article 27 is equally fascinating.

Only long after Article 27's promulgation and implementation did Mexican jurists and scholars associate it with the social function of property and the work of French theorist Léon Duguit. This association was the result of work by Mexican sociologists of law writing about Article 27 in the 1930s and 1940s after the notion of the social function of property was introduced by writers on the Mexican Civil Code of 1928. This theorizing of Article 27 occurred in overlapping stages from property serving society, to property serving a social function, and finally to property *as* a social function, as asserted by Duguit.

Mexico's tardive turn toward Duguit in the 1930s and 1940s illustrates the powerful circulation of these ideas in Latin American and European thought on the nature of property. Mexican scholars of constitutional law and private law were drawn to the social function of property as an emanation of larger trends in the sociological study of law. In a way, this move deprived Article 27 and its drafters of their uniqueness, and of their unrelenting and practical response to create property that responded to the Mexican Revolution. In their view, Article 27 was just part, although a foundational part, of the rise of the social function of property throughout the world. In theorizing Mexico's revolutionary property, these scholars brought Article 27 into a common set of international understandings. By doing so, they placed Article 27 of the Mexican Constitution of 1917 into a global framework that obscured its national genesis and genius.¹⁵²

¹⁵² MIROW, *LATIN AMERICAN LAW*, *supra* note 17, at 221–22. This step may have unwittingly paved the way to Mexican property's susceptibility to a new world paradigm in the 1990s: neo-liberalism.