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# Promised Lands: The Anabaptist Immigration to Paraguay and Bolivia and its Unintended Consequences for the Environment

Sarah M. Hanners

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# **Promised Lands: The Anabaptist Immigration to Paraguay and Bolivia and its Unintended Consequences for the Environment**

Sarah M. Hanners\*

*There is a human dimension to the slaughter of the Amazon that does not always make its way into the conventional deforestation narrative. This note examines the destruction of the Amazon through the very human experience of the Anabaptists: religious outliers who fled Europe for the Americas, seeking freedom from persecution and a promise of greener pastures. They have since indelibly transformed the landscape of the Amazon in Bolivia and Paraguay, and their efforts have caught the attention of huge agricultural conglomerates, whose bottom lines have little respect for forest life. The environmental regulations of these countries fall short of the sweeping reforms needed to halt the agricultural conversion of the remaining forests. And so it shall fall on the international community to mitigate the damage – the level of which must have been inconceivable to the first Anabaptist pioneers who arrived on Paraguayan soil almost 100 years ago. From a spark, grows a flame.*

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\* Sarah M. Hanners, Juris Doctor Candidate, December 2016, University of Miami School of Law; B.S., 2004, University of Miami. This note is dedicated to the brave people of Comunidad Inti Wara Yassi, for their tireless efforts fighting deforestation and animal trafficking in the Bolivian Amazon. I'd like to thank Kelly Cox, Esq. and Professor Peter Nemerovski for their guidance in writing this note, and Fran, Mike, and Ned Hanners, for their unwavering support.

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## INTRODUCTION

The Anabaptists<sup>1</sup> have come a long way from their ancestral Germanic homelands.<sup>2</sup> Their story is a cyclical one of movement, agricultural accomplishment, cultural disenchantment, and then movement again. They have often found themselves being courted

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<sup>1</sup> The umbrella term under which the Amish, Mennonite, and Hutterite religions fall—Anabaptists are a branch of Christianity. Alvin J. Esau, *The Establishment, Preservation and Legality of Mennonite Semi-Communalism in Manitoba*, 31 MAN. L. J. 81, 81 (2005).

<sup>2</sup> Kim Korven, *Settling That Way: the Canadian Government's Role in the Creation of Communal Religious Settlements on the Prairies*, 73 SASK. L. REV. 237, 239 (2010).

by powerful state actors, recruited because of their reputation as agricultural gurus.<sup>3</sup> A traditionally agrarian people, they came to Canada and the United States not only seeking freedom from religious persecution, but on promises from both governments of sizeable tracts of lands and a large degree of autonomy once on those lands.<sup>4</sup> Different Anabaptist sects have had varying degrees of success in asserting their autonomy from the dominant culture in both countries, but still, many have run afoul of their new respective governments' policies, particularly in the areas of land ownership and compulsory education.

Starting in the early- to mid-1900s, many of the more traditional families among the Canadian and American colonies – those who preferred not to culturally assimilate to the traditions and edicts in their new homes – trained their eyes and their hopes on a remote corner of South America, making good on a promise extended to them from the government of Paraguay.<sup>5</sup> Within a short time, the new settlers were joined by more of their brethren from Europe, and their presence began to extend into the neighboring countries of Bolivia, Argentina, and Brazil.<sup>6</sup> Left largely to their own devices, these highly skilled farmers have since transformed the once-wild lands deeded to them into vast soy fields and cattle ranches.<sup>7</sup>

Not surprisingly, this agricultural revolution in the green heart of South America has had a devastating effect on the environment, particularly in the way of clear-cutting in the Amazon and the Gran Chaco.<sup>8</sup> With the increasing global awareness surrounding climate

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<sup>3</sup> *Id.* at 238, 243.

<sup>4</sup> *Id.* at 244, 254.

<sup>5</sup> WALTER QUIRING, *The Mennonites Arrive in the Chaco*, in *THE PARAGUAY READER: HISTORY, CULTURE, POLITICS* 168, 168 (Peter Lambert & Andrew Nickson eds., 2013).

<sup>6</sup> HAROLD S. BENDER, MARTIN W. FRIESEN, MENNO EDIGER, ISBRAND HIEBERT & GERALD MUMAW, *Bolivia*, *GLOBAL ANABAPTIST MENNONITE ENCYCLOPEDIA ONLINE* (June 2013), <http://gameo.org/index.php?title=Bolivia&oldid=122239>.

<sup>7</sup> Christine MacDonald, *Green Going Gone: The Tragic Deforestation of the Chaco*, *ROLLING STONE* (July 28, 2014), <http://www.rollingstone.com/culture/news/green-going-gone-the-tragic-deforestation-of-the-chaco-20140728>.

<sup>8</sup> Simon Romero, *Vast Tracks in Paraguay Forest Being Replaced by Ranches*, *THE NEW YORK TIMES* (Mar. 24, 2012), [http://www.nytimes.com/2012/03/25/world/americas/paraguays-chaco-forest-being-cleared-by-ranchers.html?\\_r=0](http://www.nytimes.com/2012/03/25/world/americas/paraguays-chaco-forest-being-cleared-by-ranchers.html?_r=0).

change, environmental watch groups and the media have begun to scrutinize the Anabaptist-fueled development of these endangered areas.<sup>9</sup> The question then becomes what can or will the various governments do to stop the Anabaptist agriculture machine?

This note will cover the Anabaptist migration from their European origins, through the prairies of Canada and the United States, and on down into the forests of Paraguay and Bolivia, examining their impetus for immigration. The aims of this note are two-fold: the first is to identify the events and root causes that enabled the Anabaptists' unimpeded denuding of the Chaco and Chiquitano forest; the second is to catalog and discuss possible steps that the international community can take to mitigate or halt this destruction.

## BACKGROUND

The words “Amish” and “Mennonite” typically conjure up images of peace-loving people living a simple life close to nature. But at their inception, the Anabaptists were radicals because they believed, among other things, in voluntary adult baptism through profession of faith, rather than child baptism with water.<sup>10</sup> In addition to their unorthodox view on baptism, other distinguishing characteristics of the Anabaptist faith are their views on community property, education, and the separation of Church and State. “The key tenets of . . . [their] religion . . . [are] an emphasis on an individual’s personal relationship with God, adult baptism, a rejection of state or official religion, a refusal to swear oaths, non-resistance in the face of aggression, and a refusal of military service.”<sup>11</sup> This paper will touch upon the ways in which the aforementioned governments did or did not accommodate some of these tenets.

### *I. European Origins*

All of the Anabaptist groups discussed in this paper – the Amish, the Mennonites, and the Hutterites – trace their origin to the Radical

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<sup>9</sup> MacDonald, *supra* note 7; see also John Vidal, *Chaco Deforestation by Christian Sect Puts Paraguayan Land Under Threat*, THE GUARDIAN (Oct. 5, 2010), <http://www.theguardian.com/world/2010/oct/05/chaco-paraguay-deforestation>.

<sup>10</sup> Korven, *supra* note 2, at 239.

<sup>11</sup> *Id.* at 240.

Reformation that took place in Europe in the 16<sup>th</sup> century.<sup>12</sup> The Anabaptists rejected the notion of an institutional church and sought to establish religious communities outside the existing state-sanctioned religious communities, focusing instead on individual spirituality, untainted by the State. This spiritual individualism manifested itself in re-baptism, or adult baptism, hence the name Anabaptist.<sup>13</sup> Their views on the necessity of separation of Church and State made them radicals in the eyes of the Holy Roman Empire.<sup>14</sup> And although the modern versions of these Anabaptist sects differ in their views on things like property and technology, the concept of separation of Church and State remains a bedrock principle for each branch.<sup>15</sup>

The early Anabaptist movement had its roots in Switzerland and Germany, but the branches quickly spread geographically for four main reasons.<sup>16</sup> First, their ideas gained momentum. The Anabaptists in the Netherlands made a powerful ally in the Dutch priest Menno Simons, who gave the Mennonites their name and helped spread the religion in the Low Countries.<sup>17</sup> A second reason they spread out across Europe and eventually Russia was in search of land to farm.<sup>18</sup> As a people who believed in the separation of Church

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<sup>12</sup> *Id.* at 239; The Protestant Reformation of the 16<sup>th</sup> century occurred when Protestant reformers broke with the Roman Catholic Church. The more 'radical' among the reformers, who held more extreme views about the need to establish churches free from state influence and pacifism, became known as the Radical Reformers. See *The Amish, The Early Years in Europe*, RELIGIOUSTOLERANCE.ORG, <http://www.religioustolerance.org/amsih1.htm> (last visited Feb. 19, 2016); see also *Radical Reformers*, PBS, <http://www.pbs.org/faithandreason/theogloss/radref-body.html> (last visited Feb. 19, 2016).

<sup>13</sup> Korven, *supra* note 2, at 239.

<sup>14</sup> *The Amish, The Early Years in Europe*, RELIGIOUSTOLERANCE.ORG, <http://www.religioustolerance.org/amsih1.htm> (last visited Feb. 19, 2016); see also *Radical Reformers*, PBS, <http://www.pbs.org/faithandreason/theogloss/radref-body.html> (last visited Feb. 19, 2016).

<sup>15</sup> Korven, *supra* note 2, at 240.

<sup>16</sup> Eberhard Arnold, *The Early Anabaptists*, PLOUGH (1970), <http://www.plough.com/en/topics/faith/anabaptists/early-anabaptists-1>; see also Pavao Paul, *Christian History for Everyman*, CHRISTIAN HISTORY FOR EVERYMAN (2014), <http://www.christian-history.org/anabaptists.html>.

<sup>17</sup> Dan Graves, #401: *Menno Simons and the Mennonites*, CHRISTIAN HISTORY INSTITUTE, <https://www.christianhistoryinstitute.org/study/module/menno-simons/> (last visited Nov. 14, 2016).

<sup>18</sup> Korven, *supra* note 2, at 243-44.

and State, they often isolated themselves, creating their own agrarian communities. Third, because of their unorthodox beliefs and the strength of the Catholic Church, they were frequent subjects of persecution.<sup>19</sup> Lastly, the European continent was in a near constant state of war throughout the Anabaptists' time there. Those wars saw their farmlands ravaged, and their people suffering further persecution because of their pacifist ideals and unwillingness to fight.<sup>20</sup>

The Anabaptists found a temporary solution in Catherine the Great's Russia. In the 1760s, the Czarina entered into negotiations with the Anabaptists.<sup>21</sup> In exchange for a promise of religious freedom and exemption from military conscription, they were given land in areas that the Russian State wished to settle and maintain, such as what is now Ukraine.<sup>22</sup> Russia ultimately reneged on its promise to exempt the Anabaptists from military service when it introduced forced conscription for all men of military age in 1870.<sup>23</sup> And with the specter of the Russian Revolution looming large, the Anabaptists began to look west to the infant States of Canada and America,<sup>24</sup> where they believed they could find what they needed to sustain their communities: arable farmland, religious freedom, and separation of Church and State.

In 1872, the Canadian government entered into negotiations with Russian Mennonites for much the same reason as did Catherine the great: to settle their far-flung territories.<sup>25</sup> As is often the case with successful immigrant communities, word spread back home and by the 1890s Hutterites had begun to follow their Anabaptist brethren to the plains of North America.<sup>26</sup> The Amish broke

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<sup>19</sup> *Id.* at 242-43; *see also* DONALD B. KRAYBILL, *Negotiating with Caesar, in THE AMISH AND THE STATE* 3, 5 (Donald B. Kraybill ed., 2003).

<sup>20</sup> Daniel Kauffman, *Mennonite History*, ANABAPTISTS.ORG, <http://www.anabaptists.org/history/mennohist.html> (last visited Feb. 19, 2016).

<sup>21</sup> Korven, *supra* note 2, at 243-44.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 246.

<sup>24</sup> *Id.* at 237.

<sup>25</sup> *Id.*

<sup>26</sup> Korven, *supra* note 2, at 238.

from the Mennonite church at the close of the 17<sup>th</sup> century over concerns about degrees of conservatism and theological differences.<sup>27</sup> The Amish eschew technology and involvement in outside society to a greater extent than do the other Anabaptist sects.<sup>28</sup> They too suffered persecution and sought out refuge in the new world. They found it when William Penn extended an invitation for all European religious minorities to join his “holy experiment.”<sup>29</sup> The first large group of Amish arrived in Lancaster County, Pennsylvania in the first half of the 18<sup>th</sup> century.<sup>30</sup>

## *II. Experiences in Canada and the United States*

Having endured centuries of persecution in Europe<sup>31</sup>, the Anabaptists who came to North America must have felt a great sense of promise. And indeed, the governments of the Canada and the United States did at first grant them many of the freedoms they were looking for. However, as Canada and the United States experienced their own growing pains, the question of what treatment to afford the Anabaptists led to tensions, not all of which were resolved favorably for the Anabaptists. The following sections will look at some of the legislation and case law surrounding these clashes of culture, which ultimately fueled Anabaptist immigration southward.

### Land & Communal Property

The use of property is one of the principal areas of philosophy where the different sects diverge. The Hutterites practice a strict policy of communal property, where members do not have personal

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<sup>27</sup> KRAYBILL, *supra* note 19, at 6; *see also*, B.A. Robinson, *The Early Years in Europe: How the Protestant Reformation Generated the Free Church Movement, which led to the Mennonite movement from which the Amish Split*, RELIGIOUS TOLERANCE.ORG, <http://www.religioustolerance.org/amish1.htm> (last updated Mar. 25, 2009).

<sup>28</sup> Bethney Foster, *Mennonite and Amish Differences*, PEOPLE OF OUR EVERYDAY LIFE, <http://peopleof.oureverydaylife.com/amish-mennonite-differences-7025.html> (last visited Nov. 14, 2016).

<sup>29</sup> *People and Ideas: William Penn*, PBS, <http://www.pbs.org/godinamerica/people/william-penn.html> (last visited Feb. 19, 2016).

<sup>30</sup> *The Germans Come to North America*, ANABAPTISTS.ORG, <http://www.anabaptists.org/history/german-migration-to-north-america.html> (last visited Feb. 19, 2016).

<sup>31</sup> KRAYBILL, *supra* note 19, at 5.



property.<sup>32</sup> This includes real property. The Mennonites are less strict in this regard<sup>33</sup> and the Amish live on their own farms but within a community.<sup>34</sup> Despite their differences, all these forms of land use have a communal element to them, and this was accommodated to varying degrees by the Canadian and American governments.

The Canadian government, like the Russians before them, recognized that in order to attract the Anabaptist settlers, they would have to make concessions to their communal way of life. While debating various amendments to the Dominion Lands Act, former Prime Minister of Canada, Sir John A. Macdonald, stated:

[U]nless they are allowed to settle together in that way they will not come at all. Perhaps . . . it would be better to have the different races scattered throughout the territory, so that by degrees they might . . . become, in the end, Canadians; but the first thing to do is to get them to come, and if they will not come readily and scatter over the country, then we must bring them out in communities.<sup>35</sup>

In 1872, the Canadian government passed the Dominion Lands Act,<sup>36</sup> which was modeled on the American Homestead Acts of the 1860s. The Dominion Land Act gave settlers large tracts of land in return for a nominal fee and the promise to cultivate and live on the land they held title to.<sup>37</sup> The provision of the Act requiring them to live on the land deeded to them was problematic for the Anabaptists because of their use of land in a communal fashion. The Mennonites lobbied the Canadian government to make a concession and they did

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<sup>32</sup> ALVIN J. ESAU, *Communal Property and Freedom of Religion: Lakeside Colony of Hutterian Brethren v. Hofer*, in RELIGIOUS CONSCIENCE, THE STATE, AND THE LAW 97, 101 (John McClaren & Harold Coward eds., 1999).

<sup>33</sup> Korven, *supra* note 2, at 240.

<sup>34</sup> KRAYBILL, *supra* note 19, at 8; ELIZABETH PLACE, *Land Use, in THE AMISH AND THE STATE* 191, 191 (Donald B. Kraybill ed., 2003); *see generally*, *The PA Amish Lifestyle*, <http://www.discoverlancaster.com/towns-and-heritage/amish-country/amish-lifestyle.asp> (last visited Nov. 14, 2016).

<sup>35</sup> Esau, *supra* note 1, at 87.

<sup>36</sup> Dominion Lands Act S.C. (1872) c. 23.

<sup>37</sup> Esau, *supra* note 1, at 86.

in the form of the "hamlet privilege."<sup>38</sup> This hamlet privilege underwent several modifications, but the Canadian government assured the Mennonites that they could practice semi-communalism. The Canadian government addressed the issue by proposing that

[I]n the case of settlements being formed of immigrants in communities, (such for instance as those of the Mennonites or Icelanders,) the Minister of the Interior may vary or waive . . . the foregoing requirements as to residence and cultivation on each separate quarter-section entered as a homestead.<sup>39</sup>

The concessions made to the Mennonites and the agreements between them and the Canadians, which were the basis upon which they agreed to move to Canada became known as the Privilegium.<sup>40</sup>

The Mennonites and the Hutterites who came after them did a great job of doing exactly what the Canadian government had hoped they would do: settle and cultivate the prairie. However, in 1881, the government removed the reference to Mennonites and Icelanders in the hamlet so that it no longer referred to any group specifically.<sup>41</sup> This signified the beginning of a steady erosion of the hamlet privilege and the special status the Mennonites had enjoyed.<sup>42</sup> Changes to the provision also included: increased requirements for the amount of land that needed to be cultivated in the first five years<sup>43</sup> and less land available overall as a result of promises made to railways.<sup>44</sup> Consequently, these changes limited the number of contiguous plots of land available to those who wanted to settle in a community. By the end of the 1880s, the Canadian government began to ignore the Privilegium, especially the promise therein that gave exclusivity over reserved lands to the Mennonites.<sup>45</sup>

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<sup>38</sup> *Id.* at 92; *see also* Korven, *supra* note 2, at 257.

<sup>39</sup> Korven, *supra* note 2, at 257.

<sup>40</sup> *Id.* at 256.

<sup>41</sup> *Id.* 260.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Korven, *supra* note 2, at 261.

<sup>45</sup> *Id.* at 262.

By 1919, the Canadian government prohibited further immigration of Mennonites and Hutterites to Canada.<sup>46</sup> Although this law was repealed in 1922, 1955 would see the introduction of the Communal Properties Act, followed by the 1969 case of *Walter v. Attorney General*, 1969 S.C.R. 383 (Can.), which upheld its validity.<sup>47</sup> The Communal Properties Act restricted the amount of land that could be owned, specifically by Hutterites, and although it was argued that this was unconstitutional on the basis that it promoted religious discrimination, the Canadian courts in *Walter v. Attorney General* disagreed and held that the provinces had a constitutional right to pass property legislation.<sup>48</sup>

Where the Canadians were willing to create “exclusivist reserves” for Mennonites, the Americans were less amenable to the idea.<sup>49</sup> The so-called “Mennonite Bill” was debated in Congress in 1874.<sup>50</sup> This bill would have allowed Mennonites and Hutterites to purchase land from a reserve of 500,000 acres set-aside specifically for them in what is now North Dakota.<sup>51</sup> Despite statements praising the Anabaptist work ethic and the undesirability of losing the settlers to Canada, the bill eventually failed to pass the Senate because of wariness over “dividing the country into separate ethnic or religious enclaves instead of building a united country of citizens.”<sup>52</sup> Opponents of the bill voiced that:

It is fundamentally wrong that there should be allowed by law the right of any sect or body of people to separate themselves from the rest of the community and to have the exclusive privilege to build up within a State . . . a society which excludes . . .

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<sup>46</sup> *Id.* at 275.

<sup>47</sup> It was later repealed in 1973. *Walter v. Attorney General*, 1969 S.C.R. 383 (Can.); David H. Moore, *Religious Freedom and Doctrines of Reluctance in Post-Charter Canada*, B.Y.U. L. REV. 1087, 1092 (1996).

<sup>48</sup> *Walter v. Attorney General*, 1969 S.C.R. 383 (Can.); M.M. Litman, *Communal Properties Act Case*, THE CANADIAN ENCYCLOPEDIA (May 16, 2006), <http://www.thecanadianencyclopedia.ca/en/article/communal-properties-act-case/>.

<sup>49</sup> Esau, *supra* note 1, at 88.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

every other citizen of the Republic from intermingling in their society.<sup>53</sup>

Despite the failure of the Mennonite bill in Congress, aggressive competition between railroad companies, to whom land along the railroad was deeded, ultimately allowed the Mennonites to buy contiguous plots of land for communal living.<sup>54</sup> The Hutterites succeeded in a similarly circumspect way. They bought private plots of land, and they did not subject themselves to the Homestead Acts, which would have placed restrictions on communal living. In this way, they were able to abide by American laws.<sup>55</sup> The Hutterite experience in America was not entirely a positive one as two Hutterites were imprisoned – and ultimately killed – for their refusal to participate in the war effort during World War One.<sup>56</sup> After this event, many Hutterites left for Canada.<sup>57</sup>

### Education

The Anabaptists' reluctance to send their children to non-Anabaptist schools was a long-running source of contention between the Anabaptists and the state, both in Canada and America. As it currently stands, Anabaptist children in the United States are required to be sent to school through the eighth grade, but this was not always the case.<sup>58</sup> Compulsory school attendance was enacted throughout Canada at different times depending on the province, but by the first quarter of the 20<sup>th</sup> century, most provinces required compulsory attendance of school.<sup>59</sup> Similarly, compulsory education in the United States is regulated by the individual states but became the norm by

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<sup>53</sup> *Id.*

<sup>54</sup> Esau, *supra* note 1, at 89.

<sup>55</sup> Korven, *supra* note 2, at 273.

<sup>56</sup> *Id.* at 274.

<sup>57</sup> *Id.*

<sup>58</sup> See generally THOMAS J. MEYERS, *Education and Schooling, in THE AMISH AND THE STATE* 87 (Donald B. Kraybill ed., 2003).

<sup>59</sup> Philip Oreopoulos, *Canadian Compulsory School Laws and their Impact on Educational Attainment and Future Earnings*, STATISTICS CANADA (Jan. 19, 2016), <http://publications.gc.ca/Collection/Statcan/11F0019MIE/11F0019MIE2005251.pdf>.

1918,<sup>60</sup> and currently all children not part of an exempted class, like the Amish, are required to attend school at least until they are 16 years of age.<sup>61</sup>

The Anabaptist children are an exception, thanks to the landmark Supreme Court case *Wisconsin v. Yoder*, 406 U.S. 205 (1971). In *Yoder*, the Supreme Court held that “the First and Fourteenth Amendments prevent a state from compelling Amish parents to cause their children, who have graduated from the eighth grade, to attend formal high school to age 16.”<sup>62</sup> The Amish parents argued that educating their children past the eighth grade was contrary to their beliefs and that it would expose them to possible censure of the Church and even endanger their very salvation.<sup>63</sup> They further argued that the training they received after the eighth grade was tantamount to vocational school. The Court gave great weight to the Amish’s continued display of religious devotion throughout the centuries and ultimately found that the States’ interest in requiring compulsory education until the age of 16 did not outweigh the Amish’s interest in preserving their culture and the moral salvation of their children.<sup>64</sup> The Court noted,

... [T]he Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of . . . their religious organization, and the hazards presented by the State’s enforcement . . . . Beyond this, they have carried the even more difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education . . . . In light of this convincing showing, one that probably few other reli-

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<sup>60</sup> MICHAEL S. KATZ, A HISTORY OF COMPULSORY EDUCATION LAWS (1976), available at <http://eric.ed.gov/?id=ED119389>.

<sup>61</sup> *Wisconsin v. Yoder*, 406 U.S. 205 (1972); NATIONAL CENTER FOR EDUCATION STATISTICS, [https://nces.ed.gov/programs/statereform/tab5\\_1.asp](https://nces.ed.gov/programs/statereform/tab5_1.asp) (last visited Feb. 19, 2016).

<sup>62</sup> *Yoder*, 406 U.S. at 234.

<sup>63</sup> *Id.* at 208.

<sup>64</sup> See generally *id.* at 235.

gious groups or sects could make . . . it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish.<sup>65</sup>

Although the outcome of the *Yoder* case was a win for the Anabaptists and the Amish in particular, it represents the pressures to conform confronting isolationist religious sects, and is yet another reason why the more traditional among the Anabaptists sought a freer life in South America.

### Separation of Church and State

The separation between church and state is a cornerstone of the Anabaptist belief structure.<sup>66</sup> This is one of the main reasons they chose to immigrate to North America. Their traditional unwillingness to get involved with the state has lessened since coming to Canada and America, but there exists a lot of internal debate over how much interaction is too much interaction. For example, in Paraguay, Mennonites have run for national political office, with the first Mennonite senator being elected in 2003.<sup>67</sup> The senator, Orlando Penner, was quoted as saying, “[i]f we want to keep ourselves caged inside orthodoxy, we will be chasing around the world forever looking for new, empty, isolated lands . . . .”<sup>68</sup> Though Mr. Penner does not speak for the entire Anabaptist population, his words are indicative of the tension between modernity and morals that face many colonists. Even the Amish, widely considered to be more traditional than the Mennonites, have been known to vote from time to time, if the issue directly affects them.<sup>69</sup> Others from more conservative sects still think any involvement is too much because “[g]enerally, the

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<sup>65</sup> *Id.*

<sup>66</sup> Korven, *supra* note 2, at 240.

<sup>67</sup> Tony Smith, *Paraguay Mennonites Find Success a Mixed Blessing*, THE NEW YORK TIMES (Oct. 10, 2013), <http://www.nytimes.com/2003/08/10/world/paraguay-mennonites-find-success-a-mixed-blessing.html>.

<sup>68</sup> *Id.*

<sup>69</sup> PATON YODER, *The Amish View of the State*, in THE AMISH AND THE STATE 24, 35 (Donald B. Kraybill ed., 2003).

older generation clings to the centuries-old tradition of steering clear of statecraft.”<sup>70</sup>

The United States Constitution requires the separation between church and state.<sup>71</sup> Canada, however, has no such requirement in the Canadian Charter of Rights and Freedoms.<sup>72</sup> This distinction can be seen in the way that courts handle disputes arising in religious communities. The US courts have been more reluctant to get involved in church disputes, often declining jurisdiction over the cases,<sup>73</sup> or by taking a polity-deference or abstention approach to these cases.<sup>74</sup> This is not to say that Canadian courts will always take up cases brought to them by Anabaptists or that US courts will not, it is just illustrative of the fact that the Canadian government has and will insert itself into religious matters, which is a fact with which more conservative Anabaptists may not be comfortable.

The Mennonites and Hutterites have come up with a creative way to make use of the State when it suits them by forming corporations. This way, when they need to negotiate with the State or sue a competitor, they can do it through a third party on behalf of the corporation, without offending the strong presumption against using non-Anabaptist courts and against suing people.<sup>75</sup> Such was the situation in the *Hofer*<sup>76</sup> case in Canada, wherein the court upheld the ex-communication of members of a Hutterite community.<sup>77</sup> The *Hofer* case was a complicated one spanning decades, which arose out of an argument over the invention and manufacturing of hog feeders in the Hutterite colonies of Manitoba.<sup>78</sup> In this case, the Lakeside colony accused the Crystal Springs colony of stealing the design and

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<sup>70</sup> Smith, *supra* note 67.

<sup>71</sup> U.S. CONST. amend. I.

<sup>72</sup> The Canadian Charter of Rights and Freedoms (1982); Alvin J. Esau, *The Judicial Resolution of Church Property Disputes: Canadian and American Models*, 40 ALTA. L. REV. 767, 773 (2003).

<sup>73</sup> Esau, *supra* note 72, at 810.

<sup>74</sup> *Id.* at 796.

<sup>75</sup> See generally ALVIN J. ESAU, *Communal Property and Freedom of Religion: Lakeside Colony of Hutterian Brethren v. Hofer*, in RELIGIOUS CONSCIENCE, THE STATE, AND THE LAW 97 (John McClaren & Harold Coward eds., 1999).

<sup>76</sup> *Lakeside Colony of Hutterian Brethren v. Hofer* (1989) 63 D.L.R. (4<sup>th</sup>) 473 (Man. Q.B.); (1991) 77 D.L.R. (4<sup>th</sup>) 202 (Man C.A.); (1992) 97 D.L.R. (4<sup>th</sup>) 17 (S.C.C.).

<sup>77</sup> Esau, *supra* note 72, at 768.

<sup>78</sup> ESAU, *supra* note 75, at 102-03.

patent for a hog feeder, and then selling the invention for profit. The Crystal Spring colony had the patent assigned to a third party non-Anabaptist company (“Company”), with whom they contracted for marketing purposes.<sup>79</sup> This was a shrewd move because the Company was not subject to the same moral constraints against suing as were the members of the colony, meaning that they could openly and readily sue competitors for patent infringement, and they did. Furthermore, the Company split the profits from these patent actions with the Crystal Spring colony.<sup>80</sup>

What ensued was a messy debacle wherein the colonies ended up arguing amongst themselves, producing schisms and awkward living arrangements where half the people in a colony refused to speak with the other half.<sup>81</sup> These living arrangements came to be because if a member chose to leave the colony, he did so knowing he would have to leave behind his property, because of the communal nature of property within the Hutterite faith.<sup>82</sup> So when the Supreme Court of Canada finally ruled that the excommunication of certain members of the colonies would be upheld, the members who left did so presumably without their property. In this regard, the Canadian Supreme Court was able to get involved in the dispute on the basis of property disagreements, not religious ones. The important takeaway from this case is that the Anabaptists do sue one another and outsiders, even if they have to do so through third parties, and they are willing to make use of the secular courts to do so.

### *III. Early Immigration to Paraguay and Bolivia*

The Anabaptist experience in Canada and the United States was not entirely bad, as the governments of both countries did at times make an effort to accommodate their needs. Still, after centuries on the move looking for a peaceful and fertile place to call home, it is little surprise that many Anabaptists chose to immigrate to South America, which held the promise of cultural freedom and agricultural prosperity.

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 105.

<sup>82</sup> *Id.* at 110.



In the early 20<sup>th</sup> century, the Paraguayan government was looking for desirable groups of homesteaders to settle their sparsely populated provinces and protect them from usurpation and exploitation by Bolivia.<sup>83</sup> The Paraguayans followed the example set by the Canadian and Russian governments who had previously courted the Anabaptists for similar purposes. In the years building up to the Chaco War<sup>84</sup> with neighboring Bolivia, Paraguay had an interest in settling the Chaco in order to bolster its claims to the disputed area and protect itself from encroachment.<sup>85</sup> The Chaco, affectionately referred to by locals as the “green hell,”<sup>86</sup> was a notoriously untamed and seemingly impenetrable stretch of wilderness that occupies much of the landmass of the country. Having been made privy to the agricultural talents of the Anabaptists, the Paraguayan government reached out to them in an effort to tame that wilderness and preserve their borders.<sup>87</sup> Like the Russian Mennonites who brokered a deal with the Canadian government before arriving, the North American Mennonites worked with a representative who helped broker a deal between them and the Paraguayan government for approximately 150,400 hectares (over 580 square miles) of Chaco land to farm, along with specific rights and freedoms.<sup>88</sup> On July 26, 1921, the Paraguayan government formalized their settlement offer to the Mennonites in Rule number 514.<sup>89</sup>

Among the rights and privileges that Rule 514 granted the members of the Mennonite community and their descendants include the following: 1) The right to practice their religion and to worship with complete freedom, without any restriction, and, as a consequence of

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<sup>83</sup> QUIRING, *supra* note 5, at 168; *How Beautiful is Your Voice: Accounts of the History of the Enlhet and Ya'alve-Saanga* in THE PARAGUAY READER: HISTORY, CULTURE, POLITICS 220, 220 (Peter Lambert & Andrew Nickson eds., 2013).

<sup>84</sup> *Chaco War*, ENCYCLOPEDIA BRITANNICA (2016), <http://www.britannica.com/event/Chaco-War>.

<sup>85</sup> QUIRING, *supra* note 5, at 168; *see also* Smith, *supra* note 67.

<sup>86</sup> Claudia Pompa, *Paraguay: Can the Deforestation be Stopped?*, LATIN AMERICA BUREAU (Feb. 12, 2014), <http://lab.org.uk/paraguay-can-the-deforestation-be-stopped>.

<sup>87</sup> QUIRING, *supra* note 5, at 168.

<sup>88</sup> *Id.*

<sup>89</sup> Law No. 514, July 26, 1921, REGISTRO OFICIAL [R.O.] 336 (Par.) (translated).

this, to be able to answer with a simple “yes” or “no” in front of the courts and/or justices, instead of swearing; and to be exempt from compulsory military service in peacetime and wartime; 2) The right to establish, administer and maintain schools, and to teach in their own language, without restriction; 3) The right to prohibit the sale of alcohol or other intoxicants within the boundaries of their colonies; 4) Ten years of exemption from having to pay import taxes on their belongings or any machinery or seeds they wanted to import; 5) Ten years of exemption from any Paraguayan taxes whatsoever; and 6) The right to establish their own community tribunals.<sup>90</sup>

By the mid-1900s, with their vast tracts of land secured and their colonies established far from any major population centers, the Anabaptists in Paraguay had begun to transform the landscape.<sup>91</sup> Anabaptist settlement in Bolivia began in the early 1950s when several families from Mennonite colonies in Paraguay immigrated west and settled outside of the Bolivian city of Santa Cruz de la Sierra.<sup>92</sup> Since then, the Mennonite presence in Bolivia has grown exponentially. With large families and high birth rates, it is estimated that the size of a colony doubles every 15 years.<sup>93</sup> The Mennonites who came to Bolivia did so relying on many of the same promises that first drew the Mennonites to Paraguay, such as freedom of religion, language, and schooling, and freedom from conscription.<sup>94</sup> Like their Paraguayan brethren, the Bolivian Mennonites are a prosperous group who are responsible for a large portion of the country’s agricultural output.<sup>95</sup> Unlike their Anabaptist brethren, the Mennonites and Hutterites do not all shun modern technologies, and they make expert

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<sup>90</sup> *Id.*

<sup>91</sup> Vidal, *supra* note 9.

<sup>92</sup> *Bolivia*, GLOBAL ANABAPTIST MENNONITE ENCYCLOPEDIA ONLINE, <http://gameo.org/index.php?title=Bolivia> (last visited Nov. 28, 2016).

<sup>93</sup> Tim Huber, *Fragile Privileges in Bolivia*, MENNONITE WORLD REVIEW (Oct. 13, 2014), <http://mennoworld.org/2014/10/13/news/fragile-privileges-in-bolivia/>.

<sup>94</sup> *Id.*

<sup>95</sup> QUIRING, *supra* note 5, at 168; Benjamin Nobbs-Thiessen, *Soybean and Milk: Community and Commodification in a Bolivian Mennonite Colony*, ANABAPTIST HISTORIANS (Sept. 29, 2016), <https://anabaptisthistorians.org/tag/bolivian-mennonites/>.

use of high grade farming equipment.<sup>96</sup> Because they belong to colonies, they are able to pool resources in order to purchase expensive agricultural equipment, which gives them a distinct advantage over many local farmers.<sup>97</sup> They are among the wealthiest landowners in each country and enjoy a high per capita income and share of the land.<sup>98</sup>

#### *IV. Deforestation*

The Amazon rainforest is a moist tropical broadleaf forest that, along with the Amazon Basin, covers vast portions of the South American continent.<sup>99</sup> The majority of the Amazonian ecosystem lies within the country of Brazil, but it spills over into the neighboring countries.<sup>100</sup> There is not a sharp, well-drawn line between where the Amazon rainforest ends and other ecosystems begin, and as such, the name “Amazon” is often used to refer to all the tropical ecosystems adjacent to the Amazon rainforest.<sup>101</sup> These regions include tropical/subtropical dry broadleaf forests, and tropical/subtropical grasslands, savannahs, and shrub lands.<sup>102</sup> Within these adjacent ecosystems lie the Gran Chaco<sup>103</sup> and the Chiquitano dry forest.<sup>104</sup>

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<sup>96</sup> *What's the Difference Between Amish and Mennonites?*, AMISH AMERICA, <http://amishamerica.com/whats-the-difference-between-amish-and-mennonites/> (last visited Feb. 19, 2016).

<sup>97</sup> QUIRING, *supra* note 5, at 168.

<sup>98</sup> *Id.*

<sup>99</sup> *The Amazon*, WORLD WILDLIFE FUND, [http://wwf.panda.org/what\\_we\\_do/footprint/agriculture/soy/soyreport/soy\\_and\\_deforestation/the\\_amazon](http://wwf.panda.org/what_we_do/footprint/agriculture/soy/soyreport/soy_and_deforestation/the_amazon) (last visited Sept. 24, 2016).

<sup>100</sup> *Id.*

<sup>101</sup> *See About the Amazon*, WORLD WILDLIFE FUND, [http://wwf.panda.org/wh\\_at\\_we\\_do/where\\_we\\_work/amazon/about\\_the\\_amazon/](http://wwf.panda.org/wh_at_we_do/where_we_work/amazon/about_the_amazon/) (last visited Nov. 14, 2016).

<sup>102</sup> *The Amazon*. *Supra* note 99.

<sup>103</sup> The Gran Chaco covers parts of Argentina, Bolivia, and Paraguay. *The Gran Chaco*, WORLD WILDLIFE FUND, [http://wwf.panda.org/what\\_we\\_do/footprint/agriculture/soy/soyreport/soy\\_and\\_deforestation/the\\_gran\\_chaco/](http://wwf.panda.org/what_we_do/footprint/agriculture/soy/soyreport/soy_and_deforestation/the_gran_chaco/) (last visited Feb. 19, 2016).

<sup>104</sup> The Chiquitano is located predominantly in eastern Bolivia but also covers parts of Paraguay and Brazil. *Chiquitana Forest Conservation Foundation (Bolivia)*, THE REDD DESK, <http://theredddesk.org/countries/actors/chiquitana-forest-conservation-foundation-bolivia> (last visited Feb. 19, 2016).

The Gran Chaco is one of the most biodiverse locations on the planet and stretches across Paraguay, Bolivia, Argentina, and Brazil,<sup>105</sup> It is dry and hot, with landscapes and predators as unforgiving as the climate, and as such, was once thought too difficult to inhabit.<sup>106</sup> Unfortunately for the flora and fauna of the Chaco, the Anabaptists are a hard-working people, who have a history of overcoming environmental obstacles to become exceptionally skilled farmers. Since the arrival of the Mennonites in the 1920s, the Chaco has been devastated by soy farming and cattle ranching.<sup>107</sup> It is also one of the most rapidly disappearing habitats in the world and some scientists estimate that it will be completely cleared within the next 30 years.<sup>108</sup>

The Chiquitano tropical dry forest in neighboring Bolivia, where much of the country's Anabaptist population lives, faces a similar plight, with deforestation rates among the highest in the world.<sup>109</sup> Characterized by soil that is relatively fertile by tropical standards, these dry forests have been preferentially settled, and are therefore more prone to deforestation.<sup>110</sup> The vast majority of the little islands of intact forest that still remain are within one kilometer of a cleared section of forest, or are less than 50 kilometers squared in size – a fact that is devastating to wildlife trying to survive undetected within.<sup>111</sup> Although some sections of both the Gran Chaco and the Chiquitano are protected by local law, these account for only a small portion of the total land areas of those habitats. Development outside the lines is rampant.<sup>112</sup>

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<sup>105</sup> Vidal, *supra* note 9.

<sup>106</sup> See generally THE REDD DESK, *supra* note 104.

<sup>107</sup> Romero, *supra* note 8.

<sup>108</sup> *Id.*

<sup>109</sup> M. K. Steinhenger, C. J. Tucker, P. Ersts, T. J. Killen, Z. Villegas & S. B. Hecht, *Clearance and Fragmentation of Tropical Deciduous Forest in the Tierras Bajas, Santa Cruz, Bolivia*, 15 SOCIETY FOR CONSERVATION BIOLOGY 856, 856-66 (2001), available at <http://www.jstor.org/stable/3061306>.

<sup>110</sup> *Id.* at 858.

<sup>111</sup> *Id.* at 862.

<sup>112</sup> *Id.*

## LAW SUMMARY

Amazonian deforestation is a global problem. The Amazon, and its bordering ecosystems like the Chaco and the Chiquitano, is of tremendous ecological importance.<sup>113</sup> It includes over half of the remaining forests on the planet, as well as a substantial amount of all the available fresh water in the world.<sup>114</sup> Commonly referred to as the “lungs” of the planet, the Amazon absorbs carbon dioxide and releases enormous quantities of oxygen,<sup>115</sup> benefitting the entire human population. The human population primarily benefits from forests such as the Amazon because “[f]orests play a vital role in stabilising the world’s climate by storing large amounts of carbon that would otherwise contribute to climate change.”<sup>116</sup>

Because deforestation is both a state and a global concern, there exists the possibility of attacking the problem on either or both plains. Though notions of state sovereignty would most likely preclude international actors from holding Bolivia and Paraguay accountable to their own laws in any sort of meaningful, boots-on-the-ground way, there are a number of international treaties and conventions that both countries are party to, which could be evoked. The ones analyzed below are those that may have the most potential to be adequately enforced and to affect some sort of change.

*I. State Level:*Paraguay

In 2004, Law 2524, DE PROHIBICION EN LA REGION ORIENTAL DE LAS ACTIVIDADES DE TRANSFORMACION Y CONVERSION DE SUPERFICIES CON COBERTURA DE BOSQUES, or, the Zero Deforestation Law (ZDF), was implemented to halt deforestation in the Eastern region of the country.<sup>117</sup>

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<sup>113</sup> Brett Simpson, *International Involvement in Preservation of the Brazilian Amazon Rainforest: Context, Constraints, and Scope*, 13 ASIA PAC. J. ENVTL. L. 39, 40 (2010).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Slaughtering the Amazon*, GREENPEACE, <http://www.greenpeace.org/international/Global/international/planet-2/report/2009/7/slaughtering-the-amazon.pdf> (last visited Feb. 19, 2016).

<sup>117</sup> Ley N° 2524, R.O. 112, Dec. 13, 2004, (Para.).

Translated from the original Spanish text, the law reads in part: “[the] Purpose of this Act is to foster the protection, recovery and improvement of the native forests in the Eastern Region, [and] to develop a framework for sustainable development . . . .”<sup>118</sup> The law enumerates specific activities prohibited in the protected zone, including: the transformation or conversion of forested areas into agricultural land or human settlements; and the production, marketing, and/or transport of wood, timber, coal, or any other forest products originating from an area where clearance is not allowed.<sup>119</sup>

The law also delineates a plan to approve land use applications in the area and/or to apply sanctions, including by means of satellite imagery, and requires that these be submitted to Congress.<sup>120</sup> The results have been swift and positive, so much so that the measure has been renewed and extended until 2018.<sup>121</sup>

### Bolivia

In 2012, Bolivia garnered much attention for the passage of its “Mother Earth” laws.<sup>122</sup> LA LEY MARCO DE LA MADRE TIERRA Y DESARROLLO INTEGRAL PARA VIVIR BIEN sets out lofty, non-specific goals to further the overall theme of living in harmony with the planet.<sup>123</sup> The law is lengthy and multi-faceted, but for purposes of this article, only the most pertinent portions are discussed.

Article ten assigns the State the responsibility of ensuring the continuity and regenerative capacity of the land.<sup>124</sup> Article 15 calls for the establishment of cleaner production processes that will promote the progressive, incremental, efficient and sustainable exploitation of non-renewable resources, and for “agricultural processes

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Paraguay Extends Zero Deforestation Law to 2018*, WORLD WILDLIFE FUND, <http://wwf.panda.org/?210224/Paraguay-extends-Zero-Deforestation-Law-to-2018> (last visited Feb. 19, 2016).

<sup>122</sup> Nicholas Fromherz, *The Rise and Fall of Bolivia's Evo Morales*, FOREIGN AFFAIRS (Oct. 18, 2011), <https://www.foreignaffairs.com/articles/americas/2011-10-18/rise-and-fall-bolivias-evo-morales>.

<sup>123</sup> Ley N<sup>o</sup>. 300, DIARIO OFICIAL [D.O.], Oct. 15, 2012, (Bol.).

<sup>124</sup> *Id.* art. 10(5).

that would ensure greater productivity and regeneration capacity.”<sup>125</sup> These processes are to use the best technology available to “prevent, mitigate and remedy the damage [already] caused.”<sup>126</sup>

Article 24 pertains to agriculture, fisheries and livestock, and calls on the State to minimize the expansion of the “agricultural frontiers” by maximizing production and energy efficiency.<sup>127</sup> It directs the State to simultaneously “[p]romote and incentivize agriculture and livestock” and to “ensure food security and sovereignty” while incorporating “technologies and practices that guarantee the regenerative capacity of the [forested] zones,” and their diverse, life-sustaining ecosystems.”<sup>128</sup>

Article 25 addresses forests, and touches briefly on conservation and exploitation rights, saying that there is a duty to “[r]ealize an integrated and sustainable management of the forests with norms and criteria of regional management . . . with conditions for the preservation of rights of use and exploitation.”<sup>129</sup> and to “[p]romote and develop integrated and sustainable forest management policies . . . including programs of forestation, reforestation and restoration of forests, accompanied by the implementation of sustainable agroforestry systems . . . .”<sup>130</sup> Article 54 also addresses forestry issues, stating that there should be developed “an operative and methodological framework for the intervention in strengthening territorial gestation with impacts in the mitigation and adaptation to climate change in relation to the forests . . . .”<sup>131</sup>

## *II. International Level:*

Paraguay and Bolivia have entered into several treaties, compacts and the like, both with one another and with the international community. Of all of these treaties, the UN Convention on Biological Diversity (“CBD”) stands out as the strongest contender in terms of tackling deforestation, due to the number of signatory countries. Relevant portions of the CBD include:

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<sup>125</sup> *Id.* art. 15(6).

<sup>126</sup> *Id.* art. 15(3).

<sup>127</sup> *Id.* art. 24(2).

<sup>128</sup> Ley N<sup>o</sup>. 300, art. 24(6) DIARIO OFICIAL [D.O.], Oct. 15, 2012, (Bol.).

<sup>129</sup> *Id.* art. 25(1).

<sup>130</sup> *Id.* art. 25(3).

<sup>131</sup> *Id.* art. 54(2).

Article 3: States have . . . the sovereign right to exploit their own resources . . . and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States . . .<sup>132</sup>

Article 8: In-Situ Conservation: Each contacting party shall . . .

8(c): Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;<sup>133</sup>

8(f): Rehabilitate and Restore degraded ecosystems and promote the recovery of threatened species . . .<sup>134</sup>

Article 10: Sustainable Use of Components of Biological Diversity: Each Party Shall . . .

10(d): Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced.<sup>135</sup>

### ANALYSIS

The problem of Anabaptist led deforestation in Paraguay and Bolivia does not exist in a vacuum. It is not merely an issue of environmental concerns versus property rights. It is a problem that is wrapped up in state sovereignty issues, and one that involves local actors, international actors, farmers, businessmen, environmental groups, as well as the Anabaptist colonies. The problem is three-fold. First there is the issue of whether a government can prosecute a semi-autonomous people who came to a particular country on the

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<sup>132</sup> United Nations Convention on Biological Diversity [hereinafter UNCBD], art. 3, June 5, 1992, 1760 U.N.T.S. 79; 31 ILM 818 (1992).

<sup>133</sup> *Id.* at art. 8c.

<sup>134</sup> *Id.* at 8f.

<sup>135</sup> *Id.* at 10d.



promise that they could retain semi-autonomy. The second problem is how to stop those responsible for the deforestation when the government of the country they are in is encouraging the practice. The third issue is finding the best way to involve the international community if action on the state level fails.

### *I. Prosecution*

One of the primary reasons the Anabaptists came to Paraguay and Bolivia was to secure a lifestyle for themselves that they could not sustain in Canada or the United States. Chief among the attractions of Paraguay and Bolivia was the promise of little government interference, and with that, the ability to establish and govern their own communities according to their unique religious and cultural edicts. However, it is important to note that this freedom does not mean they are immune from the law.

#### Bolivia

In 2011, nine Mennonite men were convicted for the systematic rapes of the women and girls (as young as three) in their colonies.<sup>136</sup> From 2005 to 2009, the men, aged 19 to 43, used an anesthetic spray supplied to them by a veterinarian who developed it by modifying cow tranquilizer.<sup>137</sup> The effects of the spray rendered the women unconscious so when they would wake up in the morning with terrible abdominal pain covered in blood and semen, no one knew what had happened.<sup>138</sup> They just knew that this mysterious thing kept happening in the night, and many chalked it up to demons.<sup>139</sup> It was not until a pair of rapists was caught in the act of breaking into a house that it all came to light.<sup>140</sup> The men all confessed and were sentenced to 25 years in prison, which is just shy of Bolivia's maximum 30-

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<sup>136</sup> Jean Friedman-Rudovsky, *A Verdict in Bolivia's Shocking Case of the Mennonite Rapes*, TIME MAGAZINE (Aug. 26, 2011), <http://content.time.com/time/world/article/0,8599,2087711,00.html>.

<sup>137</sup> Jean Friedman-Rudovsky, *The Ghost Rapes of Bolivia*, VICE MAGAZINE (Dec. 23, 2013), [www.vice.com/read/the-ghost-rapes-of-bolivia-000300-v20n8](http://www.vice.com/read/the-ghost-rapes-of-bolivia-000300-v20n8).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*; Andres Schipani, *The Work of the Devil: Crime in a Remote Religious Community*, THE GUARDIAN (Sept. 9, 2009), <http://www.theguardian.com/world/2009/sep/10/mennonites-rape-bolivia>.

<sup>140</sup> Friedman-Rudovsky, *supra* note 137.

year penalty.<sup>141</sup> The veterinarian was sentenced to 12 years.<sup>142</sup> The magnitude of the crime was apparently too much for the civic officials of the colony to handle, and that is why they were handed over to Bolivian police.<sup>143</sup> This, of course, is a far cry from an environmental crime, but it shows that the autonomy the Anabaptists enjoy is not complete, nor is it impervious to state police action, because they are not beyond the reach of the law.

Less dramatic but more on point are the land rights skirmishes between the Anabaptists and the Bolivian State, which populate the headlines of the official governmental news agency, Agencia Boliviana de Informacion (“ABI”). This ticker-type newsreel is full of accounts of the Bolivian government trying to eject Mennonites from land that is not theirs (allegedly), and of threats to sanction them for deforesting and/or selling land without permits.<sup>144</sup> There are also many accounts of Mennonite land being overrun by campesinos, and sometimes even of Mennonites being held hostage by the invaders.<sup>145</sup> In these publicized cases, the police have intervened, further showing that the law can and will insert itself into colonial life, though often times the penalty is only a fine, and not extensive jail time.

Future government interference is a likely problem for the Anabaptists in Bolivia, as calls for redistribution of land to Bolivians threatens Anabaptist land holdings. Since becoming the country’s first indigenous President in 2005, Evo Morales has focused much time and money on raising up the embattled and impoverished indigenous communities.<sup>146</sup> Building on a plan hatched by USAID in

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<sup>141</sup> *Id.*; Friedman-Rudovsky, *supra* note 136.

<sup>142</sup> Friedman-Rudovsky, *supra* note 136; Friedman-Rudovsky, *supra* note 137.

<sup>143</sup> Friedman-Rudovsky, *supra* note 136; Schipani, *supra* note 139.

<sup>144</sup> *Ministerio Público Anuncia Que Reactivará Caso Menonita*, AGENCIA BOLIVIANA DE INFORMACIÓN (June 4, 2012), <http://www.abi.bo/abi/> [hereinafter *Ministerio Público*]; *Observan supuesta negligencia en tratar denuncia contra menonitas*, AGENCIA BOLIVIANA DE INFORMACIÓN (June 26, 2012), <http://www.abi.bo/abi/>.

<sup>145</sup> *Denuncia de avasallamiento de propiedad Menonita se formaliza en el Ministerio Publico de Santa Cruz*, AGENCIA BOLIVIANA DE INFORMACIÓN (Feb. 28, 2013), <http://www.abi.bo/abi/>.

<sup>146</sup> Ronn Pineo, *The Decline of the United States Influence and the Rise of Evo Morales*, COUNCIL ON HEMISPHERIC AFFAIRS (Oct. 22, 2014) <http://www.coha.org/the-decline-of-us-influence-and-the-rise-of-evo-morales/>.

the 1970s and 1980s to redirect people to the lowlands (originally meant to ease tensions in Bolivian cities following large-scale strikes by miners),<sup>147</sup> the President has encouraged resettlement to the Chiquitano region, despite the enormous environmental costs. The problem that may force interaction between the Anabaptists and the State is the fact that much of the arable land in the country is held by people who are technically foreigners. In the case of the Mennonites, the name on the deed to the land usually belongs to an elder, who may trace his nationality back to Paraguay or Mexico or Canada. It is not unusual for there to only be one name on the deed to thousands of hectares of land, and for that person to hold the land in trust for the entire colony.<sup>148</sup> Even though those thousands of hectares are subdivided countless times over, and the people who occupy them were born in Bolivia (Mennonite and indigenous alike), the colony is still considered foreign-owned, and hence is at peril of being overrun by squatters or redistributed by the government.<sup>149</sup> The messy and protracted processes involved in Bolivian land titling are beyond the scope of this note, but it suffices to know that land reform, especially reforms involving redistribution, is an on-going and highly controversial issue in Bolivia, promising to affect nearly all landholders.<sup>150</sup>

With the incidences of campesino invasion of Mennonite lands,<sup>151</sup> and discussion of a possible decree reneging the autonomy previously given to the Anabaptist communities, including their land titles,<sup>152</sup> it is doubtful that these communities will be able to avoid Bolivian courts for long. If the government does decide to take

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<sup>147</sup> Steinhenger, *supra* note 109, at 859.

<sup>148</sup> Huber, *supra* note 93.

<sup>149</sup> *Id.*; Emily Achtenberg, *Bolivia: The Unfinished Business of Land Reform*, NORTH AMERICAN CONGRESS ON LATIN AMERICA (Mar. 31, 2013), <http://nacla.org/blog/2013/3/31/bolivia-unfinished-business-land-reform>.

<sup>150</sup> Achtenberg, *supra* note 148; see Douglas Hertzler, *Bolivia's Agrarian Reform Initiative*, ANDEAN INFORMATION NETWORK (June 28, 2006), <http://ain-bolivia.org/2006/06/agrarian-reform-initiative/>; see also Benjamin Dangl, *Land and Power in Bolivia*, AMERICAN CONGRESS ON LATIN AMERICA, <http://nacla.org/news/land-and-power-bolivia> (last visited Jan. 22, 2017); INSTITUTO NACIONAL DE REFORMA AGRARIA, <http://www.inra.gob.bo>; Constitución Política del Estado Plurinacional de Bolivia [CONSTITUTION] 2009 (Bol.).

<sup>151</sup> *Ministerio Público*, *supra* note 144.

<sup>152</sup> Huber, *supra* note 93.

away their autonomous standing, they will likely lose some of their traditional protections from prosecution, including as it applies to land use. Still, all signs point to the Anabaptists having time to prepare for these eventualities, because despite President Morales' political discourse against large landholdings by foreigners, "the state has not done much to hinder foreign direct investment in land. And foreign agribusiness has found ways to circumvent existing regulations, influence political power within Bolivia, and tap into longstanding discrimination against indigenous people in the name of regional development."<sup>153</sup>

### Paraguay

As the Anabaptists increasingly integrate themselves into Paraguayan society, be it through running for government offices, hiring local workers, or contributing to the market, their shield of semi-autonomy is more vulnerable to piercing. In Paraguay, there is mounting unhappiness over the displacement of local indigenous peoples by the Anabaptists. There are accusations that the Mennonite farmers effectively force the indigenous population into indentured servitude, or else render them homeless by clearing their lands. Not only do the indigenous people then lose their homes, they lose their livelihoods because they depended on the forests to survive. This displacement drives them into the urban centers, where it's difficult for them to find work for which they are suited. The indigenous people are at a tremendous disadvantage

[I]n many cases found it impossible to switch to agriculture as a form of subsistence due to the variability of the Chaco's rainfall and the poor quality of its soil. Thus, many indigenous are forced to leave their colonies in search of work, often to one of the large cattle ranches found in the Chaco. At these ranches the indigenous become, in many instances, virtual indentured servants, working long hours for very little pay. In some case they receive no cash payment at

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<sup>153</sup> Miguel Urioste F. de C., *The Great Soy Expansion: Brazilian Land Grabs in Eastern Bolivia*, UPSIDE DOWN WORLD (Sept. 22, 2013), <http://upside-downworld.org/main/bolivia-archives-31/4471-the-great-soy-expansion-brazilian-land-grabs-in-eastern-bolivia>.

all, but are instead paid in food and a promise to be paid cash at a later date.<sup>154</sup>

If the urban centers become overrun or ill-equipped to deal with the influx of indigenous people from the countryside, there is potential for civil unrest, and the State may be called on to step in and investigate these allegations of indentured servitude and displacement. Similar to the Bolivian “Mother Earth” laws, the Paraguayan Constitution also has provisions protecting the indigenous population and their right to wellbeing and to the land. Like their Bolivian counterparts though, these Paraguayan laws have not yet proven themselves to be sufficiently effective in protecting the land and the vulnerable populations who lay claim to it. In Paraguay, the indigenous populations struggle

[They] have been unable to support themselves through their traditional methods, such as hunting, gathering, and fishing. This situation is in direct violation of the Paraguayan constitution which stipulates . . . that the indigenous groups have a right to preserve and develop their ethnic identity.<sup>155</sup>

#### Lessons from Brazil and Ecuador

Despite all their shortcomings, the indigenous protection measures in place in Bolivia and Paraguay have at least drawn further attention to the rights of indigenous people, and in the process, have piqued the interest of some international news sources. This is significant because it creates a potential window for action, even litigation. The indigenous rights movement has gained some traction in the last decade with all the negative attention surrounding the

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<sup>154</sup> Keith Slack, *The Indigenous of the Paraguayan Chaco: Struggle for the Land*, CULTURAL SURVIVAL, <https://www.culturalsurvival.org/ourpublications/csq/article/the-indigenous-paraguayan-chaco-struggle-land> (last visited Feb. 19, 2016).

<sup>155</sup> *Id.*

Belo Monte dam project<sup>156</sup> as well as the lawsuits brought by indigenous people in Ecuador against Chevron.<sup>157</sup> Though the indigenous populations did not come out on the winning side of these events, ultimately losing their lands and failing to obtain justice, the media coverage and the attendant social media backlash to these happenings has been impressive. So while the indigenous people involved in the Belo Monte and Chevron fracas did not fare well this time, the resistance they offered and the negative publicity they generated aimed at their corporate opponents may deter future corporations from trying to displace them in the future, and destroy more of the Amazon.

This model of resistance and negative publicity could be applied to the deforestation issues in Bolivia and Brazil. While the relatively modest operations of the Anabaptists are a far cry from the destruction wrought by corporate giants like Chevron, they are no longer operating below the radar, which means they are much more susceptible to criticism, litigation, and prosecution by the State or public interest groups. As evidenced by the number of recent articles cited in this note addressing the Anabaptists' contributions to deforestation and displacement of indigenous populations, there is growing discontent around this situation. If the indigenous people of Bolivia and Paraguay persist in their efforts to retake their lands from the Anabaptists, whether that be through redistributing foreign-owned lands in Bolivia or re-deeding the Chaco in Paraguay, the State may have no choice but to intercede, resulting in a confrontation that could lead to a legal battle, despite their aversion to State involvement.

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<sup>156</sup> See generally *Brazil's Belo Monte Dam: Sacrificing the Amazon and its Peoples for Dirty Energy*, AMAZON WATCH, <http://amazonwatch.org/work/belo-monte-dam>, (last visited Feb. 19, 2016); see also Jonathan Watts, *Belo Monte, Brazil: The Tribes Living in the Shadow of a Megadam*, THE GUARDIAN (Dec. 16, 2014), <http://www.theguardian.com/environment/2014/dec/16/belo-monte-brazil-tribes-living-in-shadow-megadam>.

<sup>157</sup> For a detailing of the procedural history of this case, see *Texaco/Chevron Lawsuits (re Ecuador)*, BUSINESS AND HUMAN RIGHTS RESOURCE CENTER, <http://business-humanrights.org/en/texacochevron-lawsuits-re-ecuador> (last visited Feb. 19, 2016).

## *II. State Encouragement*

The sad story of the Chaco and the Chiquitano, and many other forests, is that the root of the problem can be traced back to colonial times. The First World powers, having made themselves rich off the fruits of the land by exploiting ‘cheap’ labor, left the colonies worse off in many respects than when they arrived. With industrialization and the spread of capitalism and free market trade, the now independent former colonies of the Third World were at a distinct disadvantage, having been stripped of many of their natural resources. They were left with weak governments and very large wealth gaps – a by-product of the inequality that colonialism instilled. In a bid to compete globally, these countries looked inward to what they could still reap from the land, often destroying much precious habitat in the process. From strip mining to clear-cutting, from damming to intensive soy cultivation, the former colonies did what they perceived they had to do in order to ensure their economic survival.

In this context it is easy to see why the Mennonite proposition was so attractive. They were a self-sufficient group of industrious, non-violent agriculturalists willing to farm land that no one lived on, the true value of which was unknown at the time because of a lack of environmental conscience, and to inject revenue into the economy. All they asked in return was to be left alone. For a government struggling to take care of its own people, this agreement must have seemed like a win-win situation. Having held up their end of the bargain and enriching their home countries in the process, it is an easy argument to make to say that these countries owed the Anabaptists a duty to honor their promises to leave them be in return. And so these communities thrived for decades, unimpeded by environmental considerations until recently.<sup>158</sup>

Hence, even if the State can prosecute Anabaptists individually or as a colony for environmental crimes, the question of whether or not it is economically sound to do so remains up for debate. What the Anabaptists have accomplished in the Chaco and Chiquitano regions is nothing short of remarkable, and this fact has not escaped outside observers. Though it would be disingenuous to lay the blame

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<sup>158</sup> QUIRING, *supra* note 5; see also MacDonald, *supra* note 7; Kate Pankowska, *Paraguayan Chaco – The Story of Thorn Forests or Cattle Ranches*, SUSTAINABLE COLLECTIVE (June 16, 2014), <http://www.sustainable-collective.com/all-articles/2014/6/8/paraguayan-chaco-the-thorn-forest-or-cattle-story>.

for the destruction of the Chaco solely on the Anabaptists, as multinational corporate entities have since eclipsed their contributions to the environmental ruin of the region,<sup>159</sup> the Anabaptists, specifically in this case the Mennonites, were the pioneers. Without their presence and their excellent agricultural skills, the land may have remained untouched. It has been posited that:

[t]he Mennonites are the largest and most successful of all non-Latin American immigrant groups to settle in Paraguay since it gained independence from Spain in 1811 . . . . [They] are still the only people to have founded successful large-scale agricultural and cattle-ranching communities in the Chaco . . . . Today the Chaco Mennonites number over ten thousand, and they own over one million acres of land.<sup>160</sup>

In contrast to the Mennonites' million acre holding, the indigenous communities in the Chaco, who comprise the majority of the population, hold title to just 500,463 hectares of land.<sup>161</sup> And, almost all of this land "has been obtained through funds provided by foreign groups working on behalf of the indigenous populations."<sup>162</sup>

While the notable achievements of the Anabaptist agriculturalists have disadvantaged local indigenous populations, they have translated into economic success for the Paraguayan and Bolivian governments. The Anabaptists have helped these countries substantially increase their soy production,<sup>163</sup> and consequently, will have played an important role in attracting the attention of huge agribusinesses such as Cargill, Bunge and ADM.<sup>164</sup> These three conglomerates are now responsible for most of Paraguay's exports, and

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<sup>159</sup> MacDonald, *supra* note 7; Romero, *supra* note 8; see GREENPEACE, *supra* note 116.

<sup>160</sup> QUIRING, *supra* note 5.

<sup>161</sup> Slack, *supra* note 154.

<sup>162</sup> *Id.*

<sup>163</sup> Benjamin Nobbs-Thiessen, *Soybean and Milk: Community and Commodification in a Bolivian Mennonite Colony*, ANABAPTIST HISTORIANS (Sept. 29, 2016), <https://anabaptisthistorians.org/tag/bolivian-mennonites/>.

<sup>164</sup> *Adm-Sao, Bunge, Cargill y Dreyfus; multinacionales agricolas eligen a Santa Cruz*, EL DEBER, <http://www.economiabolivia.net/2013/06/11/adm-sao-bunge-cargill-y-dreyfus-multinacionales-agricolas-eligen-santa-cruz/> (last visited Feb. 19, 2016); MacDonald, *supra* note 7.



also have a large presence in Bolivia.<sup>165</sup> The once wild lands of Paraguay and Bolivia have now fallen victim to an age-old destructive cycle:

What's going on in Paraguay follows a familiar pattern in countries blessed with lots of biodiversity and saddled with a struggling economy. Typically cattle ranchers are among the first to settle a virgin forest . . . linking a once isolated area to ports and population centers. Land prices soar and pioneers sell or get pushed out by deep-pocketed farmers with access to bank loans, Big Ag financing, influential friends and high tech machinery. Once a former wilderness has been sufficiently tamed, the factory farmers often bypass the pioneers and bulldoze virgin forest themselves, going directly into commodities production. This is what's starting to happen in the Chaco.<sup>166</sup>

The global demand for soy and non-Amazon-raised cattle<sup>167</sup> has made these colonies quite wealthy and has helped Paraguay and Bolivia to stay afloat in the global market. Also helping them along, ironically, is the tightening of environmental standards in neighboring Brazil. Because Brazilian forest protection laws are strengthening, much of the clear cutting has been exported to its neighbors where the laws are not as strong. This enables companies like Cargill and giant Brazilian meat packers like JBS and Marfig to claim they are part of the solution by signing moratoriums on Brazilian soybean production and agreements not to purchase meat from forest-clearing producers.<sup>168</sup> While this is undoubtedly a step in the right direction, loopholes exist a-plenty, so in reality, some of the meat they purchase is doubly harmful to the environment. Not only has the cattle been raised on ranches carved out of the rainforest, but the meat has then been trucked hundreds of miles, using vast quantities of fuel, so that it may be processed and sold from a company outside

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<sup>165</sup> *Adm-Sao, Bunge, Cargill y Dreyfus, supra* note 164.

<sup>166</sup> MacDonal, *supra* note 7.

<sup>167</sup> Technically the Chaco is not considered part of the Amazon.

<sup>168</sup> Allie Wilkinson, *In Brazil, cattle industry begins to help fight deforestation*, SCIENCE MAGAZINE (May 15, 2015), <http://www.sciencemag.org/news/2015/05/brazil-cattle-industry-begins-help-fight-deforestation>.

the no-clearing zone to maintain the appearance that it has not come from deforested land.<sup>169</sup> Greenpeace has pulled back the curtain on these duplicitous practices.

[It] has tracked the trade in cattle products back from the export-oriented processing facilities of Bertin, JBS and Marfig in the south of Brazil to three frontiers of deforestation in the Amazon . . . . These slaughterhouses in the Amazon region then ship beef or hides to company facilities thousands of kilometres away in the south for further processing before export. In a number of cases, additional processing takes place in import countries before the final product reaches the market. In effect, criminal or ‘dirty’ supplies of cattle are ‘laundered’ through the supply chain to an unwitting global market.<sup>170</sup>

This situation has created a ‘race to the bottom’ scenario in Brazil’s neighboring countries, like Paraguay and Bolivia, who are seeking to absorb the business. For example, in 2013, the Paraguayan Ministry of the Environment granted Brazilian-owned ranching companies licenses to clear the forest home of a previously uncontacted indigenous tribe, despite its location within a UNESCO biosphere reserve.<sup>171</sup> Even without this recent development in Brazil, there is no guarantee that tribal land would have been preserved because even though its destruction caused a public outcry within Paraguay, environmental protection is low on the list of government priorities.<sup>172</sup> Paraguay and Bolivia remain among the poorest countries in South America, which makes it unlikely that they will discontinue highly profitable soy and cattle production to save the forests. Further frustrating efforts to preserve what land remains untouched includes:

the current situation is the result of decades of government policies, which have provided incentives to deforestation and lacked any measures to prevent

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<sup>169</sup> GREENPEACE, *supra* note 115.

<sup>170</sup> *Id.*

<sup>171</sup> Pompa, *supra* note 86.

<sup>172</sup> *Id.*

logging for farming and agriculture. The situation has been exacerbated by the growing presence of Brazilian ranchers and the booming Mennonite communities expanding into the Chaco region. [Paraguay's] policies of promoting cattle ranching are not helping the situation either. The Minister of Industry and Trade, Gustavo Leite, recently announced the country's plan to climb from eighth to fifth in the world ranking of beef exporting countries by 2018—which will further increase the pressure to clear the forest for 'productive' land.<sup>173</sup>

Similar proclamations and aspirations to ascend in rank on the global production ladders have been expressed by the Bolivian government. A 2015 report authored by the USDA states that the Bolivian government has charged its agricultural sector with expanding the country's soy bean production area by one million acres within the next three years.<sup>174</sup> Soybeans are Bolivia's largest export, with the majority of them being grown in the eastern lowlands, home to the endangered Chiquitano forest. Disturbingly, a senior researcher at Fundación Tierra reports that "[s]ince 1990, the area of cultivation in Santa Cruz has expanded from slightly over 400,000 hectares to more than two million hectares in 2011."<sup>175</sup> And even though 3.3 million hectares of forest have been illegally deforested in Bolivia between 1996 and 2009 alone, pressure is still mounting to expand soy and cattle operations into forested areas.<sup>176</sup>

Though the Anabaptists continue to contribute to the destruction of the land, their role in the process has been overshadowed by the corporate Big-Ag takeover of the soy and cattle sectors of both countries. Through their words and actions, both governments have made it clear that their goals involve increased production with little or no inclination to slow the process down in order to assess the cost to the environment. That said, it is a reasonable assumption that the

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<sup>173</sup> *Id.*

<sup>174</sup> *Bolivian Soybean Update*, GLOBAL AGRICULTURAL INFORMATION NETWORK, USDA FOREIGN AGRICULTURAL SERVICE (Apr. 30, 2015), [http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Bolivian%20Soybean%20Update\\_Lima\\_Bolivia\\_4-13-2015.pdf](http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Bolivian%20Soybean%20Update_Lima_Bolivia_4-13-2015.pdf).

<sup>175</sup> Urioste F. de C., *supra* note 153.

<sup>176</sup> *Id.*

States cannot be counted on to remedy the problem, since they are the ones encouraging it.

### *III. Application of Existing Laws*

Both Bolivia and Paraguay have laws in place to prevent the deforestation they are experiencing, which are clearly not adequate. As an example, Paraguay's President recently passed a decree that environmentalists said would clear the way for unchecked deforestation, because it relieves landowners of the obligation to provide environmental impact reports on properties up to 500 hectares in the eastern region, and up to 2,000 hectares in the Chaco region.<sup>177</sup>

Paraguay's ZDF law, while having had much success in protecting Atlantic Forest in the eastern half of the country, is not geared toward protecting the Chaco, which occupies the western part. Still, the results since the implementation of that law have been impressive with a reported 85% decrease in deforestation in the areas covered by the law.<sup>178</sup> The continued applied pressure from the United Nations Collaborative Program on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD),<sup>179</sup> of which Paraguay is a participant, has likely played a large role in ZDF's success, and suggests that with an international watchdog monitoring their compliance, the Paraguayan government is more likely to adhere to the environmental measures in place. Such was the success of this law that it has been extended to 2018.<sup>180</sup> Ideally, the government would extend this law to cover what remains of the Gran Chaco considering that

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<sup>177</sup> Pompa, *supra* note 86.

<sup>178</sup> *WWF Lauds Paraguay for Slashing Deforestation 85%*, WORLD WILDLIFE FUND (Aug. 30, 2006), <http://www.worldwildlife.org/press-releases/wwf-lauds-paraguay-for-slashing-deforestation-85-percent>.

<sup>179</sup> *UN-REDD Programme*, UNITED NATIONS, <http://www.un-redd.org/Home/tabid/565/Default.aspx> (last visited Feb. 19, 2016).

<sup>180</sup> *Paraguay Extends Zero Deforestation Law to 2018*, WORLD WILDLIFE FOUNDATION (Sept. 3, 2013), [http://wwf.panda.org/wwf\\_news/?210224/Paraguay-extends-Zero-Deforestation-Law-to-2018](http://wwf.panda.org/wwf_news/?210224/Paraguay-extends-Zero-Deforestation-Law-to-2018); for an in-depth analysis of how and why the ZDF has succeeded, see Sarah Hutchison, *Making a Pact to Tackle Deforestation in Paraguay*, WORLD WILDLIFE FOUNDATION (Mar. 30, 2011), [internationaltreefoundation.org/wp-content/. . . /Paraguay-FINAL-30-march-2011.pdf](http://internationaltreefoundation.org/wp-content/. . . /Paraguay-FINAL-30-march-2011.pdf).

[i]n September last year, the Paraguayan government basked in the approval of international environmental organisations after it extended the Land Conversion Moratorium for the Atlantic Forest of Paraguay, also known as the ‘Zero Deforestation Law’, for another five years. The law prohibits ‘the transformation and conversion of forested areas in Paraguay’s eastern region.’ However, the regulation only covers the eastern part of the country, while most of the Chaco forest is in the west.<sup>181</sup>

Across the border in Bolivia, the Mother Earth laws have not succeeded in halting the rapid deforestation of the Chiquitano region, or any region for that matter, in any noticeable way. The Bolivian government continues its controversial hydrocarbon explorations into the Madidi and Isiboro-Segure National Forests, and has perverted the original intent of the Mother Earth laws by using them to justify environmental destruction.<sup>182</sup> By allowing “Protected Areas” to be “responsibly exploited,” these laws have replaced stronger, previously existing environmental protections with what amounts to Constitutionally enshrined concessions to oil and gas companies, who (as of June 2015) already had concessions in 11 of Bolivia’s 22 Protected Areas.<sup>183</sup> Perhaps, with time, these laws will be developed and applied in a non-destructive way. Alternatively, perhaps the siren song of petroleum money will continue to impede this process.

Having established that the States of Bolivia and Paraguay are unlikely candidates to protect the remaining forests, and given the power imbalances facing the indigenous populations, as a last line of defense against further deforestation, the United Nations could

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<sup>181</sup> Pompa, *supra* note 86.

<sup>182</sup> Mattia Cabitza, *Evo Morales Plays a Double Game on Bolivia’s Environment*, THE GUARDIAN (July 4, 2011), <https://www.theguardian.com/global-development/poverty-matters/2011/jul/04/bolivia-evo-morales-hypocrisy-environment>; Nicholas Fromherz, *The Rise and Fall of Bolivia’s Evo Morales*, FOREIGN AFFAIRS (Oct. 18, 2011), <https://www.foreignaffairs.com/articles/americas/2011-10-18/rise-and-fall-bolivias-evo-morales>.

<sup>183</sup> David Hill, *Bolivia Opens Up National Parks to Oil and Gas Firms*, THE GUARDIAN (June 5, 2015), <http://www.theguardian.com/environment/andes-to-the-amazon/2015/jun/05/bolivia-national-parks-oil-gas>.

seek to enforce the Convention on Biodiversity (CBD). Both Bolivia and Paraguay are parties to this convention, and having agreed to its stipulations, they have agreed to be accountable to the international environmental community.<sup>184</sup> Both countries could assert that the language of article three, which permits each State to use its own resources in the way it sees fit, affords them a measure of sovereignty that cannot be challenged by other States.<sup>185</sup> However, article eight could be used to counteract such a strategy or others like it.<sup>186</sup> Article 8(c), which mandates that each party must regulate biological resources important to the conservation of biological diversity both inside and outside of protected areas,<sup>187</sup> seems perfectly tailored to expanding Paraguay's ZDF law to other areas. Article 8(f) calls for the restoration of degraded ecosystems to the benefit of threatened species,<sup>188</sup> and could easily cover many of the lands currently under stress from Anabaptist and corporate development. Lastly, Article 10(d) could empower the indigenous populations displaced by agricultural development, by requiring that they be supported in their efforts to implement remedial action in degraded areas.<sup>189</sup> Admittedly, however, the likelihood of successfully stopping the deforestation using this Convention is slim, given that the majority of parties to the CBD are probably engaged in some form of environmental degradation themselves. Still, as the world moves toward an era of collective environmental consciousness – especially on the heels of the Paris Agreement (COP21) – there is hope that the UN might flex its might for the benefit of the forests.

## CONCLUSION

The Anabaptists of Bolivia and Paraguay hail from a line of hardy survivalists who are resilient in the face of persecution, who are unparalleled agricultural opportunists, and who are accustomed

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<sup>184</sup> United Nations Convention on Biological Diversity [UNCBD], June 5, 1992, 1760 U.N.T.S. 79; 31 ILM 818 (1992); *List of Parties*, CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/information/parties.shtml>.

<sup>185</sup> UNCBD, art. 3.

<sup>186</sup> *Id.* at art. 8.

<sup>187</sup> *Id.* at art. 8(c)

<sup>188</sup> *Id.* at art. 8(f)

<sup>189</sup> *Id.* at art. 10(d)

to constant movement in search of a better life. What the American and Canadian governments could not give them in the way of religious and cultural autonomy, they sought – and found – elsewhere. From a few starving families arriving in the green hell of the Gran Chaco in 1921,<sup>190</sup> they have morphed into a well-oiled agricultural machine, and ignited a chain reaction that has led to an unimaginable amount of environmental destruction. But the blame is theirs to share with the thousands of actors throughout history who propelled them to the forests of Amazonia.

What the Anabaptists started in the Gran Chaco and the Chiquitano has gotten out of control, and has had a shocking effect on those landscapes. Even though the governments of Bolivia and Paraguay could most likely bring an action against them to stop further clear-cutting, the effect of such an action would be dwarfed by the larger picture. Seeing the Anabaptist success in taming those once wild landscapes, multinational agricultural conglomerates have swooped in and appear poised to deliver the deathblow to what little remains of those forests. The governments of Bolivia and Paraguay had an opportunity to regulate this destruction when it was in its early phases, when the Anabaptists and subsistence farmers were mostly to blame. Instead, they gave the Anabaptists *carte blanche* to do what they saw fit to do with the land, irrespective of environmental health or indigenous rights. This appalling disregard for the environment continues today. Judging by their actions and tacit approval of these destructive corporate entities, the governments of Bolivia and Paraguay, in spite of the environmental protections enshrined in their own constitutions and civil codes, likely cannot be counted on to halt the destruction. The best hope for saving what is left of these forests rests with the international community. Tick-tock.

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<sup>190</sup> QUIRING, *supra* note 5.