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Land, law, and indigeneity in Mexico: Institutional bricolage and the limits of legal formalism

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Abstract

Despite the 2024 constitutional reform that acknowledges legal standing to indigenous communities, in Mexico there is still no legal provision to protect and recognize indigenous territories at the national level. Conversely, since the agrarian legal reforms of the 1990s, the commodification of communal landholdings (ejido and agrarian communities) considered a safeguard for "indigenous lands" have escalated. How do indigenous communities, landed property, and territory intersect in contemporary Mexico? Furthermore, which legal frameworks interact in the resolution of ongoing agrarian conflicts involving indigenous communities? This article addresses these questions by conceptualizing agrarian and indigenous communities as intertwined and evolving sociopolitical institutions. It challenges a long-standing judiciary's formalist approach, which, by conceiving these communities, primarily as transhistorical and self-contained subjects of rights, with apparently juxtaposed claims (i.e., the right to landed property versus the right to self-governance and territory) have precluded the peaceful and effective resolution of historical agrarian conflicts.

Key words

Land reform; indigeneity; agrarian disputes; Mexico; multicultural turn; institutional bricolage

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Resumen

A pesar de la reforma constitucional de 2024 que reconoce a las comunidades indígenas como sujetos de derecho, en México aún no existe una figura legal que proteja y reconozca los territorios indígenas a nivel nacional. Por el contrario, desde las reformas legales neoliberales de la década de 1990, la mercantilización de la propiedad comunal (ejidos y comunidades agrarias), considerada como salvaguarda de las «tierras indígenas», ha ido en aumento. ¿Cómo se entrecruzan las comunidades indígenas, la propiedad de la tierra y el territorio en el México contemporáneo? Además, ¿qué marcos legales interactúan en la resolución de los conflictos agrarios actuales que involucran a comunidades indígenas? Este artículo aborda estas preguntas conceptualizando a las comunidades agrarias e indígenas como instituciones sociopolíticas entrelazadas y en evolución. Cuestiona el enfoque formalista del poder judicial que, al concebir a estas comunidades principalmente como sujetos de derechos transhistóricos y autocontenidos, con reivindicaciones aparentemente yuxtapuestas (es decir, el derecho a la propiedad frente al derecho al autogobierno y al territorio), ha impedido la resolución pacífica y eficaz de los conflictos agrarios.

Palabras clave

Reforma agraria; indigeneidad; disputas agrarias; México; bricolaje institucional; giro multicultural

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1. Introduction

In the fall of 2019, a Mexican delegation comprising representatives from diverse indigenous communities, along with human rights lawyers and scholars, participated in a thematic hearing hosted by the Inter-American Commission on Human Rights (IACHR), singular for Mexico: the infringement of indigenous peoples' rights under agrarian jurisdiction. The petitioners explained the situation as follows: the agrarian regime, which recognizes communal landed property in the form of *ejido* and *comunidad* (hereafter referred to both as "agrarian communities") has served as a key legal mechanism through which Indigenous peoples have sought acknowledgment of their ancestral territories. Throughout the 20th century, the ongoing land redistribution process secured both collective and individual property rights over farmland. However, since the suspension of land reform in 1992 and the implementation of a titling program targeting *ejidos* and *comunidades*—which promoted the individualization of property rights—access to land has been limited to market transactions or the resolution of long-standing agrarian disputes through agrarian courts. Consequently, certified agrarian communities currently exclude most native inhabitants. A related concern was the restrictions imposed by the agrarian jurisdiction on the self-governance of indigenous peoples and communities. When granted or reinstituted, agrarian communities had ignored the "people" (*pueblo*) as a collective entitled subject, prioritizing individual right-holders (*ejidatarios* and *comuneros*), and in doing so, both forms of land-tenure failed to respect collective regulations on access, use, and exploitation of natural resources. Moreover, in many cases, the granting or restitution of lands did not encompass the full extent of *pueblos*' ancestral territories. Petitioners at the hearing contended that, despite Mexico's multicultural legislative shift in the 1990s—which redefined the nation as a multicultural state—the agrarian regime has failed to address the specific needs of Indigenous peoples and remains misaligned with Mexico's international obligations under ILO Convention 169. In particular, they argued that the legal recognition of Indigenous territories, as envisioned by the Convention, could not be equated with peasant or agrarian land tenure forms such as *ejido* or *comunidad*. Rather, it encompassed broader collective rights to self-determination and autonomy that transcended the framework of property rights.

The arguments presented at the hearing have circulated widely in public discourse since the 1990s and, more recently, have increasingly taken the form of legal claims brought before Mexican courts. In response, a representative of the National Institute of Indigenous Peoples (INPI) acknowledged the criticisms and committed to advocating for a constitutional reform that would recognize Indigenous communities as rights-bearing entities with full legal standing. In his view, the issue at stake was primarily political rather than agrarian, as he argued that the agrarian framework has historically served to protect the Indigenous' lands in Mexico. Likewise, the representative of agrarian jurisdiction pledged to implement measures that would bolster property rights and legal security for "indigenous communities and native peoples (*pueblos originarios*)."

The recognition of Indigenous territorial rights remains an unresolved demand, despite constitutional reforms of 2024 that grant Indigenous communities legal standing. The prevalent assumption that the "lands of indigenous groups" are adequately safeguarded by *ejido* and *comunidad* property regime impedes the establishment of a legal framework

to protect indigenous territories. It is generally accepted that both forms of collective land tenure and indigenous communities share a common history and self-governance institutions (particularly *comunidad*) thereby ostensibly ensuring the continuity of indigenous peoples and ancestral territories. However, there is limited critical examination on the nature of these institutions, as well as of the implications of their allegedly historical continuity and purported interconnection in terms of normative arrangements, governance structures, and entitlements within the context of evolving legal frameworks.

This study aims to disentangle the agrarian-indigenous amalgam as portrayed in academic, political, and legal discourses in contemporary Mexico while simultaneously examining the underlying tensions and interplay between property and indigenous rights claims in the context of judicialized agrarian disputes. I contend that unexamined assumptions about "lands of indigenous groups" have stifled more ambitious proposals for rethinking the property legal framework in Mexico and overlooked the contrasting legal and jurisdictional differentiation established by the judiciary between agrarian and indigenous rights holders. Specifically, in Mexico, agrarian courts tend to disregard indigenous claims to territory, whereas civil courts shy away from resolving disputes involving indigenous claims pertaining to *ejido* or communal property.

The methodology underpinning this study combines the analysis of extensive historical and ethnographic research with a review of reports produced by non-governmental organizations documenting human rights violations within the agrarian justice system, as well as an extensive report made by the Center of Constitutional Studies from the Supreme Court of Justice, and some judicial rulings concerning conflicts involving Indigenous and agrarian communities. The analysis is further informed by my own fieldwork research conducted in ejidos from the Yucatán Peninsula between 2016 and 2023, and included interviews with agrarian officials, magistrates, and lawyers engaged in human rights advocacy.

2. An Institutional Approach to Agrarian and Indigenous Communities

When examining the nature of *ejidos* and Indigenous communities, the concept of *institution* offers a particularly effective analytical lens. This concept addresses two foundational questions in the social sciences: what governs the behavior of social actors—both individual and collective—and how can social change be understood (Hall and Taylor 1996). Contemporary scholarship converges on the definition of institutions as the "rules of the game," encompassing both formal and informal, legal and extra-legal dimensions. These include laws and regulations, prescriptive norms, moral principles, social conventions, and cognitive frameworks, as well as the mechanisms—such as authorities, assemblies, or arbitration bodies—that enforce and reproduce these rules (Colin *et al*. 2022, 24). From this perspective, *ejidos* and *comunidades* may be understood as institutions of land tenure established by the post-revolutionary Mexican state and embedded within a legal framework that defines both the subjects of rights and the corresponding rights over a specific land area. Since 1917, agrarian legislation has undergone substantial evolution to define key aspects of land regulation, such as the types of land (parcels, common-use lands, human settlement lands), rights and obligations of individual and collective right holders. The establishment of agrarian communities, along with the associated legal modifications that define them, has been

advocated by legislators and policymakers as a response to societal demands and to facilitate rural modernization in both productive and sociopolitical spheres. Therefore, from an institutional analysis perspective, agrarian communities can be understood as bureaucratic constructs imposed by the state with the explicit aim of reorganizing the rural socioeconomic order for strategic and often ideological purposes. However, a closer examination reveals that their effectiveness lay not merely in state design, but in their capacity to articulate with pre-existing institutions —particularly villages (*pueblos de indios*) with colonial legal recognition that received land through endowment or restitution during the agrarian reform. The very notion of *ejido* refers to a land tenure category of Hispanic origin, which was transposed into a distinct spatiotemporal context and re-signified through its appropriation by a range of social actors.

Another significant dimension of agrarian communities lies in their legal transformation over the course of the 20th century. Initially conceived as a form of collective landholding, they gradually evolved—most notably by the 1940s—into legal subjects endowed with rights (Azuela 2015). Adding further complexity to the analysis, *ejidos* and *comunidades* have taken on a range of functions not formally codified in their legal design. These include the management of urban assets within villages that benefited from land redistribution, as well as the regulation of land use. Over time, these entities have evolved into *de facto* institutions of local governance, frequently operating in tension with, or in parallel to, municipal authorities (Azuela 1995, Torres-Mazuera 2013).

Agrarian communities are not exceptional; rather, they align with global findings in land tenure research, which emphasize the hybrid arrangements and multifunctional nature of such institutions (Moore 1973, Cleaver 2002, Colin *et al*. 2022). Scholars in this field also underscore the ongoing transformation of these institutions—not only in response to broad environmental factors but, more crucially, as a result of the actions of a diverse array of social actors. These actors, whether intentionally or not, engage in continual processes of negotiation, competition, collaboration, and conflict that redefine the rules, practices and meanings animating these institutions (Appendini and Nuijten 2002). This perspective challenges rigid dichotomies which often present institutions as fixed, homogeneous, and bounded entities. Instead, emphasis is placed on the dynamic processes of institutional assemblage—what Cleaver (2002, 17) terms *institutional bricolage*—through which actors adapt and recompose existing social norms, regulatory frameworks, and governance practices for multiple purposes within evolving networks of relationships.

Conversely, defining the Indigenous community from an institutional perspective presents a more tangled challenge, largely due to the ideological weight the concept carries. This complexity stems from the presumption of a transhistorical, pre-state Indigenous subject embodied in the institutional form of the community—often imagined as inherently democratic, egalitarian, and self-sufficient (Viqueira 1986, Kourí 2018). Such assumptions are frequently underpinned by essentialist views that conflate shared Indigenous identity with a cosmology or worldview seen as fundamentally distinct from that of modern or Western society (Canessa 2007, López Caballero and Acevedo 2018).

The notion of indigenous communities is also embedded in the language of indigenous rights developed since the 1970s at the international level, representing an additional

facet of the emerging field of governance defined by some as "multicultural indigeneity".[1] Within this new field and horizon of meaning, the assertion of indigenous political autonomy in Mexico has been fundamentally rooted in the notion of the community. Indeed, the advancement of indigenous mobilization in the 1990s resulted in a partial constitutional amendment, which emphasized institutionality (in the sense of norms and bodies of governance) rather than culture (in the sense of language, beliefs, and worldviews).[2] Consequently, since 2001, indigenous communities have been recognized by certain subnational legislations as entities possessing legal rights, in accordance with Article 2 of the Mexican Constitution, which acknowledges indigenous communities as those that "form a social, economic and cultural unit settled in a territory" with "their *own* authorities, in accordance with their uses and customs." The same article defines Indigenous peoples as those descending from populations that inhabited the national territory at the onset of colonization and "that conserve their *own* social, economic, cultural, and political institutions" (emphasis added). However, the degree to which this legal definition corresponds with sociological and historical evidence remains uncertain. The emphasis on the "own" in indigenous institutionality casts an image of institutional isolation and historical continuity from pre-Hispanic times to the present, an assumption that numerous colonial-era historians have critically interrogated. Indeed, current colonial historiography has reconstructed the disruptions in political organization caused by Spanish colonization, the demographic decline of the native population in the 16th century, the territorial reorganization imposed by institutions such as the congregations, the *encomienda* and *hacienda* systems during the three centuries of colonial rule, and ultimately the legal and institutional changes promoted under the independent and liberal regime of the 19th and 20th centuries, which necessitated a comprehensive and dynamic restructuring of land tenure and local governance institutions.[3] The substantial institutional and legal ruptures described in detail by historians of the colonial period revealed the splices, overlaps, bricolage, adaptations, and appropriation of the institutional and legal frameworks that occurred throughout four centuries of colonial history and independent Mexican history. This evidence led us to elaborate on a more comprehensive definition of contemporary indigenous communities that emphasizes social agency over deterministic and functionalist approaches. From this perspective, an indigenous community could be characterized as one comprising individuals who self-identify as indigenous and constitute a social, political, or economic unit structured by institutions *appropriated* to their own needs and values. This definition posited the agency of individuals and their capacity for innovation in response to changing environments and their projections of a desirable future. It emancipates self-identified indigenous people from the "moral duty of tradition" as postulated by Federico Navarrete (2016), a prominent historian who elucidates the burden imposed by the discourse of historical continuity, the maintenance of custom, and the preservation of a culture anchored in a remote past, which is placed upon individuals (self)identified as indigenous.

[1] For a comprehensive discussion on the notion of indigeneity as a field of governance and shifting political and identity articulation, see De la Cadena and Starn (2007).

[2] I thank David Recondo for this observation.

[3] Consider, for example, the research conducted by historians such as Duve (2017), García (1990, 1992), and Kouri (2018), as well as the work of historical anthropologists like Dehouve (2001) and Favre (1971).

Nevertheless, the question of how to precisely define the "own" institutions presumed by legislation to be intrinsic to Indigenous peoples remains unresolved. In the Mexican context, at least four institutional forms can be identified as associated with Indigenous people: the *pueblo* (people), the *comunidad* (community), the *municipio* (municipality), and the *ejido* and *comunidad agraria*. Yet determining which of these can be considered more "authentic"—in the sense of historically grounded, socially embedded, or legally recognized Indigenous institutions—is a matter that, as will become evident in the analysis of judicialized conflicts, defies simple resolution. Given the complex articulation and overlapping functions of these institutions, this paper focuses specifically on the relationship between Indigenous and agrarian communities.

The following sections address several guiding questions: How do Indigenous communities, land tenure regimes, and territorial claims intersect in modern and contemporary Mexico? To what extent have *ejido* and *comunidad* frameworks effectively enabled access to land and control over territory for individuals and communities (self-)identified as Indigenous? And finally, what types of conflicts and legal frameworks converge in the adjudication of contemporary agrarian disputes involving Indigenous communities?

3. Post-Revolutionary Land Redistribution: The Crafting of a New Field of *Mestizo* Peasant Governance

During the extensive agrarian redistribution period in Mexico (1915-1992), ethnic identities did not hold significant relevance to land claims (Knight 1990, Azuela 2015). Being identified as an indigenous individual or self-identifying as such did not fully validate the claim to land. Instead, other identity categories aligned with emerging post-revolutionary nationalism, such as *campesino* and *mestizo*, have become central (Boyer 2003, Carib 2004). These identity categories defined their attributes in relation to the agrarian demands mobilized during the Mexican revolution and in opposition to other socio-political identities that were intended to be overcome as remnants of the colonial past, particularly that of *indio*, *ladino*, or *hacendado* used in several indigenous regions (Aguirre Beltrán 1967, Knight 1990).

The extensive agrarian reform was established concurrently with an indigenist or integrationist policy as a means of simultaneously addressing the indigenous and agrarian "problems" (Knight 1990). Analogous to the liberal thinkers of the 19th century, the architects of these policies defined the former as the exclusion and marginalization of indigenous communities from the national socioeconomic development trajectory and their subjugation to ladino control in rural and marginalized regions. Consequently, their shared and largely undisputed objectives entailed a substantial territorial reconfiguration in the form of land redistribution to the indigenous peasantry that would dismantle local cacique domination, promote agricultural modernization through productive reorganization and technological advancement, and nationalize or federalize natural resources with an emphasis on social justice and public interest. Indigenist policies were grounded in the historical narrative of acculturation, which attained unequivocal hegemony in mid-twentieth century Mexico. From this standpoint, it was widely believed that Westernization of indigenous populations was both

inevitable and desirable from political and cultural perspectives. Consequently, integration became a political doctrine and policy (Navarrete 2016).

Although contemporary analysis reveals that acculturation efforts did not achieve their intended outcomes, it is evident that they effectively established a new domain of governance centered on the peasantry as a social class. In the transformed political landscape, ethnic and community affiliations persisted, but were relegated to the status of cultural relics, while simultaneously, indigenous communities as entitled entities with any form of political representation at national or local levels were completely eradicated. Consequently, new types of local political organizations emerged, comprising landless peasants from diverse communities and regions demanding land distribution. Ejidatarios and *comuneros* were also incorporated into national peasant confederations, which ultimately became crucial constituencies for the Mexican political system (Warman 2001).

3.1. Ejido and Comunidad: Two Novel Forms of Land Tenure and Peasant Governance

Land redistribution (1915-1992) led to *ejido* and *comunidad*. These forms differed from private and public property due to their specific characteristics: agrarian lands were non-transferable, non-divisible, and non-sizeable to prevent them from becoming economic commodities. In addition, access to these lands came with a set of obligations, such as tilling the land with one's own hands and a specific socio-economic profile for the beneficiaries, who were primarily male peasants with residence of the endowed, restituted, or recognized rural villages. Furthermore, the regulation and administration of agrarian communities were not entrusted to individual property holders, but rather to the *ejido* or *comunidad* general assembly, which comprised *ejidatarios* or *comuneros* and served as the highest authority with decision-making power over all matters related to land regulation. The institutional complexity of agrarian communities resides in their dual function: they not only regulated access to land but were also instrumental in the organization and governance of communal life within villages, as will be elucidated subsequently.

3.2. Understanding the Link Between Land Restitution and Indigenous Peoples

Prior to the 1992 constitutional reform, *ejidos* and *comunidades* were governed under the same legal framework established by the Federal Agrarian Reform Law of 1971, despite significant differences in the mechanisms by which land was acquired. Article 27 of the 1917 Constitution included provisions for the restitution of land to *pueblos* that could demonstrate the loss of their colonial-era landholdings during the 19th century. To qualify for restitution, communities were required to present colonial-era land titles and prove dispossession during the relatively brief but intense period of liberal land reforms and disentailment (1857–1910) (Baitenmann 2020). This evidentiary burden made the restitution process highly complex and often inaccessible. As a result, many communities that pursued restitution were ultimately granted *ejidos* through land endowments instead. Between 1916 and 1980, only 17% of land restitution claims were approved, in contrast to a 79% approval rate for *ejido* endowment requests (Sanderson 1984, cited in Alonso and Nugent 2004). This divergence is reflected in contemporary

land tenure statistics: as of 2018, there were 2,394 legally recognized *comunidades* compared to 29,760 *ejidos* nationwide (RAN 2023).

In contrast to more recent restitution processes initiated in the 1990s under the influence of the multicultural turn—in countries such as South Africa and Colombia—the restitution efforts in early- to mid-20th century Mexico did not lead to the emergence of a differentiated citizenship regime. This is largely because restitution was granted to colonial-era villages (*pueblos*) and to the peasantry, understood primarily as a socio-economic class within the framework of the nation-state. As a result, the recognition of territorial rights in this period did not serve to reinforce Indigenous identity or ancestral territoriality as defined by contemporary standards—that is, in terms of the collective rights of pre-conquest native peoples. Furthermore, the territorial pattern of the restitutions implemented to date demonstrates that, beyond the indigenous presence in specific regions, what prevailed in this process was the effective consolidation of a colonial institution: that of the *pueblo*. Indeed, in regions where the Hispanic institution of the *pueblo* governed by a cabildo was successfully embedded under colonial rule, the restitution of *comunidades* was most effectively achieved in the 20th century (for example, Oaxaca and Michoacán). Conversely, in locations such as Chiapas and Yucatan, where there has been a significant presence of populations speaking indigenous languages since pre-conquest times, but with a contested institutionalization of *pueblos* (e.g., the 1948 Yucatan Caste War), the number of communities is quite scarce (in Chiapas, there were 89 communities compared to 3245 *ejidos* in 2021) or non-existent (in Yucatan, there is only one community among 739 *ejidos*) (RAN 2023).

As with *ejidos*, in the long term, *comunidad*, as a novel form of land tenure, entailed a disruption and transformation of *pueblos* property regulations and governance. However, such changes are often overlooked by scholars and activists who frequently portray *comunidades* as an institutional continuation of indigenous communities and precolonial forms of tenure. In the following sections, the institutional changes and bricolage brought about by agrarian communities are examined.

3.3. Land Ownership Without de Jure Political Autonomy but de Facto Self-Governance

In contrast to the demands of Emiliano Zapata and his supporters, who claimed access to and collective management of land and water, as well as municipal political autonomy for pueblos (a model of governance with colonial origins), *ejido* and *comunidad* instituted a significantly different form of local governance (Kourí 2015). The new governance structure consisted of a self-governing body composed exclusively of right-holders (*ejidatarios* or *comuneros*) who concentrated and channeled all major subsidies from the federal government, maintaining absolute control over the lands endowed or restituted to pueblos. Furthermore, these agrarian communities were distinct from local governments (municipal councils) and lacked political representation (Womack 1987, Warman 1988).

The emergence of *ejido* and *comunidad* can be interpreted as a recreation of 19th-century liberal aspirations, which initiated the individualization of rights over pueblos' communal lands while simultaneously abolishing their legal standing. The origin of this model lies in the fact that the 1917 Constitution did not recognize the political category

of all endowed or restored towns. Consequently, the geopolitical order promoted by 19th-century liberals, namely the legal subordination of thousands of indigenous villages to the municipality, with the local government situated in the most populous settlement (municipal headquarters) was maintained. Paradoxically, the necessity for a governance body at the micro-local level resulted in ejido and *comunidad* assemblies and their representatives becoming the primary governing entities. Agrarian entitlement, a prerequisite for participation in the ejidal or communal assembly, established a distinction between agrarian right holders and other residents of the settlement. In many agrarian communities, *ejidatarios* and *comuneros* with legal rights to the land gradually became privileged social groups with absolute decision-making power over all matters that concerned the urban settlement of agrarian communities (Azuela 1995, Léonard 2003, Baitenmann 2007, Velázquez 2010, Torres-Mazuera 2013).

How can we account for the imposition of the agrarian regime, which differs significantly from Zapatista's demands across rural Mexico? The answer to this question is intricate given the variety of regional experiences in terms of agrarian struggles. However, we can highlight at least three aspects that might have contributed to its success: initially, its implementation was carried out gradually. For example, in the Indigenous Northern México such as the Sierra Tarahumara in Chihuahua and the Gran Nayar region in Jalisco and Nayarit, which comprise extensive low-demographic-density regions, the Rarámuri and Wixarika communities did not witness significant alterations in their property relations and territorial management practices at the outset of land distribution. Although *ejidos* were established, resulting in territorial fragmentation, indigenous populations opted to disregard the newly defined boundaries and instead accommodate the influx of foreign, mestizo, and ranchero settlers who progressively occupied their territories (Liffman 2012, Almanza Alcalde 2015).

Two further aspects that explain the lack of resistance are the consistency of land distribution and the flexibility of the agrarian regime. Indeed, from 1915 to 1992, 103 million hectares (equivalent to half of the national land) were allocated, granted, or restituted to approximately 30,000 agrarian communities on behalf of roughly 3.5 million peasants (Warman 2001). During this period, the opportunity to expand existing *ejidos* or establish new ones became available. Consequently, the legal category of safeguarding rights (derechos a salvo) was introduced to ensure a position in newly created *ejidos* for landless peasants. Anthropologist Monique Nuijten characterized the post-revolutionary agrarian bureaucracy as a "hope-generating machine," given that the legal resolution of land allocation remained continuously accessible, thereby dissuading peasants from contesting the political regimen (Nuijten 2004).

Ultimately, one of the most significant factors explaining the absence of substantial resistance or communitarian critique of the agrarian regime lies in its institutional flexibility and the considerable *de facto* autonomy granted to formal rightsholders in managing internal affairs (Nuijten 2003, Van Der Haar 2005, Torres-Mazuera 2016). This autonomy often allowed for more inclusive and locally adapted systems of land access than those formally prescribed by agrarian legislation and enabled a relative degree of self-governance through *ejido* and *comunidad* assemblies. These observations are supported by several ethnographic studies conducted in Indigenous regions. For

instance, Velázquez (2003) documents that in the Sierra de Santa Marta, *ejidos comunales* were created to ensure open land access for all native *milpa* farmers residing in the endowed village. Similarly, in the Tojolab'al region of Chiapas, Gemma Van Haar (2005, 498) describes how communities redefined internal land rights by "drawing up new lists of rights-holders or modifying the original list of *ejidatarios*," thereby asserting local authority over land governance. Torres-Mazuera's observations revealed open access to the *montes* of the *ejidos* in Yucatan for Mayan corn-growers both with and without agrarian rights. Furthermore, in regions such as Oaxaca, where a considerable portion of the land is under *comunidad* tenure and municipal jurisdiction has more coincidence with agrarian communities' boundaries, there is an overlap of communal and agrarian authorities (i.e., communal assemblies) (Torres-Mazuera and Recondo 2022). As of now, in numerous indigenous communities, such as those inhabited by Zapotecs, Mixes, Huaves, and Triquis, access to communal land is determined by work obligations established by the communal assembly rather than by Agrarian Law alone (Juan-Martínez 2002). In Michoacán, a comparable phenomenon occurred in P'urhépecha communities, where the regulation of communidad lands, membership criteria, land allocation and transmission, forms and principles for electing their communal authorities, and internal conflict resolution mechanisms have been governed by what is termed *el costumbre* (Ventura 2018). Ventura meticulously describes the process of "negotiated normativity" and the strategic utilization of agrarian law by P'urhépecha *comuneros*. An illustrative example is the community of Acachuén, which possesses a communidad representative board as established by Agrarian Law; however, its functions are shared with the tenure chief (municipal position) and a vernacular governance body: the *ayuntamiento* appointed by the community, which is distinct from the municipal one, and is not contemplated in any legislation. Ventura's ethnography examines the interconnection between indigenous and agrarian regulations and the redefinition of agrarian citizenship recast into a communal form, a process characterized by disputes and tensions in both *de facto* and *de jure comunidades*.

From this corpus of anthropological research, it can be concluded that within numerous indigenous regions, the allocation of resources under the agrarian regime and delineation of membership and participation have been regulated by both agrarian law and indigenous customs and norms. Law and custom interact in various ways: by mutually reinforcing or disregarding one another to expand or restrict rights and subjecthood but primarily through a negotiated appropriation of procedures and principles deemed fair and beneficial for the enhancement of communal life. Nevertheless, while the *ejido* and *comunidad* frameworks allowed for the preservation of certain vernacular arrangements, over the long term both forms of land tenure subtly yet persistently reshaped the internal governance structures of Indigenous and peasant communities. This transformation was not solely the result of the gradual consolidation of the (agrarian) rule of law, but also of the expansive reach of the agrarian bureaucracy and the electoral control exercised by state-aligned peasant confederations. A particularly emblematic case is presented in Jan Rus's (1994) ethnographic study of the Chamula community in Chiapas, where land distribution facilitated what he describes as an "intimate form of domination" by the federal state through its agrarian apparatus. With historical precision, Rus illustrates how agrarian reform officials succeeded in co-opting not only Indigenous leaders who served as direct collaborators, but also the

community structures previously associated with resistance to external intervention. As he notes, "by the mid-1950s, what anthropologists were beginning to describe as corporate, closed communities had in fact become 'institutionalized revolutionary communities' harnessed to the state" (Rus 1994, 267). A comparable dynamic is documented by Lapointe (1983) and Baños (1989) in their studies of *ejido* endowments to former Mayan hacienda laborers in Yucatán, where land redistribution similarly facilitated the state's incorporation of rural populations into the postrevolutionary political order.

The regional variations in terms of adaptations, resistances, and overlaps between agrarian institutions and indigenous forms of organization are extensive and respond to the varied subnational hegemonic orders and "intimate cultures" (Lomnitz-Adler 1991) that provided them with content and direction. Notwithstanding the prevailing diversity, it is possible to assert that collective self-governance in agrarian communities began to deteriorate in the 1970s and 1990s. Rural demographic growth, limited productive lands, rural migration, and abandonment of agricultural activity led to the subdivision of communal lands and their individual appropriation, which aligned more closely with the agrarian model (Quesnel 2003, Leonard and Velazquez 2009, Torres-Mazuera 2013). In 1992, this process was formalized through the constitutional reform of Article 27 and the new Agrarian Law.

4. The Neoliberal Multicultural Turn in Mexico

The 1990s ushered in a new era of national economic policies. Mexico joined the North American Free Trade Agreement, which necessitated a series of legal reforms that allowed private investment and businesses to exploit natural resources that were previously inalienable (under the agrarian regimen) or only accessible to state corporations and public entities. Some of the key reforms and laws passed during this time included the 1992 reform of Article 27 of the Constitution and the enactment of the Agrarian Law, which legalized *ejido* land commodification. Additionally, there was a multicultural shift involving legal reforms aimed at safeguarding human rights, particularly the recognition of Mexico as a pluricultural nation (as per Article 4 of the Constitution) and the adoption of Convention 169 of the International Labor Organization. However, this turn was incomplete insofar as the recognition of national ethnic diversity and cultural rights to indigenous peoples failed to result in specific federal regulations, nor did it grant indigenous people political representation at the national level. The current paradigm has been referred to as "neoliberal multiculturalism" by numerous scholars who have drawn attention to the inconsistent rearrangements of property and citizenship (Hoffmann and Agudelo 1998, Hale 2004).

How did legal reform impact agrarian communities in general and those comprised predominantly of indigenous rights holders? To address this question, the following section examines the trend of communal land privatization, the effects of agrarian certification in indigenous regions, and the unanticipated reification of the indigenous community.

4.1. Privatization of Communal Lands

Legal scholar Pérez Castañeda (2002) highlights the dual implications of the 1992 reforms to Article 27 of the Constitution and the enactment of the new Agrarian Law for both *ejidos* and *comunidades*, as well as for Mexico's broader property regime. In his analysis, these reforms marked the dismantling of the social justice framework that had underpinned agrarian policy since 1917, replacing it with a market-oriented model of land tenure. The shift entailed a reconfiguration of agrarian rights: obligations were eliminated while entitlements were expanded. Under the new legal regime, *ejidatarios* and *comuneros* are no longer required to reside in their communities, cultivate the land themselves, or participate in assemblies in order to retain their agrarian rights. This transformation has contributed to the consolidation of control over certified land parcels by a subset of rightsholders—primarily older men—who increasingly function as *de facto* landowners. The result has been the weakening of collective institutions such as the assembly and the erosion of intergenerational and intra-familial forms of land governance (Vázquez 2017).

Moreover, land titling and certification processes in *ejidos* and *comunidades* have resulted in the fragmentation and individualization of communal lands. This shift began with the launch of the PROCEDE program in 1993, which certified and parceled 25,824,530.67 hectares, representing 24.3% of the total surface area of *ejidos* and *comunidades* in the country (RAN 2023). PROCEDE was later followed by two additional titling programs, as well as private-led initiatives, which together resulted in the parceling and titling of approximately 34,000 hectares—largely concentrated in the most productive and economically valuable communal lands.[4] Land titling served to formalize agrarian rights and marked a critical step toward the commodification of communal land. At the same time, it reinforced long-standing patterns of exclusion—particularly for rural women and younger individuals—who constitute a substantial portion of agrarian communities but were largely marginalized from land redistribution processes throughout the 20th century. As of 2022, only 27% of *ejidatarios* were women, underscoring the enduring gender disparities embedded in both historical and contemporary agrarian policy frameworks. This exclusionary dynamic persists across regions inhabited by both Indigenous and mestizo populations, reflecting the structural nature of inequality within Mexico's agrarian regime.

4.2. Certified Insecurity for Indigenous Lands under Ejido and Comunidad

Certification and titling programs have detrimental effects on communal land management, particularly in indigenous regions. For example, it facilitated the privatization of national forestlands, particularly in the Yucatan Peninsula, which affected Mayan *ejidos* that had historical claims for land expansion (*ampliaciones*) over territories deemed ancestral (Torres-Mazuera *et al.* 2020).

Against the outspoken goals of the programs, tenure security was not improved by certification and titling programs in areas where *ejido* or *comunidad* lands had high

[4] The aim of this program was to regularize communal tenure, addressing the uncertainty resulting from inaccurate measurements and the absence of systematic registration of individual plots and rights-holders. For doing so, it utilized satellite technology to delimit the boundaries of participating ejidos and comunidades, granting individual property titles for both common use and individual parcels.

commercial value or provided access to resources, such as water, minerals, wind, and sun, and are held by indigenous rights holders. Numerous ethnographic studies have revealed the prevalence of tenure insecurity in certified *ejidos* and communities with significant indigenous populations. For instance, Marín Guardado (2020) narrates the violent dispossession in the 2000s experienced by Mayan *ejidatarios* settled on the Caribbean coast. This dispossession was facilitated by businessmen with substantial economic and political power, in collusion with state officials and politicians. Almanza and his research team demonstrated the dispossession that the government of Chihuahua inflicted on mestizo and Rarámuri *ejidatarios* from the San Alonso and Creel *ejidos* to construct an airport in 2014 (2021). Both studies, along with other empirical research, highlight the significant uncertainty faced by indigenous *ejidatarios* in regions of interest for economic development. They are often deceived, threatened, co-opted, and divided by businessmen and government officials to gain access to their communal land through parceling (changes in destination) and short- and long-term leasing contracts. At the same time, we observe tenure insecurity for individuals who have historically resided in *ejidos* and communities but are not formally recognized as rightsholders, particularly women and youth (Ventura 2019, De Teresa and Basabe 2020).

Since the 1990s, *ejido* and communal assemblies have experienced a decline in their ability to register, control, and sanction transactions. By individualizing rights over the most lucrative lands, the Procede program weakened agrarian assemblies and stripped them of their decision-making power. Consequently, agrarian certification has made self-governance more difficult (Ventura 2018, 2019, 2021). This phenomenon is exacerbated by the outdated nature of *ejidatarios* and communal rights holders' registers, which results in diminished participation in general assemblies and impedes the attainment of the legal quorum necessary for collective decision-making. Unpredictably, this issue predominantly affects *comunidades* that typically comprise a substantially larger number of *comuneros* (500 individuals or more) in prominent Indigenous regions (Oaxaca, Guerrero and Michoacán) who, due to various circumstances (particularly geographical distance from agrarian offices and insufficient information and financial resources), have been unable to legally transmit agrarian rights to descendants (see in the following section a judicialized conflict with this problem). Associated with this issue are outdated representative bodies. In 2020, only 42% of *ejidos* and *comunidades* representative boards were in force, with this percentage significantly lower in certain regions (8% in Yucatan). (RAN, 2023). This situation has resulted in the unruliness of many *ejidos* and *comunidades*, as exemplified by the Zapotec community of Juchitán in Oaxaca (see section 5), where the assembly has been unable to attain quorum since the 1960s, and the Nahua people of Milpa Alta in Mexico City, with the same hindrance (Interview Agrarian Attorney officer, Mexico City, 08/12/2020).

4.3. The Reification of Comunidad as Indigenous Community

While land tenure changes appeared to be moving in only one direction of land privatization, an unexpected distinction between *ejido* and *comunidad* emerged, related to indigenous identity. In contemporary discourse, the association or equivalence between indigenous communities and *comunidad* is widely acknowledged within activist circles and the broader public sphere. Yet experts highlight that not all indigenous

communities possess land under *comunidad* land tenure, nor are all *comunidades* (as tenure) comprised of indigenous commoners (Robles and Concheiro 2004). However, the post-revolutionary indifference towards ethnic identities related to land tenure has evolved into a growing interest in examining the dynamics of land tenure, considering the common characteristics of agrarian communities comprising indigenous populations. Official data have revealed recurring patterns within indigenous *comunidades*, such as the prevalence of land disputes and the dearth of certification. According to a study conducted by Robles and Concheiro (2004, 78), in 2002, 44.5% of agrarian conflicts in the country occurred in "indigenous agrarian communities," which represented only 22.6% of the national total. In 2019, the Institute of Indigenous Peoples (INPI) reported 400 agrarian conflicts involving indigenous agrarian communities (INPI 2019). Oaxaca, a region with a high indigenous population, recorded the highest incidence of agrarian conflicts among all the states in the country (Ramírez Gómez 2001). Furthermore, the absence of certification due to agrarian conflicts in regions with the highest proportion of indigenous-speaking populations has a cumulative effect on tenure insecurity. Notably, in Oaxaca, the state with the highest percentage of indigenous population according to the national survey and the highest concentration of *comunidades* nationwide, 179 *comunidades*, or 24% of the state's total, had not been certified by 2022 (RAN 2023).

At present, indigenous and non-indigenous agrarian communities are experiencing increasing differentiation due to indigenous conditions in the dual dimension of neocolonial subjugation or multicultural emancipation. Recently, agrarian communities with indigenous populations possessing valuable resources and strategic locations have become the target of extractive ventures led by private corporations or governmental entities. In response to the unlawful imposition of many such ventures, there is an observable response from indigenous communities that mobilize and assert their rights to territory, prior consultation, autonomy, and self-determination as will be examined subsequently.

5. Agrarian Litigation in the Light of Indigenous Rights

In the year 2001, a constitutional amendment was introduced to acknowledge the indigenous "own" institutions, authorities, and regulations that shaped and governed communities and *pueblos*. Legal reform also enshrined the principle of self-identification, whereby "the awareness of their indigenous identity shall be a fundamental criterion to determine to whom the provisions on indigenous peoples apply' (Article 2 of the Constitution). The amendment to Article 2 of the Constitution was a legal response to the 1994 uprising of the Zapatista Army of National Liberation (EZLN) in Chiapas, although its scope was limited, as it failed to incorporate the main demands of indigenous organizations in the San Andrés Larráinzar Agreements. The 2001 constitutional amendment did not recognize indigenous communities as rights bearers but rather defined them as "entities of public interest" and mostly defined the scope of indigenous autonomy in terms of obligations rather than freedoms. For instance, it was recognized that indigenous peoples have autonomy "to preserve and enrich their languages, knowledge...", "to conserve, improve the habitat and preserve the integrity of the lands", and "to have access to the forms and modalities of land ownership and tenure established in the Constitution".

5.1. Own or Appropriated Indigenous Institutions?

In 2024, a new reform to Article 2 of the Constitution was enacted. While it marked a significant advancement in recognizing Indigenous communities as rights-bearing subjects, it failed to incorporate agrarian institutions—such as *ejidos* and *comunidades agrarias*—into the Indigenous institutional framework. The current prevailing regard evidenced by a thesis from the Supreme Court of Justice (henceforth referred to as the Court) from 2009, is that "the organization and operation of the general assembly of the [*ejido* or *comunidad*], including the election of the representative body, are activities that do not fall within the scope of the right to self-determination of indigenous peoples and communities..." (SCJN, Amparo directo, 3/2009). To understand the implications of this pronouncement, it is necessary to elucidate the conflict that precipitated this ruling, which reveals the interconnection between agrarian and indigenous institutionality overlooked by the Court. In 2006, a *comunidad* in Morelos, self-identified as indigenous, conducted elections for a new representative body. As had occurred for three consecutive periods (1995, 1998, and 2001), the community members eligible to participate were those recognized by the communal assembly, albeit without registration before the agrarian bureaucracy. The roster of active community members with social legitimacy was more extensive (1000 community members) than the officially registered cohort in 1965 (333 *comuneros*) and encompassed the descendants of deceased legal *comuneros* who had not formally inherited their rights (a prevalent situation in *comunidades*). The convening of the community assembly also adhered to the procedures stipulated by the Agrarian Law, obtained the endorsement of a notary, and secured the participation of 408 *comuneros*. However, a small dissident faction convened an alternate assembly on the same date, with the participation of merely 55 legal *comuneros*. The results resulted in two elected representative boards. The question arose as to who the legal and legitimate authority of agrarian and indigenous communities was. The Court's ruling recognized only the authority elected by legal *comuneros* and disregarded the community assembly that in the lawsuit, was presented as the legitimate authority of the indigenous community. A comparable case was presented to the Court in 2018 concerning the dispute of three agrarian and indigenous communities of Oaxaca, which involved the recognition of a municipal authority elected through "uses and customs" and representing one of the indigenous and agrarian communities that had reached an agreement regarding boundaries. On this occasion, the Court's ruling was consistent with the previous one: "Neither the traditional practices and customs nor the principle of self-determination of the indigenous peoples can modify the norms governing the legal representation of the agrarian communities" (SCJN Amparo Directo en Revisión 7735/2018; Gómez 2015. In this case, the Court, in contradiction to the previous rulings of the agrarian court in Oaxaca and a collegiate court that recognized indigenous authorities embodied in municipal ones as having the authority to establish agreements on territorial and agrarian limits (similar rulings where emitted by agrarian courts in Michoacán as described by Ventura, 2018), asserted that granting autonomy to an indigenous community within the framework of agrarian jurisdiction would compromise "national unity." Two criticisms can be levelled against the Court's decision: firstly, ethnographic research demonstrates that the risk of national fragmentation lacked substantiation given that in practice numerous communities throughout Mexico have historically implemented norms disregarding the restrictive

approach of Agrarian Law without undermining peace, social order, or "national unity" (see previous sections). Second, the Court's restrictive viewpoint in this regard has been contradicted by the same court's rulings and other federal government entities when indigenous consultations have been mandated in response to amparo lawsuits. In these cases (SCJN Amparo en Revisión 781/2011; SCJN Amparo en Revisión 213/2018), the authorities consulted in relation to the indigenous territory and lands, and officially recognized as indigenous representatives have, paradoxically, been members of the agrarian board of *ejidos* and *comunidades* as well as municipal authorities (Torres-Mazuera 2024). It is presumed that the agrarian institutionality defined by the state can be considered equivalent to the indigenous community; however, the possibility that indigenous "uses and customs", with a more inclusive and democratic approach, could alter established agrarian norms to redefine membership and the agrarian board composition, has been systematically disregarded. From the Court's perspective, *ejidos* and *comunidades* are not considered Indigenous institutions, even when they are composed predominantly of individuals self-ascribed as Indigenous and rooted in colonial-era structures—such as the *pueblos de indios* with *primordial titles*—that form the historical foundation of constitutionally recognized Indigenous institutionality.

5.2. The Agrarian Courts' Systematic Blindness to Indigenous Claims

Within the framework of Mexico's specialized agrarian jurisdiction, a persistent limitation exists regarding the recognition and adjudication of claims related to Indigenous and collective rights (Cruz Rueda 2013, 353, Torres-Mazuera *et al*. 2020).[5] Under current legal interpretations, only formally recognized agrarian rightsholders—either collective entities (ejidos or comunidades) or individual titleholders—are granted legal standing to initiate proceedings before agrarian courts. Moreover, no rightsholder may act on behalf of the collective unless officially elected by the assembly to serve as its representative.

This rigid procedural requirement has led agrarian courts to routinely dismiss cases involving internal disputes or opposition to contracts concerning communal lands, particularly when such cases are not filed by a duly constituted representative body. A clear illustration of this dynamic is the case of Juchitán, Oaxaca, where in 2015, a group of 100 Zapotec comuneros filed a lawsuit challenging lease agreements signed with a wind-energy company. The court dismissed the case on procedural grounds, arguing that it had not been submitted by the governing board of the *comunidad*, a body that did not exist at the time due to the lack of quorum required to elect it.

According to human rights lawyers, the agrarian courts' refusal to recognize traditional forms of political organization—such as assemblies elected through *usos y costumbres*—combined with the absence of up-to-date official registries of *comuneros*, systematically undermines Indigenous and agrarian communities' ability to defend their territories against extractive projects (Interview with EDUCA lawyer, Oaxaca, 2020). This procedural rigidity reflects not only a formalist legal culture but also a deeper

[5] For an in-depth examination of the limitations imposed by agrarian courts on the incorporation of Indigenous peoples' human rights, refer to Torres-Mazuera *et al*. (2020).

institutional bias that treats Indigenous governance as peripheral or incompatible with agrarian legal norms.

5.3. Limited Judicial Advances in the Recognition of Indigenous Peoples' Human Rights

The 2011 constitutional human rights reform marked a turning point in the legal landscape by mandating that all levels of government in Mexico take into account the content of international human rights treaties. This reform opened new avenues for litigation, allowing claims based on the rights to self-determination, autonomy, and territory to be presented as central legal arguments. In the years that followed, modest but important progress has been made in the types of cases admitted by the judiciary and in the rulings issued by the Supreme Court of Justice of the Nation (SCJN). To assess the scope and nature of these emerging claims, I draw on a report by the Center of Constitutional Studies (CEC), which compiles and analyzes all SCJN decisions related to Indigenous peoples issued between 2012 and 2021.

An initial review reveals that the Court issued a remarkably limited number of rulings—only ten—that explicitly applied an Indigenous rights framework. This scarcity of decisions (though not of cases) can be attributed to several factors. First, until 2020, the Court had not clearly articulated the content and scope of Indigenous communities' rights to land, territory, and natural resources, nor had it established interpretive criteria that would enable a coherent understanding of their practical implications (Latapie Aldana *et al*. 2020, 93). As a result, even for those compiling the jurisprudence, identifying relevant rulings proved to be a challenging task. A second factor—closely related to the first—concerns the challenges Indigenous communities face in accessing the judicial system. One key obstacle is the difficulty in demonstrating legal standing, particularly in collective claims, as noted by Torres-Mazuera and Ramírez-Espinosa (2022). Yet, the CEC report highlights recent advances in jurisprudential criteria that recognize both individual and community self-ascription, as well as legitimate interest of indigenous communities in cases involving environmental risk or damage, as important steps toward improving access to justice.

Another contributing factor to the scarcity of rulings is the strategic legal behavior of corporations, which often seek to avoid the establishment of jurisprudence that could set precedents affecting future projects on land claimed as Indigenous territory. This dynamic is exemplified by a case in Guerrero, in which an Indigenous community challenged a mining company. The case was ultimately left without a ruling after the company withdrew, anticipating an unfavorable outcome (Interview with Claudia Gómez, advocacy lawyer, 14/12/2019).

An alternative possible explanation lies in the reluctance of some Indigenous organizations to judicialize land conflicts, opting instead to reject state-imposed property regimes in favor of preserving forms of autonomy "outside the state"—a position particularly associated with neo-Zapatista communities in Chiapas. However, even in Zapatista territories characterized by *de facto* autonomy or marginalization from state institutions, legal uncertainty over land persists, especially where territorial control has been established through the occupation of private lands that remain untitled and

unregularized in favor of Indigenous communities (Interview with Agrarian Magistrate, Tuxtla Gutiérrez, 07/06/2019).

One final explanation for the limited number of cases reaching the Supreme Court is that self-identification as indigenous and the assertion of this right are not immediately evident to many speakers of indigenous languages and residents of rural *ejidos* or *comunidades.* This phenomenon has been extensively documented by anthropologists on the Yucatan Peninsula, which has a predominantly Mayan-speaking population (Castañeda 2004).

Despite the limited number of rulings, the compilation of the CCE report highlights a noteworthy issue: among the ten cases analyzed, only one involves a claim for the recognition of historical territorial possession while the remaining cases involve lands of indigenous communities secured under the form of *ejido* or communal tenure, wherein indigenous consultation was not conducted or where intercommunity conflicts existed. The core issue at the heart of these judicialized conflicts pertains to the rights of indigenous communities to determine the fate and utilization of their lands in the context of megaprojects, expropriations, or boundary disputes. In this context, the criteria employed by the Supreme Court were limited. Although the Court affirmed the right of indigenous communities to self-determination, its rulings merely recognized the obligation to conduct prior consultations and did not ensure consent (Gutierrez and Del Pozo 2019). Therefore, the most significant progress in the realm of jurisprudence lies not in the acknowledgment of indigenous territory but rather in the acknowledgment of indigenous communities as collective entities possessing legitimate interests and rights, such as the right to be consulted over some projects that affect their territories, usually held under *ejido* or *comunidad* tenure (Latapie Aldana *et al.* 2020, 93). However, in practice, this right is limited (Zaremberg and Wong 2018, Gutiérrez and Del Pozo 2019).

Numerous conflicts brought before the Supreme Court have been remanded to the agrarian jurisdiction without substantive resolution and without preventing their escalation into violence. The case of the Tila ejido in Chiapas conformed by ch'ol population affiliated to the Zapatista movement is emblematic in this regard. Relying on a restrictive interpretation that distinguishes *ejido* land from Indigenous territorial rights, the Court upheld the position that an *ejido* does not constitute an Indigenous community, even when composed of Indigenous individuals and recognized as an Indigenous authority at the local level. By applying an agrarian lens—treating *ejido* land solely as a form of property rather than as ancestral territory—the Court declined to engage with the broader claims to autonomy and self-determination raised by the community. This legal deferral contributed to the intensification of the conflict, culminating in the burning of the municipal palace in Tila.[6]

Many of the cases reaching the agrarian courts involve claims on behalf of an indigenous subject and implicates historical tensions between indigenous communities, agrarian communities, and municipalities (either (self)ascribed as indigenous and non-indigenous). These disputes reveal a confrontation often overlooked in the paradigm of self-determination and the right to indigenous territory, which typically positions indigenous peoples or communities against the state but disregards disputes in relation

[6] A comprehensive exploration of Tila conflict is found in Pérez and Villafuerte (2022).

to land between and within institutions deemed indigenous. To date, as explained by Sáenz and Velázquez (2021), there are no jurisprudential criteria on this issue within the framework of indigenous rights, nor are there criteria regarding whether the same level of state intervention should be applied when it concerns protecting: 1) an indigenous person against the state, 2) an indigenous community against another, or 3) an indigenous person against their community.

The Court's formalistic approach juxtaposes the rights of agrarian and indigenous communities, considering the former as corporations of landowners with property rights, and the latter as indigenous communities with territorial rights. This approach negates the historicity of agrarian communities and their complex interrelation with indigenous organizational and normative practices. Moreover, it disregards power relations and political conflicts between and within communities. This approach also overlooks the processes of community re-indigenization when a new avenue of legal opportunity recognizing indigenous rights is opened. Consequently, the Court estimated as "procedural fraud" the circumstance in which Tila *ejido* in Chiapas, having initiated litigation in the agrarian jurisdiction during the 1980s, subsequently asserted its right to territory and self-determination as an indigenous people (Mora 2020). In sharp contrast to this approach, anthropological and historical research elucidates the transformation of individual and community self-ascription in relation to legal frameworks that recognize indigenous entitlement, a phenomenon that does not diminish the legitimacy of claims.

Finaly, it is imperative to note that the aforementioned judicial decisions have not addressed the commodification and privatization of ejido and communal lands and its associated resources such as water or the exclusion of the majority of self-identified indigenous individuals from farmland within forms of purportedly communal land tenure, which fundamentally constitutes the root cause of numerous contemporary agrarian disputes.

6. Final Remarks

This article has critically examined the prevailing assumption that *ejidos* and *comunidades*—particularly the latter—have effectively ensured the preservation and continuity of Indigenous lands and territories. To interrogate this claim, we explored the complex interplay between agrarian and Indigenous institutions, norms, and practices, highlighting their mutual influences and entanglements. At the core of this investigation lies a critique of the liberal legal perspective dominant among agrarian officials, which equates the protection of communal lands with the certification and formalization of rights, ultimately privileging individualized property regimes.

In parallel, the article questions the notion that granting legal standing to Indigenous communities, as established in Article 2 of the Mexican Constitution, is in itself sufficient to safeguard Indigenous territorial rights. This critique challenges the narrative of historical continuity and institutional purity embedded in constitutional discourse, which posits that Indigenous institutions—understood as pre-Hispanic, unbroken, and self-contained—have been preserved by Indigenous peoples in isolation from the state.

Drawing on ethnographic and historical research, the argument presented here posits that agrarian institutions have shaped, and in turn been shaped by, local organizational

and property practices in communities inhabited by Indigenous language speakers. As such, it is analytically unproductive to conceptualize Indigenous institutions as discrete or autonomous from state frameworks. This does not deny the existence of institutional specificities in local Indigenous contexts. On the contrary, the article highlights the multiple ways in which *ejido* and *comunidad* regimes have been appropriated, reconfigured, and adapted by self-ascribed Indigenous communities. These local adaptations underscore the contradictions inherent in attempting to draw rigid distinctions between Indigenous and agrarian communities.

Furthermore, the article challenges the essentialist notion of Indigenous lands by showing that all lands have been subject to diverse tenure regimes—especially *ejido* and *comunidad*—that reflect processes of institutional bricolage. Since the 1992 reform, these tenure forms have undergone processes of individualization, progressively undermining collective decision-making and eroding the foundations of communal governance.

In addition to these conceptual critiques, the article examined the judicialization of agrarian conflicts, emphasizing how judicial decisions have often adopted formalist legal reasoning that reinforces the separation between Indigenous and agrarian legal categories. This distinction, however, frequently leaves the underlying causes of conflict unaddressed. The evidence presented suggests the urgent need to move toward a jurisprudential approach that recognizes the reality of institutional hybridity and normative pluralism—dimensions that remain largely absent in both agrarian and civil jurisdictions concerning *ejidal* and communal property. Judicial responses should shift away from simplistic balancing (ponderación) of rights between formally distinct legal entities, and instead engage in the reconciliation of overlapping and competing rights. This requires the development of clear interpretive criteria grounded in principles of social justice and the common good, capable of addressing the structural inequalities that shape land tenure and conflict in Indigenous and peasant territories.

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