Everyday Trials:
Legality, Illegality, and Extralegality in Mexico’s Agrarian Reform

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el Derecho no muere, mientras
el pueblo al cual rige no perezca
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Introduction

Mexico’s agrarian reform—the most wide-ranging and long-lasting in the nonsocialist world—was one site where rural people came into contact with the state. In 1992, as many Latin American countries began to privatize their land-reform sectors, Mexico formally ended its historical commitment to land distribution. As with other neoliberal government programs ostensibly designed to reduce the role of state institutions in the economy, the privatization program and the restructuring of the agrarian bureaucracy in fact greatly enhanced state capacity in rural (and parts of urban) Mexico (Snyder 2001). The reforms introduced in 1992 brought the legendary postrevolutionary agrarian reform to an end, but several million rural dwellers and their families continue to interact with agrarian bureaucrats and court officials.

The aim of this paper is to rethink how people “play their part in shaping national social and political histories by practicing various forms of resistance to past

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1 I thank Kevin Middlebrook for his comments. I dedicate this paper to Bill Roseberry’s memory.

2 Between 1915 and 1992, successive governments expropriated and redistributed over half of Mexico’s total surface area to 3.5 million individuals and their families, organizing them into almost thirty thousand ejidos and agrarian communities (Secretaría de la Reforma Agraria 1998, 313).
and present forms of economic and political domination” (Gledhill 2006), focusing specifically on the relationship between land-reform beneficiaries and state agencies in twenty- and twenty-first-century Mexico. It moves the discussion away from the state-society dichotomy in order to explore how law (an integral part of the state) and its practical application are sites where the legal, the illegal, and the extralegal coexist. This is intended to be a discussion paper that links recent ethnographies of the state with current interdisciplinary explorations of law.

**Rethinking the State**

The title of this paper refers back to *Everyday Forms of State Formation: Revolution and Negotiation of Rule in Modern Mexico* (1994), in which anthropologists and historians together addressed debates on popular cultures and processes of state formation. Editors Gilbert Joseph and Daniel Nugent asked scholars of nineteenth and twentieth-century Mexico to reflect about how to “simultaneously examine the formation of orders of domination and orders of resistance” by considering their own research in light of James Scott’s work on everyday forms of resistance (1976, 1985, 1990) and Philip Corrigan and Derek Sayers’s analysis of English state formation (1985). The book’s overarching goal was to understand the various forms of subaltern agency (including resistance) in relation to forms of state power, among other forms of domination. The outcome was a set of essays that “demonstrate how popular involvement in the multiple arenas through which official projects were advanced invariably resulted in negotiation from below” (Joseph and Nugent 1994, 12).

As William Roseberry noted in his own contribution to the volume, contributors to *Every Day Forms of State Formation* ended up placing their essays in partial opposition to each other: “‘the moral economy’ of the peasantry and other
subordinate groups as opposed to ‘the great arch’ of the triumphal state” (1994, 355). Moreover, in order to help identify this connection, scholars resorted less to Scott and more to Antonio Gramsci. Perhaps it was not surprising that many scholars writing on postrevolutionary state formation in Mexico found Gramsci’s concept of hegemony a particularly good lens through which to assess the longest-lasting regime in Latin America, concluding that the success of the postrevolutionary Mexican state lay in its ability to establish a common moral and social project between rulers and ruled. For many scholars writing in the 1990s, Gramsci’s concept of hegemony seemed particularly fitting for postrevolutionary Mexico, where “the state’s partial incorporation of popular demands since 1920. . .helps distinguish [it] from countries like Peru and El Salvador today” (Wells and Joseph 1996, 291). Elites holding power were able to rule through a combination of coercion and consent because “the moral project of the state includes both popular as well as elite notions of political culture” (Mallon 1995, 6).

The publication of Everyday Forms of State Formation coincided with a boom in what scholars began to label “the new cultural history of Mexico,” a shift in focus that moved discussion from attention to top-down experiences to those in which historians and anthropologists unearthed the role of non-elite groups. The achievements and shortcomings of this academic trend have been amply considered elsewhere.\(^3\) One unresolved challenge, however, is that posed by Eric Van Young, who noted that the concepts of agency and resistance added “too many degrees of freedom to individual thinking and action” (1999, 244). Perhaps this is partially true because, although most work on resistance in Latin America is viewed within the framework of the state (popular culture within national culture, and subaltern classes

\(^3\) See, for example, the special issue of the Hispanic American Historical Review (1999), Knight (1996), Van Young (1999b), and Brunk (1997:605).
in relation to dominant classes), much more empirically rich historical research appears to have been conducted on the “resisters” than on the state and its various agencies, bureaucrats, and techniques of governance.

In the last decade or so, a number of scholars have revisited questions of state building, seeking to explain the process of state formation in a number of geographical contexts, including Latin America. Some of these researchers have adopted a Weberian notion of states having the “cognitive capacity” to administer a population; others have taken a more Foucaultian perspective, from which the central characteristic of the modern state is its increasing capacity for surveillance or—in Scott’s words—“making society legible” (Scott 1998, 2-3, 65, 76-77, 81; Caplan and Torpey 2001; Trouillot 2001). And current anthropological research has allowed scholars to take seriously efforts to “rethink the state as an object of ethnographic inquiry” (Das and Poole 2004, 5; Hansen and Stepputat 2001, 2005; Krohn-Hansen and Nustad 2005).

One important challenge in this regard is how to transcend the state-society dichotomy. John Gledhill reintroduced Foucault to his discussion of resistance by explaining that he “seems to have led us away from the simple dichotomies—such as ‘dominant’ and ‘subaltern’—and potentially illusory spaces of freedom in which unfettered ‘resistance’ can be recognized but its effects on power relations more subtly diagnosed” (Gledhill 2006, 9). A number of other scholars have also tried to cut across the state-subject divide. George Steinmetz, for example, suggests that the line of separation between state and society “objectifies what is in fact a mobile demarcation, subject to continual construction and deconstruction” (1999, 12). Thus, rather than trying to mark out more clearly the boundary between state and society, a

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4 For Latin America, see, for example, Whitehead (1994) and Knight (2002).
5 For discussions of Foucault’s ideas in the context of Latin America, see Centeno (2001) and Poblete (2002).
current challenge for explorations state formation is to traverse these apparently separate units of analysis and to explore how “the uncertain yet powerful distinction between state and society is produced” in the first place (Mitchell 1999, 77).

In the exploration of “the porous edges where official practice mixes with the semiofficial and the semiofficial with the unofficial” (Mitchell 1991, 82), one fertile area of research has been law, which is generally thought of as an integral part of the state. Contributors to an edited volume on crime and punishment in Latin America, for example, show how although “the operation of law has generally reflected the continuous power exercised by state officials, members of the upper classes, and professional lawyers and jurists…law has always offered avenues for the subaltern to challenge, circumvent, manipulate, and even profit from the law” (Aguirre and Salvatore 2001, 13).

Vena Das and Deborah Poole invite us to rethink the boundaries between center and periphery, public and private, legal and illegal (2004, 4). Specifically, they argue that scholars’ goal should be to explain “how the frontier between the legal and the extralegal runs right within the offices and institutions that embody the state” (14). Das and Poole suggest that state practices in what they call emergency zones “cannot be understood in terms of law and transgression, but rather in terms of practices that lie simultaneously outside and inside the law” (Das and Poole 2004, 15).

Studies of state illegality in its most brutal forms are certainly not new for Latin America, where military and civilian governments have all too frequently killed and terrorized their populations (Davis and Pereira 2003; Huggins 1991). Nor is research that acknowledges widespread corruption in governmental practices new to Latin America. What Das and Poole in fact propose is a more nuanced or “daily
form” of illegality of a type that often escapes scholarly attention because it seems less urgent.

A number of legal anthropologists have tried to understand the more subtle complexity between oppositional categories such as state and society, legality and illegality. Following Boaventura de Sousa Santos’s pioneering work, many scholars in this field use concepts such as “interlegality” to describe not only the interconnectedness, but also the mutual constitution, of indigenous legal systems and national law (Sierra and Chenaut 2002, 157; Baitenmann, Chenaut, and Varley 2007). This paper explores different shades of legality and illegality as a way to explore further the interconnectedness of state and society. Together with earlier research on corruption and illegality in the agrarian sector (Varley 1989, XXXX), it shows that illegality cannot exist outside the framework of the law, in the same way that Foucault meant that “resistance is never in a position of exteriority to power.”

This paper, then, explores the relationship between legality and illegality in Mexico’s agrarian reform sector. The first section illustrates how the legal and the extralegal tend to be inseparable aspects of one another in a history of state-building and social engineering that was (and continues to be) profoundly legislated and yet still plagued by disorganization, fraud, and corruption. It offers examples of how agrarian reform officials and land beneficiaries are actors located simultaneously inside and outside the law. The second section explains how the architects of the postrevolutionary agrarian reform created a number of proxy courts within the executive branch of government, a development that had important consequences for everyday rights in rural Mexico. Therefore, when the Salinas government revamped what was a corrupt and inefficient agrarian sector, its first step was to “legalize” the state. The third section considers how the boundaries between the lawful and the
illegal in the agrarian reform sector coexisted with different forms of legality (private law) within the same nation-state, making present-day forms of justice in rural Mexico highly complex. And the fourth section shows how everyday forms of legality and illegality created different categories of agrarian citizens at the grassroots level. Indeed, in implementing the 1992 agrarian titling program, state officials first had to legalize the position of those whose status in the ejido had been illegal.

**Redeeming the State**

Although residents of Ixhuacán de los Reyes (Veracruz) had petitioned for land in 1921, the presidential resolution was not issued until 1973, 52 years later. When the agrarian engineer arrived in Ixhuacán in 1980 to mark the ejido boundaries, he was confronted by a group of around 50 armed individuals led by the municipal authorities. The armed men told the potential land beneficiaries that they would indeed give them land, but—pointing in the direction of the municipal cemetery—just two meters of it. A substantial portion of the land granted to residents of Ixhuacán in 1921 had been since 1973 “owned” by residents of the same town. The individuals

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6 As part of the process of redistributing land, postrevolutionary agrarian law established limits to rural property. Land exceeding these limits was distributed in the form of ejidos. The colonial term ejido (whose significance varies historically as well as geographically) was commonly used to denote communal land use, and the term was adopted for the land grants made by the postrevolutionary government. With the Agrarian Codes of 1934, 1940, and especially 1943, the ejido became a collective entity with its own patrimony, its own legal standing (personalidad jurídica), and its own administrative and representative organs (general assembly and ejido board of representatives). Endowed population centers (núcleos de población) became permanent corporate owners of ejido lands. Although woodlands, pastures, and water sources would be managed communally, arable lands could either remain under communal control or be fractioned into individual parcels. Both communal land and individual parcels could be worked individually or cooperatively. In 1934 the Agrarian Code differentiated between two types of land endowments: the dotación, or granting of land by state fiat to rural dwellers with no ancestral claims to land, and the restitution (restitución) of lands to those communities that could prove that their communal lands had been usurped during the implementation of nineteenth-century liberal laws.

7 “Eliseo Morales Vargas, al frente de más de 50 individuos armados con machetes, pistolas, rifles y carabinas, se lo impidieron físicamente, diciéndoles a los integrantes del Comisariado Ejidal que sí les van a dar tierras, pero nada más dos metros, señalando hacia el panteón municipal ubicado cerca de los terrenos afectados” (ASRA exp. 251, Ixhuacán de los Reyes, del Secretario general de la Liga de Veracruz, Ernesto Medel Martínez, al Delegado del D.A.A.C, Mario Hernández Posadas, 19 julio 1973).

8 In 1980, there were 200 individuals who claimed to farm these lands (ASRA exp. 251, Ixhuacán de
who bought the land from a corrupt local agrarian official had sent copies of the extralegal purchase “contracts” to the agrarian delegate, but the bureaucracy had failed to investigate the legality of such sales. The land distribution tasks were so complicated it took agrarian agronomers nine years to complete them.\textsuperscript{9} In 1981, agrarian officials reported a number of violent incidents in that year alone, including nine death threats, armed stalking, and attempted assaults with machetes.\textsuperscript{10}

Most local and regional histories of the Mexican agrarian reform, regardless of the time period under study, are filled with similar accounts of fraud, illegality, and often violence. When agrarian bureaucrats were not demanding bribes for their work, they incorrectly measured ejido boundaries, endowed the same lands to two or more ejidos, or failed to call for the renewal of ejido boards, thereby enabling representatives to stay on longer than legally permitted. Ejido boards became notorious for abusing their powers, charging illegal fees, and often despoiling legitimate ejidatarios of their parcels. In 1937, for example, one observer wrote:

The majority of ejidos which are unorganized or disorganized at the present time are in this unhappy state for the very good reason that they never have been organized. In many cases the laws have simply not been enforced at all and the ejidos have been abandoned to their own resources to work out their salvation as best they may; in other cases the laws have been applied but in such a hit and miss fashion and with such an inadequate outlay of funds for


\textsuperscript{10} ASRA exp. 251, Ixhuacán de los Reyes, Lic. Juan Leonel Lozada, de la Coordinadora de Solidaridad Campesina del Edo. de Veracruz, al Lic, Ignacio Morales Lechuga, Secretario de Gobierno, 26 octubre 1981.
administrative and supervisory purposes as, more often than not, to create
more problems than have been solved (Simpson 1937, 342).

There were several attempts to regulate the agrarian reform sector. President
Manuel Ávila Camacho (1940-1946), for example, tried to curtail the power of
abusive ejido boards and end the corruption he called the “carnival of the ejido” (*feria
del ejido*) (Medina 1978, 243). During his presidential campaign tour through the
country, he had received so many complaints about ejido board abuses that ten days
after becoming president in December 1940 he issued a decree mandating the
parcelling of all ejidos as a measure “against exotic doctrines and improper
hegemonies within ejidos” (Luna Arroyo and Alcérreca 1982, 100; Medina 1978,
237). His legal reforms were aimed at giving beneficiaries individual rights and
protecting them from abusive ejido boards. Toward this end, all ejidatarios would
receive certificates of agrarian rights (*certificados de derechos agrarios*) at the time
the provisional grants were issued. These could later be exchanged for titles (*título
parcelario*).

Neither the Ávila Camacho administration nor successive ones managed to
give individual titles to land beneficiaries mainly because the government lacked the
institutional capacity to do so. By the time President Gustavo Díaz Ordaz (1964-1970)
came to power, the agrarian reform process had already become an unmanageable
bureaucratic morass. In order to reduce the administrative backlog, the government
tried to decentralize the Agrarian Department by strengthening the role of state-level
offices (Moguel 1989, 185, 203, 219). By that time, however, the entire agrarian
reform process had virtually ground to a halt. Indeed, as of 1967, only 54 percent of
existing ejidos (around 11,000 of the total 20,528) were legal entities that had fulfilled
all required agrarian procedures (Zaragoza and Macías 1980, 581). The bureaucracy
was understaffed and overburdened with the regulation of already-existing ejidos. For example, the Agrarian Department had a total of 3,757 employees, of whom only 370 were regional officers (*jefes de zona*) in charge of agrarian organization. Each *jefe* had to oversee an average of 55 ejidos. And corruption had become fully institutionalized. Most agrarian procedures were only fulfilled only when agrarian officials received payoffs (*gratificaciones*) (Reyes Osorio 1979, 647-48).

Government efforts to restructure bureaucratic procedures and reduce the administrative backlog (*rezago*) mostly made matters worse. For example, from 1970 to 1976 the number of agrarian personnel tripled, and yet the increase in personnel had a perversely negative impact on the efficiency of the agrarian reform process. Because agrarian bureaucrats were among the worst-paid public servants (some had to survive without pay for long periods of time), and because many had no proper schooling or professional training, agrarian reform procedures were plagued with errors. For instance, many documents were misplaced in what was already an archaic filing system. By the early 1990s there were an estimated 150,000 incomplete administrative procedures pending across the country as a whole (Canabal and Flores Félix 1994).

Irregularities were rampant. There were legally recognized ejidatarios who had never received land, provisional grants that never became definite, land grants that had been denied but continued to be worked as provisional ejidos, overlaps between land tracts granted to two or more neighboring ejidos, and land granted that did not correspond geographically with the officially registered boundaries.\(^{11}\) Although some of these problems dated back to the 1920s and were largely consequences of rudimentary measuring techniques and the difficult working

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\(^{11}\) See, for example, Cambrezy and Lascuráin (1992, 134).
conditions (including the threat of violence) confronted by agrarian surveyors, on some occasions information was purposefully falsified.\textsuperscript{12}

For those individuals with land-use rights in ejidos, the main problem lay in the inordinate number of bureaucratic and administrative steps required to obtain an agrarian certificate—the document that would give them a quasi title to their parcel. Securing an agrarian certificate required 34 different administrative procedures involving nine internal branches of the Ministry of Agrarian Reform, as well as the special offices of the Office of the Presidency and the Ministry of Interior (Zaragoza and Macías 1980, 603). As a result, in 1970 almost half of all ejidatarios lacked agrarian-rights certificates.

When in 1992 President Carlos Salinas de Gortari (1988-1994) oversaw the amendment of Article 27 of the Constitution, formally ending the state’s 1915 commitment to land distribution,\textsuperscript{13} what seemed to resonate across the country (despite some important denunciations of the privatization program) was the promise of a new relationship between the state and the agrarian social sector based on transparency and accountability. The government revamped what had become a profoundly inefficient and corrupt bureaucracy, creating an agrarian ombudsman (Procuraduría Agraria) and an agrarian court system and initiating a large-scale land-titling program aimed at gradually privatizing the agrarian reform sector.\textsuperscript{14} In many ways, the restructuring of the government agencies in charge of the agrarian sector was a way for the Salinas administration to “redeem the apparatus of the state” (Pisa 2001, 32).

\textsuperscript{12} See, for example, Hoffmann (1992, 152).

\textsuperscript{13} From 1960 to 1992, all presidents except Luis Echeverría Alvarez (1970-1976) had tried to put an end to the agrarian reform sector, maintaining that ejidos were inherently inefficient and that increases in agricultural production were more pressing than further land distribution. Moreover, in order to promote greater private investment in agriculture, successive administrations wanted to assure entrepreneurs that their lands would not be expropriated. However, declaring an end to the redistribution phase of the reform became more difficult in the 1960s and 1970s as regional peasant organizations began to coalesce around demands for land (Bartra 1986, 102; Mackinlay 1996, 189).

\textsuperscript{14} Programa de Certificación de Derechos Ejidales y Titulación de Solares Urbanos, or PROCEDE.
To “legalize” the state, government planners had to create an alternative judicial structure.

**In the Wrong State: The Creation of the Agrarian Court System**

By November 1992, less than a year after the Salinas administration overhauled the agrarian reform bureaucracy and created a new agrarian court system, judges had already produced several tomes of precedential rulings (*jurisprudencia*) on agrarian matters, which were published in *The Federation’s Judicial Weekly (Semanario Judicial de la Federación)*.\(^\text{15}\) In one important decision, a circuit court determined that hundreds of agrarian rulings made between 1970 and 1992 were illegitimate and therefore no longer binding. These judges noted that, under the Federal Agrarian Reform Law of 1970, the state-level agrarian commissions responsible for delivering verdicts on individual conflicts of interest in the agrarian sector were comprised of a president, a secretary, and three regular members (vocales). For commission rulings to be valid, the judges argued, written decisions had to be signed by all six members. Thus, rulings not signed by one or more commission members were nonbinding (*carece de existencia jurídica*).\(^\text{16}\)

The importance of this precedential decision lay in the fact that, because agrarian commissions had not followed proper procedures in many of their pre-1992 verdicts, hundreds of rulings nationwide could be overturned. What was especially significant in this matter, however, was that an agency pertaining to the executive branch had previously held the power to act as a judicial institution. In other words, the agrarian justice system responsible for deciding the fate of collective and

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\(^\text{15}\) Zamora et. al define the term *jurisprudencia* as “judicial decisions that establish rules of law or interpretation of laws that are binding on judges who subsequently decide identical or similar matters” (2004, 84).

\(^\text{16}\) *Semanario Judicial de la Federación, Tomo X, noviembre 1992*, p. 238. “Comisiones Agrarias Mixtas. Inexistencia jurídica de las resoluciones que no sean suscritas por todos sus integrantes.”
individual agrarian rights in large parts of rural Mexico from 1915 to 1992 had occupied the wrong institutional space. Instead of creating a specialized agrarian court system within the judiciary (as would have been customary under a republican form of government), the early architects of Mexico’s agrarian reform had established a number of proxy-courts within the executive branch of the state. Therefore, in order to “legalize” the agrarian sector in 1992, government planners had to create an alternative judicial system.¹⁷

The story of how the agrarian justice system wound up in the executive branch is beyond the scope of this paper. Ultimately, even though more region-specific agrarian projects (such as Emiliano Zapata’s Plan de Ayala) had proposed the creation of special tribunals to settle conflicts stemming from the distribution of large landholdings, it was Venustiano Carranza’s Law of January 6, 1915 that gave the federal executive final say on agrarian matters, thereby permitting it to operate as a proxy judicial institution parallel to the Supreme Court. It was on the basis of the 1915 law that Article 27 of the 1917 Constitution gave the federal executive the right to issue rulings on all agrarian matters, including border conflicts between communities, land expropriations, and the distribution of expropriated land among beneficiaries (the *restitución* or *dotación*). Formal rulings (called “presidential resolutions”) were published in the daily federal register (*Diario Oficial de la Federación*).

[missing: paragraph on the agrarian *amparo*]

Most scholars have focused on these presidential resolutions as a symbol of how committed a particular president was to bestowing land to the landless. For example, analysts often measured the agrarian performance of a *sexenio* (six-year presidential term) in terms of the number of presidential resolutions issued.

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¹⁷This is not to say that the “real” judicial branch is inherently more efficient, depoliticized, or accountable in Mexico, although recent reforms have indeed professionalized the Supreme Court.
Presidential resolutions, however, were not only about the grand performance of the head of state granting land to the landless; these majestic proclamations of state also directly affected the daily livelihood of millions of individuals.

Presidential resolutions issued between 1934 and 1984 included the names of all land beneficiaries. At the community or village level, whenever someone died, left town, or illegally sold or bought a land parcel, there was no way to legalize these changes until the president issued another ruling—this one called a “judgment of withdrawal and new bestowal of agrarian rights” (*juicio de privaciones y nuevas adjudicaciones de derechos ejidales*). Presidential rulings published in the *Diario Oficial de la Federación* were hard to secure, thus creating a huge gap between the original land beneficiaries listed in the presidential resolution and the reality of everyday life in ejidos.

At the local level, it was the ejido commissioner (*comisariado*) who had the authority to make decisions concerning individual agrarian rights. In 1933, agrarian committees responsible for administering ejido land (*comités particulares administrativos*) became boards of representatives (*comisariados ejidales*) and received expanded duties, such as administering common lands, overseeing the fractioning of individual parcels, and legally representing the collectivity.  

As subsequent legislation augmented the powers of ejido boards, some efforts were made to control the widespread abuses committed by their members. For example, the election of board members was by secret ballot in a process overseen by officials from the state-level agrarian commission (Comisión Agraria Mixta, CAM), and oversight councils (*consejos de vigilancia*) were established to supervise the ejido...

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18 *Decreto que Reforma el Artículo 27 de la Constitución Política de los Estados Unidos Mexicanos*, 30 December 1933, text in *Diario Oficial*, 10 January 1934, 121-5.
board's financial accounts and overall performance. Nevertheless, the agrarian archives are replete with complaints against abuses committed by ejido officials.

In an effort to bridge the gap between the content of presidential resolutions and daily life in ejidos, the administration of President Miguel de la Madrid Hurtado (1982-1988) reformulated the Federal Agrarian Reform Law in 1984, expanding the authority of state-level agrarian commissions and empowering them to issue resolve individual grievances filed against ejido boards. These commissions (located in state capitals) were, however, often so distant from rural communities that complainants could not make the roundtrip in a single day. And when individuals did invest the time and money necessary to take their grievances to the commission, they often had to wait for long periods of time just to get an audience with a commission representative. Even worse, if they actually managed to secure a favorable resolution of their grievance, they might not receive it until years later because the agrarian commissions were not administratively capable of handling the case backlog expeditiously. One serious problem was that agrarian personnel—who were not trained as judges—had to find their way through a complicated and confusing legal system.

Many legal scholars in Mexico questioned the existence of this parallel legal system. It was a topic discussed at national law congresses in the 1950s, but it was not until 1992, when the Salinas administration overhauled the entire agrarian reform sector, that government officials created an actual agrarian court system comprised of 49 individual agrarian district courts (Tribunales Unitarios Agrarios, each headed by a judge) and an Agrarian Supreme Court in Mexico City (Tribunal Superior Agrario, comprised of five justices). This court system has become a key mechanism for

19 García Ramírez XXXX cites the following congresses where this was discussed: the Primer Congreso Revolucionario de Derecho Agrario (Mexico D.F., 1959), the Congreso Nacional Agrario (Toluca, 1959), and the VIII Congreso Mexicano de Derecho Procesal (Xalapa, 1979).
resolving disputes and legally validating rights to land in rural (and parts of urban) Mexico. Since 1992, a number of groups have collectively sought the resolution of old land demands, and hundreds of thousands of individuals have turned to the agrarian courts to settle disputes with neighbors, bequeath and inherit agrarian rights, or legalize (previously illegal) land rentals and sales (Fix Zamudio 1999, 13, 15).

These new courts are one of the most important and least studied aspects of the post-1992 agrarian reforms. The agrarian judiciary deals with two types of cases. First, these courts assumed responsibility for the unresolved land petitions filed with the Agrarian Reform Ministry before 1992. The district courts and the Agrarian Supreme Court share responsibility for what is, in the words of a court official interviewed by Fix Zamudio, “the backlog of the backlog” (el rezago del rezago). The official went on to explain that “Matters pending are found in dozens of tomes stored in numerous archival boxes. Many of the documents on which these land petitions are based were issued during the Colony; there are land titles issued by Maximilian of Habsburg. More ‘recent’ conflicts involve land invasions and transfers that date from between December 1876 and the drafting of the 1917 Constitution. There are controversies regarding the implementation of revolutionary agrarian law, the Agrarian Codes, and the Federal Agrarian Reform Law” (1999, 37-38). For example, in one decision regarding a demand for land filed in January 1971 by a group of campesinos in the state of Jalisco, the Agrarian Supreme Court noted that previous rulings had incorrectly judged the matter under the dispositions of the Federal Agrarian Reform Law, which was valid as of April of 1971. In order to correct these

20 Secretaría de Reforma Agraria (SRA), formerly the Departamento Agrario or Departamento de Asuntos Agrarios y Colonización.
rulings, the Agrarian Supreme Court judges issued a judgment based on the prior law, the 1942 Agrarian Code.21

Second, the new agrarian courts deal with individual grievances in ejidos and agrarian communities. Since 1992 the 49 district courts have received more than one hundred thousand grievances dealing with everyday matters such as the registration of individual parcels inherited upon the death of a family member. What recent court documents show is that the resolution of even the most mundane matters is highly complicated, largely because agrarian law operated parallel to private law and made practices that were legal in one system illegal in the other.

**Overlapping Legalities**22

In the Tuzamapan ejido in the state of Veracruz, two brothers fought over their late father’s ejido parcel because he had registered two different succession (inheritance) lists. At the district court hearing, the judge explained that the ejido’s general assembly had been privy to the father’s second will: “In the ejido’s general assembly, it was stated that …the ejidatario’s last petition was substituted for his initial list.”23

As in civil law, the most recent agrarian succession list voids the former one(s).

Unlike private property laws, however, only one of the two brothers could inherit the father’s land because agrarian testamentary regulations prohibit the partitioning of ejido parcels.

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21 “Sentencia pronunciada en el juicio agrario número 395/96, r elativo a la dotación de tierras, promovido por campesinos del poblado Platanillo, Municipio de Purificación, Jal.” Diario Oficial, 16 May 2005.
22 Parts of this discussion are drawn from Baitenmann 2007.
If Mexico’s post-1992 agrarian laws allow ejidos to be fully privatized, why are land parcels still indivisible?\textsuperscript{24} To answer this question, we must first note that agrarian law coexisted with private law in twentieth-century Mexico. The relationship between social and private law is so complex that today’s rulings must take into account earlier concepts of justice for the landless. The Tuzamapan ruling can, for example, only be understood (and ruled on) in terms of the concept of family patrimony.

The early architects of Mexico’s agrarian law agreed to define land grants as “family patrimony” in order to ensure that the land distributed to reform beneficiaries would not be sold or lost in mortgage. The general idea that property (usually the home or a plot of land) could not be alienated was commonplace throughout Mexican history. In the Aztec calpullis, for example, individuals possessed only use rights to land, and these could be transmitted only by means of inheritance (Rincón Serrano 1980, 24). Many colonial laws also restricted the transfer of Indian properties; land endowed to them by the Spanish crown was usually inalienable.\textsuperscript{25} Moreover, the nineteenth-century liberal laws designed to privatize communal property decreed that land should be distributed among the “family heads” of each pueblo, including widows with children (Chassen-López 1994, 34).

Rival factions during the 1910-1920 revolution seemed to agree on the fundamental characteristics of the concept of family patrimony. For example, Pancho Villa’s Agrarian Law of 1915 called for state governments to protect family

\textsuperscript{24} With the Agrarian Law of 1992, the rights to an ejido parcel and to lands held in common were divided into two separate rights and each was given new meaning. Rights to individual parcels were transformed into private rights (derecho de propiedad en sí mismo), which, under specified circumstances, allowed individual holders to use or dispose of lands as they saw fit (Pérez Castañeda 1995, 458-96). In the first phase of the land-titling program, ejidatarios receive certificates of individual ownership and are entitled to sell land to other ejido members. The second phase of land privatization requires that a majority of ejido members vote to authorize unrestricted ownership, which would allow free-market sales of ejido land (Hamilton 2002, 122).

\textsuperscript{25} See, for example, Ots Capdequi (1986).
patrimony by prohibiting land grants from being mortgaged or embargoed. Land would be registered as private property in the Public Property Registry, but it could only be passed on, by inheritance, to a member of the family (Ley General Agraria del Villismo, in Lemus García 1991, 226). Many of the Constitutionalists responsible for designing agrarian law in the second decade of the twentieth century believed that the disentailment laws of 1856 had produced widespread losses for Indian villages, rural injustice, and, consequently, revolution (Kouri 2002, 69). The new agrarian program of 1915 had to make sure that beneficiaries would not lose their granted or restituted land all over again, and it therefore imposed significant constraints on the disposition of property.

The ejido parcel represented the minimum amount of land required to support the new agrarian family. Rules limiting the size of ejido parcels took into account the quality of land in order to determine how much was necessary for the head of family to support a household. As in the case of postrevolutionary workers’ rights, in which the minimum wage was intended to be the minimum required to support a nuclear family, the agrarian reform was based on the idea of granting sufficient land for beneficiaries to support their families. Indeed, according to the 1920 Law of Ejidos, potential grantees were family heads who lacked enough land to earn twice the average daily wage (jornal) prevailing in the region. When agrarian officials and engineers went to the countryside to map and measure new ejido lands, the size of the land grant was directly related to the number of hectares needed for each land solicitor to support a family. By 1922, for example, the Agrarian Regulatory Law had established that the minimum individual grant had to measure three to five hectares if it was irrigated land, four to six hectares when rain-fed, and six to eight hectares in more arid environments.
What is striking is that the 1992 reforms did not alter the idea of the indivisibility of the land grant (*parcela ejidal*). Even though the post-1992 agrarian testamentary rules give individuals with registered testaments or succession lists testamentary freedom (the right to bequeath the ejido parcel to whomever he or she chooses), there is one important constraint that makes ejido land different from unrestricted private property. Although private property under the civil code can be distributed among several heirs, ejido parcels cannot be divided and must be bestowed as a single unit. Thus, bequeathed land parcels remain indivisible.

The way that the architects of the 1992 reforms settled the contradiction between private and social property was that when someone dies intestate and there are several offspring, parents and grandparents, or other individuals dependent upon the ejidatario or ejidataria and claiming inheritance rights, the potential beneficiaries have three months in which to agree among themselves who will inherit the deceased’s agrarian rights and the land parcel.26 In the event that they do not agree among themselves, the courts can auction the agrarian right (parcel) and divide the profit among those who have inheritance rights.27 Thus, although the profit from the transaction can be divided into parts, the land parcel itself remains undivided, ultimately preserving the founding principles of the 1915 land reform program.

**Legalizing the Illegitimate**28

In 1999, Francisca Miranda sent a petition to the agrarian district court in Central Veracruz in which she explained that “she sought recourse to the agrarian court to appeal for the recognition of her ejidataria status at the San Marcos de León ejido” (*solicitando el reconocimiento de su calidad de ejidataria*). Her court hearing

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26 Ley Agraria, 1992, art. 18.
28 Portions of this discussion are drawn from Baitenmann 2005.
concluded (as many others do) with the judge stating the following: “Francisca Miranda’s character as ejidataria of the population center San Marcos de León . . . is [hereby] recognized with all the rights and obligations that correspond to this category” (con todos los derechos y obligaciones correspondientes a los de su especie). 29

Before the Salinas reforms, there were several ways of becoming an ejidatario or an ejidataria. Individuals could either be listed in the first census or they could be included during a census revision conducted after the presidential resolution. At the census revision meetings, deaths and the abandonment of parcels (for two or more years) were recorded, and certificates were issued either to heirs of the rightful beneficiary, or to those who had “peacefully” cultivated the respective parcel for two or more years. And it was through these census revisions (depuraciones) conducted by the Ministry of Agrarian Reform that ejidatarios managed to legalize parallel norms. For example, someone recorded as having “abandoned” a parcel might actually have sold it to the person listed as having cultivated it peacefully for two years.

Most researchers conducting fieldwork in ejidos have noted the continuous breaking of agrarian rules—primarily in the form of sales and rentals of land parcels, both of which are illegal in this form of property removed from the market. Ejidatarios often sold land when they became indebted. Those who were better-off often purchased more land to be able to distribute it equally among their offspring. Some members left the settlement in search of other employment. Ejidatarios engaged in raising profitable corps rented out their land when agricultural prices crashed and later resumed cultivation when prices stabilized. These were the quotidian

29 Tribunal Unitario Agrario del Trigésimo Primer Distrito del Estado de Veracruz 470/99, San Marcos de León (Xico), Veracruz.
transactions or “parallel norms” that were part of daily life in ejidos (Zendejas and Mummert, 1993).

Ejido members created their own internal categories to deal with the illegality the formed part of everyday life. In most ejidos there were several categories of individuals: ejidatarios or formally recognized agrarian-rights subjects; non-ejidatarios residing in the ejido’s urban settlement (*avecindados or libres*); ejidatarios without parcels but with collective rights to land (*comuneros*); and individuals with only de facto use-rights to a land parcel, oftentimes the result of an illegal purchase of ejido land (*posesionarios*). In Chavarrillo, Veracruz, for example, there were five types of residents: beneficiaries (*derechosos*), heirs of beneficiaries (*herederos por derecho*), offspring of beneficiaries (*hijos de derecho*), residents without agrarian rights (*avecindados*), and residents without rights who rented land (*prestamistas*) (Casas 1993, 208).

The genius of the post-1992 land-titling program lay in that, instead of stripping ejidatarios of their agrarian rights, state officials first legalized the position of those whose status in the ejido had previously been de facto or illegal (*posesionarios, or those with access to a land parcel but without agrarian rights*). By validating the rights of *posesionarios*, the land-titling program legalizes the illegitimate. All those living and working on ejidos without prior agrarian rights became new agrarian subjects—without the right to claim land, but with certificates that formalized their previously illegitimate status. For this reason, the project was perceived as one of incorporation or expansion of the agrarian population. (Only later, after the titling program was completed, could ejidatarios vote to privatize the ejido.) As the land-titling program progressed, tens of thousands of individuals without prior agrarian rights became agrarian state subjects. As a result, at no other time in history
did the Mexican state have as many agrarian-rights subjects as during the implementation of the land-titling program.

At the Estación Alborada ejido in Veracruz, for example, there were 57 agrarian-rights subjects before the land-titling program; by the time it had been concluded, another 108 individuals (all of whom were previously posesionarios) had been added to this category. Similarly, the Mahuixtlán ejido had 74 agrarian-rights subjects before the titling program and a total of 356 thereafter. Censuses from 14 other ejidos in the region show that, in most ejidos, the numbers of agrarian-rights subjects tripled as a consequence of the land-titling program.

The larger point here is not just that the relationship between state and society and between law and illegality is different for distinct categories of people (beneficiaries versus non-beneficiaries, for example). Rather, it is that as the state—in the form of agrarian laws, offices, and practices—is constructed, undone, and recreated, so are the spaces for the illegal and the extralegal. Each time lawyers designing the agrarian reform altered its laws, agencies, and technical procedures, they also shifted the concept of legality and, with it, the concepts of illegality and extralegality as well.

Concluding Remarks
This paper began with a quotation from the famous legal scholar (and first female magistrate of the Mexican Supreme Court) Martha Chávez Padrón: “el Derecho no muere, mientras el pueblo al cual rige no perezca” (2003, x). The idea that law cannot die so long as there are citizens points to the idea of law as an abstract (and just) code, and society as the sphere of its practical application. It is precisely scholars such as

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Chávez Padrón who, from a legal perspective, pointed out important illegalities in the agrarian reform sector. Despite the fact that they themselves were an integral part of the Mexican state system, legal scholars like Chávez Padrón highlighted the fact that ejidatarios effectively lacked citizenship rights because there was no proper judicial system through which they could redress their grievances. Critiques such as hers were particularly sobering in a political atmosphere in which criticism of the agrarian reform was automatically discarded as reactionary.

There are numerous other Mexican legal scholars who also have important things to say about citizenship rights, legality, and justice in twentieth-century agrarian reform programs. More recently, Juan Carlos Pérez Castañeda has offered important critiques of the post-1992 agrarian bureaucracy from a purely legal perspective. He notes, for example, that the new Office of the Agrarian Attorney General (which was intended to serve as agrarian ombudsman, defending the rights of ejidatarios and other rural producers by hearing, investigating, and channeling to the appropriate authorities all charges against public servants or other individuals who have allegedly violated the terms of agrarian legislation) is same agency furnished with de facto powers to coordinate and implement the very titling program it is supposed to watch over.

One goal of this paper has been to stimulate a dialogue between the work of leading agrarian legal scholars like Pérez Castañeda and more sociological discussions and empirical explorations of the agrarian reform. There has in recent years been a proliferation of ethnographic studies of the ejido sector which are less inclined to view it in such straightjacketed terms as justice for the landless, and which are more inclined to detail everyday forms of abuse and corruption in the ejido.
sector. In a broader sense, this shift in perspective reflects an interest in rethinking such traditional dichotomies as state and society, and legality and illegality.

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