

ILLEGAL PRACTICES AND THE RE-ENCHANTMENT OF GOVERNMENTAL TECHNIQUES LAND AND THE LAW IN MEXICO

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Introduction

In Mexico the *ejido*¹ was introduced as a specific form of land tenure at the beginning of the 20th century. As a result of the Mexican Revolution (1910-1920) large landholdings were expropriated and the confiscated lands were handed over to the landless rural population who became formally organised in *ejidos*. In most *ejidos* the arable land was immediately divided into individual plots. The Agrarian Law stipulated that *ejidatarios* (the members of the *ejido*) only held usufructuary rights to the land and that they were not allowed to sell the plot, rent it out or leave it without use. Over time, however, *ejido* land tenure gradually turned into a form of private property and illegal *ejido* land transactions became quite common. Most *ejidos* were formed in the first half of the twentieth century but officially the Mexican agrarian reform lasted until 1992. Finally, in 1992 a new Agrarian Law was issued and land reform came officially to its end. The new Agrarian Law to a large extent privatised *ejido* land tenure (Nuijten 2003b).

This article discusses the ways in which illegal land transactions were organised before 1992. The analysis focuses on the renting out of land and the sale of plots, both prohibited by the Agrarian Law. An analytical approach is used which

¹ The latin root of the word *ejido* is 'exitus', which means exit or end. In Spain the term *ejido* referred to the commons at the outskirts of the village. During the colonial period the Spaniards used the term for the commonly held lands at the entrance or the exit of the rural villages in the colonies. With the Mexican Land Reform, and the new Constitution of 1917, the term *ejido* acquires a legal meaning for a specific type of land tenure.

studies the development of organising practices in relation to a specific force field (Nuijten 2003a). It is argued that illegal land transactions in the *ejido* became established in relation to a force field constituted by several elements: the value attributed to *ejido* land, the ideology of the family, local politics, wider social networks, and bureaucratic rules and processes in government agencies. Contrary to most notions of fields, however, it is argued that the force field is not based on a normative order but on forms of struggle and contention that have patterning as their consequence. It is also shown how in contexts where the official rules are not followed, illegal practices can lead to the ‘re-enchantment of governmental techniques’ (the use of existing procedures for new purposes) and the creation of ‘shadow procedures’ (the creation of informal measures) in order to conceal illegal transactions. The article is based on detailed historical ethnographic research on one *ejido*, La Canoa, in western Jalisco.²

The *Ejido* and Flaws in Formal Registration

The formation of *ejidos* in Mexico was accompanied by extensive legislation, as well as the creation of a huge agrarian bureaucracy, which had to implement land reform and was the institution responsible for the resolution of conflicts. In the seventies this bureaucracy became the Ministry of Agrarian Reform (SRA).³

It is well-known that “post-revolutionary states are especially prone to enacting laws of high ideals which come up against an intractable reality” (Harris 1996: 9) and the Mexican Agrarian Law is no exception. A central contradiction in the Mexican case is the fact that on the one hand the Agrarian Law allowed the ‘individual’ possession of *ejido* plots, while on the other it tied the use of the *ejido* plot to many ‘social’ rules. This contradiction had its origin in the Revolution and the Mexican Constitution which stressed the need for social justice in the distribution and use of land. For example, an important principle derived from the Mexican Revolution was: *land to the tiller*. For that reason, the *ejidatario* had to work the land himself and could not leave it unused or rent it out. *Ejido* land was meant to provide a subsistence basis for peasant families and should not become

² This research was conducted in different periods from 1991 to 1995. The researcher has continued to visit the *ejido* regularly to the present.

³ The institution that took care of agrarian affairs was reorganized and renamed several times after 1917. In the 1970s it became the Ministry of Agrarian Reform (SRA, Secretaría de la Reforma Agraria). In order to avoid confusion, in this article I refer to the SRA as the institution that takes care of *ejido* land affairs.

an economic commodity, so *ejidatarios* only received ‘use rights’ to the land and not property rights. Each *ejidatario* could receive the right to only one plot as monopolisation of land should be avoided. At the same time, however, the law allowed the *ejidatarios* to choose their own heir for their plot. This made *ejido* land tenure very similar to private landownership.

Besides this tension between ‘individual possession’ and ‘social rules’, the registration of *ejido* land was very inadequate. Although agrarian procedures existed for the division of the land into individual plots, the registration of *ejidatarios* in relation to a specific plot of land was never carried out. Actually, the land survey and the mapping was one of the aspects that created most problems during the implementation of the land reform. In many *ejidos* the final definitive map of their land which would clarify the legal situation of the *ejido* in relation to their neighbours, was never elaborated. Furthermore, in the great majority of *ejidos*, after the land had been received, it was internally divided among the *ejidatarios*, without a map or formal registration of the plots ever being made. Hence, at the SRA *ejidos* were registered with their name, a map of the total *ejido* (if the *ejido* was lucky) and a list of *ejidatarios* (members of the *ejido*). On the basis of this list, certificates of agrarian rights were issued with a number.

These numbered certificates accredited *ejidatarios* as members of the *ejido* and provided them with certain rights. The first and most important right was the usufructuary right to an individual *ejido* plot and the right to designate the heir of the land. However, it also gave them rights to use the common lands and the right to receive a free *lote* (house lot) for the building of a house within the urbanised zone of the *ejido*. In terms of the law, the numbered *ejido* certificates referred to a specific plot of land (*unidad de dotación*) and protected the *ejidatario* in his or her agrarian rights. However, as individual plots were never measured, the link between a plot and the number of the certificate was never formally established. Nevertheless, for the *ejidatarios* these certificates acquired a very important meaning. They were their proof of land rights and as such had an important legal-symbolic value.

Every three years the general assembly of the *ejido*, which includes all *ejidatarios*, elects the executive committee of the *ejido*. The president of this committee is the *ejido* commissioner. The executive committee is responsible for the daily administration of *ejido* affairs but the highest authority at the local level is the general assembly. The *ejido* administration concerns a broad range of activities, such as the administration of the different types of land: the individual plots, the commons and the urban zone.

In order to keep control over the 'social use' of the lands, the SRA introduced the Investigation of Use of Plots (*Investigación de Usufructo Parcelario*) (IUP). The aim of the IUP was to check if *ejidatarios* still used their land in the right way. In cases where they did not, the land could be taken away from individual *ejidatarios* and the *ejido* assembly then had to decide to whom the land should be given. During the IUP an official of the SRA visited the *ejido* with the official list of *ejidatarios* and their certificate numbers. An *ejido* meeting was convened at which the assembly had to declare of each *ejidatario* whether he or she was still working the land him or herself, or whether somebody else was tilling the plot. In the latter cases the *ejidatarios* were dispossessed of their rights. Later on, we will see that in practice the function of the IUP became a completely different one.

Land and its Distribution in La Canoa

La Canoa is one of the many small hamlets in the valley of Autlán, Jalisco. In 1938 La Canoa received lands to establish its own *ejido* and in 1942 it got a small extension. In total the *ejido* received approximately 450 hectares of arable land and 1800 hectares of lands in the mountains. The arable land they received was immediately divided into individual plots, while the mountainous land became common lands used for the herding of cattle. Since the 1960s half of the arable *ejido* land of La Canoa has fallen within the irrigation district. At the start of the *ejido*, almost every household possessed a plot of land. However, over the years the number of households has increased substantially and today most households in the village have no access to land any more. La Canoa has 837 inhabitants (INEGI 1991) while the *ejido* La Canoa has 97 *ejidatarios*. Many villagers, *ejidatarios* as well as no-*ejidatarios*, combine their life in the village with migration to the United States.

When I started the study of the distribution and transfer of *ejido* plots I encountered serious problems in distinguishing 'general trends' from 'specific cases', or 'exceptions to the rules'. There were many stories and commentaries about land transfers. But how representative were the stories people told me? For example, some people said that many plots had been sold through the years and others said only a few. This obviously did not explain how important land sales had been in relation to the total number of land transfers. The *ejidatarios* also tended to express themselves in terms of established rules or customs. For example, they could say: *It is the custom here in the village that the youngest son inherits the land*. Although at first I tended to accept this statement, which was frequently uttered, doubts grew when many 'exceptions to this rule' became apparent. In the many cases when the youngest son had not inherited the land, the *ejidatarios* always came up with logical explanations for this 'exception'. So, the

logic of these practices seem to lie partly in general principles and partly in the emergent properties of the situation. So, what then were the principles which informed the designation of the heir and was it possible to speak of inheritance customs in the *ejido*? Furthermore, how did the many conflict stories I was collecting relate to the non-conflictive land transactions?

With respect to the political side of land transactions and the monopolisation of land in the hands of certain families, I had similar doubts. On the basis of what people told me I was convinced that certain figures had been despotic local bosses who had abused of their relations with the bureaucracy to get more land for themselves and their sons. But to what degree? How does one compare the amount of land a man with eleven sons at the time of the land distribution received with the situation of a man with only one son? In sum, I felt that I needed a general overview. For that reason I elaborated ‘maps of kinship’ (genealogies of people) and ‘maps of land transfers’ (genealogies of land). The combination of these genealogies of land and people provided me with a general overview of land transactions in the *ejido*. Furthermore, it gave a good picture of the distribution of plots between different families in the village and how this changed over the years. This genealogy of land transfers concerns the period between 1942 and 1992, the year that the Agrarian Law was changed.

This genealogy of plots showed that the arable land has been a very dynamic field with respect to transactions. The abandoning of *ejido* plots, fragmentation of *ejido* plots, and buying and selling of parts of it has been a wide-spread phenomenon in the *ejido*. In 1942 the land was divided into 119 different plots among 77 *ejidatarios*. As a result of fragmentation of plots and the clearing of new land, in 1993 there were 136 plots divided among 94 *ejidatarios*.⁴ While in 1942 the average number of ha. per *ejidatario* was 5.5, this was 4.7 in 1993. An important subdivision of plots has taken place since the establishment of the *ejido*. A great number of plots nowadays measure less than two hectares. This serious fragmentation of the land is above all due to the transfer of plots to more than one child and to the sale of fractions of plots. Many *ejidatarios* have more than one plot of land. Some *ejidatarios* possess up to five different plots.

As was mentioned above, in the village people tend to complain about local bosses, or *caciques* who monopolised the land. This same tendency can be found in much of the literature in which the selling and renting out of *ejido* plots has been attributed to the influence of local powerful bosses. Gordillo (1988), for example, argues that in general the *cacique ejidal* controlled access to *ejido* land

⁴ Three of the 97 *ejidatarios* do not possess an *ejido* plot.

and that through the renting out of *ejido* land and monopolisation of plots an illegal land market developed which formed the basis of accumulation for the *cacique* (1988: 231). This image of the '*cacique* in control' has prevented people from studying how the manifold 'petty' transactions of *ejido* plots were organised in relation to procedures and laws which prohibited these deals.⁵ In contrast, Ibarra discusses the *ejido* from a juridical perspective, and shows very well how control by the state over internal *ejido* organisation and *ejido* land use, and interference by the SRA in dispute settlement, culminated in a widespread set of relations and spheres of influence encompassing the local *ejido* level and different institutions belonging to the state bureaucracy (Ibarra 1989: 21). Consequently, he argues that studies from 'below' of the way in which *ejidos* and *ejidatarios* become involved in the juridical structure and the state apparatus are necessary to arrive at a full understanding of these processes (Ibarra 1989: 23). This is precisely what has been lacking in studies of the *ejido*.⁶

Although the phenomenon of the *cacique* who controls access to land indeed has been documented in certain *ejidos* and in determinate periods, we cannot assume that this was the central principle underlying land transactions in Mexican *ejidos*. An important factor is that land was not everywhere an important element in political control. For example, in La Canoa, which received only rainfed land, in the first decades after the establishment of the *ejido*, control over the maize market was the most important element of political control and not access to arable land. Although local politics played a role in land distribution, and above all in the number of plots households received, in La Canoa almost all of the 71 households in the village possessed at least one plot of land in 1942. Several young unmarried men also received a plot, which made 77 people holding plots. Real competition for land only started afterwards when the population grew and there was no land available any more. The sons of *ejidatarios* could only hope to be the heir of their father's land. As not sufficient land was available for all the children, a category of landless households was created that would grow steadily with the years. Land became a scarce resource in a region with hardly any other sources of income and *ejido* land gradually turned into a valuable commodity.

⁵ Valuable exceptions are Zaragoza and Macías (1980) and Reyes et al. (1974).

⁶ The widely held view that power relations determined the land market has prevented many academics from studying what actually happened with the land. Gledhill (1991) presented the first detailed historical study of the history and transfer of *ejido* plots in an *ejido* in Michoacán. He demonstrated the existence of a complex and active land market that was certainly not characterized by monopolization of land by *cacique* families.

This happened especially in the sixties, when half of the *ejido* land of La Canoa fell into a new irrigation district.

Migration and the Renting out of *Ejido* Land: a Risky Endeavour

The Agrarian Law prohibited the abandoning or renting out of *ejido* plots for more than two consecutive years. Yet, migration became increasingly important in the lives of the *ejidatarios* and many rented out their land for several years in succession (Nuijten 2001). The renting of *ejido* land took place within fields of tension and many *ejidatarios* mentioned that migrant *ejidatarios* risked their land being taken away from them.

From the genealogy of land plots, it became clear that in the first years of the *ejido* several migrants were dispossessed of their agrarian rights. At that time the interest in the land was not so great and although the dispossessions certainly caused tensions the affected *ejidatarios* did not try to stop the dispossession by lodging a formal case at the SRA. The local powerholders had considerable influence in the taking away of plots from migrants and the redistribution of abandoned or confiscated plots. The following example illustrates this point.

Iginio: a migrant ejidatario is dispossessed of his land rights

Iginio was registered as an *ejidatario* in 1942 but had not received a plot as there was not sufficient land to be distributed. However, his father Claudio possessed four plots of land and later passed one to Iginio. After receiving the plot, Iginio went to work in grape cultivation in the United States. He stayed several years in the USA and his father Claudio took care of Iginio's plot during his absence. Then an IUP was held in the *ejido*. Miguel Romero was commissioner at that time and he wanted to take the plot away from Iginio and another *ejidatario* who was in the United States. The SRA official told Claudio that for 100 pesos he would not make a problem about his son living elsewhere and Iginio could keep the land. However, Claudio refused to pay the official. Iginio in his turn refused to come back to the village. Iginio said that in that period he was having a good time in the USA and was not very interested in the land. So, the agrarian rights of Iginio and the other man were withdrawn and the plots were given to José Romero, one of Miguel's sons who had no land. When Iginio returned to the village years later he received another of Claudio's plots.

However, Iginio never forgave don Miguel and still grows angry when he talks about the case.

As land became scarcer and more valuable over the years, and especially after the arrival of irrigation in the sixties, migrants did not take such a passive attitude any more if the commissioner or somebody else threatened to take their land away. Most migrants had become wealthier and less dependent on local powerholders. Although some *ejido* commissioners still tried to get the land of migrants, a legal fight in which the SRA would become involved was something most people wanted to avoid. The point is that these legal cases normally took many years, cost a lot of money in terms of bribes and payment of lawyers, and never had a predictable outcome. So, several people who intended to dispossess migrants of their land, gave up when they realised it would become a difficult and lengthy process. So, gradually the individual plots remained stable in the hands of their 'transnational owners' and no land was taken away from migrants anymore. At this stage local bosses did no longer succeed in taking land away from migrant *ejidatarios*.

Nevertheless migration and renting out the *ejido* plot remained a risky situation and migrants used to take several precautionary measures to be on the safe side. One precautionary measure was the payment of the *ejido* land tax. This tax was collected by the *ejido* treasurer and written down in a book. The *ejidatarios* received a receipt of payment. Although the amount of money paid was negligible, this tax acquired a different and very important role. It became a 'proof of land use'. People who rented out their land, insisted on paying the tax themselves as this was considered to be an important proof of their being in the *ejido* and working the land themselves. If, instead, the leaseholder paid the tax and had the receipts in his name, he could try and claim rights to the land at the SRA. Furthermore, in the case of an official investigation (for example, during an IUP) the payment of the land tax by the leaseholder would weaken the position of the migrant *ejidatario*. In addition to paying this land tax every year, the migrant *ejidatarios* also tried to be present at the IUP meeting in the *ejido*. When an IUP meeting was announced by the SRA, migrant *ejidatarios* in the United States were immediately informed by their relatives in La Canoa and if possible they would return from the United States. The migrant *ejidatarios* also tried to remain good friends with the *ejido* commissioner. In this way, they would not make problems about their case.

For the officials the migrant *ejidatarios* provided an interesting way to raise some extra money. The officials tried to strike deals with them in the sense of not making problems about the fact that they lived in the United States if they paid some money. However, the influence of the official was limited. As we saw, they

had no register of individual *ejido* plots and they certainly held no registration of the renting out of plots or residence of the *ejidatarios*. The SRA officials were totally dependent on information from other *ejidatarios* and the *ejido* commissioner.

The renting out of *ejido* plots by migrants was a risky endeavour not only because the migrant infringed the law, but also because the leaseholder was building personal rights to the plot. The person who rented and tilled the same *ejido* plot for several years, legally acquired rights to this plot (the land belonged to the person who tilled it). Hence, unlike many other illegal transactions where nobody had a personal interest in interfering, with these renting arrangements the leaseholder could turn into a personal enemy of the migrant *ejidatario*. This becomes clear in the following example.

A leaseholder tries to acquire the rights to an ejido plot

In the sixties Daniel Fábregas started renting two and a half hectares of rainfed land from Ignacia Hernández, a widow who lived in the United States with all her children. When Daniel died, his sons continued renting Ignacia's land. Before dying Daniel had told his wife Aurora García: *That land is yours, don't let anybody take it away from you!* Every year Ignacia came to the village to agree on the renting arrangement and pay the land tax. However, Aurora had twice paid the tax before Ignacia arrived in the village and Ignacia had been furious about it.

When Ricardo García, Aurora's brother, became *ejido* commissioner (1970-1973), he told Aurora that he could easily dispossess Ignacia of her land rights and pass these to Aurora or one of her sons. They decided to initiate a formal procedure at the SRA to start this process. Aurora found herself in a good position. She had worked the land for many years, she had paid the tax several times, and she had the support of the *ejido* commissioner. However, Ignacia was not prepared to lose the land and she fought back. Among other things, she claimed that she had been living in the village all these years. As tensions between the families in the village rose and people feared violent confrontations, Aurora told her sons not to put any more effort into the case.

By not putting any more effort into the conflict, and by stopping their dealings with the SRA bureaucracy, it was most probable that Aurora would lose the case, especially as Ignacia actively negotiated with the SRA officials. In 1973 the SRA issued an official decision in which Ignacia was indeed recognised in her rights to the plot. So, Ignacia kept the land.

After having won the case Ignacia and her sons worked the land themselves for three consecutive years. They obviously did not want to run any more risks with renting arrangements. Later Ignacia sold the land to another *ejidatario*. As will be discussed later on, sale of *ejido* land was a safer option than renting the land out. Aurora regretted the affair very much as she would have preferred to continue renting the land or, even better, buy the land. For several years the two families did not speak to each other. However, now relations have been normalised and they even visit each other again.

The migrant *ejidatarios* were well aware that danger came from the leaseholder and for that reason they were very careful to whom they rented their land. They often left a relative in charge of it. The other *ejidatarios* followed the strategy of not causing problems. As long as they were not involved as potential beneficiaries and knew that it was very improbable that the land of the migrant *ejidatario* would be allotted to them, they would not start any trouble. So, no objections were ever made in the majority of renting arrangements by migrants.

In conclusion, we can see a certain patterning of organising practices around the renting out of land by migrant *ejidatarios*. These practices changed with the changing value of *ejido* land. When the value of the land was low, and people had less resources to fight a powerful *ejido* commissioner, several migrants were dispossessed without this giving rise to fights. With land becoming more valuable and *ejidatarios* acquiring more resources and experience, the practices changed. The resources at stake became more important, and people were prepared to fight for them. Local power relations had less influence, and the support of the *ejido* commissioner was not sufficient any more to dispossess a migrant *ejidatarios* of his land. So, practices developed which strengthened the private property character of *ejido* land possession.

Organising Practices Around the Sale of *Ejido* Plots in La Canoa

Twenty nine plots were (illegally) sold in La Canoa between 1942 and 1993. Many of these sales were only of parts of *ejido* plots. As yet, *ejido* plots have always been sold to people within the community, that is to say to sons, brothers, or sisters of *ejidatarios*. Hence, it was an internal landmarket. People from outside have never bought land in the *ejido*.

There were several elements which influenced the development of organising practices around the sale of *ejido* plots. According to the Agrarian Law, the *ejidatario* who sold his plot, as well as the person who bought the plot would lose the right to the land. Although this certainly was a threatening prospect, the sale of plots was less risky than their renting out. In a land sale, unlike a renting arrangement, both parties infringed the law and would lose their rights to land. This meant that both parties would be careful not to make problems about the issue. This was in contrast to renting arrangements in which the leaseholder was building up rights to the land at the expense of the migrant *ejidatario*.

Many *ejidatarios* had mixed feelings about the sale of *ejido* plots. The main reason against land sales was that land was considered to be family patrimony. The *ejidatario* as the official ‘owner’ of his or her plots was not considered to be the only person with rights to the land. According to most *ejidatarios*, the other members of the *ejidatario*’s household: his wife, his children and even grandchildren had certain rights to the land. For that reason, *ejidatarios* who sold their land without any urgent need for money were heavily condemned by the *ejidatarios* and other villagers, and especially when they left their partner or children without land. In the same way people often felt ashamed about the fact that they had sold a piece of land in the past.

However, despite this moral judgement on *ejido* land sales, *ejidatarios* did not interfere in the transactions of others. A strong sense of individual responsibility reigned and if somebody wanted to sell, the others would not make it impossible. They would gossip about it and criticise the *ejidatario* who had decided to sell his land, but they would not interfere. Although these transactions were influenced by the normative notion that it is better not to interfere in someone else’s business, there were also more strategic and practical reasons not to meddle in the transactions of others. It could be in everyone’s interest that renting and sale of plots were tolerated. If you accepted it from your neighbour now, he would not make problems if you did something similar in the future. Furthermore, even if an *ejidatario* did not agree with an *ejido* land sale and wanted to lodge a formal complaint about it, it was very improbable that in the case of a formal settlement he himself would receive the land. So, why bother and make trouble? In the

existing force field, there was little to gain from denouncing illegal transactions. Hence, these practices were not only based on values concerning property relations but also on what was politically attainable. As Wiber shows in her work on property and the law in the Philippine Uplands “conflict over resources is often couched, not in terms of normative expectations, but in terms of what the market will bear” (Wiber 1993: 11).

This attitude of the other *ejidatarios* was very important for the people involved in the land sale for they needed the approval of the *ejido* assembly for the transfer of the *ejido* land right from one person to another. Notions of honour also played an important role with respect to land sales and the support of the other *ejidatarios*. The common view was that if people had agreed on a transaction they should not go back on it later. So, people who tried to recover land that they had sold in the past, could not count on the support of the other *ejidatarios*. This support of the majority of the *ejidatarios* could be crucial in a land conflict.

Nevertheless, because of this ever present ‘menace’ of the Agrarian Law, which prohibited land sales, people tried to ‘formalise’ their illegal arrangements in a way that made them look like permitted transactions. In this way they hoped to be safe in the future if someone created problems. So, land sales were formally presented as a ‘voluntary transfer of use rights’ from one person (the seller) to the other (the buyer). The majority of *ejido* members had to agree to the ‘voluntary transfer’ of the land and signed a document. (They always knew that it concerned a sale.) There were additional ways to protect the sale. One was to put the new owner down as the successor of the one who was going to sell. In this way, one avoided officially registered heirs claiming their rights at a later stage.⁷ Likewise, it was important that the partner of the *ejidatario* who sold the land signed his or her agreement to the ‘transfer of rights’, as well as their children. This was important since if an *ejidatario* ‘transferred his rights’ without the permission of the rest of the family, the sons or wife could later on try to claim the land. The above mentioned elements were all very usual but there were no fixed common rules in this respect. There are for example, people who sold *ejido* land without informing and asking permission from the *ejido* assembly or without putting the buyer down as their successor. Others sold land without the permission of their wives. These arrangements were riskier and led in some cases to problems at a later stage.

⁷ This remained an awkward arrangement as the Agrarian Law stipulated that the heir had to be chosen from among the partner and children of an *ejidatario*. So, official inheritance by someone else would be illegal.

Apart from these formal precautions, it was helpful to ensure the favourable attitude of officials of the SRA, so that they would not make problems about the sale. Therefore, they were often paid a certain amount of money 'to keep quiet'. These functionaries of the SRA were often actively involved in the sales as they knew better than anyone else the working of the bureaucracy and the best way to arrange and formalise these transactions. When we look at what eventually happened with land transfers in La Canoa, we see the following. The great majority of illegal transactions was silenced forever and never mentioned or reported in the formal arena. *Ejido* land sales in La Canoa were never cancelled, although on several occasions people tried to cancel them in a formal procedure.

Hence, with respect to *ejido* land sales, a pattern of organising practices developed which went very much against the 'letter' and the 'spirit' of the Agrarian Law. However, these practices were less characterised by tensions than the practices around the renting of land by migrants and around the inheritance of land. The reason for these lesser tensions was the fact that in the case of land sales it was not so much a question of opposing interests (like those of a leaseholder who might build up rights to the plot, and of the migrant *ejidatario*) but of mutually agreed transactions in which both parties had something to lose in case of a formal conflict (both parties had infringed the law). Furthermore, the fact that the *ejidatarios* felt it was a question of individual responsibility if *ejidatarios* decided to sell their plot, had the result that the *ejidatarios* acquired a high degree of autonomy. Again the officials were not central to the development of these organising practices as they had no means to check or influence the situation. They depended on the information provided by *ejidatarios*.

These arrangements to hide illegal land transactions, were largely abandoned in 1992 when the new Agrarian Law was issued. This new law allows the sale of *ejido* plots, but only when the individual plots have been officially measured and registered in the land regularisation program PROCEDE.⁸ Yet, the interesting phenomenon is that the *ejidatarios* did not wait for the measuring of their plots but immediately reacted to this new law by organising the land sales in a 'new way'. They no longer talked about a transfer of right, nor asked the consent of the *ejido* assembly, nor did they represent the buyer as the heir of the seller. *Ejidatarios*

⁸The PROCEDE (Program for the Certification of Ejidal Land Rights and the Titling of Urban House Plots) takes care of the measuring and mapping of *ejido* boundaries and registration of plots. The Program started in 2003. At the end of 2001 77% of the *ejidos* in Mexico had been certified (SRA 2002). La Canoa entered PROCEDE in 2002 but because of several pending conflicts with neighbouring *ejidos*, the programme could not be completed.

who wanted to sell their plot directly went to a notary or a lawyer to draw the documents of a land sale.

Sales in the 'New Way'

One of the first men who wanted to buy an *ejido* plot in La Canoa after the change of the Agrarian Law, was Ignacio Fábregas. Ignacio first went to the SRA office in Autlán to ask if they could help him. David, an official, said that he could help him with the land transfer but he asked him for a large amount of money for the transaction. Then Ignacio went to see a lawyer and asked him if it was already permitted to organise *ejido* land sales as real sales, in the 'new way'. The lawyer explained to him that it was not allowed yet, but that there was no problem in doing it in the new way as these sales would be respected anyhow. The lawyer charged a much smaller amount of money than David. So, Ignacio and the *ejidatario* who sold his plot decided to let the lawyer handle the sale which took place at the office of a notary. To be on the safe side, they invited the *ejido* commissioner to come as well and sign the document. So, this time neither the *ejido* assembly, nor the SRA were involved in the transaction.

According to the new Agrarian Law these *ejido* land sales would only be allowed in the future when the plots had been measured. However, *ejidatarios* as well as officials and lawyers realised that nobody would cancel this new type of sales. Most *ejidatarios* preferred these new rules as now they did not need the consent of the *ejido* assembly, nor the assistance of SRA officials who always asked for money. Since the new law was issued several plots have been sold in La Canoa, but no important changes in the *ejido* land market have occurred. Hence, what we see here is an immediate adaptation of the *ejidatarios* to the new law. The new rules are not followed but they directly influence the existing force field and stimulate the development of new local practices. As K. and F. von Benda Beckmann point out, the effects of the introduction of a new property form are always shaped by the historically grown property regime (F. and K. von Benda Beckmann 1999). In this case, we do not find a change in transactions but a change in the way in which illegal transactions are legalised. In the context of the new law, the *ejidatarios* of La Canoa have changed the practices that aim to formalise and secure their illegal transactions.

The Distant Law, the Re-Enchantment of Governmental Techniques and the Creation of Shadow Procedures

We have seen that although the Agrarian Law was seldom applied it had considerable influence on the way in which illegal transactions were framed. As far as possible, *ejidatarios* tried to organise their prohibited agreements according to the accepted procedures and in this way hoped to avoid problems. The prohibitions of land sale and land rental were the rules which - though seldom enforced - formed the biggest threat to their property. The fact that transactions were always carried out “in the shadow of the law” (F. von Benda Beckmann 1992) had as a consequence that the formal Agrarian legislation remained the discursive context in which negotiations and bargaining took place, even though transactions were settled according to other criteria. As Sierra points out, official laws “constitute a frame of reference that people incorporate or manipulate in their daily lives”(Sierra 1995: 241). Galanter (1981) calls this the “bargaining and regulatory endowment” which is constituted by state law even when the law is not applied. In fact, the more that *ejidatarios* get involved with official institutions, the more they start using formal legal discourse even though they use it in ways that do not correspond to the official meaning (Lorenzo 2003).

If an illegal transaction or a conflict case was formally denounced at the SRA and officials became involved it was not clear at all what was going to happen. The process of formal decision-making in disputes could take a long time and could involve different departments in different cities. Official documents could easily get ‘lost’ or procedures be delayed for years. In the resolution of conflicts money and relations played an important role. So, the official bureaucratic world was quite obscure. However, the formal settlement of land conflicts was hardly ever followed to its conclusion. People who felt that they would lose a case or who feared that it would end in a dirty fight with negative consequences for their personal life, often decided to withdraw from the case in the middle of the process and before a formal decision was taken. In this way they left ‘the victory’ to the other party. Yet, this ‘non-resolution’ and the fact that conflict settlement by the SRA took such a long time also meant that tensions could linger on for a long time. The possibility that somebody would take the case up and set the SRA bureaucracy in motion was always present. Cases were never closed and one could always try to reopen them. SRA officials have been very eager to stimulate *ejidatarios* to lodge formal complaints and start a formal case even if they had little chance of winning.

An element which helped the *ejidatarios* ‘keep the law at a distance’ was the fact that the SRA did not keep a register of individual *ejido* plots and had no means of controlling the use and distribution of plots. This was strengthened by the fact that

the *ejido* assembly had the decisive vote at the meeting of the IUP. The assembly could hide every type of land transfer under the notion of 'voluntary land transfer' or 'abandonment of plot and assignation to somebody else'. Anyhow, as no registration of plots existed, officials had to cope with procedures that did not offer them any instruments of control.⁹ Only when the *ejidatarios* were divided amongst themselves, the official could side with one of the parties in dispute and find room for negotiation and bribery.

What is interesting in this situation of obscurity, insecurity and illegality is that it gave rise to the phenomenon that procedures and documents acquire meanings which bear little relation to their official function. This phenomenon in which governmental documents and procedures get meanings that are very different from their official role, is what I call the re-enchantment of governmental techniques (cf. Comaroff and Comaroff 1993). For example, the IUP, a procedure to check on *ejido* land use, turned into a procedure for the legalisation of illegal transactions and the formalisations of legal actions which had not followed the official procedures. In the end, the IUP functioned in a way that had very little to do with control over land use. Instead it became a way to disguise legally permitted transactions that had not followed the formal procedures (inheritances), as well as many illegal manoeuvres. The numbered *ejido* certificate also was 're-encharnted' as it took on an important symbolic value for the *ejidatarios*, even though it did not bear a 'real' relation to their plot. The receipt of *ejido* tax payment also changed meaning and became a 'proof of residence' in the *ejido* (in the case of migrants), instead of a proof of payment.

In addition to the re-enchantment of governmental techniques, we see the creation of 'shadow procedures', the process in which additional measures are invented and added to provide more security. For example, in the case of land sales the additional measures that were taken as forms of precaution were the following: squeezing the sale into the category of a voluntary land transfer, putting the buyer as the official heir of the plot, obtaining the consent of the other *ejidatarios*, paying the *ejido* commissioner and IUP officials to keep quiet.

These phenomena of changing the function of official procedures and inventing new precautionary measures, are not the result of purely local-level processes.

⁹ Without information from the *ejidatarios* themselves, there was no way for the official to find out if people had sold part of the land, had bought other plots, had rented their land out, etc. Hence, the official registration of the *ejidatarios* could remain the same even though people had changed plots, had bought extra land or only possessed a fraction of their original plot.

Officials often played an active role in this process. In the cases where *ejidatarios* possessed several plots, officials often suggested to them to put one of their plots in the name of a son as they were not allowed to possess more than one plot. They also helped *ejidatarios* to formalise land sales. Officials received financial compensation from the *ejidatarios* to put these ‘illegal’ practices into ‘official rules and categories’. There was also a certain room for officials to threaten the *ejidatarios* by saying that if they would not accommodate their situation, they would run the risk of losing the land. In this way, these irregularities provided some room for negotiation and an extra source of income for the officials of the SRA.¹⁰ The officials had a restricted bargaining position between, on the one hand, the flawed official procedures and, on the other hand, the illegal practices on the ground. In conclusion, we see organising practices in which the individual *ejidatarios* had considerable autonomy with respect to their land and in which the Agrarian Law and the agrarian bureaucracy above all stimulated the re-enchantment of governmental techniques and the invention of shadow procedures.

Conclusion: Organising Practices, Force Fields and the Role of Procedures

This article has analysed how in La Canoa different sets of organising practices developed around the individual *ejido* plots. The study showed that the influence of ‘the state’ and ‘the *cacique*’ has been exaggerated in the literature. Although local bosses, or *caciques*, and the agrarian bureaucracy definitely have influenced land transactions, they have not been central in the distribution and transfer of plots in La Canoa. Only in the first years after the establishment of the *ejido*, was the official rule which prohibited the renting out or abandoning of *ejido* plots used to take land away from *ejidatarios* who left the *ejido* for a long time. These dispossessions and the re-distribution of these plots were influenced by local political relations. However, when land became scarcer and more valuable with the irrigation in the 1960s, *ejido* land possession became more and more a form of private property and land was never taken away from migrant *ejidatarios* anymore. The main reason for this development was that with land becoming more valuable and *ejidatarios* becoming wealthier, nobody let the land be taken away from them anymore without a fight. This meant that in order to dispossess an *ejidatario* of his or her land a long and dirty struggle had to be followed in which the SRA would become involved and the outcome of which would not be

¹⁰ The new Agrarian Law of 1992 to a large extent finished off with the ‘bargaining position’ of officials as it permits the renting out and sale of *ejido* land.

clear. This was not a pleasant prospect even for local powerholders. Many illegal transfers of *ejido* plots took place between the establishment of the *ejido* and the issuing of the new Agrarian Law in 1992. Many *ejido* plots were sold and many others were divided into several plots and passed to several children. Yet the fate of the majority of these illegal arrangements in La Canoa was the same. While they were sometimes vehemently criticised at the local level, they were never brought up in the official arena.

Legal anthropology offers several possible ways to analyse these phenomena. Some legal anthropologists might talk in this situation about the development of a semi-autonomous field (Moore 1973) and others about the co-existence of a “variety of normative orders and suborders” (F. von Benda Beckmann 1992: 1-2). Indeed, in La Canoa we found alternative forms of ordering and even resistance to state law. The valuable aspects of these approaches is that they take distance from ethnocentric approaches to law and rules and that they recognise forms of order in informal or illegal activities. However, the limitation of these perspectives, in my view, is the belief that systems of norms form the basis of social order, even though they recognise that rules can be manipulated. In my view, orders are not necessarily rule- or norm-based. They are based on many different elements of which rules – whether state rules or customary rules – form only a certain part.

The notion of force field which I use here, most resembles Bourdieu’s notion of a field (1992: 94-115). According to Bourdieu the field is the locus of relations of force and not only of meaning. Every field has its own logic, rules and regularities which are not explicit and which make it resemble the playing of games. However, it always remains a field of struggles aimed at preserving or transforming the configuration of forces. In Bourdieu’s field, agents and institutions constantly struggle, according to the regularities and the rules constitutive of this space to appropriate the specific products at stake in the game. The coherence, ruling, and regularities that may be observed in a given state of the field, or even its apparent orientation toward a common function, emanate from conflict and competition, and not from some kind of immanent self-development of the structure.

I have used the notion of *force field* as meaning a field of power and struggle between different social actors for certain resources around which forms of dominance, contention, and resistance may develop, as well as regularities and forms of ordering. These forms of ordering are often made up of formal and informal elements and refer to the many ‘rules of the game’ around illegal land transactions. In this view, the patterning of organising processes is not the result of a common understanding or normative agreement, but of the forces at play within the field.

Several factors were crucial in the development of organising practices around *ejido* plots in La Canoa. To begin with, *ejidatarios* considered it to be the responsibility of each family to do whatever they liked with their plot. Yet, the force fields were also composed of other elements: the changing value of *ejido* plots (through the growing scarcity of the land, the arrival of the irrigation system, and the increasingly transnationalised nature of family economies); local power relations; ideological notions about the family; the formal legal setting (the Agrarian Law, formal procedures, and dealings with SRA officials); different types of relationships between *ejidatarios*; ideological notions of individual responsibility and honour in the striking of deals. As Sabean points out, “property is not a relationship between people and things but one between people about things” and “all social transactions take place within a field of rights, duties, claims, and obligations, which taken together comprise the system of property holding” (Sabean 1990: 17-18).

In order to legalise the practices with land that were prohibited or in order to avoid possible problems in the future, *ejidatarios* invented several precautionary measures. It also happened that existing procedures and documents got a totally new meaning within the existing force field; the re-enchantment of procedures. For example, the payment of land tax became a proof of residence for migrant *ejidatarios* and the Investigation of Plot Use became a way of hiding a sale by registering it as a voluntary land transfer. In addition, a world of ‘shadow procedures’ was created in order to secure illegal transactions. In these dealings on the margin, SRA officials played a central role. They helped *ejidatarios* to bend the rules and adapt the formal registration. This gave officials some room to negotiate and receive some extra money and favours. They could try to increase this room by threatening the *ejidatarios*. On the other hand, the officials had only limited room for manoeuvre as no adequate registration of *ejido* plots and holders existed.

Given the fact that in practice *ejido* land tenure had to a large degree been privatised, it is ironic that the new Agrarian Law of 1992 was introduced with the argument that the *ejido* system would be radically changed with important consequences for agricultural productivity. The most fundamental change introduced by the new Agrarian Law is that *ejidatarios* are now allowed to sell, buy, rent, or lease their land, all practices that had already become firmly established on the ground. The new Agrarian Law did, however, immediately affect the shadow procedures that no longer were considered to be necessary as safety measures for illegal transactions.

References

- BENDA-BECKMANN F. von and M. van der VELDE (eds.)
1992 *Law as a Resource in Agrarian Struggles*, Wageningse Sociologische Studies 33. Wageningen: Landbouw Universiteit Wageningen.
- BENDA-BECKMANN, K. von
1981 'Forum shopping and shopping forums; dispute settlement in a Minangkabau village in West Sumatra.' *Journal of Legal Pluralism* 19: 117-159.
- BENDA BECKMANN, F. and K. von
1999 'A functional analysis of property rights, with special reference to Indonesia.' Pp. 15-56 in T. van Meijl and F. von Benda-Beckmann (eds.), *Property Rights and Economic Development: Land and Natural Resources in Southeast Asia and Oceania*, London, Kegan Paul International.
- BOURDIEU, P. and L. WACQUANT
1992 *An Invitation to Reflexive Sociology*. Chicago: Chicago University Press.
- COMAROFF, J. and J. (eds.)
1993 *Modernity and its Malcontents; Ritual and Power in Postcolonial Africa*. Chicago and London: University of Chicago Press.
- GALANTER, M.
1981 'Justice in Many Rooms.' *Journal of Legal Pluralism* 19: 1-47.
- GLEDHILL, J.
1991 *Casi Nada; A Study of Agrarian Reform in the Homeland of Cardenismo*. Austin: University of Texas Press.
- GORDILLO, G.
1988 'El leviatán rural y la nueva sociabilidad política.' Pp. 223-254 in J. Zepeda (ed.), *Las Sociedades Rurales Hoy*. Zamora: el Colegio de Michoacán, CONACYT.
- HARRIS, O. (ed.)
1996 *Inside and Outside the Law: Anthropological Studies of Authority and Ambiguity*. Routledge: London and New York.
- IBARRA, J.
1989 *Propiedad agraria y sistema político en México*. Sonora: El colegio de Sonora.
- INEGI
1991 *XI Censo General de Población y Vivienda, 1990*. Jalisco. Resultados definitivos. Datos por Localidad (Integración Territorial).

LORENZO, D.

2003 'Yo tambien quiere tener! Como las personas organizan el acceso y uso a los terrenos comunales en un ejido mejicano.' Wageningen: MSc. thesis.

MOORE, S.

1973 'Law and social change: the semi-autonomous social field as an appropriate subject of study.' *Law and Society Review* 7: 719-746.

NUIJTEN, M.

2001 'What is in the land? The multiple meanings of land in a transnationalized Mexican village.' Pp. 71-92 in G. van der Haar and A. Zoomers (eds), *Land and Sustainable Livelihood in Latin America*. Amsterdam and Frankfurt: Royal Tropical Institute, KIT Publishers and Iberoamericana/Vervuert Verlag.

2003a *Power, Community and the State, the Political Anthropology of Organisation in Mexico*. London: Pluto Press.

2003b Family property and the limits of intervention; the Article 27 reforms and the PROCEDE program in Mexico.' *Development and Change* 34: 475-497.

REYES, S., R. STAVENHAGEN, S. ECKSTEIN and J. BALLESTEROS

1974 *Estructura agraria y desarrollo agrícola en México: Estudio sobre las relaciones entre la tenencia y el desarrollo agrícola de México*. México: Fondo de Cultura Económica.

SABEAN, D.

1990 *Property, Production, and Family in Neckerhausen, 1700-1870*. Cambridge: Cambridge University Press.

SIERRA, M.

1995 'Indian rights and customary law in Mexico: a study of the Nahuas in the Sierra de Puebla.' *Law and Society Review* 29: 227-255.

WIBER, M.

1993 *Politics, Property and Law in the Philippine Uplands*. Ontario: Wilfrid Laurier University Press.

ZARAGOZA, L. and R. MACÍAS

1980 *El desarrollo agrario de México y su marco jurídico*. México: Centro Nacional de Investigaciones Agrarias.