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Democracy, Citizenship, and Constitutionalism

Graduate Workshop

**“The Challenge of Plurinational Citizenship: Reconciling
Indigenous Demands for Legal Pluralism with Liberal
Citizenship in Mexico’s Legal System”**

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Introduction

The rise of identity politics from indigenous rights to gay and lesbian rights as a basis for new claims to citizenship rights made possible by new economic, social and cultural conditions has generated a new focus on questions such as what it means to be a citizen, who is and can be considered a citizen, and what are the specific rights and obligations attached to citizenship. These calls for legal, political and social recognition have spawned citizenship studies in areas of immigration, gender studies and ecology and have prompted scholars to reassess standard theories of citizenship especially the traditional liberal theory of citizenship upon which modern democracies rest. For thinking about and making sense of these new demands for “recognition and citizenship”¹ traditional liberal notions of citizenship have been found wanting. The theoretical vacuum left by modern liberalism’s inability to adequately respond to the articulation of identity claims as citizenship claims has generated innovative approaches to standard theories of citizenship. Liberal, republican and communitarian theories have been reexamined and in some ways reconfigured in light of this phenomenon. They have also informed various studies of citizenship from ecological citizenship to multicultural citizenship. For example, the liberal citizenship regime in Mexico is being challenged by its indigenous peoples who historically have been denied full citizenship. Their demands for legal, political and social recognition of the multicultural nature of Mexico has been framed in terms of citizenship rights. Since a liberal perspective on citizenship cannot capture the current dynamics in Mexico, one needs to take a multicultural view of this struggle over the form and scope of citizenship- specifically one that focuses on the legal struggles. Multicultural citizenship tends to stress the social and political processes of citizenship. I argue that we should not lose sight of the relevance of legal battles

¹ Isin, Engin. “Citizenship Studies: An Introduction” In *Handbook of Citizenship Studies*, edited by Engin F. Isin and Bryan S. Turner. London: Sage Publications, 2002, 2.

over citizenship particularly since this has been the chosen battleground for indigenous activists. Yet, there are ideological as well as political forces deeply embedded in the foundations of the Mexican state that are working against a radical rethinking and restructuring of citizenship. In order to make this argument, I will first outline the current struggle over citizenship. Next, I briefly trace the historical construction of citizenship in Mexico to point out the ideological foundations of Mexican citizenship. Then, I will discuss both liberal and radical approaches to multicultural citizenship and why liberal multicultural citizenship has offers more leverage than radical multicultural citizenship in conceptualizing the dynamics of multicultural citizenship and in providing tangible suggestions for accommodating the multiethnic nature of Mexico. Lastly, I will posit why, in the context of Mexico, currently the most important domain for study and reform is the Mexican legal system. I will then briefly sketch out some of the reforms necessary to fully and justly respond to indigenous demands for differentiated citizenship as well as lay out some of the obstacles to ideological and institutional changes to Mexico's legal system.

Demands for Multicultural Citizenship

Changing economic social and cultural conditions in Mexico such as the implementation of political and economic liberalism and the growth of transnational social movement networks over the past several decades have both prompted and enabled the contestation of the terms and practices of Mexican citizenship by Mexico's indigenous peoples. These changes, from the reorganization of the peasant organizations in the 1970s to the debt crisis in the 1980s and the peso crisis of 1992 to the subsequent adoptions of neoliberal macroeconomic policies unraveled the corporatist arrangements that had sustained Mexico's post revolutionary governments. These corporatist arrangements had served the state for over seventy years by maintaining stability and

reducing pressure on the government. But as the legitimacy of the authoritarian regime was undermined by its inability to maintain its clientelistic networks through the selective distribution of benefits to its corporate sectors (military, peasant and popular) the Mexican revolutionary regime effectively ended. A consequence of the dismantling of the revolutionary project was that Mexico's indigenous peoples lost their access to political institutions and accordingly, their access to participation, representation and resources also declined. Although the benefits of acquiescence to the government in exchange for government subsidies and group representation and participation in government were hardly satisfactory, they did offer some protection against the brutality of liberal economic policies. Without the minimal protections from the compromised form of citizenship, people who had been effectively excluded from enjoying the benefits of full citizenship in particular indigenous communities began asserting the reconfiguration of Mexico's citizenship regime. Ironically, Mexico's corporatist structures unwittingly provided autonomous spaces protected rural indigenous communities from state control. The neoliberal policies of the 1990s that promoted individualized relationships challenged the indigenous autonomy corporatism unknowingly fostered. So when neoliberalism failed to deliver the promised citizenship rights, indigenous peoples were politically galvanized and ethnic cleavages were politicized.²

The rise of ethnic identity as a source of community identity and political mobilization in the struggle to (re)envision indigenous peoples' citizenship came to the fore on the eve of the ratification of NAFTA on January 1st, 1992 with the Ejército Zapatista de Liberación Nacional (EZLN) uprising in Chiapas. The EZLN uprising in Chiapas brought national and international attention to indigenous demands for autonomy, recognition of collective rights and the right to

²Deborah J Yashar. "Contesting Citizenship: Indigenous Movements and Democracy in Latin America," *Comparative Politics* 31, no. 1 (Oct 1998) 23-42, 31.

self-determination. These demands articulated a rejection of the “indigenista”³ policies that had historically guided the Mexican state’s relationship with its indigenous peoples. Calling into question the indigenista policies geared towards the assimilation and enculturation of the indigenous people into the dominant mestizo society, the EZLN set forth a number of rights claims: the right to an indigenous language, to educate children in the language and to have official business conducted in that language, the right to use customary judicial processes and punishments for offenses that occur within the community, the right to govern and select political leadership according to local customs and the right to territorial integrity and control including control over local resources.”⁴ In essence, Mexico’s indigenous called for recognition as peoples who have unique customs, political institutions and traditions that currently are not taken into account by the larger mestizo social, political and economic structures. This recognition means the construction of “indigenous national autonomies”⁵ within the Mexican nation-state. This entails differentiated citizenship with boundaries that guarantee equal rights and representation at the national level and recognize corporate indigenous authority structures in indigenous territory.

The Mexican government’s response to the political mobilization by indigenous peoples was the recognition of the multicultural nature of Mexico, but not its political and legal diversity.⁶ For instance, the 1992 constitutional reform defined the Mexican nation as having a “pluricultural” composition. This is the first time the government has officially acknowledged the various ethnic groups in Mexico. It also guaranteed the protection and promotion of

³ Generally speaking “indigenista” policies celebrated the indigenous cultural past while, at the same time, geared to “modernize” the indigenous population and, thereby, erasing the present indigenous identity.

⁴ Willem Assies. Ramírez Sevilla and Marâ del Carmen Ventura Paiño, “Autonomy Rights and the Politics of Constitutional Reform in Mexico, *Latin American and Caribbean Ethnic Studies* 1 no. 1 (April 2006): 37-62, 43.

⁵ Claudio Lomnitz. *Deep Mexico, Silent Mexico*. Minneapolis: Regents of the University of Minnesota, 2001, 49.

⁶ The presence and use of traditional judicial processes by indigenous peoples within their communities.

indigenous cultural and social organizations. Yet, what was conspicuous in its absence was any recognition of Indigenous political and legal rights. In addition, the fact that the reform was located in Article 4 of the constitution, which deals with individual rights, signals that the Mexican government does not favor interpreting indigenous rights as collective rights.

Another sign that the Mexican government may have been serious about recognizing indigenous claims for political, legal and cultural autonomy was the ratification in 1991 of the ILO treaty 169 which mandated the recognition of the pluriethnic national composition without much debate or opposition. Yet, in 1992, a reform of the Agrarian Reform Law of the 1917 Constitution (Article 27) was passed making it possible for individual shareholders in communal land to sell their land and engage in commercial ventures going beyond the community, which in effect directly attacks the ability of indigenous peoples to maintain communal lands and in the process maintain their communities. Perhaps most discouraging for the future of indigenous autonomy was the actual changes that came out of the San Andres Peace Accords between the federal government and the EZLN. President Zedillo refused to implement San Andres Accords in which the government agreed to EZLN demands that indigenous communities be allowed to establish their own local governments, to use indigenous languages in education and to have indigenous representation in the legislative bodies. Moreover, when the federal government did pass an indigenous rights law in 2001, it reduced scope of indigenous autonomy set out in the 1996 peace accords with the EZLN and drawn up by the consultative peace commission, Comisión de Concordia y Pacificación (COCOPA), arguing that they conflicted with the property rights guaranteed by the constitution. The indigenous rights law was also extremely weak on issues of autonomy, collective landownership, control of natural resources, access to media in

native languages, customary law and the legal recognition of “peoples.”⁷ To date, there have not been substantive moves on the part of the government to seriously engage with indigenous demands for autonomy.

The Historical Development of Mexican Citizenship

The exclusionary nature of Mexican citizenship has been grounded in part in the liberal thrust of its constitutional regimes and its ethnically homogenized concept of nationality. Consequently, since independence Mexico’s indigenous peoples have been systematically excluded from the protection and benefits of Mexican citizenship. The first federal constitution (1824) paved the way for this exclusion by leaving the decision of who would be considered a citizen up to states and thus up to the regional elites of each to decide who was to be considered a citizenship. Delegating the power to determine who would be granted citizenship to the regional elites “left the door open for mechanisms of exclusion.”⁸ Also, despite an opposing republican movement to broaden the basis of citizenship by eradicating criteria for exclusion such as lineage and race, laws such the legal code of 1836 reaffirmed certain restrictions on citizenship for minors, domestic servants, criminals, illiterates⁹. After the initial period of state building and consolidation during which citizenship was linked to the forging of a national identity, concerns for stability and progress overrode the occupation over creating a broadly based nationality. So although the first truly liberal constitution of 1857 set out very inclusive citizenship criteria-all Mexican males over eighteen qualified- it was largely ignored because the main concern of the ruling elite, both liberal and conservative, was the consolidation of state power (at the expense of

⁷ The expression “peoples” as opposed to population conveys a community that shares past, present and future.

⁸ Claudio Lomnitz. *Deep Mexico, Silent Mexico*. Minneapolis: Regents of the University of Minnesota, 2001, 58.

⁹ Many indigenous peoples were illiterate in Spanish and thus were excluded from politics.

broadening citizenship rights). The debates over liberal citizenship resurfaced once regime stability had been achieved under the Diaz regime (1876-1910); these debates fueled by “existing divisions among elites and by the pressures of popular groups.”¹⁰ All groups and individuals were made juridically equal by erasing group distinctions through individual citizenship in the interest of equality and mexicanidad an attempt was made to erase all previously existing distinction within the population. The liberalists’ objective was to increase equality in society by “legally erasing differences”¹¹ between individuals and distinctions between class and ethnicity through undifferentiated citizenship and equality before the law. However, the reality was that sharp ethnic and class discrimination and inequality remained. Moreover, as critics and reformers of liberalism point out, the practice of liberalism falls quite short of its goal of eradicating difference. Under this liberal citizenship regime, indigenous peoples were not seen as full citizens, but rather “protocitizens” who needed to “conform to the ideal of citizenship that the constitution granted them....through state protection, miscegenation or education.”¹² Instead of freedom and equality that liberalism promised, the indigenous were effectively excluded from national politics through property and literacy qualifications on franchise, paternalistic policies and disregard for indigenous peoples without any respect to indigenous cultures and language.

In addition to Mexican liberalism, the paradigm of the nation-state that underlies the Mexican state functions as an obstacle to the Mexican state’s resistance to supplanting its current citizenship regime with a multicultural citizenship regime. Liberal nationalists in the nineteenth and twentieth century sought to create a nation-state through culture, while cultural nationalism was also seen as a way to promote liberal goals. The interconnectedness of liberalism and

¹⁰ Claudio Lomnitz. *Deep Mexico, Silent Mexico*. Minneapolis: Regents of the University of Minnesota, 2001, 74.

¹¹ Rachel Sieder. Introduction to *Multiculturalism in Latin America*. Edited by Rachel Sieder. New York: Palgrave Macmillan, 2002, 11.

¹² Ibid 66.

nationalism is most evident in the post-revolutionary era. The revolution of 1910 expanded citizenship rights from individual rights and no social rights to a wide range of civil, political and social rights and in the process “enshrined a full concept of Mexican citizenship.”¹³ One of the urgent goals was national unification; therefore, the state had to wrench control of the masses from the catholic church—a competing power structure that threatened to undermine the authority of the new revolutionary regime by reaching out to the popular masses. However, the state reached out to the masses¹⁴ not as individual citizens, but through corporate groups and sectors. Coupled with this effort to consolidate and legitimate the revolutionary regime, the state initiated nationalist discourses¹⁵ to promote a unified ethnic national identity— one that distinctly was mestizo— in an attempt to unify a heterogeneous population. The goal was “to assimilate and integrate various racial, ethnic, political and economic sectors of society into a single pueblo.”¹⁶ Accordingly, these nationalist discourses contained a new forged “civic myth”... “to explain why [Mexicans] form a people...[and] how [the Mexican] political community originated, who is eligible for membership, who is not and why and what the community’s values and aims are.”¹⁷ While the current indigenous people were rendered invisible through the state’s homogenizing effort, ironically the revolutionary government used a glorified idea of the pre-Columbian Mesoamerican history and culture to provide the mythical founding of the Mexican peoples. This glorification of Mexico’s pre-Columbian past did not, however, translate into substantive and equal citizenship rights for Mexico’s indigenous people. Instead, the policy towards of

¹³ Joe Foweraker. “Measuring Citizenship in Mexico” In *Rebuilding the State: Mexico After Salinas*. edited by Mónica Serrano and Victor Bulmer-Thomas. The Institute of Latin American Studies: University of London, 1996, 79.

¹⁴ Under which indigenous peoples were subsumed as peasants along with nonindigenous peasants as opposed to indigenous peoples.

¹⁵ “Discursive strategies that attempt to define elements that constitute a nation by delineating a nation’s unique cultural, economic, political or demographic characteristics in order to foster national unity through its portrayal of the traits of a community to which citizens believe they belong” (Chorba 2007, 8).

¹⁶ Carrie C Chorba. *Mexico, From Mestizo to Multicultural*. Nashville: Vanderbilt University Press, 2007, 8.

¹⁷ Rogers Smith . *Civic Ideals*. New Haven: Yale University Press, 1997, 33.

indigenous peoples was to force them to integrate into the mestizo nation that had been constructed by the revolutionary regime. The goal of the revolutionary state was to create a nation by destroying and ignoring previous distinctions within the population.¹⁸ Thus, the indigenous peoples' right to their own political, cultural and social structures, were abridged in the effort to construct a mestizo nation. The 1917 constitution reflects this nation building process by not recognizing the variety of ethnic, linguistic or cultural identities of its Mexican citizens. Citizenship lost its urgency and was, consequently, relegated to a long-term goal that would be fulfilled after complete modernization and as soon as the state was consolidated. It can be said that the main approach of the Mexican state towards its indigenous population officially in the service of both liberalism and nationalism has been assimilation alternating, at times, with unofficially eradication. The policies of assimilation have actively sought to deny cultural and political expression and refused to recognize these cultural differences to fit into its hegemonic vision of the Mexican nation. With recent constitutional recognition of indigenous people; however, the state has moved from a policy of assimilation to a policy of integration, which limits but does not deny rights of cultural expression.

Liberal and Radical Multicultural Citizenship

Mexico's indigenous peoples' challenge to the idea of a homogenized mestizo nation has forced the state to legally recognize the multicultural nature of Mexico. Mexico's indigenous peoples have "constructed a vision of multiculturalism as a tool for self-empowerment as well as for social and political reform."¹⁹ In their perspective, the recognition of the multicultural nature of Mexico does not simply mean an acceptance of privately practiced cultural customs and

¹⁸ Moisés Franco Mendoza. "The Debate Concerning Indigenous Rights in Mexico." In *The Challenge of Diversity*, edited by Willem Assies, Gemma va de Haar and André J. Hoekema. Amsterdam: Thela Thesis, 1998, 59.

¹⁹ Guillermo De La Peña. "A New Mexican Nationalism?" *Nations and Nationalism* 12 no. 2 (2006): 279-302, 281.

traditions, rather it demands the practice of new forms of governance specifically participation and representation. Studies of indigenous peoples multicultural demands often derive from two basic theoretical orientations on multicultural citizenship- radical and ““reformist”” liberal both of which emphasizes the social and political enactments of citizenship over its legal manifestations. Additionally, they reject the traditional liberal citizenship’s tenant of state ‘neutrality’ with respect to ethnocultural differences meaning the state should be indifferent to ethnocultural identities of their citizens and to the ability of ethnocultural groups to reproduce themselves over time.²⁰ They argue that, in reality, liberal institutions are neither impartial nor neutral to cultural differences. Rather the state reproduces and reflects the dominant culture through the designation of an official language and holidays and the practice of standards methods of dispute resolution. Therefore, although citizenship is supposedly undifferentiated, membership in a specific cultural group does in fact determine the opportunities to be represented in political institutions and to participate in political deliberations. In other words, citizenship as a political resource is unevenly distributed among members of any political community, and cultural difference plays an important role in this unfair distribution.²¹ These critiques of the way that liberal citizenship is played out often center on liberal citizenship’s language of universal citizenship rights that demands undifferentiated citizenship- that everyone can be a citizen and citizenship means the same for each individual. As critics of liberal citizenship point out, although universal citizenship seems to be egalitarian, it actually degrades the quality and substance of citizenship for minority groups as it encourages the process of homogenization. The insistence that members of minority groups will be protected by universal individual rights ignores the reality that groups and therefore individuals within those groups

²⁰ Will Kymlicka. *Politics in the Vernacular*. Oxford: Oxford University Press. 2001, 16.

²¹ Matteo Gianni. “Taking Multiculturalism Seriously: Political Claims of Differentiated Citizenship.” In *Citizenship After Liberalism*, edited by Karen Slawner and Mark E. Denham. New York: Peter Lang, 1998, 35-36

(because of their membership in the group) are systematically denied individual rights enjoyed by the majority group. Conversely, in a society that recognizes group-differentiated rights certain groups in society will have special rights and exceptions determined by their status in society. Members of these groups are “incorporated into the political community not only as individuals, but also through the group, and their rights depend, in part, on their group membership.”²²

In an effort to close the gap between liberal citizenship’s theoretical promise and its practice, liberal theorists such as Kymlicka augment liberal theory to take into consideration group- citizenship rights. He defends the liberal focus on individual rights arguing that “individual rights can be and typically are used to sustain a wide variety of social relationships and, furthermore, liberal principles of justice are consistent with...certain forms of special status for national minorities.”²³ Nevertheless, the lacuna in liberal theory, he argues, is that it does not recognize that an individual’s cultural group can function to protect her universal individual. Consequently, access to one’s societal culture is essential for that individual’s freedom because of the deep bond that between people and their own culture. Therefore, in a multinational country, where there are component indigenous nations,²⁴ these nations must be granted autonomy to ensure their full and free development, which serves the interests of their people by securing their individual rights in the larger polity. This demands, Kymlicka argues, a new liberal theory of minority rights, one that will “...replace the idea of an ethnoculturally neutral state with a new...nation-state model of a liberal democratic state.”²⁵ This model will include both individual universal rights and certain group-differentiated rights for indigenous groups.²⁶

²² Will Kymlicka. *Multicultural Citizenship*. Oxford: Clarendon Press, 1995, 174.

²³ Ibid 171

²⁴ “Nation” a historical community more or less institutionally complete occupying a given territory or homeland sharing a distinct language or culture.

²⁵ Will Kymlicka. *Politics in the Vernacular*. Oxford: Oxford University Press. 2001, 19.

²⁶ Ibid 6

Radical multicultural theorists of citizenship²⁷ are not content with merely augmenting liberal citizenship, they argue that the idea of universal citizenship reinforces the dominance of one social group over oppressed groups because the idea of universality covers up the fact that universal citizenship is really just a particular citizenship for the dominant group from which oppressed social groups are excluded. In its stead, these theorists call for special representation rights specifically reserved for oppressed groups such as women, blacks, Asian American working-class people, poor people etc. The wide range of potential and actual oppressed groups has been a target of criticism of radical multicultural citizenship for its vagueness, which may impede implementation.²⁸ On the other hand, Kymlicka's nation-state model differentiates between different types of minorities²⁹ recognizing that their significant differences in the makeup and relationship to the state and other social groups result in different claims and thus, demand different accommodations. So unlike, radical multicultural theories who often do not distinguish between indigenous groups (whom Kymlicka contends have legitimate claims to autonomy) from immigrants (whom he argues do not), radical multicultural theories are not sufficiently suited to theorizing about the multicultural demands of Mexico's indigenous groups.

The Requirements of Liberal Multicultural Citizenship for Mexico's Legal System

Adopting liberal multicultural form of citizenship that calls for differentiated rights for indigenous peoples would require seismic changes in the legal foundations of the Mexican state. Multicultural citizenship emphasizes that the recognition of Mexico's multicultural nature should not only be legal process, but also a political and social process "through which individuals and

²⁷ (Young 1989, Gianni 1998)

²⁸ (Barry 2001, Joppke 2002, Glazer 1997)

²⁹ Kymlicka specifically distinguishes indigenous groups from immigrant groups.

social groups engage in claiming, expanding or losing rights.”³⁰ Yet, at its core, citizenship is about rights-enshrined in the legal institutions of the state primarily the constitution. Therefore, while negotiating and contesting the application and distribution of rights and obligations is a social and political process that determines the nature of citizenship, who is a citizen and where citizenship is located, citizenship rights are given legal status by the state.³¹

This emphasis, I argue, on the legal context of citizenship, is appropriate for the Mexican context for two reasons. First, Mexican citizenship is based on the liberal principles of individual rights within the context of an “imagined”³² ethnically homogenous nation-state. These liberal underpinning are grounded in a legal system that privileges individual over collective right and undifferentiated rights over differentiated rights. Consequently, the normative basis of the legal order along with legal practices and procedures must be substantially modified to fit the pluri-national nature of the Mexican state. Second, as Moisés Franco Mendoza makes the case, Mexico is more a legalistic state as opposed to a rights-based state.³³ As he argues, “the exclusive rule of law in Mexico has taken the place of the enjoyment of rights so that rights have been reduced to law.”³⁴ In other words, rights are conceptualized as being bestowed from above by the legal structure as opposed to being generated from below (within civil society) through social movements. Hence, citizenship rights are inextricably linked with a legalistic framework. So a juridical opening recognizing Mexico’s ethnic plurality would be responding to indigenous demands for justice. In other words, establishment of legal pluralism and the recognition of group rights in and of itself would be an act of justice. Additionally, since indigenous peoples

³⁰ Isin, Engin. “Citizenship Studies: An Introduction” In *Handbook of Citizenship Studies*, edited by Engin F. Isin and Bryan S. Turner. London: Sage Publications, 2002.

³¹ Linda Bosniak. *The Citizen and the Alien*. Princeton, N.J.: Princeton University Press, 2006.

³² Benedict Anderson. *Imagined Communities*. London: Verso, 1983.

³³ Moisés Franco Mendoza. “The Debate Concerning Indigenous Rights in Mexico.” In *The Challenge of Diversity*, edited by Willem Assies, Gemma va de Haar and André J. Hoekema. Amsterdam: Thela Thesis, 1998, 60.

³⁴ *Ibid*

citizenship claims have centered around political rights as opposed to social or civil rights, much of the contestation and negotiations over citizenship will most likely center around legal issues.

What are some of the necessary alterations to the Mexican legal system to justly address indigenous claims to autonomy? Foremost, the rule of law in Mexico needs to be strengthened by reducing the level of patronage and clientelism that impedes the uniform and consistent application of law. Furthermore, the state's institutional legal structures need to be transformed and strengthened by imbuing the judiciary with more discretion and freedom from the executive branch. Also, in order to better to serve in the interest of justice, indigenous peoples and the poor must be given better and fairer access to the judicial system. The most radical but essential transformation would be the acceptance of a separate indigenous legal system that would not be subordinate to overarching state legal system, which in time would require recognition of indigenous customary law. The Mexican state, especially in rural areas where there is little federal or state presence, has tolerated the incorporation of indigenous communities' legal practices, but only as a form of alternative dispute resolution. In essence, the state has, only in a de facto sense, recognized the practice of indigenous legal norms and practices at the community/village level with the understanding the state legal system is the final arbitrator of legal issues and disputes and its judgments always take precedence over the judgments of indigenous authorities. This inconsistent de facto recognition does not translate into a guarantee that indigenous peoples' will be able to independently determine and control their own mechanisms of justice that are based on their traditions, norms and customs. For that reason, in order to ensure that the indigenous peoples do not continue to be denied access to justice that is in keeping with their cultural needs, the state must fully recognize indigenous peoples' rights to their authorities, legal norms and practice. However, this process will be fraught with questions

concerning the relationship between majority and minority rights as well as the tension between collective and individual rights. ILO convention 169 specifies that customary law should be respected when it does not conflict with universal human rights. Kymlicka attempts to reconcile these potentially conflicting rights by making an external/internal protections distinction. He proposes that collective rights that limit the liberty of its members in the name of group solidarity or cultural purity violate individual rights, while collective rights understood as protecting the group from restrictions set by the larger society are not incompatible with individual rights. Thus, the legal system of the larger society should not interfere with the legal system of the indigenous groups unless it unduly violates the individual rights of its members. The inherent tension between universal individual rights and differentiated collective rights that Kymlicka attempts to reconcile theoretically can be explored concretely through a study of how the parallel legal structures (liberal and indigenous) in Mexico have evolved in tension with one another over time. Such an empirical study may help inform the processes and identify the impediments to establishing legal pluralism in Mexico as well as help evaluate Kymlicka's liberal multicultural theory.

Not only do implementation issues beset efforts to legally institutionalize indigenous autonomy, but there exists a few other substantial impediments to the legal recognition of indigenous autonomy of which I will discuss one. One major impediment is the nationalist vision of a homogenous ethnic citizenry. This nationalism is embedded into the Mexican culture. Consequently, any attempt to introduce policies or even rhetoric that call into question this vision is in some quarters still vehemently opposed. This offers a partial explanation for the intractability of many Mexican politicians to entertaining the idea of legally and in particular constitutionally recognizing and accommodating the plurinational composition of their country.

What drives this obduracy is the fear that recognizing differences would lead to disunity and distrust that is cultivated when people did not feel that they share a common background, history and ethnicity. This lack of cohesion would then fatally undermine the state. Brian Barry argues that such concerns should not be dismissed as reactionary. He argues that “citizenship should be a forum where people transcend their differences and are concerned with the common good.”³⁵ Thus, minority groups retreating from the larger society fragments the civic sphere through distrust and lack of cooperation impeding democratic deliberation necessary for the health of democracies. shared citizenship or civic identity. Yet, on the other hand, refusing demands for self-government rights will simply aggravate alienation among national minorities.

Over the past few decades, indigenous peoples in Latin America have sought to revise their respective country’s citizenship regimes to recognize their indigenous collective identities. Such recognition entails granting indigenous peoples the autonomy to practice their own cultural beliefs, respecting the authority of their religious and political leaders and institutions, and honoring their territorial claims. Critics of liberal citizenship theory, argue that liberal citizenship is incapable of justly addressing these identity claims through universal, individual citizenship. “Reformist” liberal theorists such as Will Kymlicka attempt to retool traditional liberal citizenship theory to oblige multicultural demands. The tension between reconciling universal individual rights and collective rights is being played out on the ground as governments try to both accommodate and contain pressures to construct differentiated citizenship regimes. In Mexico specifically, there are ideological and political obstacles to establishing a multicultural citizenship regime. The linchpin in this battle is Mexico’s legal system since it is where

³⁵ Brian Barry. *Culture and Equality*. Cambridge, MA: Harvard University Press, 2001, 119.

citizenship rights are enshrined and as well as the fact that this is the institution most affected by indigenous calls for legal autonomy. Much can be learned about the feasibility of liberal multicultural theory by exploring in a concrete manner the playing out of the tensions over individual and collective rights as indigenous peoples and the Mexican state struggle over the degree and scope of legal pluralism and indigenous autonomy.

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