

THE USE OF INSTITUTIONAL ANALYSIS (IAD) FOR DEFINING FOCAL ACTION SITUATIONS IN MEXICAN CULTURAL HERITAGE: PROCEDE-INAH AND CONACULTA OUTCOMES AFTER 1992 REFORMS.

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ABSTRACT

This paper analyzes how polycentricity governance is articulated around cultural heritage (CH) performance in an overview of changing contextual factors and focal action situation in Mexican Cultural System (MCS). Besides, this paper adds to conversation some historical analysis from law changes through time in both countries, also uses the Network of Adjacent Action Situation Analysis (NAAS) and Combined IAD-SES (CIS) framework to structure and compare institutional analysis. Polycentric governance of cultural heritage is a reality rarely observed in the development of cultural resource management policies. Two study cases are presented under this understanding of Institutional Analysis (IAD): PROCEDE-INAH and CONALCULTA. The polycentric approach is clearly defined in Ostrom's work and can be used as an opportunity to bridge Economy and Archaeology discussions about local management of cultural heritage. This opens an important opportunity where CH should be considered as common resource which can be used and owned by a social group which identify this resource as heritage.

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INTRODUCTION

This paper analyzes how policentricity is articulated around cultural heritage performance in two study cases in the Mexican Cultural System (MCS). Besides, this paper adds to conversation some historical analysis from cultural law changes through time in Mexico following Institutional Analysis framework (IAD), also enriched with using the Network of Adjacent Action Situation (NAAS) analysis and Combined IAD-SES (CIS) framework to structure and compare institutional analysis. Polycentric governance of cultural heritage is a reality rarely observed in the development of cultural resource management. Because of it is not observed or considered in project decisions the performance of institutions and organizations will affect the expected results. The polycentric approach is clearly defined in Ostrom's work and can be used as an opportunity to bridge Economy and Archaeology discussions about local management of cultural heritage (CH). So, this opens an important opportunity where CH should be considered as common resource in some cases where is used and owned by a social group which identify this resource as heritage. Consequently, I propose to analyze more the network of focal action situations in which value of CH is managed, instead of just current used cost-benefit analysis: willing-to-accept (WTA), willing-to-pay (WTP), contingent valuation (CV) or conjoint cost analysis (CCA).

Two cases had been crucial in my understanding of institutional analysis (IAD) in CH. Firstly, in Mexico after 1988 started a new multilevel institutional reconfiguration which allowed to new actors, like subnational governments, to invest in areas like archaeology. With the establishment of new laws which created the National Council for Culture and Arts (CONACULTA), Mexico opened doors for private investments using new financial mechanism as trust, patronage, or fund. As can be observed in some upcoming paged, many years after, this issue increased a social

dilemma which lies in local community accessibility to self-managing cultural resources and self-capacity to create opportunity for economic development for local communities who possess cultural resources and land ownership.

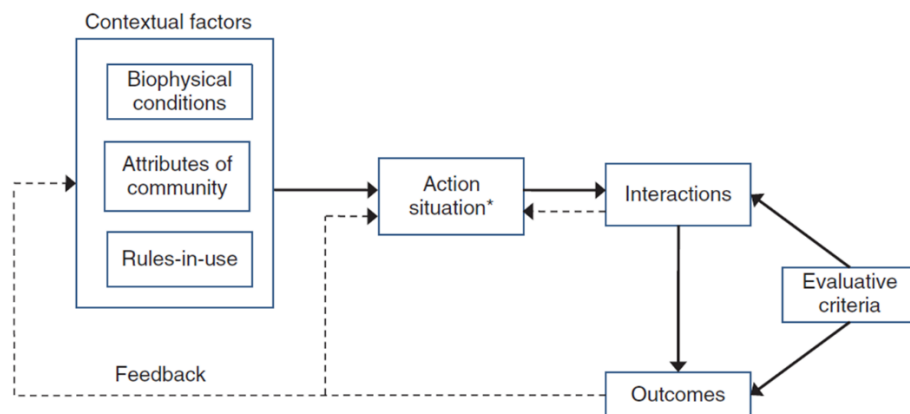
Secondly, and strongly linked to last case was 1992 Article 27 Constitutional reform, which led to create PROCEDE-INAH program. PROCEDE program facilitated for Mexican citizens to acquire full control of plots on ejidal lands and opened the possibility for these plots to pass into privately owned regime, therefore, it is how private property in social property system obtained constitutional and civil guarantees other than those of ejidal and communal property, which included a law conflict when archaeological remains appear on soil. PROCEDE-INAH program was created to handle this controversy, and since 50% of the total archaeological sites of the country, in 1992, were located in ejidal or communal lands.

IAD, CIS and NAAS

Archaeology focuses the attention of scholars in many fields onto the problem of cultural heritage management (CHM) because of the diverse views among cultural resource stakeholders as users and owners. Through the analysis of the interactions among descendants, communities, archaeologists, economists, environmental preservationists, and government agencies within institutional frameworks my research will describe and contextualize the context of CHM in several locations. By instance, the Mexican case is an excellent example to illustrate the transition from stewardship-deficit practice towards a cultural governance strategy where local self-government systems try to use development projects related to archaeology as a common pool resource. This attempt aims to measure the consequences of this transition and concomitant

innovation in daily process and will gauge public opinion about archaeology as a factor in the decision-making process for local development.

This project examines in general the possibility of understanding cultural resources as a common pool resources, using the "Institutional analysis framework" created by Elinor Ostrom as well as other literature resources currently available. There are some countries around the world where various concepts close to the idea of "common-pool resource" have been chosen for the operation, management, research, and dissemination of cultural goods. This study aims to show the findings in the literature about the use of the "common-pool" concept for the implementation of cultural resource management, its definition according to its legal framework, the possible dependence of changes in the function of political alignments or its socioeconomic context.



*Figure 1: Basic components of the IAD framework.
Source: after Daniel H. Cole et al. (2019), adapted from Ostrom (2010, 646)*

Elinor Ostrom (2005) show the importance of interdisciplinary cooperation, towards a comprehensive understanding and diagnosis of social and socio-ecological problems beyond the theories and tools of any discipline, where no place for institutional panaceas and no single methodological approaches that can be considered always the best, therefore, institutional

academics should be prepared to use various approaches from various disciplinary perspectives as examples: Small-n-type case studies (based on field studies), meta-analysis of case studies, large econometric analyses, field and laboratory experiments/games, and agent-based modeling. Within the Ostrom IAD model (2005) one of the potential components that can help to discuss these conceptual differences are those of community attributes such as reciprocity, communality, or prestige. From the experimental economy, Ostrom and Walker (2003) raised possible scenarios where community attributes can take part in the collective decision making in common goods.

This discussion is an exercise of comparison between a set of networks of action situations inside Mexican Cultural System, focusing in the possibility to apply in upcoming dissertation chapters the principles of commons developed by Elinor Ostrom for archaeological resources as CPRs. These methodological exercises have been developed in recent years by academics concerned about intertwining the two dimensions of cultural heritage: global and local. Thus, from a theoretical perspective and global dimension of cultural heritage Yan Zhang (2012) proposes us to dimension the strategies of managing world heritage (WH) as a CPR from the ordinances of UNESCO and the World Heritage Convention (WHC), his proposal discusses the concept of value of heritage sites. It also makes an institutional analysis of the process of *patrimonialization* and nomination of sites towards the WH denomination; and how tourism determines almost all variables with respect to the operation and management of a given site. However, the great value of Zhang's work is to be able to approach the development of cultural goods under a form of self-government, according to the Ostrom principles (Zhang, 2012; Alonso, 2014; Gould, 2014).

Zhang (2012) and authors such as Barbash-Riley (2015) had discussed an essential issue in the conceptualization of cultural goods and CPRs: The concept of ownership in cultural heritage. This discussion can be framed within what Hess (2008) proposes about the nature of cultural heritage

and recently Chris Bilton & Gonzalo Soltero (2019) talk about the influence of nationalist meta-narratives in the definition of cultural policies in Mexico and Great Britain. For many years, this discussion has been open between different fields of economics and anthropology, where the discussion is whether cultural goods are elements capable of having an economic value in current terms. For example and following the idea of the foundational ideology of legal frameworks, in the Mexican case the influence of the French tradition (Bilton & Sotero, 2019) places cultural heritage value as incalculable, since its existence is parallel to that of the state and is therefore a public idea of heritage. Even the development of public policies within the study of the legislative processes around cultural heritage (Kaitavuori, 2019).

In a practical case in underwater heritage, Barbash-Riley (2015) details the international and local legal scaffolding which has followed the submerged heritage of the Dominican Republic and how international legislation has performed different formal and informal institutions in the Caribbean country. Barbash-Riley (2015) takes us to the same by different processes and legal arguments of other cases in Florida (US) and addresses how this has developed international controversies between different countries by the property of the discovered goods. The discussion in her article “Using a Community-Based Strategy to Address the Impacts of Globalization on Underwater Cultural Heritage Management in the Dominican Republic” reinforces the hypothesis that there is a difference in the application of institutions which resides in the foundational ideological spirit of each law or convention; in this case between world heritage ordinances and the idea of ownership for laws, such as the United States or Great Britain, and another countries laws inspired by another legal conceptual framework.

Polycentric governance of cultural heritage is a reality rarely observed in the development of cultural resource management. The fact that polycentric governance is not observed or considered

in cultural project decisions does not mean that some observable institutions or organizations do not have an influence on the expected outcomes. The polycentric approach is clearly defined in Ostrom's work, and developed along with Vincent Ostrom (e.g., in the Alaska Constitution). In Ostrom, Tiebout and Warren (1961) it is possible to find the best definition as a system of independent but interdependent authorities that are multi-level (neighborhood, local, state, regional, national, international, global), multi-type (nested jurisdictions of general purpose, as in traditional federalism, and specialized and cross-cutting policy units, such as special districts, multi-sectoral (public, private, voluntary, community, and collaborative hybrids). Such an analysis increases the range of choice of participants and the possibilities for experimentation and learning among government units. In Latin American context, for example, the work of Brondizio, Ostrom, and Young (2009): *Connectivity and the governance of multilevel social-ecological systems: the role of social capital* and Elinor Ostrom's with Juan Camilo Cardenas called *What do people bring into the game? Experiments in the field about cooperation in the commons in Colombia* are an excellent starting point in terms of methodologies applicable to cultural heritage.

Considering last mentioned ideas as fundamental, at this time this paper uses Institutional Analysis framework (IAD), also enriched with using the Network of Adjacent Action Situation (NAAS) analysis and Combined IAD-SES (CIS) framework to structure and compare institutional analysis. McGinnis (2011) developed the concept of Network of Adjacent Action Situation (NAAS) as a solution for representing “the complexity of a polycentric system of governance”, this idea bring us out the possibility to represent a context of interactions which provides a better understanding of any action situation in any phase of IAD framework. Following McGinnis (2011) this model can help us to determine deeper the institutional arrangements around the actor's situation. For the purpose of this paper, the Network of Adjacent Action Situation (NAAS) brings the opportunity

to start testing if the archaeological resource may be considered as a common good or just must be considered as another public good in the Mexican Cultural System. As mentioned by McGinnis (2001), some individuals play many “adjacent games that determine the value of these working components, [...] This would be the case of self-organized community of resource users who [...] rarely experience interference from outside actors” (McGinnis, 2011). This scenario is tested adding to same analysis an exercise conjoint with Combined IAD-SES (CIS) framework (Cole et al., 2019).

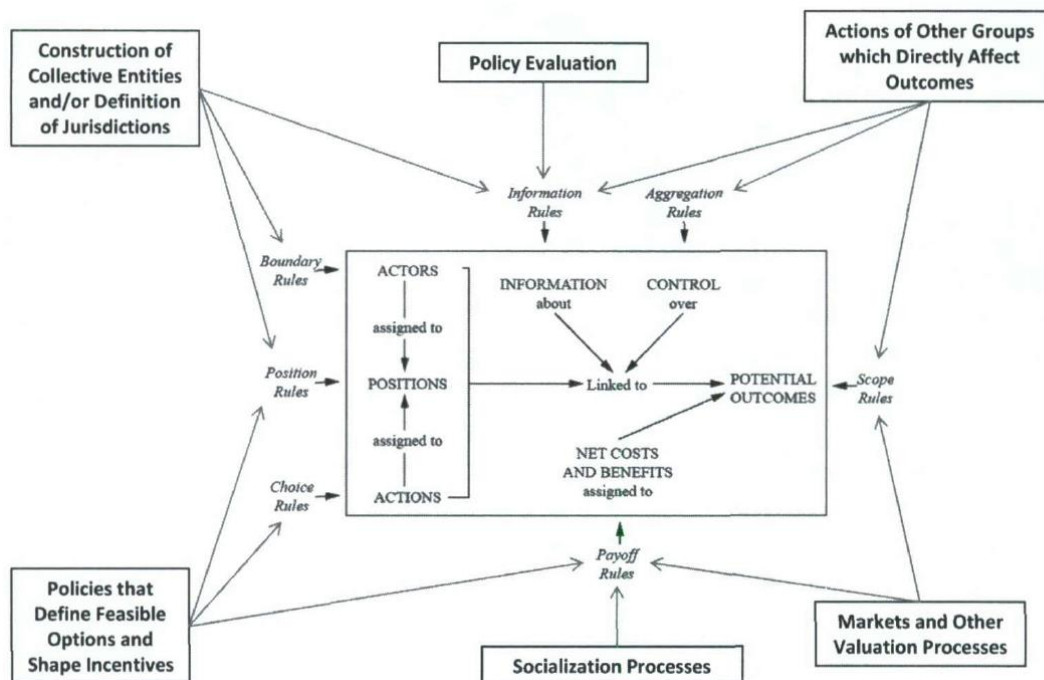
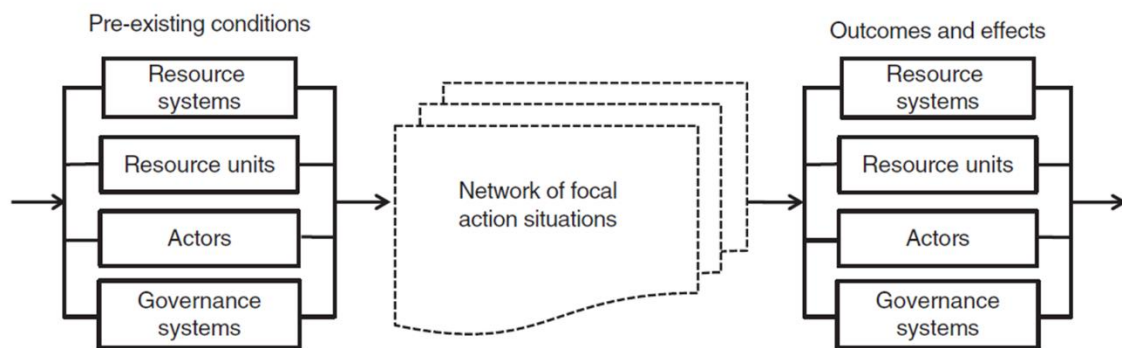


Figure 2: Action Situations Adjacent to a Focal Action Situation, with Connections to Working Parts and Associated Rules.

Source: after McGinnis (2011), taken from E. Ostrom (2005), p. 189

Cole et al. (2019) argues in *Combining the IAD and SES frameworks* that existed a possibility to get into multiple deeper details if we were able to develop a framework, based on these two elaborated previous ones, into a single entity. In a nutshell, Combined IAD-SES (CIS) framework

“enables to rearrange the overall figure in way that more directly represents the natural temporal order of before, during and after the operation of action situations” (Cole et al., 2019).



*Figure 3: Generic representation of combined IAD-SES framework.
Source: Daniel H. Cole et al. (2019)*

Cole et al. (2019) argues that implementation of this new framework will improve our understanding of contextual factor enormously. Also, this framework can “encompass a broader network of adjacent action situations whose outcomes mutually shape the contextual conditions under other nodes in this network operate” (Cole et al., 2019). At the same time, SES attributes or variables are easier to identify in action situations by “increasing the number or categories of relevant contextual conditions” (Cole et al., 2019). CIS framework provides an excellent opportunity, as showed in next pages, “to organize and integrate insights from variable-oriented research”. On this paper, CIS framework is tested in an overview of changing contextual factors and focal actions in San Pablo Villa de Mitla Communal Lands.

MEXICAN ARCHAEOLOGICAL HERITAGE MANAGEMENT UNDER AN INSTITUTIONAL ANALYSIS APPROACH (IAD).

The nationalist model of Mexican cultural heritage management begins at the end of the revolutionary armed-era under the administration of Lazaro Cardenas, who created the National Institute of Anthropology and History (1939) and the National Institute of Fine Arts (1939). These institutions depended on the Ministry of Public Education until the creation of the National Council of Culture and the Arts (1994) under the government of Carlos Salinas de Gortari (1988-1994) known by its neoliberalism thought; with this ideology change the above mentioned institutions were decentralized from the federal government and their activities are sectorized in a non-structured way, until 2015, with the return of the PRI to the government, the formalization of the Secretary of Culture was legislated (Bordat, 2011).

The decentralization of the cultural sector in Mexico is a slow dynamic driven by an elite sector, whose banner is the government's inability to manage the vast cultural heritage. Since 1994, the consequences of this process can be seen in the facilities granted to the private sector for the construction of hotels, resorts, museums or sound, and light shows, inside of monument areas; whose operation is on the fringes of an outdated federal law of sites and monuments of 1972, which does not contemplate these scenarios. Since 2015, with the creation of the Law that creates the new Ministry of Culture and its Organic Regulation, in addition to the General Law of Culture and Cultural Rights, a legal framework is proved for the first time that formally allows the opening to the investments from the private sector (Bordat, 2011).

Changes in Mexican Legislation and Institutions of Cultural Heritage (1939-Today)

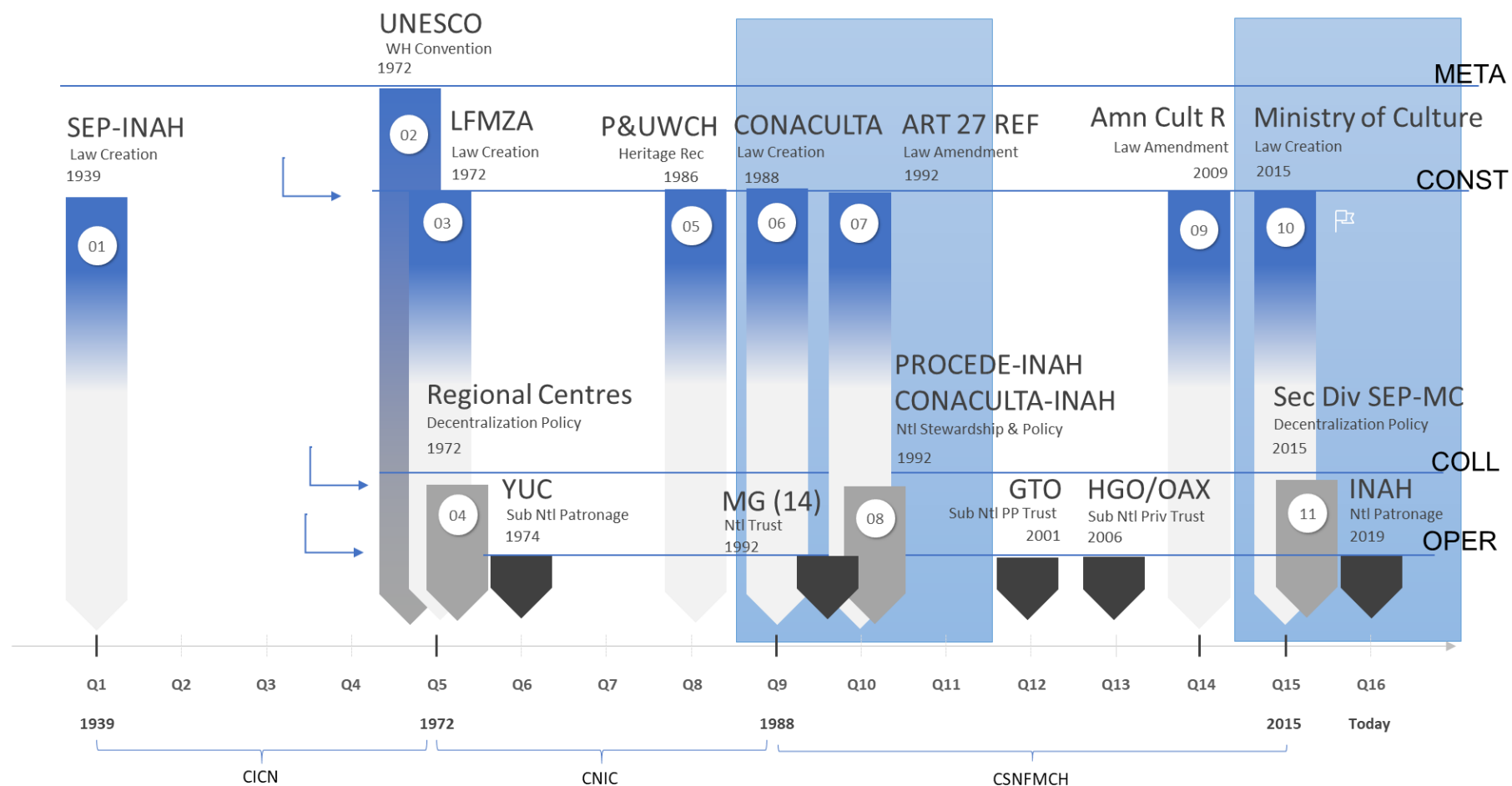


Figure 4. Graphical overview of Laws and Institutions in the Mexican CHM arena.

As shown in Figure 4, the different changes in cultural heritage legislation and institutions under one institutional analysis can be systematized into three periods of change. The first of these has been called Creation of the Idea of Nationalist Culture (CICN), between 1939-1972. In this period is located the creation of the INAH (01) within the national education sector, which provided it with political stability for a long period of time, as it was an important underpinning in the creation of national identity and pride in the country's indigenous roots as state policy.

The next period has been called Creation of New Centres and Institutions (CNCI) between 1972-1988. In 1972, the World Heritage Convention was established at the international level by UNESCO (02), which structurally modifies the definition and recognition of cultural heritage in most of the countries that joined the convention. For Mexico, this represented a profound change in the administration of the heritage; following the international recommendations, the Federal Law of Monuments and Archaeological Zones (03) was created in 1972, which resulted in the creation of a Regional Center (04) as the first decentralization policy to improve the registration and management of cultural goods in Mexico. Thus, in 1974, as a consequence of the new impulse to the archaeological zones, the Patronato de las Unidades Culturales y Turísticas del Estado de Yucatán (YUC) (Patronage of Cultural and Tourist Units of the State of Yucatán) was created; this patronage constitutes the first financial mechanism in Mexico. The following legislative reform is inspired by the international inertia of the 1972 Convention and promotes the recognition of paleontological and underwater heritage (05).

The third period will be called Creation of Subnational Financial Mechanisms for the Management of Cultural Heritage (CSNFMCH) between 1988-2015. With the arrival of Carlos Salinas to the presidency in 1988 a reform of law is registered that creates the National Council for Culture and the Arts (06) that configures the hierarchy of the INAH and INBA in the decisions of the cultural

patrimony. As a consequence of these changes, the Megaprojects (MG) were created in Mexico, where 14 archaeological zones would be modified with integral projects financed entirely by the state and whose objective was regional development, perhaps based on the idea of the Work Progress Administration (WPA) of the 1940s in the United States. Without the intention of saying that there are no previous attempts, in 2001 the first public-private organization was founded in the state of Guanajuato, known as the Administration and Investment Trust for the Realization of the Activities of the Archaeological Zones of Guanajuato (GUA), which for the first time contemplates private investment in research and conservation activities in Mexican archaeology. For 2006, the archaeological project of the Tamtok site in the state of Hidalgo is fully funded by the Banamex Cultural Foundation (HGO) and the Teposcolula Project by the Alfredo Harp Helu Oaxaca Foundation (OAX). With the constitutional ratification of the Mexican state of the universality of Cultural rights (07) the possibility was opened of a new change in the national administration of culture, which after several attempts culminated in 2015 with the creation of the Ministry of Culture (08). The implementation of the secondary laws led to an administrative separation of the relation education-culture existing since 1939 (09) with which CONACULTA was only ratified as now Ministry of Culture.

After the 2018 elections in Mexico, and with a new nationalist rhetoric, much expectation has created the possible realization of new Megaprojects in Mexican archaeological sites. However, in the face of a policy of present austerity, the INAH has chosen to create its own financial mechanism in the form of patronage (INAH) in 2019 and presented it on October 25, 2019. This patronage is a public-private mechanism governed by a board of directors, and whose characteristics are to accept private funding for improvements in archaeological sites open to the public as Teotihuacan.

PROCEDE-INAH

On first months of 1992, a decree reforming Article 27 Constitutional was published in the Official Journal of the Federation, consequently Agrarian Law regulating amendments to that article was published. The new legal reform made it possible for Mexican citizens to acquire full control of plots on ejidal lands and these may pass to the privately owned regime, therefore, private property in social property system has constitutional and civil guarantees other than those of ejidal and communal property, thus creating several conditions that did not previously exist. However, no matters changes done at this time, by law the archaeological monuments found therein will remain the property of the Nation (Rodríguez, 1998; Trejo, 2016).

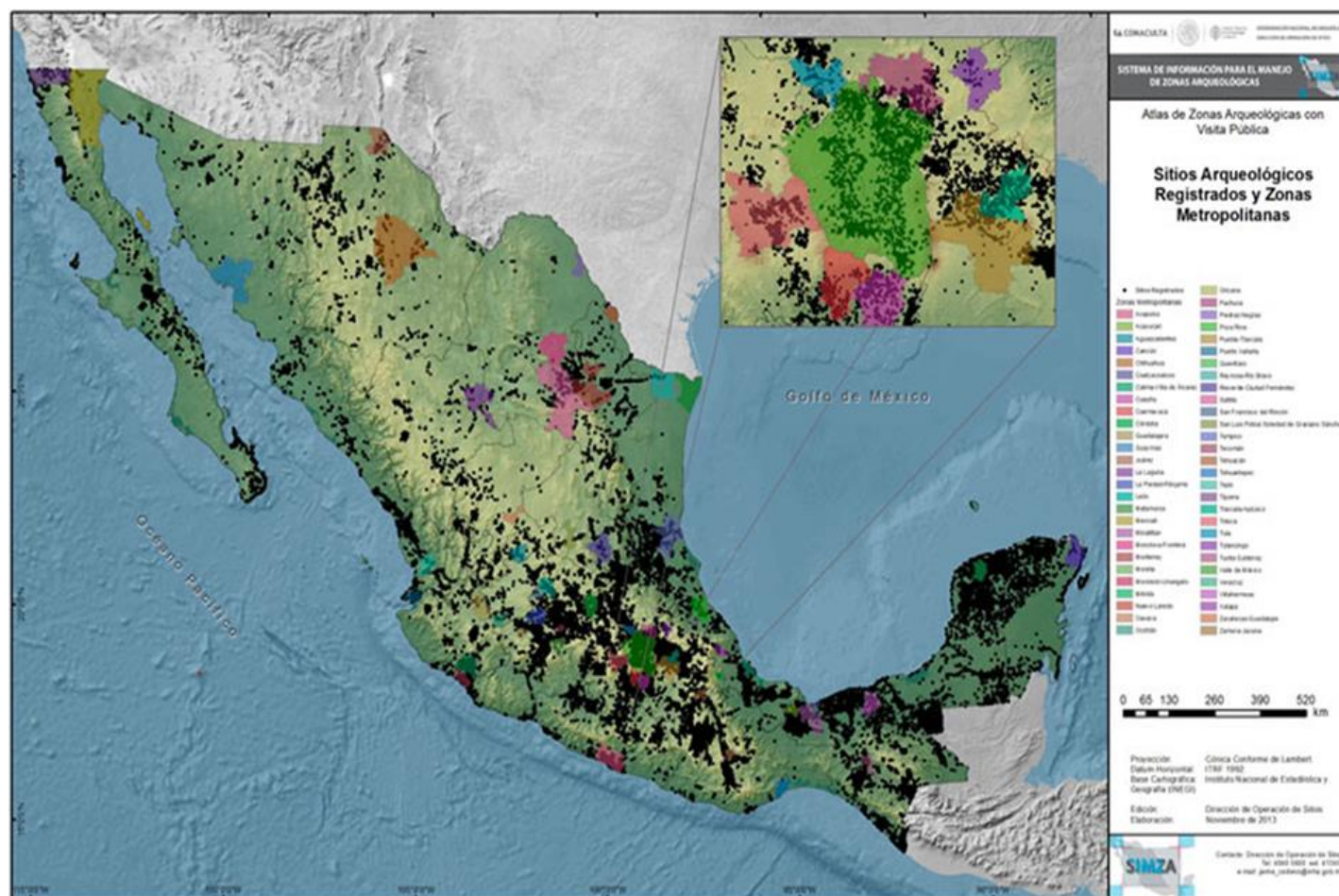
The 1992 Agrarian Reform allowed *ejidatarios and comuneros* (commoners) or any holder to request the change of ownership regime of their plot as appropriate with the restrictions that the Agrarian Law marks in Articles 81 to 86. This implied a legal conflict because if the lands pass to the privately owned regime also archaeological sites where are located, although by law an archaeological monument will always be owned by the Nation, but land where it is settled is not considered in the Federal Law of Archaeological Monument and Zones (LFMZA). By instance, new Agrarian law amendments indicates in Article 831, that property cannot be occupied against the will of its owner, but because of public utility and through compensation (Pisa, 1994; Rodríguez, 1998; Trejo, 2016).

Social property in Mexico is a regime that provides protection from the State to recipients, without implying limitations on *ejidatarios* and commoners in the use of their resources. Ejido and the community rose as a form of ownership with this new reform, also *ejidatarios* and commoners

became as official modalities of social property. As a operational outcome of reform, the certification of ejidal rights provided to *ejidatarios* security about the possession of their plot and a system to certify the limits of it. In 1992, Mexico had more than 29 thousand ejidos and agrarian communities in the country, which constituted 3.5 million *ejidatarios and commoners*, and approximately 4.6 million plots and 4.3 million urban plots. Currently, the area of certified social property represents 50% of the national territory which include many archaeological unexplored remains, and the population that resides constitutes just over 25% of the total inhabitants of the country, including many indigenous communities (Moya, 2012; Pisa, 1994; Rodríguez, 1998; Trejo, 2016; Yetman, 2000).

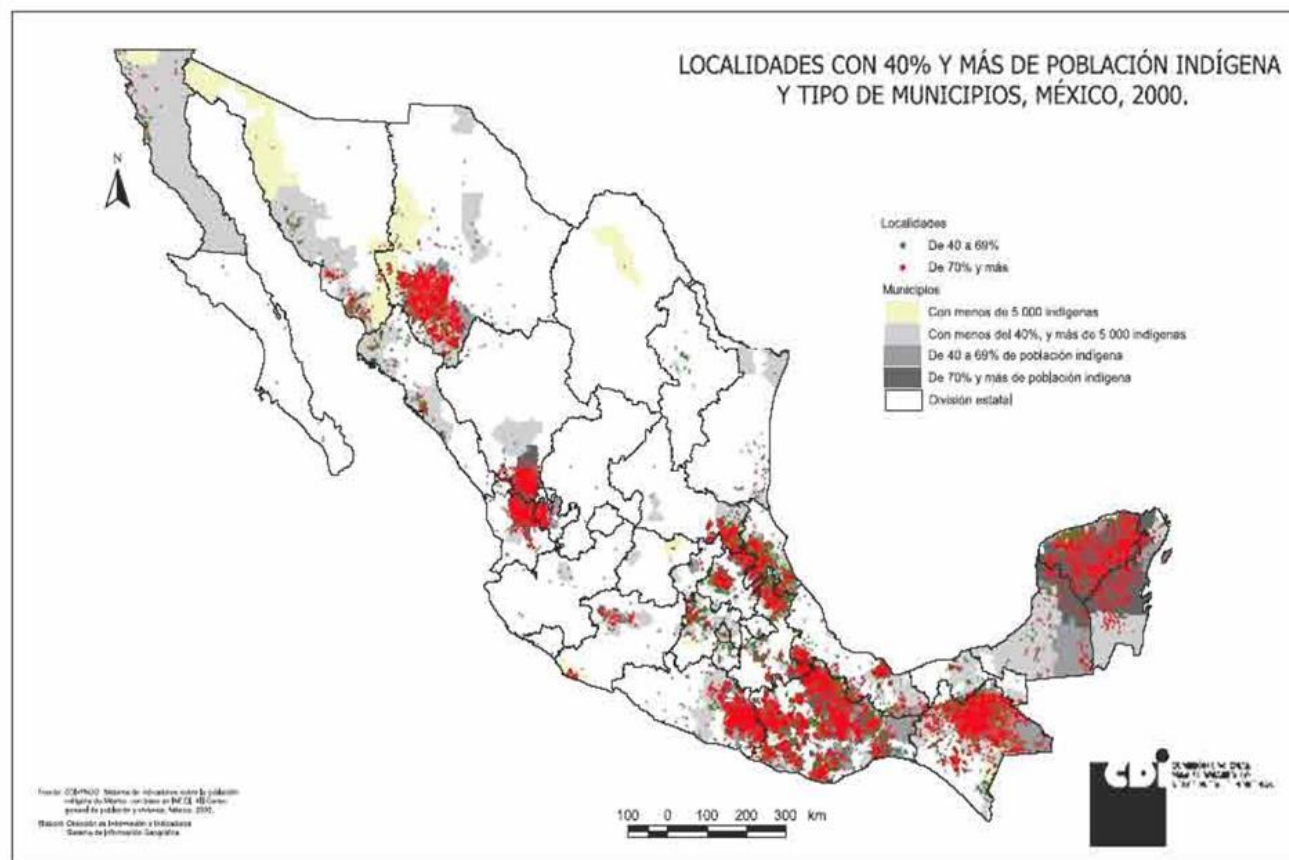
Since 1972 Mexican archaeological monuments are declared of public utility by the Federal Law of Archaeological Monument and Zones (LFMZA) because of the importance they attach to society. This social importance, in addition to its scientific value, is that it contributes to shaping the national identity of peoples. The study of material remains, according to Mexican law, is the means of archaeology to be able to reconstruct almost all Mexican history. INAH's Organic Law. The National Institute for Anthropology and History (INAH) is still the only one legally empowered to dictate what is related to an archaeological site and therefore also has an obligation to do so when required. The agricultural achievements of the Mexican Revolution are a law heritage for Mexicans that was generated because of a bloody social struggle and a model of the agricultural regimes for many revolutions in the world. The ejido is seen as a national heritage for its revolutionary origin and its meaning of land endowment (Moya, 2012; Pisa, 1994; Rodríguez, 1998; Trejo, 2016; Yetman, 2000).

ARCHAEOLOGICAL SITES DISTRIBUTION IN MEXICO (INAH,2018)



INDIGENOUS POPULATION AND DISTRIBUTION IN MEXICO (INEGI,2016)

- 11 million (10% total)
- Nahuas (Puebla, Veracruz,Hidalgo): 1,575,685.
- Mayas (Yucatán, Quintana Roo, Campeche): 971,770.
- **Zapotecos (Oaxaca): 474,298**
- Mixtecos (Oaxaca, Guerrero): 456,620
- **Tsotsil (Chiapas): 356,247**
- Otomís (Hidalgo, Edo. de México): 350,368
- Tzeltales (Chiapas): 308,443
- Totonacas (Veracruz, Puebla): 267,375
- Mazatecos (Oaxaca): 217,432
- Mazahuas (Estado de México): 206,065
- +53 other groups



SOCIAL PROPERTY DISTRIBUTION IN MEXICO (RAN,2016)

- Total surface: 100,235,240 ha.
- Agrarian nuclear groups: 31,874
- Ejidos: 28,876
- Comunidades o comunales: 1,998
- Landowners with title: 4,786,703
- Population: 25,179,916



Due to the impact of the Agrarian Reform on archaeological heritage, it was necessary to implement a series of technical and legal measures that would rest on a joint participation of the tasks of the PROCEDE and those of INAH in the registration and delimitation of archaeological areas, to cover the need for protection of the sites. The importance and priority of the incorporation of INAH into the PROCEDE program was because of 50% of the total archaeological sites of the country are located in ejidal or communal lands. Agrarian National agencies, as Agrarian Attorney's Office (PA), the National Agrarian Registry (RAN) and the National Institute of Statistics, Geography, and Informatics (INEGI), developed a program with the goal to accomplish the certification of national social property, his name was Program for the Certification of Ejido Rights and Urban Land Titling (PROCEDE). In a second moment, the PROCEDE-INAH program was created with two fundamental objectives: to increase the National Catalogue and Inventory of Archaeological Zones by developing the delimitations of these sites, and to raise awareness among rural communities of the importance of the protection of archaeological heritage. An overview of workflow can be described as: register and delimit sites with the approval of the Ejidal or Communal Assembly, prepare official documents and PROCEDE-INAH-Communities Agreements and prepare the report reporting the delimited sites and activities to National Archaeological Atlas. Also, the physical *deslinde* or delimitation of an archaeological area involves several steps. Initially it was necessary to develop the delimitation proposal which was carried out through a systematic tour of the site in order to detect the presence of archaeological material and enclose all areas with materials within a polygon, uncharged to INAH official with participation in the PROCEDE, then it was necessary to carry out a physical delimitation which consists of the placement in the field of marks or *mojoneras* (Moya, 2012; Pisa, 1994; Rodríguez, 1998; Trejo, 2016; Yetman, 2000).

Therefore, the protection and delimitation of archaeological sites was carried out during the demarcation of ejido lands for two main reasons: first, so that ejido members would be aware of the proposed delimitation and accept that it would be indicated on the plans prepared by INEGI's survey brigade; and second, to propose, before choosing the destination of ejido lands, that those areas that are an inalienable part of the ejido be registered as common use lands; Second, to propose, prior to the stage of choosing the destination of the ejido lands, that those lands that would be inalienably part of the ejido be registered as common use lands, since it was desirable that these areas be protected by the State in the agrarian agreements of the new law, because the lands belonged to social property (as ejido and communal property) (Moya, 2012; Pisa, 1994; Rodríguez, 1998; Yetman, 2000).

Some focal situations can be illustrated here. First, the Mexican Civil Code expressly mentioned the safeguarding of cultural heritage, including the archaeological one, whatever its ownership regime. Second, that it is a power of the State to protect such property to preserve them, with the State having preference over the individual, the power to limit their property rights by virtue of which property of public interest has a social function in substantiating national consciousness and symbolizing the past. Third, if National agencies like National Institute for Anthropology and History (INAH) had sufficient resources for the protection, investigation or conservation of a particular site, the procedure to be followed would be, once the public utility of the monument has been proven, expropriation by compensation (Moya, 2012; Pisa, 1994; Rodríguez, 1998; Trejo, 2016; Yetman, 2000). Some contextual factors need to be appointed as this moment. Firstly, prior to their participation in the PROCEDURE, several ejidos or communities' members worked in Community form on the land through internal agreements in the ejido, authorized some of its

members to work a part of the ejido, or the community in more suitable conditions for production than originally assigned to them, therefore, with certification of rights, the *ejidatario or commoner* has a limited area for production. If it turns out that, once the plots have been delimited, allocated and titled, and archaeological remains are found in it, the farmer may not change it and be relocated to work another part of the land that constituted the ejido or communal property. Thus, *ejidatario*' perception of archaeological remains became that new awareness of archaeology have affected conditions to work theirs plots in the most cost-effective way (Moya, 2012; Pisa, 1994; Rodríguez, 1998; Trejo, 2016; Yetman, 2000).

This action situation indicated a risk to monuments and archaeological sites since access to the archaeological sites is often not restricted, along with other activities promoted by the new Agrarian Law are those related to the creation of infrastructure works that include the use of heavy machinery for agricultural production. This creates a situation of tension among the *ejidatarios* and commoners which can even lead them to destroy the sites by dragging them away for fear that their properties will be expropriated by the state. This fear was resulted from new knowledge of the owner or holder about the content of both current legislation on archaeology, as regards their property rights and the failure of the INAH in two respects: by not being able to inform the population as a whole of its legal and land-labour policies, and not convince her about the importance of the protection of national heritage. In a second moment, by failure to deal with the *ejidatario or commoner*, and not clearly explain them about purposes of a particular intervention in an archaeological site and the true legal situation of his property. Some scholars considered legislators responsible for amending Article 27 Constitutional, were not explicitly considered the protection of archaeological heritage in the new Agrarian Law from its initial approach.

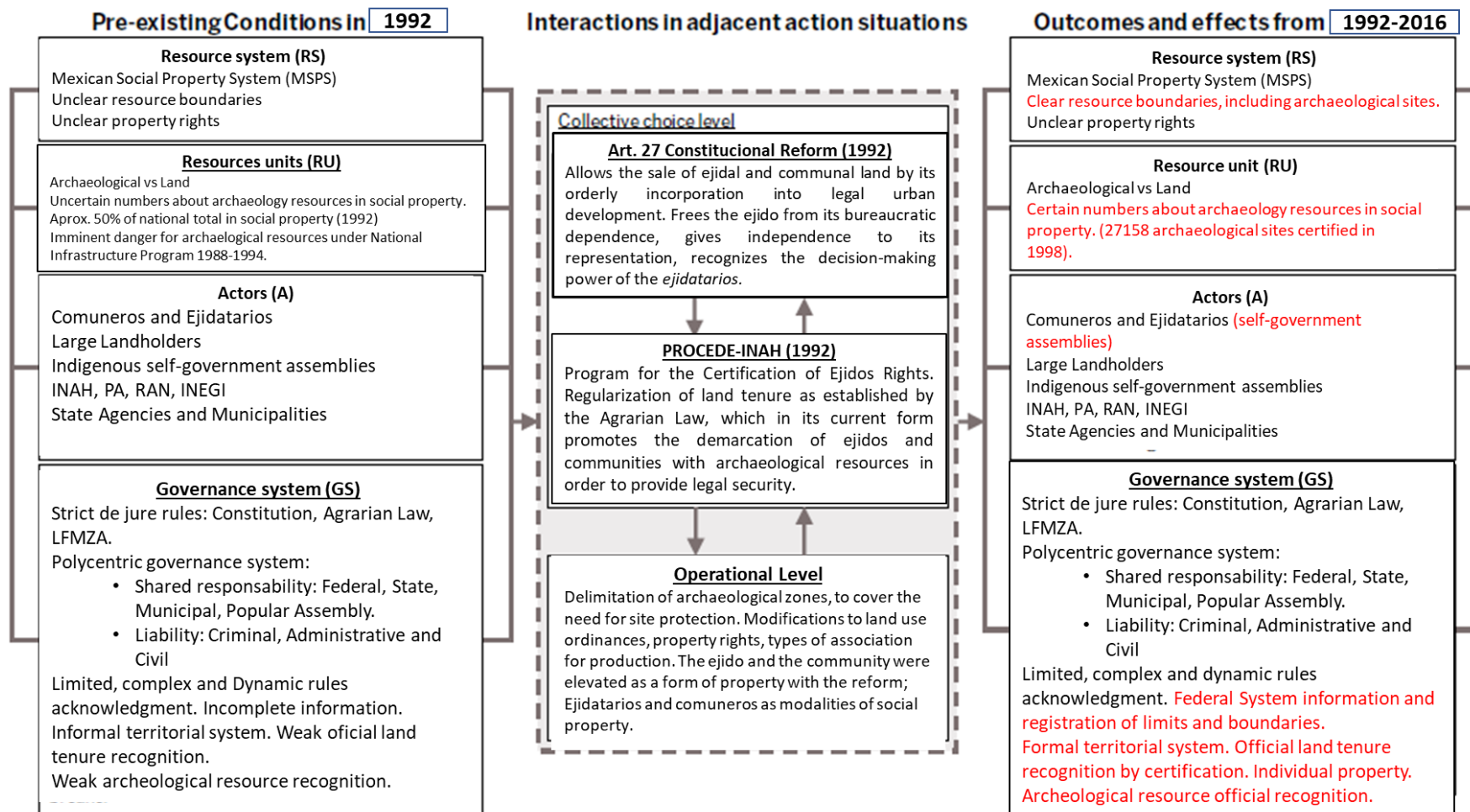


Figure 4. PROCEDE-INAH outcomes and effects:1992-2016. (based in Cole et al.,2019)

CONACULTA

On December 6, 1988, only three years after the reform of the Organic Law of the INAH, at the beginning of the six-year term headed by Carlos Salinas de Gortari, the new government opted for a change in the institutional model. This modification, undoubtedly relevant for the country's cultural history, was the replacement of the aforementioned Undersecretary of Culture by the National Council for Culture and the Arts (CNCA or CONACULTA). The CNCA was created "[...] as a decentralized administrative body of the Ministry of Public Education that will exercise the attributions of promotion and dissemination of culture and the arts" [Presidency of the Republic, 1998]. An important attribute mentioned in this decree is that the decree gave CONACULTA the power to [...] coordinate, in accordance with the applicable legal provisions, the actions of the administrative units and public institutions that perform functions in the areas mentioned in the previous section, including through audiovisual means of communication" [Presidency of the Republic, 1998].

The cultural sector in Mexico has been left aside in the construction of social development options, perhaps because it has not represented since 20 years more than 3.0% of the country's GDP (INEGI, 2013), however, according to official figures from 1988 the federal government implemented new directions in the sector that are reflected in the public cultural policies that have been changing towards an opening of the sector to the participation of other actors in the period 1988-2016 (Bordat, 2011; Cottom, 2000; Cottom, 2006).

As we can observed in figure 5, different outcomes has been obtained since 1988 reform. Within the evolution of the financing mechanisms for specific areas or sectors, the Mexican Cultural System has been nourished by experiences from environmental sector enormously, a sector that

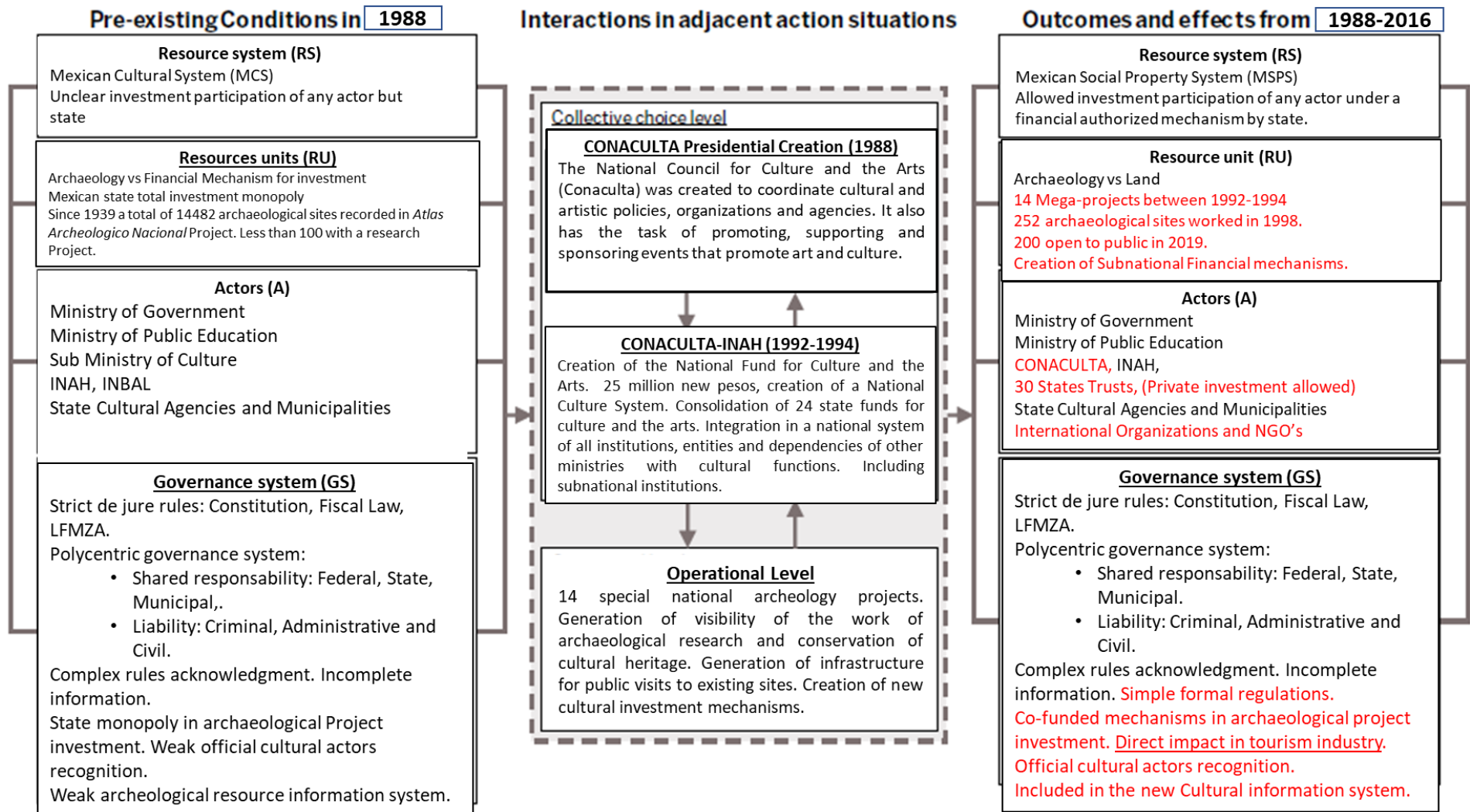


Figure 5. CONACULTA-INAH outcomes and effects:1988-2016. (based in Cole et al.,2019)

has developed for many years ahead of the cultural sector and whose results have established guidelines in terms of cooperation with different mechanisms, mainly Public Private Partnerships (PPPs). As an example, we can take into account discussions is use of financial mechanisms for investment in "Natural Capital" which provides us a more developed and better-defined framework. For instance, we have direct market, indirect market, other markets and non-market mechanisms (Parker et al., 2012). In the case of our study, MCS took a financial mechanism definition as "proposed institutional arrangement" whose essence is the combination of state, national and sub-national participation, in a cooperative manner, for the purposes stated (Parker et al., 2012).

Second concept will be the mechanism which generates additional development funds by tapping new funding sources (that is, by looking beyond conventional mechanisms such as budget outlays from established donors and bonds from traditional international financial institutions) or by engaging new partners (such as emerging donors and actors in the private sector), it enhances the efficiency of financial flows, by reducing delivery time and/or costs, especially for emergency needs and in crisis situations. Also, it makes financial flows more results-oriented, by explicitly linking funding flows to measurable performance on the ground. (World Bank,2010).

Among the financial mechanisms implemented in the cultural sector are Patronages, Trusts and Foundations. Substantial differences are the objectives that each one offers; the board of trustees had a period of growth from the seventies within the cultural sector as a parallel tool to the national administration, and whose example we have in the Yucatan model in Mexico; the trust could be defined as a second step in the transfer of responsibilities where the state is on an equal footing with all those investors for a cultural issue as can be seen in the Guanajuato model; the third case to be defined is the Foundation, the biggest difference being that it is an individual institution

motivated by a personal interest and not by a specific public policy, as is the case of the Alfredo Harp Helu Foundation in Oaxaca (Bordat, 2011; Cottom, 2000; Cottom, 2006; Cottom, 2008; Negrete & Cottom, 2000; Yáñez, 2006).

SAN PABLO VILLA DE MITLA: AN OVERVIEW OF CONTEXTUAL FACTORS

This case study lies into the municipality of San Pablo Villa de Mitla, Oaxaca. In 2018, the *comuneros*, or peasant landlords ruled by a consuetudinary law, inaugurated a communal-ruled project called Prehistoric Caves of Mitla. In 2007, the community began to work on the conservation of their lands with the National Commission of Natural Protected Areas, an effort which stopped the quarry extraction and began a low impact use. In 2010, the site was included in the UNESCO denomination as World Heritage by having within their nuclear zone the Cave of Guila Naquitz, where archaeologists found remains of maize primigenial in the years 60's and ultimately confirmed by new research (Allier, 2015; Garcia, n.d.).

This event made a revaluation of space, at the same time grew speculation. In 2012, Mitla' community decided to join the Volunteer Areas program. One of the fundamental advances is the registration of existing flora and fauna, in addition to which the comuneros certified 4,200 square kilometers as a Volunteer Natural Area. Under the theme of the old maize, communal fairs helped to disseminate, through lectures and exchange of seeds with producers of the State of Oaxaca, a conservation program of the native corn; besides having the first public plan of low impact visiting for contexts as dry caves. One of its most significant achievements is the opening of the trail as a communal-ruled CHM project since 2018. Additionally, by promoting the involvement of this Zapotec indigenous community directly in protecting their heritage by joining stakeholders in a

	Resource systems	Resource units	Actors	Governance Systems	Focal action situation
Pre-1890	Local religious-habitational use of archaeological remains Local concentration	Limited resource mobility Low economic value	Catholic Oaxaca Archdiocese Local Authorities Federal Government	Federal, State and Local Informal territorial system Federal Religious Licensing	Appropriation and uses Licensing
<i>Focal Action Situations</i>	<ul style="list-style-type: none"> • Appropriation and uses: Territory under local use, cattle and harvesting. Saint Pablos's lands. • Licensing: Catholic Housing use under licensing of Federal Government 				
1895	Local religious-habitational use of archaeological remains First Federal Archaeological project. Local concentration	Limited resource mobility Low economic value	Catholic Oaxaca Archdiocese Local Authorities Federal Government	Federal, State and Local Informal territorial system Federal Religious Licensing	Appropriation and use Licensing Zone management Informal rules and norms
<i>Focal Action Situations</i>	<ul style="list-style-type: none"> • Appropriation and uses: Territory exclusively under local use, cattle and harvesting. Saint Pablos's lands. • Licensing: Catholic use under licensing of Federal Government • Zone management: Main Archaeological site defined by wall, still public use but divided zones between civil and religious. • From Licensing to Formal Regulation: Federal government took control of North Group or Church group. • First Federal Archaeological Project: Leopoldo Batres, National Monuments Inspector started consolidation and restoration works. 				
1939	Local and Federal use Local concentration	Limited resource mobility High economic value	Local Authorities (assembly) Federal Government INAH (National agency creation)	Informal territorial system Simple formal regulation (Access)	Appropriation and use Formal regulation Informal rules and norms
<i>Focal Action Situations</i>	<p>Appropriation and use: From territory exclusively under local use to Federal Zones for public uses. General local opposition.</p> <p>Informal rules and norms: Inhabitants continued using some former public spaces as sport fields, and started a transition to handcraft sellers.</p> <p>Formal regulation: Federal presence consolidated with National Anthropology Institute (INAH) officials. Federal ticketing started.</p>				
1972	Local and Federal use (research and public use) Local concentration	Limited resource mobility High economic value	Local Authorities (assembly) Federal Government INAH	Formal territorial mechanism (decree) LFMZA Complex regulations	Appropriation and use Formal regulation Informal rules and norms
<i>Focal Action Situations</i>	<p>Appropriation and use: Federal recognition of 5 zones inside town. Federal supervision in public zone uses. General local opposition.</p> <p>Formal regulation: Regulation of public Infraestructure construction started under new Federal Law (LFMZA). General local opposition. Federal Archaeological projects started.</p> <p>Informal rules and norms: Inhabitants developed a handcraft monopoly around Federal public zones.</p>				

Figure 6. Overview of changing contextual factors and focal action situations in San Pablo Villa de Mitla archaeological resources. (Part 1)
(based in Cole et al.,2019)

	Resource systems	Resource units	Actors	Governance Systems	Focal action situation
2005	<p>Local handcraft monopoly and services (income source) Federal use (research and public use) Local concentration. New resources defined.</p>	<p>Limited resource mobility High economic value</p>	<p>Local Agrarian Authorities (communal assembly) Municipality Local gremial groups Federal Government INAH-CONANP</p>	<p>Formal territorial system (decree) Land Communal Certification (4992 has) LFMZA, LGEPA Complex regulations Pro-conservative norms</p>	<p>Appropriation and use Formal regulations informal rules and norms</p>
<i>Focal Action Situations</i>	<p>Appropriation and use: Communal recognition to land led opportunity to define Zone Management and self-management Statutes. New zones with archaeological potential detected. Formal regulations: Land Communal Certification including archaeological resources (4992 has). PROCEDE-INAH Informal rules and norms: Communal use of lands, cattle and agricultural uses. Agreements led to Communal management regime for defined zones as archaeological.</p>				
2018	<p>Local certificated self-management use (public and conservation). 4992 has. Federal use (research and public use) Local concentration. New resources defined.</p>	<p>Limited resource mobility High economic value</p>	<p>Local Agrarian Authorities (communal assembly) Municipality Federal Government INAH-CONANP</p>	<p>Formal territorial system (ADVC voluntary decree) Land Certification (4992 has) LFMZA, LGEPA Complex regulations Pro-conservative norms Communal management regime for defined zones</p>	<p>Appropriation and use Formal regulations informal rules and norms Zone Management Comunal Statutes (self-regulation)</p>
<i>Focal Action Situations</i>	<p>Appropriation and use: Regulation of uses of forestal resources. Adding formal restrictions to hunting. Formal regulations: Formal territorial system (ADVC voluntary decree). Land Certification as ANP level (4992 has). Zones defined and Management planning. Comunal Statutes (self-regulation): Communal agreements led to build a Comunal Statute for self-management with Federal recognition. Informal rules and norms: Rise of pro-conservation ethics enforcing new laws and opening zones for public uses as visitation.</p>				

Figure 7. Overview of changing contextual factors and focal action situations in San Pablo Villa de Mitla archaeological resources. (Part 2)
(based in Cole et al.,2019)

communitarian museum project. This scheme constitutes a totally new perspective in Mexican Cultural Heritage arena (Allier, 2015; Garcia, n.d.; Flores, 2017; Rios et al., 2015; Zarate, 2015).

This ongoing research proposes a systematization of social-economic data, from direct or indirect sources, that will contribute to understanding the phenomenon of archaeological heritage management in Southern Mexico which currently displays examples of local and community development around cultural heritage. This project aims to observe the limits of the phenomenon and enforcement of an indigenous communal management model in San Pablo Villa de Mitla, Oaxaca. This research is based on three research questions:

RQ1: How the “communal heritage management” impacts in the bundle of rights of users and owners around the Mitla’s Prehistoric Caves project?

RQ2: How they have organized property rights between cultural heritage and communal property ownership?

RQ3: Are there specific stakeholder cases of inequalities or benefits in property rights generated by the implementation of the Mitla communal-ruled Prehistoric Caves Project?

In order to answer the questions addressed above, it was necessary to develop an Overview of changing contextual factors and focal action situations in San Pablo Villa de Mitla archaeological resources, which allow us to analyze stakeholders’ approach in the San Pablo Villa de Mitla action arena, including indigenous inhabitants, public or private institutions, NGOs, national and sub-national governments. During this project, this researcher has been participating with stakeholders developing surveys, dynamics of discussion, and participatory analysis. Also, creating aside consultants in qualitative and quantitative data, instruments related to observe the management and ownership of cultural heritage by *comuneros* and Mitla Zapotec community action arena;

Actor types	Primary Motivations	Private provision	Public provision, Financing and Monitoring		Rule making And coordination	Dispute Resolution Political	Dispute Resolution Legal
Individuals	Landowners in a communal surface.	Contribute to or participate in pro-conservation activities	Propose programs; apply for public funding	Receive grants, fees, donations	Communal Statute	May support political leaders in assembly	
Commoners							
Communal Assembly	Manage public pro conservation agenda	Set priorities and activities criteria	Determine specific program goals	Award grants Monitoring contracts	Determine detailed regulations	May support political leaders in municipality	
Public Bureaucrats (agencies)							
Municipal authorities (elected)	3-year elected. Public support	May solicit support for communal self-organized activities		Public charismatic support Authorization	State and Municipal laws	May need support of communal assembly Compete for votes	May pass laws about property rights to override agrarian courts.
Agrarian courts	Rule of law						
Interest groups, (NGO's)	Specialized concerns						
Other citizens	Potential landowners		Propose programs Apply for public and private funding	Award grants Monitoring contracts May give donations and labor time	Set limits Determine physical land property when controversy	Lobbying, media, policy evaluation Public opinion	May file complains May disagree with communal assembly decisions

Figure 8. Actor types and Keys Action Situations in San Pablo Villa de Mitla (based in McGinnis NAAS,2011)

therefore, results will be processed to understand and advise about the importance of shaping public policies to the management of cultural resources in the area.

This study aims to show findings in fieldwork at San Pablo Villa de Mitla about the use of "common-pool" idea for the enforcement of cultural resource management, impacts in bundle of property rights according to local legal framework, possible changes in benefits and inequalities in function of political alignments or its socioeconomic context. Also, this project examines the feasibility of understanding cultural heritage as a common pool resource, using the Institutional Analysis Framework (IAD) created by Elinor Ostrom as well as other literature resources currently available. In a preliminary literature review, we can find some other countries around the world where various concepts close to the idea of "common-pool resource" have been chosen for the operation, management, research and dissemination of cultural goods, which also motivates this project. Based on these ideas, this project aims to observe a trust model in an action arena such San Pablo Villa de Mitla and his Prehistoric Cave Project which contemplates consuetudinary decision-making action arena and takes in account some social attributes such as beliefs, reciprocity, communality or prestige (Ostrom & Walker, 2003; Poteete et al., 2010; Pyburn, 2011; Sántiz & Rojas, 2014).

Hopefully in Summer 2021, semi-structured interviews will be addressed with local users and owners to inquire into their perception and experience to such heritage. In particular, it will be possible to characterize the action arena and identify problems, tensions or turning points in their experience in the management of the current site. It is also proposed to collect two individual stories with key actors who have been involved at some stage of the implementation of the cave project in order to give an account of how they have been organized locally and how their relationship has been with other government institutions involved in the project and management.

To answer the second question, it will be necessary to analyze how property rights are exercised among people and what type of property the "caves" belong to; if they are part of a common property or if we are talking about a "common good"; for which it would be necessary to investigate the rules of use of space, type of authorities and works and how the benefits of the management of a common good are distributed. In addition to identifying which are the decision-making arenas and how they work, this will lead to being able to answer whether there are inequalities among the actors involved with the project.

CONCLUSIONS

As it has been observed in the previous pages, for the case of the Mexican Cultural System and specifically for the national archaeological resources, there is an important correlation between the situation of land tenure and the application of financial mechanisms. The latest official data on the registration of archaeological sites in Mexico indicates that there are close to sixty thousand records, which means that since the implementation of the 1988 reforms there has been a constant and undeniable growth in the number of records. In addition, the implementation of new financial mechanisms created new poles of tourist development in various parts of Mexico. Of course, further statistical or econometric studies will help to support these hypotheses, however, from the anthropological point of view it is also clear that this causes a controversy about the management of archaeological resources by the communities that possess the archaeological resource.

As a result of the analysis of the role of the Mexican state over time, it can be highlighted that the Mexican state has not stopped implementing cultural policies, following or imitating many that have been successful in other countries, which makes their implementation difficult, and the

desired results were not obtained. On the other hand, new dynamics of resistance developed inside and outside the official cultural institutions. This can be seen in the current controversy after the creation of the INAH' Patronage in 2019, a financial mechanism that takes up what was done in 1992 by CONACULTA but now as a mechanism of INAH itself that seeks to open the cultural sector to private initiative.

In another sense, Mexico is a country intrinsically linked to the land and to the mechanisms of self-government that have been in place for many years. The implementation of programs such as PROCEDE was very controversial because it was the government itself that opened to private investment a series of mechanisms for the purchase of land that was previously inalienable. From the archaeological point of view, this project is still unfinished since the certification of rights has not been completed. Nevertheless, it is undeniable that from a program destined to the recognition of archaeological sites within the Mexican social property it was possible to document and register thousands of archaeological sites that are now part of the Mexican cultural patrimony.

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