

Indigenous Peoples and Land Claiming in Latin America

Tatiana Alfonso Sierra,¹ Ana Braconnier De León,²
and Rachel Sieder³

¹Centro de Investigación y Docencia Económicas (CIDE), Mexico City, Mexico;
email: tatiana.alfonso@cide.edu

²Universidad Rafael Landívar, Quetzaltenango, Guatemala;
email: ana.braconnierdeleon@gmail.com

³Centro de Investigación y Estudios Superiores en Antropología Social (CIESAS), Mexico City, Mexico; email: rachel.sieder@ciesas.edu.mx

ANNUAL REVIEWS CONNECT

www.annualreviews.org

- Download figures
- Navigate cited references
- Keyword search
- Explore related articles
- Share via email or social media

Annu. Rev. Law Soc. Sci. 2025. 21:249–67

The *Annual Review of Law and Social Science* is online
at lawsocsci.annualreviews.org

<https://doi.org/10.1146/annurev-lawsocsci-061824-080800>

Copyright © 2025 by the author(s). This work is licensed under a Creative Commons Attribution 4.0 International License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See credit lines of images or other third-party material in this article for license information.



Keywords

land rights, Indigenous Peoples, Latin America

Abstract

Inequalities in ownership, distribution, and access to land generate social injustice in many contexts, yet land rights litigation has not been central to the literature on socioeconomic rights, courts, and social transformation. What is specific about land litigation? Is there any feature—in processes of judicialization or their outcomes—that renders land conflicts distinct? We address these questions by analyzing Indigenous Peoples' (IP) judicialized claims for land and territory in Latin America, arguing that existing scholarship on the prospects for social transformation through the courts does not adequately address their specificities. Putting the literature on the judicialization of socioeconomic rights in Latin America in discussion with research on judicialized IP land and territorial claims in the region, we propose an analytical frame for assessing when court rulings of IP land rights litigation can be considered transformative.

INTRODUCTION

Indigenous Peoples (IP) across Latin America have suffered massive loss of land because of historical and ongoing processes of colonization, where cultural domination has led to what Bhandar (2018; see also Harris 1993) termed “racialized regimes of land ownership.” Land regimes have varied across the region—for example, throughout much of the twentieth century, the figure of the *ejido* in Mexico provided collective property rights and rights to participation in internal governance for many IP (although *ejidos* were granted to peasants and did not recognize IP’s specificity), whereas in Chile or Guatemala, the privileging of individual private property rights steadily dispossessed IP of control over their ancestral lands. Patterns of economic development privileging the extraction of natural resources have accelerated since the 2000s, involving land commodification; land grabs; and large-scale extractive projects including mining, logging, and agribusiness affecting areas where IP live (Copeland 2023, Gudynas 2020, McKay et al. 2021, McNeish & Shapiro 2021, Svampa 2019). IP are among the most disadvantaged sectors of Latin American societies, testament to the consequences of historical land dispossession and ongoing patterns of exclusion and discrimination. Most IP continue to lack secure legal title to their historic lands and resources and have little leverage in Latin America’s dominant political systems. From the mid-1980s onward, partly in response to sociopolitical mobilization by Indigenous rights movements, Latin American countries enacted constitutional reforms in successive waves that recognized specific collective rights for IP, including to ancestral land (Ramírez & Maisley 2016, Sieder 2002, Van Cott 2000, Yashar 2005, Yrigoyen 2011). Constitutional reforms, increasingly robust international instruments guaranteeing IP’s collective rights, and a growing body of national and international jurisprudence fueled litigation by IP to defend their specific ways of life, centered mostly on disputes involving land and territorial resources, such as water and forests, and more recently extending to encompass claims of rights of nature (Lennox & Short 2016, Rodríguez-Garavito 2011, Rodríguez-Garavito & Arenas 2005, Rodríguez-Garavito & Orduz Salinas 2012, Sieder 2020). Although judicialized IP land claims are “lengthy, costly, [and] technical, and implementation rare” (Gilbert 2020, p. 316), recourse to the courts became a central pillar of IP political mobilization in Latin America, with litigation supported by a dense network of national and regional human rights nongovernmental organizations and allies and channeled through national courts and the Inter-American human rights system. We explore the effects of IP’s judicialized claims for land and territory in Latin America, reflecting on the extent to which these can be considered transformative in light of the specificities of IP and their collective rights.

COURTS AND SOCIOECONOMIC RIGHTS: BLIND SPOTS ON LAND

Literature on the judicialization of social movements’ rights claims in Latin America has analyzed changing legal and political opportunity structures and the role of high-level courts in enforcing constitutional and human rights (Couso et al. 2010, Gargarella et al. 2006, Sieder et al. 2005, Wilson & Gianella 2019). Research on socioeconomic rights (SER) claiming and adjudication asks under what conditions courts will respond to human rights claims and produce transformative outcomes through the redistribution of social goods. SER litigation seeks, in general terms, the provision of, regulation of, and obligation toward basic goods and services (Gauri & Brinks 2008, p. 11) by states for citizens generally referred to in this literature as “the poor” or “the marginalized.” SER scholarship on Latin America has analyzed education, housing, health, and sexual and reproductive rights litigation, understanding judicialized demands for these rights—and court-mandated remedies—as means to redress structural inequality and poverty (Bergallo 2016, Brinks & Gauri 2012, Courtis 2008, Epp 1998, Gauri & Brinks 2008, Langford et al. 2017, Rodríguez-Garavito & Rodríguez Franco 2015, Yamin & Gloppen 2011,

Yamin & Parra-Vera 2010). However, a focus on land rights has been largely absent, even though inequalities in ownership and access to land have historically constituted the dominant political economy of the region and remain central for poor and marginalized groups, including IP (Albertus 2015a, Albertus et al. 2016, Carter 2015, Kay 2019). In Latin America's colonial political economy of land, IP were confined geographically and spatially as a strategy to subordinate them socially and culturally and extract their labor. After their foundation, nation-states maintained this spatial-cultural distribution of lands. For the most part, these are the lands that IP have claimed through the law in the past three decades. Rights to land, and specifically IP's judicialized claims to their ancestral and collective lands, clearly address structural inequalities and the sources of poverty.

SER scholarship tends to be grounded in universal assumptions that privilege a liberal understanding of rights and see land primarily as individual or collective property guaranteed by law. Through this lens, land redistribution through the courts is transformative of social injustice. However, the kind of injustices that courts must remedy when dealing with IP collective land rights is distinct from the injustices present in most SER claims. As many scholars have shown, the culturally differentiated relationship of IP to land involves ontological differences with dominant society (Blaser 2019, de la Cadena 2015, Di Giminiani 2018, Escobar 2020, Nichols 2019). As Indigenous scholars and critical anthropologists have argued, judicialized IP land claims are not merely appeals for the redistribution of land as a social good or property—rather, they call for recognition of the material and spiritual basis of distinct livelihoods and the recovery of lands removed from Indigenous control through processes of territorial and historical occupation (Fjellheim 2023, Gilbert 2020, Pataxó 2022, Shields 2023, Skjrevestad 2010, Wetterslev 2024). IP land claims are not only recognition claims based on the right to culture but also claims for the material basis for political self-determination and autonomy—core collective rights of IP (Lennox & Short 2016). As Wetterslev (2024, p. 35) pointed out, “the titling of lands as collective Indigenous territories has been understood as a precondition for cultural survival, and as means to strengthening the cultural, social and economic rights of communities that classify as indigenous.” Land litigation, and more specifically IP land litigation, therefore requires a culturally differentiated and intersectional analysis to determine when and how land rights litigation can be transformative.

Reviewing the literature on recent IP land litigation in Latin America, and using Nancy Fraser's analysis of recognition and redistribution, we argue that, in contrast to other socioeconomic goods and services that may be secured through SER judicialization, land—and IP land specifically—is a resource inextricably linked to the legacies of colonialism. To produce transformative outcomes, legal recognition of IP land rights would require engaging with different ontologies and conceptions of land as territory—not only as property—to reverse long histories of colonialism, violence, and exclusion. As we suggest, this understanding of land as the necessary basis for the exercise of sovereign authority based on indigeneity is a clear example of Fraser's argument, in that land redistribution and recognition can lead to transformative remedies in terms of self-government for IP. However, as we explore below, judicial decisions on IP land claims in Latin American courts have tended to fall short on the redistributive part of Indigenous claims, making it easier for the judiciary to limit themselves to strong rights declarations that are generally affirmative of the recognition of IP difference, leading in turn to affirmative, not transformative, remedies. Our review of the literature confirms that courts in Latin America have granted important forms and levels of recognition for IP as possessors of their territories and as social actors with legal standing. Simultaneously, judicial decisions in the region have replicated the hierarchy of colonial logics on conceptions, uses, and relations around land.

RECOGNITION AND REDISTRIBUTION: LAND LITIGATION AS A SITE OF TRANSFORMATION

The recognition/redistribution dilemma (RRD) that Fraser articulated for a critical theory of social justice in the mid-1990s has been one of the main arenas for discussing transformative outcomes and processes in post-socialist societies. In her seminal essay, Fraser (1997) notes that disenchantment with the socialist imaginary of socioeconomic redistribution on one hand, and the emergence of new forms of mobilization along political identities such as gender, race, or ethnicity on the other, led to a false dichotomy and opposition between politics of equality and politics of difference. She argues that social justice requires both recognition and redistribution and asks under what circumstances a politics of difference recognition can support a politics of redistribution to secure greater equality. Fraser suggests that, although in practice recognition and redistribution are intertwined, analytical distinctions are needed to understand how they interact and the (causal) relations between them.

To theorize IP land claiming before courts, we use the RRD as a template to analyze processes and outcomes of judicialization. According to Fraser, social injustice may be characterized in two dimensions: socioeconomic injustice that is rooted in political-economic structures and leads to exploitation, economic marginalization, and deprivation, and cultural and symbolic injustice rooted in social patterns of representation, interpretation, and communication that leads to cultural domination, nonrecognition, and disrespect. The injustices that IP face locate them as a paradigmatic example of what Fraser (1997, p. 19) calls “bivalent collectivities”: collectivities located in the middle of the spectrum of socioeconomic and cultural injustice. The trajectories of Latin American nation-state formation have shaped an inextricable relation between colonial racial categorization as a form of cultural devaluation and the political economy of land tenure in the region.

According to the RRD framing, socioeconomic justice requires political and economic restructuring via reorganization of economic relations, whereas symbolic justice requires processes to revalue disrespected identities and changes to patterns of representation. We argue that court-mandated social justice measures can be classified as affirmative or transformative just as Fraser names remedies. An affirmative remedy seeks to correct inequitable outcomes of social arrangements without disturbing the underlying structure that produces them (Fraser 1997, p. 23). A transformative remedy aims to correct inequitable outcomes by changing the underlying structure that produces them (Fraser 1997, p. 23). Affirmative and transformative remedies could be designed for both types of injustice; the key element to classify a remedy in one or another of the categories is whether it tackles the source of the injustice rather than merely the symptoms. We draw on this distinction to classify judicial remedies: affirmative if they do not tackle the sources of the injustices (even if they are important in specific mobilization processes) and transformative if they touch upon the bivalent injustice at the root of IP's land claims. Social justice—understood as more egalitarian arrangements in society—would be produced if an effective combination of affirmative and transformative outcomes is achieved and attacks the sources of the specific injustices. The dilemma, however, emerges because affirmative remedies require affirming the value of the group and promote differentiation, whereas distributive remedies aim to eliminate group differentiation to remove economic arrangements that negatively affect specific groups. Therefore, to achieve social justice, groups that face economic and symbolic injustice would need to assert and deny their specificity as a group. Crucially, transformative remedies for IP require the defense and assertion of group differentiation, as the conception of land and the rights derived from it requires collective and differential rights rather than universal distribution. Universal remedies for land claims would lead to the fragmentation and destruction of collective Indigenous territories. The

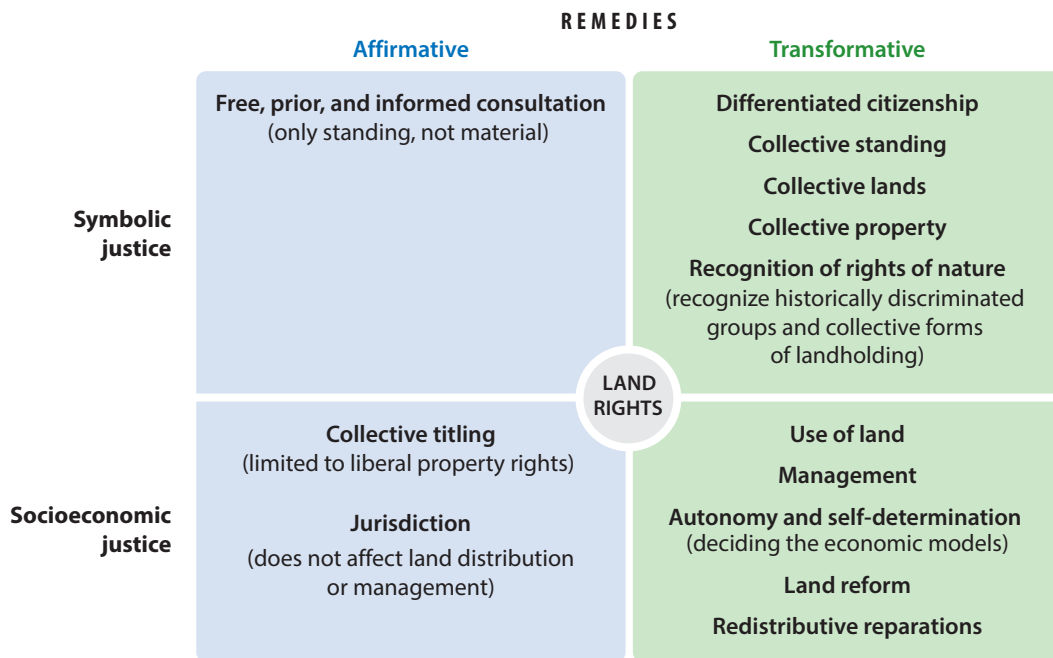


Figure 1

Land in the middle.

remedies IP sought before the courts are, therefore, for recognition and redistribution, involving the affirmation and protection of Indigenous territories and effective rights to self-determination over those lands (including rights to exclude third parties and to self-government). In the following sections, we review the recent literature on IP land rights claiming through the courts in Latin America. We organize our review in terms of the types of frames analyzed—claims to collective land title and claims to free, prior, and informed consultation (FPIC), involving decision-making over land. We then classify these processes of judicialization and their remedies as affirmative or transformative in terms of symbolic and socioeconomic justice (**Figure 1**). We propose this framework to dialogue with the literature on SER judicialization and social transformation, maintaining that transformative judicialization for IP land rights—and for other rights claims—requires, as Fraser argues, both recognition and redistribution.¹

IP LAND RIGHTS CLAIMING IN LATIN AMERICA

The legal recognition of IP and other ethnic communities as collective subjects of indivisible rights, including collective rights to land, challenged the liberal idea of property and was echoed in literature emphasizing IP's alternative conceptions of land (Blaser 2019, de la Cadena 2015, Di Giminiani 2018, Escobar 2020, Nichols 2019). Central to much of this literature is an

¹Fraser (2009) later added a third element, representation, that refers to both the decision-making capacities within groups and the meta-injustices that arise from what she calls mis-framing of recognition/redistribution/representation issues because of certain bounded political spaces, such as the nation-state. We do not use Fraser's dimension of representation here because in the claims we analyze, representation is necessarily embedded in the bivalent injustice and cannot be differentiated when looking at judicialized claims; in other words, legal standing is itself a matter of representation that needs to be analyzed from the original dimensions of Fraser's framework.

insistence on the indivisible nature of land and other elements or “natural resources” (including subsoil resources), for IP, grounded in their specific ontologies or worldviews and histories. Although IP participate in capitalist, market relations (including property relations) and organize for social and economic benefits, IP’s political and sociolegal mobilization has challenged hegemonic conceptions of land and natural resources as commodities, arguing instead for the holistic nature of territory and the relationality of all elements that comprise it.² In some cases, IP litigation has mobilized epistemologies and ontologies that understand entities such as mountains or rivers as sentient beings (Blaser 2009, de la Cadena 2010, Li 2015). Indeed, some authors suggest IP land claims intersect with recent trends in international and national law toward recognizing rights of nature, including the recognition of rivers and mountains as subjects of rights or rights-holders (Izquierdo & Viaene 2018, Macpherson 2019, Vargas Roncancio 2024). Our review of the literature on IP land litigation reveals two dominant frames: claims for collective title and claims for decision-making powers over land, through the figure of FPIC.

Land Titling

Prior to the constitutional recognition of IP’s collective rights in Latin America, titling as a formal recognition of rights over land remained absent for Indigenous communities (even with the ambivalent results of land reforms in the region) (see the sidebar titled Land Reform in Latin America). The formalization of ancestral possession of land was one of the most important grievances IP raised in the political processes of constitutional changes in the early 1990s (Yashar 2005). To a greater or lesser extent, Latin America’s multicultural constitutional reforms recognized IP land rights, implying their exclusion from market mechanisms and the need for forms of title that protected Indigenous lands from fragmentation. This requires “physical delimitation, demarcation, and titling to give effect to the rights to land” (Gilbert 2020, p. 313). Although titling has advanced through administrative programs in some countries (Ruiz González et al. 2021), the absence of titles has been one of the injustices IP have brought to courts. Using the multicultural

LAND REFORM IN LATIN AMERICA

Latin America is historically marked by unequal land distribution and high levels of informality of land tenure and rights (MTC 2015, Oxfam 2016). Several waves of land reforms during the twentieth century aimed to distribute lands and formalize land rights through titles. Social revolutions in Mexico and Bolivia are often explained as responses to high levels of land concentration and are seen as the first processes of land redistribution in the region (Barracough 1999). In the 1960s, land reform programs in Latin America were encouraged as means for capitalist modernization in the context of the Alliance for Progress (Kay 2019, Thomson 2011) and promoted market models around land. The scope and outcomes of land reforms vary widely, but most distributed marginal lands (Botella Rodríguez & González Esteban 2021), leaving IP out of the attempted redistribution, especially IP women (Deere & León 2003). Reforms focused heavily on allocating and formalizing individual titles to facilitate land markets (Albright & De Soto 2008, De Soto 2000) and agrarian productivity (Albertus 2015b, Borrás et al. 2008, Griffin et al. 2002, Thomson 2011).

²McNeish (2023) makes a useful distinction between extraction (economic activities that humans have always engaged in) and extractivism, an operative logic of capitalism premised on maximizing profit from land and territory. Indigenous land litigation may involve claims for sovereign rights to extraction but generally rejects the violent and destructive colonial logics of extractivism in favor of more sustainable use of specific environments.

frame, IP have claimed collective titles rather than individual property, arguing that their organizational and political structures are deeply connected to land as territory (Alfonso 2021; Grueso 2007; Grueso et al. 1998; Ng'weno 2007, 2012). Additionally, IP have asserted their rights to land, and specifically their right to have legal titles, as a form of reparation for colonial processes of dispossession. Limited success in securing collective title before national courts has led IP to take their claims to the Inter-American system. Since the early 2000s, the Inter-American Court of Human Rights (hereafter IACtHR) has developed a significant jurisprudence on IP's land and territorial rights using the frame of property. Absent a specific mention of IP's rights to collective property in the Inter-American Convention on Human Rights (hereafter the Convention), the IACtHR drew on International Labor Organization 169 (hereafter ILO 169) to reinterpret Article 21 of the Convention, referring to the right to property, to establish that rights to property include Indigenous groups' rights to collectively own their ancestral lands and administer them according to their own forms of law (Anaya & Grossman 2002, Pasqualucci 2009). Both the IACtHR and the Inter-American Commission on Human Rights have interpreted Indigenous communal territory to include not just lands that are physically occupied by IP but those used for cultural and subsistence activities, including subsoil resources (Martínez Martínez 2021, p. 206; Ramírez & Maisley 2016, p. 193). This expansive interpretation was first established in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001) and in *Maya Indigenous Communities of the Toledo District v. Belize* (2004) from Belize (Kroshus Medina 2024).³ As Kroshus Medina (2024, p. 116) notes, these cases shaped subsequent Indigenous land rights litigation across Latin America, with the Inter-American Commission on Human Rights citing the Maya lands decision "as a precedent to affirm that Indigenous lands and territories are a form of collective property grounded in Indigenous customary tenure, and that the principle of nondiscrimination requires states to treat Indigenous modalities of property as legally equivalent to non-Indigenous forms of property." In this manner, the IACtHR established that IP's historic or traditional forms of land use and occupation are analogous to property rights issued by states, and that states are obligated to recognize and register IP's collective property rights. As Gómez Isa (2017, p. 74) has observed, the IACtHR's evolving interpretation of Article 21 of the Convention "includes not only the traditional and orthodox notion of the right to own property as a right of an individual nature, but also that the aim is to protect communal property belonging to the indigenous community as a whole, in accordance with established traditions and customs." Another key aspect of the emergent IACtHR jurisprudence is that IP who have been forced to cede their ancestral lands, having involuntarily lost control over them, retain property rights even when they have no formal title. According to the court, lack of possession does not invalidate IP's rights to their traditional lands.⁴ Scholars have shown that implementation of IACtHR-mandated remedies has been slow and deficient. For example, although the *Awas Tingni* judgment ordering the Nicaraguan state to establish community boundaries and demarcate and title the lands was issued in 2001, the process of implementation involving land titling (in accordance with the customary law of the Mayagna community, as stipulated by the court) did not commence until 2008 and was characterized by bad faith on the part of the government and challenging intercultural negotiations (Hale 2008). Recent scholarship indicates that more than two decades since the IACtHR's historic judgment, IP on the Atlantic coast of Nicaragua continue to lose land and suffer extractive development in their

³In *Sawboyamaya v. Paraguay* (2006) and *Yakye Axa v. Paraguay* (2005), the IACtHR confirmed the right of Indigenous and tribal communities to the natural resources they have traditionally used in their territories, in the same way that they hold rights to their traditional lands.

⁴Gilbert (2020, p. 313) notes that "Human rights institutions have mainly relied on three main types of remedies, including (1) legal recognition of indigenous rights to land; (2) physical delimitation, demarcation and titling to give effect to those rights to land; [and] (3) material and nonmaterial damages for past harms."

territories (Koper 2022, Wetterslev 2024). Other authors have similarly noted that successful litigation for collective land title does not necessarily guarantee effective protection for Indigenous territories (Correia 2019).

IP have claimed recognition of collective titles as a particular form of property that should give them the ability to make autonomous decisions regarding not only the soil but all natural resources and forms of management of the land, according to their economic, political, and social institutions—in other words, powers of self-government. This is reflected in the UN Declaration on the Rights of Indigenous Peoples' (hereafter UNDRIP's) standard of self-determination: "Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development" (UNDRIP article 3). Collective land titles for IP in Brazil, Colombia, Peru, and Ecuador have strong protections against dispossession through market mechanisms because once the indigenous community acquires legal title, the land cannot be sold, expropriated, or traded. On the other hand, those lands cannot be used as collateral for agricultural production, services, or any other investment. These features, research shows, although necessary for IP to be recognized as citizens and owners of their lands, have proved insufficient to grant tenure security and prevent dispossession (Peña-Huertas et al. 2017, 2021; Rodríguez-Garavito, Alfonso Sierra and Cavelier 2009). Moreover, autonomy over land management is heavily restricted. Titling processes have been necessary but insufficient to repair IP's historical exclusion and material dispossession, because institutional arrangements for collective IP title do not confer effective property rights and their correlative powers of exclusion and decision-making abilities.

Land Administration: Free, Prior, and Informed Consultation

Even where Indigenous land rights are strongly recognized in constitutional law or where collective title has been granted, Latin American states retain sovereignty over subsoil resources; governments approve licenses for extraction of minerals, oil, and gas and concessions for hydroelectric dams affecting rivers situated in Indigenous territories, forms of development that offer few benefits and often represent great environmental and social costs for IP. As Rodríguez Franco (2017, p. 116) has shown in her work on Colombia, there is no concurrence between ownership of the topsoil and of the subsoil; therefore, IP collective property rights cannot protect against the injurious effects of mineral extraction. In part due to these institutional features of collective property, when IP cannot make decisions to exclude others, protect their lands, and avoid legal forms of dispossession through extractive projects, they channel their land-related grievances through legal claims of FPIC, a key aspect of the legal opportunity structure open to IP.

The figure of FPIC (as specified in Articles 6, 7, and 15 of ILO 169) has been widely used across Latin America in litigation to assert Indigenous jurisdiction over land and natural resources. The stronger formulation of free, prior, and informed consultation to obtain consent, as set out in the UNDRIP [Article 32(2)], strengthens the rights of IP to be consulted regarding projects affecting their lands, although only ILO 169 is binding on states party to the convention (Flemmer 2023; Rodríguez-Garavito 2011; Rodríguez-Garavito & Orduz Salinas 2012; Schilling-Vacaflor 2016; Schilling-Vacaflor & Eichler 2017; Schilling-Vacaflor & Flemmer 2015, 2019; Torres-Wong 2023; Weitzner 2019). Struggles over what constitutes FPIC have been fought out before national courts, for example, by the Uw'a people in northern Colombia against petroleum extraction in their ancestral lands (Rodríguez-Garavito 2011, Rodríguez-Garavito & Arenas 2005), or by Mayan peoples opposing open-pit gold mining in western Guatemala (Fulmer et al. 2008, Sieder 2007). Latin American courts have repeatedly recognized the consultation rights of Indigenous communities and insisted on government obligations to ensure FPIC, citing emerging

international standards and sometimes ordering the suspension of extractive projects pending adequate consultation processes.

Typically, in FPIC cases, courts have ordered the relevant ministries or congress to regulate the right to consultation, reaffirmed the obligation of public administration to conduct the consultation, and required environmental impact assessments. However, governments and companies frequently have ignored court rulings, and extractive industries continue to operate in breach of courts' recognition of Indigenous consultation rights. Political and legal mobilization against large-scale extractive projects has led to increased violence against IP by state security forces and paramilitary groups. Where consultation processes have been carried out, these have tended to be used to legitimize development projects already approved or underway rather than to ensure meaningful participation that respects Indigenous governance structures and processes (Flemmer 2023). Controversies persist over who qualifies as Indigenous to be consulted, how processes of consultation should be conducted, and with what ultimate effects. States continue to reject any IP's right of veto, and consultation processes have often reinforced age and gender asymmetries within communities (Flemmer 2023, p. 184).

Numerous territorial disputes involving the violation of IP's FPIC rights have gone to the Inter-American human rights system. The IACtHR has clarified and advanced standards around FPIC/consent regarding development projects affecting Indigenous communities. In *Saramaka People v. Suriname* (2008), the IACtHR reaffirmed the special relationship between Indigenous and tribal peoples and their territories and ruled that IP's property rights restrict states' jurisdiction to issue concessions for the exploitation of natural resources on their ancestral lands, and include guarantees of effective Indigenous participation, a share of the benefits, and supervision of impact assessments.⁵ However, as Rodríguez-Garavito & Orduz Salinas (2012, p. 187) have shown, far from effectively defending IP's territorial rights, judicialization of FPIC claims has at best amplified IP's voice and slowed down the installation of extractive projects or mitigated some of their most egregious effects, usually through financial compensation measures. Ultimately, Latin American courts' recognition of IP standing and rights to land and consultation has been accompanied by ongoing and accelerated commodification of IP land and territories.

As this review indicates, courts' responses to IP's claims to land in Latin America have varied but largely have privileged recognition over redistribution. In addition, although litigating may provide a voice for IP, placing their claims in the public sphere and strengthening internal processes of community organization, the post-litigation stage of implementing court-mandated remedies and reparations is notoriously deficient. In the following section, we consider the extent to which these different examples and frames of judicialization of IP land rights claims have resulted in affirmative or transformative remedies.

IP LAND CLAIMING: BEYOND RECOGNITION VERSUS REDISTRIBUTION

IP have faced a complex type of injustice that involves long histories of nonrecognition by colonial and modern states and elites that refused them social and legal standing first as persons, then as citizens, and then as equal citizens with rights to redress injustices from the past. IP have faced profound manifestations of social and institutional disrespect entailing forms of cultural domination aimed to eliminate their political, social, and economic systems. The legal recognition of collective citizenship rights was a necessary precondition for IP to take their grievances to courts, and for those institutions to be able to respond to the multiple injustices that IP face. As signaled

⁵In *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012), the IACtHR determined that in the case of large-scale development projects, the duty to consult should extend to obtaining free, prior, and informed consent.

above, during the late twentieth century, the codification of IP's collective rights in international and constitutional law in Latin America effectively gave them standing as collective subjects of rights. These rights are premised on IP's precolonial occupation prior to the establishment of sovereign states, and the negative impacts that ongoing processes of colonization and occupation have on their prospects for survival as collectivities culturally distinct from mainstream society. In this sense, as Kuppe (2009) has argued, the legal justification for specific IP land rights is premised on an idea of reparations for the historical injustices of colonization, instantiating a politics of difference in contrast to a politics of universalism. Yet the so-called multicultural turn in Latin America recognized IP's land rights as a form of reparation for the history of political exclusion and simultaneously opened the geographic frontier for the advancement of extractive projects (Eisenstadt et al. 2013; Fisk 2005; Hale 2002, 2008, 2020; Hooker 2020; Postero 2017; Sieder 2002). The multicultural turn therefore marked a critical juncture in the history of dispossession of Indigenous land, in what Fraser would call an affirmative remedy without transformation. This can be illustrated when we look carefully at the variation of land rights in the region that gave IP symbolic—and in some cases formal—tenure of their lands, accompanied with some titling processes, but, as explained above, denied them the ability to make fully autonomous decisions over their lands.

Under the lenses of the RRD, social justice for IP in terms of their land rights would require affirmative remedies combined with transformative remedies that allow IP to have legal and social standing to claim their rights, as well as the ability to integrate their conceptions and uses of territories for their own economic and political projects. As Fraser (1997) asserts, redistributive remedies usually presuppose an underlying conception of recognition, and vice versa. The empirical question is then, when are we witnessing a process that might trigger structural transformations for IP to overcome distributive injustice through mechanisms of symbolic recognition? We maintain that the combination of recognition and redistribution measures secured through IP sociolegal mobilization and land litigation in Latin America has been processual. Analyzing the remedies granted in litigation processes and classifying them as affirmative or transformative, we identify a process in which causality between affirmative and transformative remedies is probabilistic. This means that instead of understanding the outcomes of judicialization as either recognition or redistribution, we need to conceptualize them as necessary conditions for reaching distributional solutions and advancing toward social justice in land rights for IP. Our analysis does not consider individual judicial decisions but rather organizes analytically what remedies of IP land litigation mean in terms of social transformation. We propose a form of classification to determine when the legal argumentation of land rulings might become transformative (redistribution of lands and decision-making powers over them) and when legal arguments might only be affirmative. Given the baseline of inequality, involving a complex relation between symbolic and material injustices, judicial remedies would be transformative when they provide the basis to interrogate the bivalency of the injustice that affects IP and their lands.

The first type of outcome that the literature has focused on is the recognition of IP's legal standing. In our processual perspective, these rulings provide affirmative remedies because they constitute a formal provision for IP to act in court. However, because a good part of the distributive injustices that affect IP are rooted in the colonial idea that they are not "persons" in the same legal sense as others and in the historical denial of citizenship, legal standing becomes an element for triggering a process toward social justice. Judicial remedies that allow for IP's voice in state courts are necessary conditions for further claims. Without legal standing, it is impossible to imagine that IP could have claimed any other right related to land tenure, governance, self-determination, or sovereignty. These are not transformative judicial remedies per se but are necessary for achieving any type of transformation through the law and courts.

The second type of remedy that (according to the literature) courts have delivered in IP land litigation cases is the recognition of IP as collective subjects of rights. Inextricably related to their legal standing, courts have granted the possibility that state law recognize IP as a specific and different legal figure, thereby opening possibilities of recognizing alternative forms of political organization. The possibility for IP to act as a collective subject responds to the idea that, despite state policies that sought to eliminate their social structures, IP have preserved their different forms of organization, and state law should not try to assimilate them. Therefore, and in contrast to other forms of SER litigation, IP can act as collective subjects of law through their own political authorities and forms of governance, without resorting to equivalences with moral persons or collective legal actions. As collective subjects, states and courts have also recognized that some rights need to be defined and understood as collective rather than individual provisions. IP's right to land is one of the most important rights that Latin American courts have defined and granted as collective, creating a very important exception to the liberal blueprint of rights. In our processual view, these are transformative remedies because (a) they contradict the basic matrix of the economic system around land distribution in Latin America, displacing the idea of individual and private land as a foundational right; (b) courts' remedies are based on the corrective ideal of respecting Indigenous forms of life and social institutions rather than on the colonial view of domination; and (c) they are the basis for claiming the idea of territory as an indivisible element that is part of a larger social system, rather than an asset for the dominant economic system—as is liberal property. In terms of Fraser's RRD, these remedies aim to correct structurally unfair land distribution that distinctively affects IP, and simultaneously to preserve the specificity of the group, by giving value to the differential identity of IP with specific relations to land.

One nuanced assessment the literature makes regarding the idea of land as a collective right for IP is the tension between the liberal idea of property and the consequent emphasis on titling as a legal requisite for the right and Indigenous ontologies over land that transcend and differ from the concept of property (Anthias 2018, 2021; Di Giminiani 2018). Some scholars have argued that titling is a necessary measure for tenure security of Indigenous lands and a powerful form of recognizing historical possession (Galiani & Schargrodsky 2010, Ige et al. 2024, Vega et al. 2022). Others have denounced titling as a fetish that undermines IP's grievances by ignoring spiritual visions of land and imposing the language and dynamics of property (Anthias 2021, Fontana 2023). This research tends to emphasize the relation between legal titles and market mechanisms that could create new forms of dispossession and contemporary forms of economic exclusion. Judicial remedies that favor property rights framings could constitute a form of symbolic dispossession by imposing meanings upon Indigenous conceptions and uses of land. In our processual perspective, however, judicial remedies that use the framing of collective property and proceed to order titling by the state in favor of the collective subject have transformative potential. Remedies that order titling of collective property constitute a necessary basis for claiming further sovereign faculties over lands. Although formal title—individual or collective—does not guarantee any autonomous faculty for people to make decisions over land, for IP the judicial remedy has become an instrument for claiming participation in decisions that may affect their territories. Because remedies that grant collective legal standing and collective rights are rooted in the idea of IP's cultural difference regarding land, arguments for collective property and title are linked to IP's full citizenship, tackling the symbolic injustice that was part of land distribution arrangements since the colony. Under the liberal paradigm, property titles are designed to facilitate market transactions, and they could enable new forms of dispossession for IP's territories. However, collective property titles in most Latin American jurisdictions imply legal protections from market transactions. Hence, remedies that grant collective property titles with protections from markets might be interpreted as transformative because they could alter the material structure of

land tenure in colonial societies. Rulings that grant collective title and, specifically, processes of titling without considering different ontologies or protections against market dynamics would be only affirmative because they would not touch upon the original symbolic or material injustices.

As indicated above, FPIC claiming is the most common case law in Latin America. From the perspective of winning the case, FPIC claims are the most successful because IP have mostly obtained the right to FPIC. However, as all the critiques demonstrate, the outcomes and impacts of rulings on FPIC are ambivalent. Those victories have not granted autonomous decisions over land tenure, management, or exclusion. Rulings have granted different levels of participation without modification of extractive political economies. The legal mandates to conduct FPIC have created new tensions in the internal structures of Indigenous communities. FPIC as an outcome of judicialization has been praised as a symbolic victory for social justice, affirming as it does IP's right to land. According to our framework, FPIC rulings are still affirmative if they only argue that IP have a right to participate in a procedural understanding without consenting to the final decisions. By contrast, those cases where courts argue that FPIC is an instrument to operationalize IP's autonomous decisions are likely transformative. From a processual perspective, FPIC rulings have been necessary conditions to challenge state restrictions to Indigenous self-determination. FPIC claims have broadened the space for questioning the extractive model that tends to dominate the structure of recognition of collective rights, property, and territory. FPIC has not been sufficient to grant autonomy or self-determination, and yet, it has opened the door for stronger political participation of IP because voice is a necessary element of IP land litigation.

More recent claims and decisions based on ontological differences about rights, such as rights of nature or nature as a subject of rights, could become affirmative remedies because of their emphasis on difference. Attempts to litigate using rights of nature and eco-centric perspectives have gained pace in Latin America in recent years (De Salles Cavedón-Capdeville et al. 2024, Fiorini Beckhauser 2023). Courts in several countries of the region have issued affirmative judgments recognizing the rights of nature, regardless of the existence of a constitutional clause or legal provision that explicitly recognizes nature as an autonomous subject of rights. For example, high courts in Ecuador and Panama (states that recognize rights of nature at the constitutional and legal level, respectively) have issued several landmark rulings from the eco-centric perspective that could limit extractive activities as well as ensure actions for environmental reparation. High courts in countries like Colombia and Peru that lack explicit legal clauses on rights of nature have also issued landmark rulings using the framing of nature as a subject of rights (see the sidebar titled Recent Rights of Nature Cases in Latin America). Scholars have argued that rights of

RECENT RIGHTS OF NATURE CASES IN LATIN AMERICA

Recent rights of nature cases decided in Latin America include rulings issued by Ecuador's Constitutional Court to prohibit mining in protected forests, protect mangrove ecosystems, and recognize the Machangara River as a subject of rights (Constitutional Court of Ecuador 2021, 2023; press release at World Wildlife Fund 2024). Colombia's Constitutional Court recognized the Atrato River as a subject of rights, and the Colombian Supreme Court of Justice granted the same status to the Amazon (Constitutional Court of Colombia 2016, Supreme Court of Colombia 2018; press release at GARN 2024). In Peru, the High Court of Justice in Loreto recognized the Marañón River as an entity with autonomous rights, and Lima's Supreme Court of Justice granted differentiated and autonomous rights to the Andean fox (Supreme Court of Justice of Lima 2024). And Panama's Supreme Court annulled a mining concession due to the breach of rights of nature (Supreme Court of Panama 2023; press release at Earth Law Center & Leatherback Project 2023).

nature and eco-centric framings could offer a way for courts to challenge anthropocentric forms of legal ordering (González Serrano 2024, Rodríguez-Garavito 2024) and recognize Indigenous jurisdiction over land and natural resources. However, some of those scholars also recognize that according rights to a river, mountain, or ecosystem is not the same thing as recognizing and respecting IP's collective rights to self-determination, and that recognizing the former may ultimately mean limiting the latter (Izquierdo & Viaene 2018, MacPherson 2019). Judicialization in Latin America using eco-centric and rights of nature framings has not always referred to IP's collective rights, and the literature is not yet conclusive on the extent to which such litigation could produce transformative remedies for IP (González Serrano 2024, MacPherson et al. 2020). However, our processual model suggests that judicialization that leads to standing for nature as a subject of rights could contribute to transformative remedies for IP when autonomy and agency for IP as collective subjects are linked to the legal defense of nature.

CONCLUSIONS

State law's recognition of IP in Latin America has been a slow and gradual process. As the literature shows, IP have struggled before courts to achieve sovereignty and self-determination within nation-states. As a result of diverse processes of sociolegal mobilization and IP land litigation, they have obtained a wide variety of judicial decisions. Most of the literature, as we have shown, analyzes pitfalls and progress toward IP's self-determination in judicial decisions and their implementation processes. We have argued that IP land rights litigation should be understood as a process of necessary and sufficient conditions to achieve greater social justice for IP. The impacts of judicial rulings in the process toward IP self-determination therefore must be assessed considering the bivalency of the injustice that IP have faced.

We also argued that IP land rights differ from other forms of SER judicialization and signaled some of the blind spots in the SER literature with respect to IP's judicialized land claims. The underlying assumption that universal access will overcome inequality implies that symbolic and material disadvantages are equivalent, yet that is not the case for IP's land injustices and judicial claims. Our meta-analysis of the existing literature on IP land rights judicialization in Latin America classified judicial remedies through the lens of Fraser's RRD to determine the extent to which judicialization of IP land claims have produced affirmative or transformative remedies in judicial rulings. The question we tackle by reviewing the empirical scholarship is what type of justice IP have achieved through land litigation and whether courts have triggered any type of process toward greater social justice. Under the rubric of redistribution, judicialization processes have fallen short for IP as autonomous agents and owners of their territories, because courts have not effectively appropriated the alternative forms of attachment and connections between IP's land organization simultaneously with remedies that may tackle the material distribution of the resource.

Ultimately, our analysis questions the extent to which rights judicialization can respond to large-scale, historically rooted structural injustices. IP's grievances are complex and historical; legal framings through hegemonic forms of law inevitably simplify and mistranslate these grievances. Yet, although state law may never engage fully with different ontologies regarding territory, IP land rights judicialization has amplified IP voice and narratives, and in some cases strengthened IP's forms of organization in their territories as litigation processes compel Indigenous claimants to strengthen and translate their narratives of dispossession and belonging. As McCann (1994, p. 467) states, voice and organization must be understood as "constitutive of social life"; voicing IP claims and histories inside and outside courts has challenged dominant narratives of development and private property, instead centering ongoing processes of colonial dispossession and environmental destruction.

Lastly, we have suggested that the relation between symbolic and socioeconomic justice might be causal and not oppositional. In our analysis based on research findings in Latin America, the effective combination of remedies for IP's land distribution is processual. By this, we mean that in litigation of IP lands in Latin America, some measures of symbolic justice might be, and have been, necessary conditions for moving toward greater socioeconomic justice. Undoubtedly, recognition remedies have not been enough to redefine the existing racialized land regimes in the region, yet without recognition, IP would not have been able to fight for distributive measures.

DISCLOSURE STATEMENT

The authors are not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

ACKNOWLEDGMENTS

The authors acknowledge funding from the Research Council of Norway as part of the project “PluriLand: Theorizing Conflict and Contestation in Plural Land Rights Regimes” (project no. 300851). We are enormously grateful for the comments and suggestions of Jackie Dugard, Namita Wahi, Helena Alviar, Siri Gloppen, Dan Brinks, Antonio Azuela, Jorge Peláez, Rodrigo Meneses, Erika Bárcena, Camilo Saavedra, and Ana Carolina Gómez, as well as those of the *Annual Review of Law and Social Science* reviewers.

LITERATURE CITED

- Albertus M. 2015a. *Autocracy and Redistribution: The Politics of Land Reform*. Cambridge University Press
- Albertus M. 2015b. The role of subnational politicians in distributive politics: political bias in Venezuela's land reform under Chávez. *Comp. Political Stud.* 48(13):1667–710
- Albertus M, Brambor T, Ceneviva R. 2016. Land inequality and rural unrest: theory and evidence from Brazil. *J. Confl. Resolut.* 62(3):557–96
- Albright K, De Soto H. 2008. Empowering the poor through property rights. In *Making the Law Work for Everyone*, Vol. 2, ed. Working Group on Property Rights, Commission on Legal Empowerment for the Poor. UN Developmental Program
- Alfonso T. 2021. Derechos territoriales colectivos vs derechos de propiedad colectiva: ganancias y pérdidas del uso del marco de los derechos de propiedad para la comprensión de los derechos étnico-territoriales en Colombia. In *Propiedad sobre la tierra en Colombia: Viejos y nuevos dilemas sobre la distribución*, ed. H Alviar García, T Alfonso. Universidad de Los Andes
- Anaya SJ, Grossman C. 2002. The case of Awas Tingni v. Nicaragua: a new step in the international law of indigenous peoples. *Ariz. J. Int. Comp. Law* 19(1):1–15
- Anthias P. 2018. *Limits to Decolonization. Indigeneity, Territory, and Hydrocarbon Politics in the Bolivian Chaco*. Cornell University Press
- Anthias P. 2021. Rethinking territory and property in indigenous land claims. *Geoforum* 119:268–78
- Barracrough SL. 1999. *Land reform in developing countries: the role of the state and other actors*. Discuss. Pap., UN Research Institute for Social Development. <https://digitallibrary.un.org/record/277045?ln=en>
- Bergallo P. 2016. Interpretando derechos: La otra legalización del aborto en América Latina. In *Debates y Reflexiones en Torno a la Despenalización del Aborto en Chile*, ed. L Casas, D Lawson. Ediciones Loñ
- Bhandar B. 2018. *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership*. Duke University Press
- Blaser M. 2009. Political ontology. *Cult. Stud.* 23:873–96
- Blaser M. 2019. Reflexiones sobre la ontología política de los conflictos medioambientales. *Am. Crítica* 3(2):63–79
- Borras SM Jr., Kay C, Lahiff E, eds. 2008. *Market-Led Agrarian Reform: Critical Perspectives on Neoliberal Land Policies and the Rural Poor*. Routledge

- Botella Rodríguez E, González Esteban AL. 2021. Twists and turns of land reform in Latin America: From predatory to intermediate states? *J. Agrar. Change* 21(4):834–53
- Brinks D, Gauri V. 2012. The law's majestic equality? The distributive impact of litigating social and economic rights. Policy Res. Work. Pap., World Bank
- Carter M, ed. 2015. *Challenging Social Inequality: The Landless Rural Workers Movement and Agrarian Reform in Brazil*. Duke University Press
- Constitutional Court of Colombia, Nov. 10, 2016, Decision T-622/16 (Colombia)
- Constitutional Court of Ecuador, Nov. 10, 2021, Los Cedros Decision, Case 1149–19-JP/21 (Ecuador)
- Constitutional Court of Ecuador, Nov. 23, 2023, Mangrove Decision, Case 22–18-IN/21 (Ecuador)
- Copeland N. 2023. Politicizing water: rescaling resistance to extractive development in Guatemala. *Geoforum* 140:103704
- Correia JE. 2019. Unsettling territory. *J. Latin Am. Geogr.* 18(1):11–37
- Courtis C. 2008. *Courts and the Legal Enforcement of Economic, Social and Cultural Rights*. International Commission of Jurists
- Couso J, Huneeus A, Sieder R, eds. 2010. *Cultures of Legality. Judicialization and Political Activism in Latin America*. Cambridge University Press
- Deere CD, León M. 2003. The gender asset gap: land in Latin America. *World Dev.* 31(6):925–47
- de la Cadena M. 2010. Indigenous cosmopolitics in the Andes: conceptual reflections beyond 'politics.' *Cult. Anthropol.* 25:334–70
- de la Cadena M. 2015. *Earth Beings: Ecologies of Practice across Andean Worlds*. Duke University Press
- De Salles Cavedón-Capdeville F, Berros MV, Filpi H, Villavicencio-Calzadilla P. 2024. An ecocentric perspective on climate litigation: lessons from Latin America. *J. Hum. Rights Practice* 16(1):89–106
- De Soto H. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Basic Books
- Di Gimniani P. 2018. *Sentient Lands: Indigeneity, Property, and Political Imagination in Neoliberal Chile*. University of Arizona Press
- Earth Law Center, Leatherback Project. 2023. *Panama's Supreme Court upholds rights of nature, declares country's largest copper mine unconstitutional*. Press Rel., Nov. 29. https://earthlawcenter.salsalabs.org/panama_iron
- Epp C. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. University of Chicago Press
- Eisenstadt TA, Danielson MS, Bailon Corres MJ, Sorroza Polo C, eds. 2013. *Latin America's Multicultural Movements: The Struggle Between Communitarianism, Autonomy, and Human Rights*. Oxford University Press
- Escobar A. 2020. *Pluriversal Politics: The Real and the Possible (Latin America in Translation)*. Duke University Press
- Fjellheim EM. 2023. Wind energy on trial in Saepmie: epistemic controversies and strategic ignorance in Norway's green energy transition. *Arctic Rev. Law Politics* 14:140–68
- Fiorini Beckhauser E. 2023. The synergies between human rights and the rights of nature: an ecological dimension from the Latin American climate litigation. *Neth. Q. Hum. Rights* 42(1):12–34
- Fisk M. 2005. Multiculturalism and neoliberalism. *Prax. Filos.* (21):21–28
- Flemmer R. 2023. The implementation paradox: ambiguities of prior consultation and free, prior and informed consent (FPIC) for Indigenous Peoples' agency in resource extraction in Latin America. In *The Routledge Handbook of Indigenous Development*, ed. K Ruckstuhl, IA Velásquez Nimatuj, JA McNeish, N Postero. Routledge
- Fontana L. 2023. *Recognition Politics: Indigenous Rights and Ethnic Conflict in the Andes*. Cambridge University Press
- Fraser N. 1997. From redistribution to recognition? Dilemmas of justice in a "postsocialist" age. In *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition*. Routledge
- Fraser N. 2009. *Scales of Justice: Rethinking Political Space in a Globalizing World*. Columbia University Press
- Fulmer A, Godoy A, Neff P. 2008. Rights, resistance and the law: lessons from a Guatemalan mine. *Latin Am. Politics Soc.* 50:91–121

- Gargarella R, Domingo P, Roux T, eds. 2006. *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?* Ashgate
- Galiani S, Schargrodsky E. 2010. Property rights for the poor: effects of land titling. *J. Public Econ.* 94:700–29
- GARN (Global Alliance for the Rights of Nature). 2024. *Peruvian Court makes history by recognizing the rights of the Marañón River*. Press Release, Oct. 30. <https://www.garn.org/derechos-del-rio-maranon/>
- Gauri V, Brinks D, eds. 2008. *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. Cambridge University Press
- Gilbert J. 2020. Indigenous peoples and litigation: strategies for legal empowerment. *J. Hum. Rights Pract.* 12(2):301–20
- Gómez Isa F. 2017. Human rights, cultural diversity and legal pluralism from an Indigenous perspective: the *Awas Tingni* case. In *Human Rights Encounter Legal Pluralism: Normative and Empirical Approaches*, ed. G Corradi, E Brems, M Goodale. Bloomsbury
- González Serrano MX. 2024. Rights of nature, an ornamental legal framework: water extractivism and backbone rivers with rights in Colombia. *J. Peasant Stud.* 52:322–42
- Griffin K, Kahn AR, Ickowitz A. 2002. Poverty and the distribution of land. *J. Agrar. Change* 2(3):279–330
- Grueso L. 2007. La población afrodescendiente y su referencia como sujeto de Ley en el desarrollo normativo de Colombia. Punto de partida para definir niveles de Reconocimiento y Reparación. In *Afro-reparaciones: Memorias de la Esclavitud y Justicia Reparativa para negros, afrocolombianos y raizales*, ed. C Mosquera Rosero, LC Barcelos. Universidad Nacional de Colombia
- Grueso L, Rosero C, Escobar A. 1998. The process of black community organizing in the southern Pacific coast region of Colombia. In *Cultures of Politics and Politics of Cultures: Re-visioning Latin American Social Movements*, ed. S Álvarez, E Dagnino, A Escobar. Westview
- Gudynas E. 2020. *Extractivisms: Politics, Economy and Ecology*. Fernwood Publishing
- Hale CR. 2002. Does multiculturalism menace? Governance, cultural rights and the politics of identity in Guatemala. *J. Latin Am. Stud.* 34(3):485–24
- Hale CR. 2008. Activist research v. cultural critique: indigenous land rights and the contradictions of politically engaged anthropology. *Cult. Anthropol.* 21(1):96–120
- Hale CR. 2020. Using and refusing the law: indigenous struggles and legal strategies after neoliberal multiculturalism. *Am. Anthropol.* 122(3):618–31
- Harris C. 1993. Whiteness as property. *Harvard Law Rev.* 106(8):1707–91
- Hooker J. 2020. *Black and Indigenous Resistance in the Americas: From Multiculturalism to Racist Backlash*. Lexington Books
- Ige VO, Pelume Akinbogun S, Jones CA. 2024. *Achieving the Sustainable Development Goal Against Poverty in Developing Nations: Perspective from Urban Land Titling Potentials*. Springer
- Izquierdo B, Viaene L. 2018. Descolonizar la justicia transicional desde los territorios indígenas. *Por la Paz* 34. <https://www.icip.cat/perlapau/es/articulo/descolonizar-la-justicia-transicional-desde-los-territorios-indigenas/>
- Kay C. 2019. Land reform in Latin America: past, present and future. *Latin Am. Res. Rev.* 54(3):747–55
- Kichwa Indigenous People of Sarayaku v. Ecuador*, Inter-Am. Court Hum. Rights (ser. C) No. 245 (June 27, 2012)
- Koper N. 2022. The Inter-American Court of Human Rights and indigenous rights in Nicaragua: From land to empowerment? *Bull. Latin Am. Res.* 41(4):608–24
- Kroshus Medina L. 2024. *Governing Maya Communities and Lands in Belize: Indigenous Rights, Markets, and Sovereignties*. Rutgers University Press
- Kuppe R. 2009. The three dimensions of the rights of indigenous peoples. *Int. Commun. Law Rev.* 11(1):103–18
- Langford M, Rodríguez-Garavito C, Rossi J, eds. 2017. *Making it Stick: Compliance with Socio-Economic Rights Judgments in Comparative Perspective*. Cambridge University Press
- Lennox C, Short D, eds. 2016. *Routledge Handbook of Indigenous Peoples' Rights*. Routledge
- Li F. 2015. *Unearthing Conflict: Corporate Mining, Activism, and Expertise in Peru*. Duke University Press
- Macpherson EJ. 2019. *Indigenous Water Rights in Law and Regulation: Lessons from Comparative Experience*. Cambridge University Press
- Macpherson EJ, Torres Ventura J, Clavijo Ospina F. 2020. Constitutional law, ecosystems and indigenous peoples in Colombia: biocultural rights and legal subjects. *Transnatl. Environ. Law* 9:521–40

- Martínez Martínez JC. 2021. *Más que una brecha: Etnografías sobre la efectividad de los derechos indígenas*. Plaza y Valdés
- Maya Indigenous Community of the Toledo District v. Belize*, Case 12.053, Rep. No. 40/04, Inter-Am. Court Hum. Rights, OEA/Ser. L/V/II.122 Doc. 5 rev. 1 at 727 (Oct. 12, 2004)
- Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-Am. Court Hum. Rights (ser. C) No. 79 (Aug. 31, 2001)
- McCann M. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. University of Chicago Press
- McKay BM, Alonso-Fradejas A, Ezquerro-Cañete A. 2021. *Agrarian Extractivism in Latin America*. Routledge
- McNeish JA. 2023. Indigenous peoples: extraction and extractivism. In *The Routledge Handbook of Indigenous Development*, ed. K Ruckstuhl, IA Velásquez Nimatuj, JA McNeish, N Postero. Routledge
- McNeish JA, Shapiro J. 2021. *Our Extractive Age: Expressions of Violence and Resistance*. Routledge Studies of The Extractive Industries. Routledge
- MTC (Misión para la Transformación del Campo). 2015. *Diagnóstico de ordenamiento y desarrollo territorial*. Rep., MTC
- Ng'weno B. 2007. *Turf Wars: Territory and Citizenship in the Contemporary State*. Stanford University Press
- Ng'weno B. 2012. Beyond citizenship as we know it: race and ethnicity in Afro-Colombian struggles for citizenship equality. In *Comparative Perspectives on Afro-Latin America*, ed. K Dixon, J Burdick. University Press of Florida
- Nichols R. 2019. *Theft Is Property! Dispossession and Critical Theory*. Duke University Press
- Oxfam. 2016. *Unearthed land, power and inequality in Latin America*. Rep., Oxfam. https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp-land-power-inequality-latin-america-301116-en.pdf
- Pasqualucci JM. 2009. International land rights: a critique of the jurisprudence of the Inter-American Court of Human Rights in the light of the United Nations declaration on the rights of indigenous peoples. *Wis. Int. Law J.* 27:51–98
- Pataxó S 2022. The judicialization of indigenous territories in Brazil: judicial power and the obstacles to demarcation. *Tipití* 18(1):114–18
- Peña-Huertas RDP, Parada-Hernández MM, Abril-Bonilla N, Uribe-Larrota LF, Jiménez-Nicholls MC, Nieto-Cruz AV. 2021. Collective ownership and land restitution: a new opportunity for Afro-Colombian communities. *Int. J. Transit. Justice* 15:230–41
- Peña-Huertas RDP, Ruiz LE, Parada-Hernández MM, Zuleta S, Álvarez R. 2017. Legal dispossession and civil war in Colombia. *J. Agrar. Change* 17(4):759–69
- Postero N. 2017. *The Indigenous State: Race, Politics, and Performance in Plurinational Bolivia*. University of California Press
- Ramírez S, Maisley N. 2016. The protection of the rights of indigenous peoples. In *The Latin American Casebook. Courts, Constitutions, and Rights*, ed. JF González-Bertomeu, R Gargarella. Routledge
- Rodríguez Franco D. 2017. *Participatory institutions and environmental protection: popular and prior consultations in Latin America*. PhD Diss., Northwestern University
- Rodríguez-Garavito C. 2011. Ethnicity.gov: global governance, indigenous peoples, and the right to prior consultation in social minefields. *Indiana J. Glob. Legal Stud.* 18:263–305
- Rodríguez-Garavito C, ed. 2024. *More than Human Rights: An Ecology of Law, Thought and Narrative for Earthly Flourishing*. New York University Press
- Rodríguez-Garavito C, Alfonso Sierra T, Cavalier Adarve I. 2009. *El desplazamiento afro*. Universidad de Los Andes
- Rodríguez-Garavito C, Arenas L. 2005. Indigenous rights, transnational activism, and legal activism: the struggle of the U'wa people in Colombia. In *Law and Globalization from Below: Towards a Cosmopolitan Legality*, ed. C Rodríguez-Garavito, B de Sousa Santos. Cambridge University Press
- Rodríguez-Garavito C, Orduz Salinas N. 2012. *Adiós Río: La disputa por la tierra, el agua y los derechos indígenas en torno a la represa de Urrá*. DeJusticia
- Rodríguez-Garavito C, Rodríguez Franco D. 2015. *Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South*. Cambridge University Press

- Ruiz González LE, Peña-Huertas RDP, Parada-Hernández MM, Lozano Válcárcel AJ, Triana Ancinez B, Valencia-Herrera MA. 2021. Who owns what in Macondo? The flexibilization of the rules of evidence in land restitution in Colombia. *Int. J. Transit. Justice* 15:26–46
- Saramaka People v. Suriname*, Inter-Am. Court Hum. Rights (ser. G) No. 185 (Aug. 12, 2008)
- Sawboyamasa Indigenous Community v. Paraguay*, Inter-Am. Court Hum. Rights (ser. C) No. 146 (March 29, 2006)
- Schilling-Vacaflor A. 2016. Who controls the territory and the resources? Free, prior and informed consent (FPIC) as a contested human rights practice in Bolivia. *Third World Q.* 38(5):1058–74
- Schilling-Vacaflor A, Eichler J. 2017. The shady side of consultation: tactics of ‘divide and rule’ in Bolivia’s resource extraction. *Dev. Change* 48(6):1439–63
- Schilling-Vacaflor A, Flemmer R. 2015. Conflict transformation through prior consultation? Lessons from Peru. *J. Latin Am. Stud.* 47(4):811–39
- Schilling-Vacaflor A, Flemmer R. 2019. Mobilising free, prior and informed consent (FPIC) from below: a typology of indigenous peoples’ agency. *Int. J. Minor. Group Rights* 27(2):291–313
- Shields E. 2023. Countering epistemic injustice in the law: centering an indigenous relationship to land. *UCLA Law Rev.* 70(1):206–56
- Sieder R, ed. 2002. *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*. Palgrave
- Sieder R. 2007. The judiciary and indigenous rights in Guatemala. *Int. J. Const. Law.* 5(2):211–41
- Sieder R. 2020. The juridification of politics. In *The Oxford Handbook of Law and Anthropology*, ed. MC Foblets, M Goodale, M Sapignoli, O Zenker. Oxford University Press
- Sieder R, Schjolden L, Angell A, eds. 2005. *The Judicialization of Politics in Latin America*. Palgrave Macmillan
- Skjrevestad A. 2010. The Mapuche people’s battle for indigenous land: litigation as a strategy to defend indigenous land rights. In *Cultures of Legality: Judicialization and Political Activism in Latin America*, ed. J Couso, A Huneus, R Sieder. Cambridge University Press
- Supreme Court of Colombia, April 5, 2018, Decis. STC–4360 (Colombia)
- Supreme Court of Justice of Lima, Third Specialized Court on Constitutional Matters, June 28, 2024, case 04921–2021–0–1801–JR–DC–03 (Peru). <https://www.animallaw.info/case/decision-no-11-2024-zorro-run-run-peru>
- Supreme Court of Panama, Rights of Nature Law, no. 287, Nov. 27, 2023 (Panama)
- Svampa M. 2019. *Neo-Extractivism in Latin America: Socio-Environmental Conflicts, the Territorial Turn, and New Political Narratives*. Cambridge University Press
- Thomson F. 2011. The agrarian question and violence in Colombia: conflict and development. *J. Agrar. Change* 11(3):321–56
- Torres-Wong M. 2023. *The Indigenous Right to Self-Determination in Extractivist Economies*. Cambridge University Press
- Van Cott DL. 2000. *The Friendly Liquidation of the Past*. University of Pittsburgh Press
- Vargas Roncancio ID. 2024. *Law, Humans, and Plants in the Andes-Amazon: The Lawness of Life*. Routledge
- Vega A, Fraser JA, Torres M, Loures R. 2022. Those who live like us: autodemarcations and the co-becoming of Indigenous and beiradeiros on the Upper Tapajós River, Brazilian Amazonia. *Geoforum* 129:39–48
- Weitzner V. 2019. Between panic and hope: indigenous peoples, gold, violence(s) and FPIC in Colombia, through the lens of time. *J. Legal Plur. Unoff. Law* 51(1):3–28
- Wetterslev J. 2024. When the forest and the rivers is home - managing indigenous territory and settler relations in northeastern Nicaragua. *Iberoamericana* 53(1):31–43
- Wilson BM, Gianella C. 2019. The judicialization of politics in Latin America. In *The Handbook of Law and Society in Latin America*, ed. R Sieder, K Ansolabehere, T Alfonso. Routledge
- Yakye Axa Indigenous Community v. Paraguay*, Inter-Am. Court Hum. Rights (ser. C) No. 125 (June 17, 2005)
- Yamin AE, Glidden S, eds. 2011. Litigating health rights: Can courts bring more justice to health? Human Rights Program Series. Harvard University Press
- Yamin AE, Parra-Vera O. 2010. Judicial protection of the right to health in Colombia: from social demands to individual claims to public debates. *Hastings Int. Comp. Law Rev.* 33(2):101–29
- Yashar D. 2005. *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge*. Cambridge University Press

Yrigoyen R. 2011. Derecho y jurisdicción indígena en la historia constitucional. De la sujeción a la descolonización. In *El derecho en América Latina: Los retos del siglo XXI*, ed. C. Rodríguez-Garavito. Siglo XXI

World Wildlife Fund. 2024. *Protecting Machángara River: a historic opportunity to ensure living rivers in Ecuador*. Press Release, Sept. 4. <https://www.wwf.org.ec/?390811/Proteccion-del-Rio%20Machangara>