REVIEW ARTICLE

# MULTI-ETHNICITY, THE STATE AND THE LAW IN LATIN AMERICA[1]

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Over recent decades new forms of indigenous peoples' protest and mobilization have brought about a renewed interest in issues of ethnicity in Latin America. This is the outcome of a complicated process. New forms of indigenous peoples' activism have arisen in the period from the 1960s. An emerging Indianist ideology has rejected the integrationist projects of state-sponsored indigenism as well as the then prevailing discourses that labelled the rural population of the Andes region and much of Meso-America as *campesinos* without taking account of ethnic aspects. At the same time new forms of incorporation of lowland areas of the Amazon region under slogans like 'Land without people for people without land' triggered new conflicts and contributed to the rise of new organizations in this region. Furthermore, the emergence of a transnational movement of indigenous peoples influenced such developments. The interaction between these new modes of organization generated new types of demands. An emerging pan-Indian movement discourse articulates concepts like territory and self-determination or autonomy, implying the right to 'freely determine their political status and freely pursue their economic, social and cultural development.' Though not aiming for secession, indigenous peoples' movements claim the right to govern themselves and to administer justice according to their own usages, practices and traditions.

Debate over such issues was fuelled by the polemics and mobilizations surrounding the commemoration of the five hundredth anniversary of Columbus' arrival in the Americas. The adoption in 1989 of the new ILO Convention 169 concerning tribal and indigenous peoples in independent countries, which arguably is the most important international standard on indigenous rights at present, and which has been ratified by a series of Latin American countries, is another important marking point. The drafting of a UN Declaration on the Rights of Indigenous Peoples and the way indigenous peoples presented themselves during UN conferences on human rights and on environment and development, are further recent milestones. Transnational mobilizations have contributed to opening new spaces for Indian activism and to new ways of putting the 'Indian question' on national agendas, particularly in the context of the democratic transitions that have got underway in Latin America since the mid 1970s.

The 'democratic transitions' provided openings for constitutional reform which in a significant number of cases included the recognition of the pluricultural and multiethnic character of the country. Moreover, Latin American countries have been among the first to ratify ILO Convention 169 whereby it acquires the force of domestic law. Such developments imply a formal acknowledgement of rights to traditionally owned lands, the recognition of traditional authorities, and the aknowledgement of their right to jurisdiction and the administration of justice according to 'their own norms and procedures'. The implied formalization of legal

and political pluralism constitutes the subject for a newly emerging and extremely dynamic field of legal and political studies. In this essay I will review some contributions on the subject.

## Indigenous Mobilization and Constitutional reform

The introductory chapter of *Indigenous Peoples and Democracy in Latin America* edited by Donna Lee Van Cott outlines some of the policy issues involved in the shift from a focus on minority protection to the recognition of the multiethnic character of Latin American societies. She points to the challenge which forms of self-determination pose for the existing nation states, the issue of political reform, territorial rights and access to natural resources and the issue of counterinsurgency and antinarcotics policies.

The volume provides a broad overview of indigenous peoples' movements and their achievements in terms of constitutional reforms in a series of Latin American countries.[2] It thus documents the emergence of new Indian movements and the shift in demand-making and the themes addressed by these movements. The earlier discourse, often strongly influenced by the left and in many ways revolving around 'class' demands for land, has increasingly come under fire and has given way to more identity-centered discourses that privilege notions like territory and autonomy and stress the *originario*-character of indigenous peoples, referring to their existence prior to the formation of the present Latin American states. This implies that they can not be granted rights but that their rights simply should be acknowledged.

A further common theme is the relation between local ethnic consolidation and efforts at overarching organization. Efforts at building bridges between highland and lowland organizations have been relatively successful in Ecuador in contrast to countries like Peru or Bolivia. Organizational efforts most often also involve outside actors such as churches, NGOs and political parties as well as transnational networks. They pursue their own interests that intersect with local mobilizations and alternately contribute to and enhance, or hamper and fragment further mobilization. The different forms of alliance making partly account for the achievements of Indian mobilization. The appraisal of such achievements constitutes a central theme of the volume which covers the period up to late 1993. The review of various

[2] Contributions on the Andean region depict the cases of Bolivia, Colombia, Peru and Ecuador. Meso-America is represented by case-studies of Guatemala and Mexico, while the Southern Cone is represented by the cases of Brazil and Paraguay.

constitutions, e.g. the Brazilian 1988 Constitution, Colombia's 1991 Constitution, the 1992 Paraguayan constitution, and Bolivia's recognition of *organizaciones originarias* reveals the formal consolidation of indigenous peoples' rights.

Jochen Schulz's *Indianerpolitik in Venezuela; Ansätze zur Mitsprache der Betroffenen?* (Indian Policies in Venezuela; Toward the Participation of Those Concerned?) discusses policy development in Venezuela, a country not covered by the Van Cott volume. The study shows how, as a result of the Venezuelan oil economy, pressure toward the settlement of the southern lowland areas was until recently much lower than in neighboring Brazil. For a long time Catholic missions were mainly responsible for dealing with the indigenous peoples of the south. At a later stage 'indian policy' has come to oscillate between the integrationist project of developmentalism and tendencies toward a more pluralist 'new indigenism'. The study thus reveals the background to the lack of policy definition in Venezuela. In recent years this constellation has come under pressure as the economic crisis has prompted new policies for the southern region which have provoked the emergence of new forms of organization and protest on the part of the indigenous inhabitants.

These books provide a broad perspective on new indigenous peoples' activism and the policy shifts to which it has contributed. Its effects show in the recognition of the multiethnic or pluricultural character of nations, the promotion of bilingual education, and the recognition of the right to traditional lands, and the right to retain their own customs and institutions, including customary law and traditional authorities. A key question posed in *Indigenous Peoples and Democracy in Latin America* is: "How to encourage democracy by expanding participation for excluded groups in Latin America without weakening democratic institutions by adding sources of instability to the political system?" In other words: "Which policies are more likely to reinforce democracy: those that protect the interests of distinct subcultures, or those that strive to unify national interests?" (2-3). The volume provides no clear-cut answer to the question and lacks a concluding chapter. This may partly be due to the fact that the constitutional changes described were quite recent and that experiences with the forging of an order that effectively acknowledges political and legal diversity still were at a very initial stage. These volumes thus allow us to situate different experiences of indigenous peoples' mobilization and its effects in a broad context.

## The Recognition of Indigenous Jurisdiction

The step from constitutional recognition to the effective shaping of a new institutional framework presents a huge and unresolved problem. *Derechos*

*Humanos y Pueblos Indígenas de la Amazonia Peruana: Realidad, Normativa y Perspectivas* (Human Rights and the Indigenous Peoples of the Peruvian Amazon: Reality, Regulations and Perspectives) under the editorial supervision of Manuel Cornejo Chaparro provides some insight into the issues involved.

The first section reviews international human rights standards in relation to indigenous peoples as well as the Peruvian legislation regarding indigenous peoples. This exposes some of the ambiguities in the recognition of indigenous peoples' rights which also can be found in other Latin American countries. While the 1993 Peruvian Constitution recognizes the cultural and ethnic diversity of the nation, at the same time it substantially dismantles the protection of communal land rights. It thus opened the way for the new Land Law issued in 1995, as a result of which communities may loose substantial parts of their lands.

This analysis of the legal situation is followed by four case studies of peoples of the Amazon area, the Asháninka, the Aguaruna, the Shipibo and the Yagua. Historical introductions are followed by descriptions of the ways in which the four groups are confronted with incursions of colonists from the highlands, terrorism, drug-trade and militarization, and the exploitation of natural resources, in particular petroleum. The studies also give attention on the other hand to bilingual education, the situation as regards rights to land and territories, and economic organization, as well as to the articulation between old and new systems of organization and authority and the role of customary law.

The 'native communities' of the Peruvian Amazon region as they exist today have largely been shaped by legislation enacted under the particular Peruvian brand of military government in 1974. The mode of organization thus introduced was patterned after the Andean community model and had little to do with the systems of land management, social arrangements, or forms of production of the Amazon Indians. Nonetheless, the native communities began to function once they had been called into being. Though descriptions are somewhat cursory, the case studies show how clan-like forms of organization that provided the basic framework for conflict resolution are being replaced by or rearticulated with the state-imposed system of communal organization with its *jefe comunal*, *teniente gobernador* and *juez de paz*.

According to the 1993 Peruvian Constitution the authorities of peasant and native communities may, with the support of the *rondas campesinas*[3], exercise

[3] The *rondas campesinas* initially emerged in northern Peru as community-run vigilante patrols against cattle rustlers and evolved into an alternative justice system

jurisdictional functions within their territory according to customary law as long as fundamental rights of the individual are not violated. Further legislation should establish forms of coordination between this special jurisdiction and the *juzgados de paz* and other instances of the judiciary. The case studies contained in the volume provide some description of the functioning of customary law, usually stressing its objective of reestablishing social equilibrium. In a context of increasing state encroachment and little progress in the development of effective regulation of the formal recognition of indigenous jurisdiction, the relation between custom and the law seems to be increasingly subject to stress in most of the cases described.

Among the Aguaruna this has led to an attempt at codification of Aguaruna law in a *Regulamento* by the *Consejo Aguaruna Huambisa*, the local indigenous organization which was created in 1977 and today is one of the largest indigenous organizations of the Peruvian Amazon. A rather sketchy description suggests that formerly conflict regulation among the Aguaruna normally took place through negotiation between the heads of extended families or clans. A council of elders might take up cases not resolved at this level and, more generally, would provide moral orientation. Notions about the supernatural, tales of the exploits of culture heroes, and drug-induced visions played an important role.

In response to the increasing presence of state sanctioned authorities, the *Consejo Aguaruna Huambisa* took the unprecedented initiative of codifying Aguaruna law and, in the process, established itself as the institution of ultimate legal recourse within the self-styled jurisdiction. Although, because of discord among the affiliated organizations, the project failed to take off, the attempt is interesting. The codification establishes the extended family as the primary locus of conflict resolution, followed by community authorities and the overarching *Consejo Aguaruna Huambisa*. It furthermore regulates the rights and duties of community members, establishes rules for marriage and divorce, and lists sanctions for various misdemeanors and crimes. This includes the issue of suicide, frequent among Aguaruna women in cases of unloving behavior or infidelity by their husbands, and prone to spark interfamilial feuding. Though the regulation suggests that local authorities should intervene to prevent such suicides it also forbids vengeance in cases of female suicide. Also included are some articles concerning witchcraft and a paragraph providing that the killing of a proven witch cannot be a ground for a

arbitrating a wide range of disputes. Later vigilante patrols, also called *rondas campesinas*, were organized by the army in the southern mountain region to fight the Shining Path guerrilla movement. It should be noted that *rondas* have been established only among some of the indigenous peoples of the Amazon region.

claim. Though according to the study the codification thus reflects the axiological structure of Aguaruna society, it is also clear that traditional modes of conflict resolution are undergoing substantial change as a result of the introduction of new institutions, codification and articulation with state authorities and laws.

This volume on the Peruvian Amazon ends in a series of recommendations which include the recognition of customary law and indigenous jurisdiction. The ways in which such recognition might be achieved, however, remain undefined. This points to the quandaries involved in the acknowledgement of distinct sources of law and in working out their relations to national law and international human rights standards. Debate over such issues is intense as various countries seek to effectuate the formal recognition of plurality and multiethnicity.

While much of this debate remains rather abstract, the case of Colombia is illuminating. The new 1991 Constitution was elaborated as part of an attempted pacification of the country. Among other things the new charter acknowledges the jurisdictional capacity of indigenous authorities as far as not contrary to the constitution and the laws of the Republic. The recognition of a *jurisdicción especial indígena* and the ensuing effort to apply this guideline seriously probably constitutes the most ambitious attempt in Latin America to resolve some of the questions involved, particularly through the decisions of a newly created Constitutional Court. To prepare the judicial system for the challenge of applying the new norms the Colombian Institute of Anthropology was commissioned to undertake the study of indigenous legal systems. Carlos César Perafán Simmonds' *Sistemas jurídicos Paez, Kogi, Wayúu y Tule* (Legal Systems of the Paez, Kogi, Wayúu and Tule) is the first outcome of this effort and illustrates some of the difficulties of the undertaking.

Recognizing that his approach, which tends to decontextualize 'legal systems' from their cultural environment, has its limitations, Perafán sets out to describe these systems. He starts from the observation that in Colombia, beside the national system, various other systems of conflict resolution are operative. The segmentary system relies on kinship groups and does not know permanent authorities. Depending on the case at hand and the parties involved it is resolved by the head of an extended family or in the case of inter-family conflicts by a council of elders. This reflects the dynamic of fission and fusion classically described by Evans Pritchard in his study of the Nuer in Africa. The system of permanent communal authorities, by contrast, relies on a centralized and institutionalized authority such as the *cabildos* of the Andean villages or the *capitanes de maloca* in the Amazon region. A third type of conflict regulation operates through religious systems, including theocratic systems, shamanism and the intervention of christian religious organizations. In the fourth place, armed groups operate in the country and can

either be called upon by sectors of a community or intervene of their own accord. Finally, one can distinguish a system of direct compensation that may either operate before a particular jurisdiction is activated or after other systems of regulation have failed to satisfy one of the parties to a conflict. Though mediators may play a role, no authority which emits a verdict is involved. Generalized violence, however, is a distinctive case and indicates the breakdown of regulatory systems. Between the different systems relations of substitution and complementarity exist and within ethnic groups the exact nature of coexistence and articulation can only be determined through research.

Indigenous jurisdiction, which is not the same thing as the constitutionally recognized *jurisdicción especial indígena*, relies on four of these systems: the segmentary system, the permanent authorities, the religious system and the mechanism of direct compensation. The strategy behind the constitutional recognition of a *jurisdicción especial indígena* then is to retain only the national system and that of the indigenous peoples in an attempt to achieve a qualitative change whereby the current forms of extra-institutional conflict resolution, violence and human rights abuse are eliminated. This requires, on the one hand, a strengthening of the *jurisdicción especial indígena* in order to regain the spaces lost to the forms of conflict resolution unacceptable within the legal order but which the national system has historically been unable to control. On the other hand the strategy requires the establishment of forms of coordination between the *jurisdicción indígena* and the national system. The challenge is to find ways simultaneously to respect cultural diversity and to maintain the unity of the national juridical order.

The description of legal systems of the indigenous peoples of Colombia is meant to facilitate the task of doing justice and coordinating the national system and the structurally very different indigenous systems. Four such systems are described. The Paez system combines Paez normativity with national regulations concerning *resguardos* (reserves), and largely relies on the permanent centralized authority of elected local *cabildos* backed up by a general assembly. The Kogi system relies on oral tradition and religious specialists. Forms of penitence designed to reestablish cosmic equilibrium are arrived at through a process of divination and confession. The Wayúu practice a system of compensation where negotiations between social segments in conflict may be mediated by *palabreros* in order to avoid escalation into warfare. The Tule system relies on permanent civil-religious authorities at the community level under supervision of a community assembly. Whereas a large part of personal behavior is guided by dreams and guilt-feelings, authorities may sanction misbehavior with fines or labor for the community.

In each of these cases rules and sanctions are described and categorized in terms of

civil, penal and administrative law. This distinction clearly is imposed and artificial. Forms of personalized reciprocity thus are classified under the heading of civil law and assimilated to contractuality, though such notions reflect very different worldviews. Similarly, the individualized responsibility of western penal codes is at odds with notions of collective responsibility, as in the case of the Wayúu where the extended family is liable to render compensation for acts committed by its members. In the description of each of these cases an attempt is made to outline the relation between the dominant mode of conflict resolution and other complementary modes or substitutes as well as the relation with the national judicial system. Furthermore, in each case some of the dynamics of change resulting from relations with the 'outside world' and the emergence of new indigenous peoples' organizations are indicated. And finally, some of the 'gaps', that is, conflicts or issues for which there are no appropriate norms or procedures, in the various systems are indicated, as well as the efficacy of each system in terms of *cosa juzgada*.

In an abridged form this analysis of indigenous juridical systems returns in *Derecho, etnias y ecología* (Right, Ethnic Groups and Ecology) which dedicates a section to the analysis of ethnic and cultural diversity and the 1991 Constitution. Angarita *et al.* start with a description of ethnic diversity in Colombia, then discuss the issues of autonomy, participation and cooperation (*concertación*), jurisdiction, territory, economy and the clash between cognitive systems in the case of traditional medicine. In each case they briefly outline the point of view of the national society as well as that of the ethnic or cultural minority groups and an attempt is made to discuss the implications of the recognition of interculturality. In conclusion they seek to assess the effective application of the new constitutional regime through a review of some Constitutional Court decisions. Their review reveals the oscillation between the recognition of territorial rights of indigenous peoples in one case, and the priority given to considerations of national interest and sovereignty in another case, where an air surveillance complex was installed at a site considered sacred by the local indigenous population. Ambiguity also reigns in relation to indigenous autonomy where normativity as a source of law is concerned as well as in the tendency towards a restrictive interpretation of the *jurisdicción especial*. Such cases lead to the conclusion that there still is quite some way to go in before the spirit of the 1991 Constitution is realised. Curiously, however, though the study mentions a crucial court decision (T-254, 1994), it fails to discuss the attempts by the Constitutional Court to devise standards to resolve the rather contradictory constitutional scheme of recognizing indigenous jurisdiction while at the same time subordinating it to "the Constitution and the laws of the Republic".

Taking the latter provision literally, as magistrate Carlos Gaviria pointed out in a 1996 verdict (T-349), would reduce the recognition of indigenous jurisdiction to

mere rhetoric. The court, he argued, should seek interpretations that maximize indigenous autonomy. The 1994 verdict (T-254) sought to set a general standard by stating, firstly, that the more local customs had been preserved the greater the autonomy that should be accorded; secondly, that indigenous justice should respect fundamental human rights as contained in the constitution; thirdly, that the imperative legal norms of public order of the Republic only take precedence over indigenous customs if they protect a constitutional right superior to the principle of ethnic and cultural diversity; and, finally, that indigenous custom takes precedence over ordinary civil law.

The 1996 verdict (T-349) reiterated the right to maximal autonomy and stipulated that it was restricted by fundamental rights such as the right to life and to protection against slavery and torture. It also stipulated that indigenous procedures should be respected if their outcome could be foreseen according to indigenous normativity. Imposing western norms of due process would violate the recognition of "their own norms and procedures". At the same time the court returned the case (which was a murder case) to the indigenous authorities for reconsideration since they had condemned the culprit to a prison sentence in a Colombian jail, which was not considered a traditional sentence. Either a more traditional punishment should be imposed, the court held, or the case should be handed over to national justice. In a further, widely publicized, case in 1997 (T-523), which involved the murder of an indigenous authority by a guerrilla group after complaints by a his indigenous rivals, the court upheld the sentence on the indigenous instigators of the murder imposed by their community authorities. A sentence to whiplashes was considered not to constitute torture since, though painful, the physical harm was neither permanent nor excessive, and whipping was a customary practice intended as a ritual purification and to reestablish harmony. Equally, expulsion from the community was not considered anti-constitutional since it did not involve expulsion from the national territory. The case also was remarkable for extending a large degree of autonomy to a relatively acculturated community.

While suggestive of the drift of court verdicts in recent years and of the public debate they occasionally generate, this case also shows that conflicts of jurisdiction often are related to internal factionalism within indigenous communities. That raises a number of issues, including questions in relation methodological aspects of Perafán's very rich and detailed description of indigenous legal systems.

## Customary Practices, National Law, Power and Domination

Perafán's outline of the norms and procedures of the legal systems of the four peoples he studies almost inevitably construes such systems as devices for the preservation of social order and tends to abstract from power relations. Conflict regulation according to socially accepted norms thus becomes the central theme of his case studies while the method of study basically relies on informants who outline the main features of a system. Methodologically it thus relies on a rather traditional functionalist framework. The introductory chapters of *Pueblos indígenas ante el Derecho* (Indigenous Peoples and the Law), edited by Victoria Chenaut and María Teresa Sierra, and centering on Mexico, propose a different approach. Here the focus is on conflict itself, relations of power and domination, and the strategic use by social actors of distinct regulatory and normative instances of 'the juridical'. Rather than thinking of a coexistence of various systems that maintain a certain level of autonomy, this approach highlights the articulations and intermediations among different normative systems considered as parts of a process. Though for analytical purposes distinctions can be made between customary law and positive law, we should be aware that in the reality of social practice one often encounters a mixture resulting from the strategic manipulation by social actors. They thus argue for an anthropological approach that distinguishes between norms and practices, highlights their use and intersections and situates them in their historical and socio-cultural context.

Such considerations inform an important part of the case studies presented in the following chapters. Thus a study of Nahua strategies by María Teresa Sierra concerns the filing of a complaint of abduction before the official authorities with the intention of improving the position of the aggrieved party in negotiation over a bride price. The unintended consequence, however, was that, by the time the dispute was settled at the community level, the police had appeared to arrest the culprit and had to be paid by his father to leave without making an arrest. Other studies demonstrate the efficacy of customary law in maintaining social control and the ways it functions, according to different contexts, in an autonomous way, as an alternative, or subordinate to the state legal system. Customary practices can provide a forceful means to maintain cohesion in disputes over land or in resisting illegitimate and, therefore, violent impositions of local *caciques*.

Customary law as a reflection of a culture of resistance, however, is only one side of the coin. This becomes clear in the study, by Magdalena Gómez, of the expulsion of indigenous persons from their communities in Chiapas for allegedly religious

reasons. Members of Evangelical churches were expelled from a number of communities on the ground that Catholicism, linked to the *cargo*-system and the local *fiestas*, was part and parcel of indigenous identity. In their refusal to participate the Evangelicals had called into question traditional power relations and the cohesive function of the *fiesta*-system. The state government proposed to punish the crime of expulsion and in 1992, that is, two years before the Zapatista rising, a public session of the local Congress was called to discuss the proposal. On this occasion a range of groups and institutions gave their opinion, often also suggesting that secondary motives played an important role behind the alleged religious reasons for the expulsions. In the wake of the debate the proposal to punish those behind the expulsions was deferred. In any case, it was not clear who should be punished: the local indigenous authorities, the community as a whole? The case is extreme, and cannot be used as an argument for the wholesale rejection of indigenous claims to autonomy. However, it once again illustrates the problematical relation between collective rights and the rights of the individual. Above all, Gómez argues, the case reveals the pressure and tensions to which indigenous groups are subjected and which result in the breakdown of mechanisms of conciliation.

The recognition of popular medical practices, discussed by María Eugenia Módena, provides another perspective on the continuing debate. She argues that, in a context of deterioration of the national health care system, such recognition entails the risk of institutionalizing the inability of the health care system to deal with its task. Similarly the contradictions between the constitutional recognition of pluriculturality and the agrarian legislation that undermines communal landholding and, therefore, the material bases of indigenous cultures, pass review in an article by Díaz-Polanco. He makes a case for regional autonomy to overcome the secular tendency toward fragmentation into communities which furthermore are now menaced by further disarticulation as a result of the deregulation of land markets that tends to weaken their material base. Issues of territoriality are also elaborated upon in discussions of evolving international and national norms relating to displacement of populations to the benefit of projects of 'public interest' such as hydro-electric schemes. The book ends with some reflections on the intersections between anthropology and legal studies.

## Concluding Remarks

The books reviewed provide an insight into the impact of indigenous mobilization on state reform in Latin America. It would be an overstatement to say that state reform is driven by indigenous peoples' mobilization. The processes of transition from authoritarianism, as well as the neoliberal reforms that often dovetail with partial decentralization in the context of dismantling the 'developmentalist' and

'interventionist' state, should be taken into account if we are to understand what is going on. Nevertheless, in various countries and with varying success, indigenous peoples' mobilization impacts upon such processes.

The questions raised by Van Cott concerning the participation of excluded groups in the expansion and deepening of democracy, which should be taken to comprise improvement of the living conditions of such groups, certainly are pertinent. The recognition of multiethnicity implies a departure from the tradition of understanding citizenship as equality which, in turn, is equated with homogeneity. These different studies show how, despite formal constitutional commitments, states are reluctant to implement an effective recognition of multiethnicity, particularly in the sphere of economic and political rights. They seem to be much more eager to regulate new agrarian legislation detrimental to the interests of indigenous peoples, as in the cases of Peru and Mexico, or to be lax in the enforcement of formally accorded rights to territories, as in the cases of Colombia and Bolivia.

To characterize this ambiguity Díaz-Polanco introduces the notion of "ethnofagous indigenism". This refers to policies that acknowledge the persistence of identities and support reforms recognizing the pluricultural character of society but which at the same time promote legislation undermining the very basis of indigenous culture and organization, the local community. He therefore forwards the strategic option of regional autonomy as a means of defending and strengthening the community, rather than taking the community level as the strategic starting point. The proposal for a 'fourth level' of government, besides the municipality, the states and the federal state, aims for both an enhanced recognition of indigenous peoples' rights and a democratization of the state structure, and is one of the controversial issues raised by the Zapatista's in Mexico.

The recognition and strengthening of customary practices in conflict resolution also has its ambiguities. Perafán's argument about the recognition of such practices in order to curb extralegal forms of violence throws up the question of whether such recognition truly involves a right of indigenous peoples to develop their own normativity or merely a recognition of the weakness of the existing system of justice administration. Nevertheless, for the moment the evolving jurisprudence in Colombia seems to be the most ambitious attempt to devise norms that permit a maximization of indigenous autonomy in the administration of justice without losing sight of fundamental human rights. An outstanding feature of the Constitutional Court verdicts is that they seek to promote intercultural dialogue rather than to resolve all conflicts of jurisdiction through the usual means of state intervention based on the unilateral imposition of a unified body of positive law.

On the other hand, particularly the contributions to the book edited by Chenaut and Sierra draw attention to the contradictions and power relations that cut through indigenous communities and peoples. When this results in violence this can, in part, be attributed to outside pressures and a deterioration of conditions contributing to a breakdown of more conciliatory mechanisms of conflict regulation as in the case of the expulsions in Chiapas. Such cases reveal the profound crisis many indigenous societies are currently facing. The distinction between discourse and practice and its relation to the issue of power relations, warrants a critical view of indigenous organization and mobilization. It also should be clear, however, that contradictions and conflict inevitably are part and parcel of the processes of indigenous mobilization. While a critical assessment is needed, it should be acknowledged that through the process of mobilization a strong and often justified critique of present societies and institutions evolves and makes a valuable contribution to the struggle for a more just and democratic future. The prospects for such mobilization and critique may well depend on a qualitative jump, as suggested by Diego Iturralde (personal communication), in the form of a move from national solutions for indigenous peoples' problems towards indigenous proposals to solve national problems. This seems to be emerging in the recent political practice of the Mexican and Ecuadorian indigenous movements. The pursuit of the recognition of plurality thus would blend into a broader strategy of alliances aimed at an extension and deepening of democracy.

The books reviewed here are suggestive of an emerging and expanding field in legal and political anthropology that, with reference to indigenous peoples, thematizes the redimensioning of state sovereignty in a context of globalization and localization. While an increasing number of articles addresses the subject, draft copies of more substantial publications by some of the authors reviewed here as well as others have started circulating. That we may look forward to their publication indicates the consolidation and the increasing quality of studies in this field.