

The Challenge of Indigenous Legal Systems: Beyond Paradigms of Recognition

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ACROSS LATIN AMERICA, INDIGENOUS PEOPLES have increasingly demanded that nation-states respect their culturally specific forms of governance and justice administration. Such demands form an essential part of their claims for autonomy and respect for their collective rights. As well as constituting a central aspect of indigenous peoples' identity, the existence of community-based systems of law reflects their lack of access to official justice systems, which systematically discriminate against them and fail to guarantee their fundamental rights.

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In this article I will outline recent processes of legal "recognition" of indigenous justice systems, identifying the main issues of contention, advances, and challenges. Drawing on examples from Guatemala, Mexico, Ecuador, and Bolivia, I point to some of the innovative ways indigenous peoples are strengthening and revitalizing their justice practices, and then consider the broader implications of recent developments for politics and law in the region.

MULTICULTURAL RECOGNITION OF LEGAL PLURALISM

Since the early 1990s, "multicultural" or "pluricultural" reforms to Latin American constitutions have increasingly favored the official recognition of legal pluralism (the existence of more than one legal order in the same space) and have created special jurisdictions of indigenous law.¹ Legal recognition of indigenous

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justice has been a marked feature of constitutional reforms in the Andean region.² Colombia was the first country to approve a new constitution recognizing legal pluralism in 1991, followed by Peru (1993), Bolivia (1994), Ecuador (1998) and Venezuela (1999). The new constitutions of Ecuador (2008) and Bolivia (2009) went further than previous multicultural formulations, declaring that henceforth these states would be based on principles of ethnic pluralism and “plurinationalism.” All of the Andean constitutional reforms recognize indigenous justice systems and the jurisdictional autonomy of indigenous authorities, (i.e., their right to administer justice in their own territories). However, even in countries such as Mexico or Guatemala where constitutional formulations for recognizing legal pluralism are relatively weak, there has been a growing acceptance in recent years of indigenous peoples’ right to exercise their own forms of dispute resolution within their communities. Such shifts reflect trends in international development thinking that view non-state justice systems as an important factor in increasing access to justice for marginalized populations.³

Prior to these constitutional reforms, the legacy of colonialism and racism meant that indigenous law was marginalized or even criminalized by states. Current changes are a result of years of lobbying by indigenous peoples’ organizations that have defended their own forms of law (*derecho propio*) as an essential element of their collective indigenous identities. State policies of recognition in Latin America have been profoundly influenced by new international human rights instruments, in particular the 1989 International Labor Organization’s Convention on Indigenous and Tribal Peoples in Independent Countries and the United Nations’ Declaration on the Rights of Indigenous Peoples (adopted by the General Assembly in 2007). As result, over the course of the last 20 years jurisprudence has emerged in some Latin American states and increasingly within the inter-American system of human rights that supports the rights of indigenous peoples to exercise their own forms of government and law in what are effectively semi-autonomous areas within existing nation-states.⁴ Yet while international law has turned “indigenous peoples” into a category which transcends national boundaries, the ways in which indigenous people understand their own forms of law and government and the nature of their claims to autonomy are highly dependent on specific histories and contexts.⁵

THE REVITALIZATION OF INDIGENOUS LAW

Prevailing ideas about indigenous justice systems tend to assume a correspondence between ethnicity and law. In some ways this echoes earlier perspectives in

legal anthropology, which understood legal pluralism as a multiplicity of different legal orders, each belonging to a distinct “tribe” or ethnic group. However, contemporary anthropological research has repeatedly pointed to the ways in which ethnic identities, indigenous conceptions of justice, and the boundaries between subaltern and dominant forms of law are, in practice, produced and negotiated through multiple encounters and interactions between individuals, groups, institutions, and national and transnational legal orders.⁶ Contemporary international law invokes notions of authenticity and pre-colonial continuity to justify indigenous peoples’ special collective rights. Yet when specific identities are recognized through law, ethnic frontiers are effectively reinscribed, strengthening certain constructions of *traditional* and *indigenous*. In other words, law itself contributes to defining the “authentically indigenous.”⁷ Such processes can reinforce indigenous identities, but they can also reinforce power inequalities within communities—for example, by entrenching stereotypes of “traditional” gender roles which limit women’s participation in community authority structures. They can also limit the legitimacy of hybrid, mobile identities which characterize many forms of indigenous “being-in-the-world” today: paradigms of legal recognition often tend to associate and “fix” indigenous people with rural forms of territoriality based on the exploitation of agriculture or natural resources, when in fact nearly 50 percent of Latin America’s indigenous people live in urban areas and many are transnational migrants.

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Some authors have alleged that the normative frameworks associated with paradigms of liberal multiculturalism oblige indigenous peoples to continuously demonstrate and perform their authenticity.⁸ According to these critiques, indigenous identities and legal forms end up responding to hegemonic expectations and definitions of what constitutes indigeneity. However, recent research in Latin America has pointed to the complex ways in which indigenous norms and practices are being renegotiated through intra- and intercultural dialogues, and has explored the impacts of these processes of dialogue on individual and collective identities.⁹ For example, the recognition of indigenous jurisdiction in Colombia has led indigenous organizations to create new secondary tier “courts of appeal,” which provide a means for redress for members of communities dissatisfied with the decisions of their own communal authorities. Such innovative mechanisms constitute spaces for the emergence of new intercultural forms of legal discourse and practice, or interlegality.¹⁰ The shift toward official policies of recognition has led to a revitalization of indigenous justice systems in many communities

and regions. These continue to incorporate a range of elements, most recently including international human rights discourse. For example, in Santa Cruz del Quiché, Guatemala, K'iche' community activists have reinstituted the *alcaldía indígena*, a supracommunal coordination of indigenous communal authorities which ceased to function during the worst years of the armed conflict. Today the *alcaldía* works to mediate disputes and reduce the incidence of lynchings of suspected criminals, drawing on discourses about Mayan identity but also paradigms of universal human rights and the collective rights of indigenous peoples.¹¹ Among more isolated lowland indigenous populations, particularly in the Amazon basin, justice systems were historically less affected by official law due to the minimal presence of state justice authorities. However, in recent years, indigenous autonomy in these regions has been seriously threatened by outside actors such as migrant settlers and by the intrusion of national and international companies seeking to exploit natural resources. Indigenous justice systems have had to adapt to these threats to group existence and have often championed a discourse of rights as part of their defensive strategies.¹²

While strategic and identity discourses deployed by indigenous movements may depict indigenous justice systems as millenarian or static distillations of distinct cultural worldviews wholly separate from dominant forms of law, they are in fact highly dynamic and, invariably, internally contested. Not only do the norms, authorities, and practices of indigenous justice systems reflect the changing relationship of indigenous peoples with dominant society, but they also reflect changes and tensions within indigenous communities and movements themselves on issues such as gender roles. For example, while before the armed conflict all members of the *alcaldía indígena* in Santa Cruz del Quiché were men, today some women have been selected as *alcaldes*, and issues of gender discrimination are slowly beginning to be addressed, or at least broached within community decision-making processes. This is, in part, a consequence of indigenous women's participation in Mayan social movements throughout the country, but also of demands within indigenous communities that women's dignity and physical integrity be respected. In Chiapas, Mexico, the Zapatista autonomous municipalities have developed local councils (*consejos de honor*) that apply "Zapatista justice," challenging the Mexican state's monopoly on the rule of law by providing accessible forms of dispute resolution for both Zapatista and non-Zapatista communities. Such justice practices reflect the debates and tensions around gender roles that have been such a marked characteristic of the Zapatista movement.¹³ Constitutional and international recognition have certainly encouraged a renaissance of community-based forms of law in some

contexts. But in others, factors such as migration, religious conversion, and the influence of national political parties mean that indigenous communal authority and non-state forms of law have all but disappeared. Nonetheless, the revival of indigenous law and its defense by indigenous rights activists is challenging existing paradigms of legality across the region.

INTERLEGAL COORDINATION IN LATIN AMERICA

An overriding concern in Latin America in recent years has been how to coordinate official and indigenous justice systems in order to guarantee fundamental human rights while simultaneously ensuring indigenous peoples' rights to exercise their jurisdictional autonomy.¹⁴ A number of bills have been drafted to this end, though few have become law. Controversies have centered on the appropriate limits of the personal, material, and territorial jurisdiction of indigenous law—to whom, where, and to what kinds of disputes it should apply.¹⁵ Also at issue are the kinds of dispute resolution procedures deployed by indigenous communities. Policy makers and indigenous representatives have debated the kinds of secondary or appeal mechanisms that should exist to adjudicate conflicts between different indigenous jurisdictions, or between indigenous law and state law. However, instead of opening a debate on the nature of national legal systems as a whole, national elites have tended to focus narrowly on the compatibility of indigenous justice practices with accepted constitutional and human rights norms. This has led critics of multicultural reforms to ask whether efforts at coordination amount to little more than an attempt to subordinate indigenous justice forms to the hegemonic paradigms of liberal legality.

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DUE PROCESS AND HUMAN RIGHTS GUARANTEES

Intercultural debates about what constitutes “due process” have been particularly contentious—for example, whether indigenous law provides adequate protections for those accused of wrongdoing.¹⁶ Another highly controversial issue is the nature, severity, and interpretation of the sanctions applied within indigenous justice systems. Typically, these range from monetary fines to physical punishments such as ritual whippings, communal work, short periods of detention, and even the expulsion of individuals and their families from their communities of residence. Those opposed to the recognition of indigenous peoples' rights have argued that granting autonomy to community-based justice will lead to the sanctioning of torture and other practices that constitute violations of hu-

man rights.¹⁷

Such criticisms tend to assume that indigenous law is somehow fixed or immutable, yet it is clear that the act of recognition by both the state and international rights organizations is profoundly changing the nature of indigenous justice systems. For example, García Serrano's work in Ecuador shows how some communities have taken measures to limit the severity of physical punishments of wrongdoers by reducing the number of lashes applied or developing alternative sanctions to corporal punishment.¹⁸

At the same time, however, reports from other places have indicated a hardening of sanctions in response to perceptions of growing citizen insecurity and an increase in common crime affecting indigenous communities, including

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a tendency to use tougher forms of corporal punishment against supposed delinquents.¹⁹ In addition, given the inability of the national judicial systems

to guarantee justice and security for the majority of the population (particularly the poor), violent and arbitrary acts such as lynchings have also occurred in response to the perceived increase in crime across the region.²⁰ Such collective acts of vigilante violence are not indigenous law. To the contrary, available evidence indicates that where indigenous justice systems are strong, the incidence of such arbitrary violence is low. However, indigenous law may also reflect wider, dominant trends of being tough on crime as governments across the region champion policies that are increasingly restrictive of human rights.

GENDER DISCRIMINATION AND GENDER VIOLENCE

Concerns have been expressed that the granting of autonomy for indigenous law could reinforce gender inequalities and patriarchal forms of domination within indigenous communities. Indigenous women's organizations across Latin America have generally rejected this counter-positioning of collective indigenous rights and women's rights and have fought to secure protection for their rights as women at the same time as supporting claims for the recognition of their peoples' collective rights to exercise jurisdiction over their own affairs. For example, a successful campaign by Quichua women in highland Ecuador secured two important articles in the 2008 constitution: Article 57 guarantees the right of indigenous peoples to "create, develop and practice their own forms of law or customary law, which cannot restrict constitutional rights, especially

of women, girls, boys and adolescents,” and Article 171 of the constitution states, “The authorities of indigenous communities, peoples and nationalities shall exercise jurisdictional functions, based on their ancestral traditions and their own forms of law within their territories, with guarantees for women’s participation and decision-making.”

While women undoubtedly continue to be discriminated against within both official and indigenous legal systems, recent research indicates that they are playing an important role in transforming community-based justice systems. Indigenous women’s organizations are working to increase female participation in community decision-making processes and to ensure that women have access to effective forms of defense and reparation within community-based forms of justice.²¹ The influence of NGOs and indigenous social movements has led to new practices in some communities that seek to address intrafamilial violence, marital disputes, and unwanted pregnancies.²² Innovations have traveled across national boundaries: the Zapatistas’ women’s charter was an important inspiration to indigenous women across the continent as it set forth women’s decision-making autonomy as a key aspect of indigenous autonomy.²³ In the Andes and in Guatemala, community charters have been drafted that outline general principles for dispute resolution, including the need to balance men’s and women’s rights and obligations and to guarantee mutual respect.²⁴ The outcomes of such attempts to address gender inequalities remain uncertain. However, they do show that indigenous legal systems are dynamic and constantly evolving, and that it is perfectly possible to combine respect for the legal autonomy of indigenous peoples with human rights.

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INDIGENOUS JUSTICE AND BELIEF SYSTEMS

The coordination of indigenous justice systems and state law also raises more complex issues surrounding indigenous belief systems. Understandings about causality and the appropriate measures that should be taken to resolve disputes vary enormously according to cultural context. Among indigenous peoples, wrongdoing may be interpreted as a result of illness or even witchcraft—all requiring remedial actions that may be very different from those prescribed in the state judicial system.

A controversy among the Nasa people in the department of Cauca, Colombia, signaled some of the tensions between state and indigenous prescriptions for justice. When male indigenous authorities applied traditional purification rituals to a rapist, claiming his actions were the result of sickness, many women

within the community thought the treatment was too lenient and called instead for the man to be sent to the state justice system for punishment.²⁵ While this case highlights intracommunal differences of interpretation, it also signals some of the broader challenges inherent in the recognition of indigenous justice systems. As García Serrano notes:

The relationship between [indigenous peoples' justice systems] and supernatural forces, superstitions and beliefs, myths and the interpretation of dreams give the former a complex character. In fact indigenous people do not distinguish between the legal order and other social and cultural orders. For them there is only one reality and neither is there [necessarily] a distinction between the action of political-legal authorities and religious authorities.²⁶

While this observation may not hold true for all indigenous communities or peoples, it does question the extent to which the different belief systems that exist within complex legal pluralities are commensurable and warns us against any simple assumptions that different legal systems in Latin America will eventually converge.

PLURINATIONAL STATES: BEYOND PARADIGMS OF RECOGNITION?

The Ecuadorian constitution of 2008 and the Bolivian constitution of 2009 go well beyond previous constitutional formulations for the recognition of indigenous law. Both recognize the autonomy of indigenous jurisdictions, explicitly stating that these have parity with traditional state jurisdictions. This is in line with the professed intentions of their drafters to “decolonize” their respective nation-states rather than simply to recognize indigenous law within existing legal frameworks (a formulation which had effectively made indigenous law subordinate to non-indigenous state law). Article 179 of the Bolivian constitution states that ordinary jurisdiction and “Indigenous Native Campesino jurisdiction” (*Jurisdicción Indígena Originaria Campesina*) enjoy equal status. A new law of the judiciary establishing legal pluralism as the basis of the national justice system was approved in June 2010. It mandated reform of the legal system to reflect the plurinational nature of the state and to guarantee the rights of indigenous peoples and nations to self-determination, autonomy, and self-government as set out in the constitution, ILO 169, and the UN Declaration on the Rights of Indigenous Peoples.²⁷

A law of coordination (*ley de deslinde jurisdiccional*), approved in Bolivia in December 2010, establishes the mechanisms for “coordination, cooperation

and complementarity” between the different forms of law, and commits the state to strengthening indigenous law and guaranteeing equality and “mutual respect” between the different jurisdictions.²⁸ However, indigenous organizations in Bolivia criticized the new law for subordinating indigenous law to ordinary state law, for example by limiting the exercise of indigenous jurisdiction only to rural areas.²⁹ A controversial law was approved in July 2010 that created a new “plurinational” constitutional court. This court will decide on conflicts between the different jurisdictions that make up Bolivia’s new legal system and is supposed to make its decisions on the basis of intercultural deliberations between indigenous and non-indigenous judges.³⁰ Initial proposals for parity between indigenous and non-indigenous judges were defeated and, in addition, the law stipulates that the indigenous magistrates must be qualified lawyers, illustrating the continuing dominance of hegemonic liberal conceptions of law.

The Ecuadorian constitution of 2008 recognizes the rights of indigenous peoples and nationalities (Article 57) and indigenous jurisdiction (Article 171). In 2011 the national congress debated a proposed law of coordination and cooperation between indigenous law and ordinary law. This law, known as the *Ley Orgánica de Coordinación y Cooperación entre la Justicia Indígena y la Jurisdicción Ordinaria*, provoked considerable opposition among non-indigenous political elites.³¹ Opponents voiced concern about the kinds of sanctions applied within communal indigenous justice systems and how to guarantee constitutional and international human rights. Indigenous representatives worried that indigenous justice systems would be overly limited by the dominant legal system. On the issue of personal and territorial jurisdiction, the Ecuadorian draft law proposed that indigenous law could apply to indigenous and non-indigenous people, although only within indigenous territories. The 2010 *ley de deslinde* in Bolivia went further, establishing that indigenous law can apply to acts that affect the interests of indigenous peoples, even when those acts are committed outside indigenous territories. In both countries, political opposition to the exercise of indigenous autonomy rights remains strong, and the new legislation has yet to be fully tested. But, at least in the Andes, the trend has been toward the strengthening of indigenous jurisdictions, establishing their legality vis-à-vis ordinary jurisdiction in more precise terms. This is not the case in other countries: in Mexico and Guatemala, for example, the absence of laws of coordination means that indigenous authorities continue to operate in a state of legal ambiguity without a strong mandate confirming their legitimate rights to exercise their own laws.

CONCLUSION

The adoption of multicultural and plurinational constitutions in Latin America represents a profound challenge to the monistic conceptions of law which have dominated most of the region's republics since independence. Legal pluralism is now clearly recognized as a feature of many states, even though attitudes among legal practitioners and political elites are notoriously slow to change. Indigenous peoples have campaigned for decades for their collective rights. The shift toward legal recognition of their justice systems is, therefore, a significant political advance. However, the focus of much debate continues to be on how to coordinate different legal systems and ensure that indigenous law upholds internationally accepted notions of human rights, rather than how to transform political systems and development models in order to guarantee indigenous peoples' collective rights as a whole.

The new plurinational constitutions of Ecuador and Bolivia are premised on the belief that indigenous forms of self-government are indivisible from issues of control over territory, natural resources, and forms of social and economic development. Yet the governments of Rafael Correa and Evo Morales have continued to clash with indigenous communities over precisely these issues. Indigenous peoples' claims for the autonomy of their justice systems are inextricably linked to their broader claims for political autonomy, land rights, and alternative forms of development. Although Latin American states have recognized indigenous justice systems to varying degrees, they continue to pursue development paths that are highly injurious to indigenous peoples' rights and to their continued survival. 

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NOTES

1. For surveys of debates on legal pluralism, see: John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism* 24 (1986): 1–50; Anne Griffiths, "Legal Pluralism," in *An Introduction to Law and Social Theory*, ed. Reza Banakar and Max Travers (Oxford: Hart Publishing, 2002), 289–310; Sally Engle Merry, "Legal Pluralism," *Law and Society Review* 22 (1988): 869–96; Brian Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sydney Law Review* 30 (2008): 375–411; William Twining, *Globalization and Legal Theory* (Evanston, IL: Northwestern University Press, 2000).

2. Eddie Condor Chuquiruna, *Estado de la Relación entre Justicia Indígena y Justicia Estatal en los Países Andinos: Estudios de Casos en Colombia, Perú, Ecuador y Bolivia* (Lima, Peru: Comisión Andina de Juristas, 2009); Eddie Condor Chuquiruna, *Experiencias de Coordinación y Cooperación entre Sistemas Jurídicos en la Región Andina* (Lima, Peru: Comisión Andina de Juristas, 2010); Raquel Yrigoyen Fajardo, "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*, coord. César Rodríguez Garavito (Buenos Aires: Siglo XXI, 2012).

3. Julio Faundez, "Community Justice Institutions and Judicialization: Lessons from Rural Peru" in *The Judicialization of Politics in Latin America*, ed. Rachel Sieder et al. (New York: Palgrave Press, 2005), 187–209; Julio Faundez, "Should Justice Reform Projects take Non-State Judicial Systems Seriously?"

Perspectives from Latin America,” *World Bank Legal Review* 1 (2006): 113–39.

4. Esther Sánchez Botero, *Justicia y Pueblos Indígenas de Colombia: La Tutela Como Medio Para la Construcción del Entendimiento Intercultural* (Bogota, Colombia: UNIJUS, 2010); S. James Anaya, *International Human Rights and Indigenous Peoples* (New York: Aspen Publishers, 2009); Luis Rodríguez-Piñero, *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime, 1919–1989* (Oxford: Oxford University Press, 2006).

5. Ronald Neizen, *Public Justice and the Anthropology of Law* (Cambridge: Cambridge University Press, 2010), 106.

6. Sally Falk Moore, *Social Facts and Fabrications: “Customary” Law on Kilimanjaro, 1880–1980* (Cambridge: Cambridge University Press, 1996); Merry, “Legal Pluralism”; Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006); Maria Teresa Sierra, ed., *Haciendo justicia: Interlegalidad, Derecho y Género en Regiones Indígenas* (Mexico: CIESAS, 2004); Rachel Sieder, “Building Mayan Authority and Autonomy: The ‘Recovery’ of Indigenous Law in Post-peace Guatemala,” ed. Austin Sarat, *Studies in Law, Politics, and Society* 55 (2011): 25–57; Fernando García Serrano, “Estado de Relacionamento en Ecuador” in *Estado de la Relación entre Justicia Indígena y Justicia Estatal en los Países Andinos: Estudios de Casos en Colombia, Perú, Ecuador y Bolivia*, coord. Eddie Condor Chuquiruna (Lima, Peru: Comisión Andina de Juristas, 2009), 105–69.

7. Nicholas Buchanan and Eve Darian-Smith, “Introduction: Law and the Problematics of Indigenous Authenticities,” *Law and Social Inquiry* 36, no. 1 (2011): 119.

8. Karen Engle, *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy* (Durham, NC: Duke University Press, 2010); Elizabeth A. Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham, NC: Duke University Press, 2002); Neizen, *Public Justice and the Anthropology of Law*. Such critiques have principally focused on multicultural policies toward indigenous peoples in the United States, Canada, and Australia.

9. Sandra Brunnegger, “Legal Imaginaries: Recognizing Indigenous Law in Colombia,” ed. Austin Sarat, *Studies in Law, Politics and Society* 55 (2011): 77–100; Sieder, “Building Mayan Authority and Autonomy”; Sierra, *Haciendo Justicia*. Brunnegger’s research on Colombia has shown how these negotiations are often tied up with indigenous leaders’ attempts to secure political legitimacy.

10. Brunnegger, “Legal Imaginaries: Recognizing Indigenous Law in Colombia.” Boaventura de Sousa Santos has proposed the influential concept of “interlegality” to analyse legal pluralism; this emphasizes notions of fluid, hybrid legalities and the importance of human agency in negotiating, reinterpreting, and deploying legal ideas such as rights: Boaventura de Sousa Santos, *Toward a New Legal Commonsense: Law, Globalization and Emancipation*, 2nd edition (Toronto: Butterworths, 2002).

11. Rachel Sieder, “Contested Sovereignties: Indigenous Law, Violence and State Effects in Postwar Guatemala,” *Critique of Anthropology* 31, no. 3 (2011): 1–24; Sieder “Building Mayan Authority and Autonomy.”

12. Susan Sawyer, *Crude Chronicles: Indigenous Politics, Multinational Oil, and Neoliberalism in Ecuador* (Durham, NC: Duke University Press, 2004).

13. Mariana Mora, “La Politización de la Justicia Zapatista Frente a la Guerra de Baja Intensidad en Chiapas” in *De las reformas multiculturales al fin del reconocimiento. Justicia, pueblos indígenas y violencia en México y Guatemala*, eds. María Teresa Sierra, Aída Hernández, and Rachel Sieder (Guatemala City: CIESAS/FyG, forthcoming); Aída Hernández Castillo, “Zapatismo and the Emergence of Indigenous Feminism,” *Report on the Americas NACLA* 35, no. 6 (May/June 2002): 39–59.

14. Yrigoyen Fajardo, “Derecho y Jurisdicción Indígena.”

15. S. James Anaya, “Video-conference to the Comisión de Justicia y Estructura del Estado, Asamblea Nacional República del Ecuador,” June 16, 2011, <http://unsr.jamesanaya.org/esp/videos/video-conferencia-asamblea-nacional-del-ecuador>; Willem Assies, “Indigenous Justice in the Andes: Re-rooting or Re-routing?” in *Imagining the Andes: Shifting Margins of a Marginal World*, ed. Ton Salman and Annilese Zoomers (Amsterdam: Askant, 2003). Anaya has argued that the rights of indigenous peoples to self-determination must be respected, but that the limits of personal and material jurisdiction will vary depending on the indigenous community in question and their decision making processes.

16. Controversy over due process guarantees has focused on indigenous law, although the ordinary

justice systems across the region routinely violate due process guarantees.

17. During the 1990s Colombia's constitutional court favoured the autonomy of indigenous justice systems but established a series of "minimum legal standards" (*mínimos jurídicos*) which all forms of law, including indigenous justice systems, were to uphold. These included the right to life and the prohibition on all kinds of torture or slavery. The court has also insisted on the need for state and non-state justice systems to provide due process guarantees, but has favoured intercultural mechanisms and dialogue to interpret supposed violations to human rights within indigenous justice systems. See: Assies, "Indigenous Justice in the Andes"; Sánchez Botero, *Justicio y Pueblos Indígenas de Colombia*.

18. Serrano, "Estado de Relacionamiento en Ecuador," 146.

19. Serrano, "Estado de Relacionamiento en Ecuador"; Gonzalo Ortiz, "Harsh Indigenous Justice Sparks Debate," *IPS News*, May 26, 2010, <http://ipsnews.net/news.asp?idnews=51591>.

20. Daniel M. Goldstein, *The Spectacular City: Violence and Performance in Urban Bolivia* (Durham, NC: Duke University Press, 2004); Angelina Snodgrass Godoy "When 'Justice' is Criminal: Lynchings in Contemporary Latin America," *Theory and Society* 33, no. 6 (2004): 621–51; Angelina Snodgrass Godoy, *Popular Injustice: Violence, Community, and Law in Latin America* (Stanford: Stanford University Press 2006).

21. Rachel Sieder and María Teresa Sierra, *Acceso a la Justicia para las Mujeres Indígenas en América Latina* (Norway: Chr. Michelsen Institute, 2010); Rocío Franco Valdivia and María Alejandra González Luna, *Las Mujeres en la Justicia Comunitaria: Víctimas, Sujetos y Actores* (Lima, Peru: Instituto de Defensa Legal, 2009); Miriam Lang and Anna Kucia, *Mujeres Indígenas y Justicia Ancestral* (Quito: UNIFEM Región Andina, 2009).

22. García Serrano, "Estado de Relacionamiento en Ecuador"; Sieder and Sierra, *Acceso a la Justicia para las Mujeres Indígenas*; Lang and Kucia, *Mujeres Indígenas y Justicia Ancestral*.

23. Aida Hernández, "National Law and Indigenous Customary Law: The Struggle for Justice of the Indigenous Women from Chiapas," in *Gender, Justice Development and Rights*, ed. Maxine Molyneux and Shahra Razavi (Oxford: Oxford University Press, 2002), 384–412.

24. Sieder and Sierra, *Acceso a la Justicia para las Mujeres Indígenas*.

25. In its reports about the case, the national media criticized indigenous autonomy as counter to women's rights. This failed to analyze the complex political issues which also contributed to the dispute. See: "Mujeres indígenas cuestionan la justicia de su comunidad," *Noticias Caracol*, October 2, 2011.

26. García Serrano, "Estado de Relacionamiento en Ecuador," 147.

27. Bolivia, Ley del Poder Judicial (2010), Article 159.

28. *Ibid.*, Articles 5 & 6.

29. See Ministerio de Justicia, Viceministerio de Justicia Indígena Ordinaria Campesina, FORDECAPI – Pueblos Indígenas y Empoderamiento (EMPODER), *Sistematización del Proceso de Consulta a los Pueblos Indígenas Originarios Campesinos. Anteproyecto de Ley de Deslinde Jurisdiccional*, Estado Plurinacional de Bolivia, La Paz, Bolivia (document on file with the author, 2010); Silvina Ramírez, "Reconocimiento Pleno de la Administración de Justicia Indígena en la Nueva Constitución de Bolivia. La Ley de Deslinde Jurisdiccional: Sus Contenidos Mínimos y Alcances," (Unpublished document on file with the author, 2009); Marco Antonio Mendoza Crespo, "Estado de Relacionamiento en Bolivia," in *Estado de la Relación Entre Justicia Indígena y Justicia Estatal en los Países Andinos: Estudios de Casos en Colombia, Perú, Ecuador y Bolivia*, coord. Eddie Condor Chuquiruna (Lima: Comisión Andina de Juristas, 2009), 173–217; Zenobio Quispe Colqué, "La justicia indígena y la ley de deslinde jurisdiccional (Bolivia)," August 26, 2011.

30. One of the chambers of the new constitutional court is exclusively reserved for consultations with indigenous authorities about the application of their norms in specific cases in order to determine their compatibility with the new constitution.

31. República del Ecuador Asamblea Nacional, Comisión Especializada Permanente de Justicia y Estructura del Estado, *Informe para Primer Debate del "Proyecto de Ley Orgánica de Coordinación y Cooperación entre la Jurisdicción Indígena y la Jurisdicción Ordinaria*, Quito, Ecuador (document on file with the author, 2011).

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