Indian Rights and Customary Law in Mexico: A Study of the Nahuas in the Sierra de Puebla

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In memoriam Claudia Olvera

Based on the findings of a research project in a Nahua Indian area of central Mexico, this article focuses on the relationship between customary law and state law in the context of the administration of justice by and toward Indians. By showing how customary and state law interact and conflict in the everyday life of Indian people, it questions the idealized vision of customary law that appears to be taken for granted in the current debate over Indian rights in Mexico and Latin America. Thus a paradox is revealed between the intertwining of law and custom in social praxis and the revival of an ethnic discourse which calls for an autonomous indigenous legal system based on customary law.

On 19 December 1984, in the Tepehuano Indian community of Santa María Taxicaringa, Durango, a woman and a man accused of witchcraft were assassinated and their bodies burned by members of the local community.[1] According to legal testimonies by some of those involved in the crime, the decision to kill them was taken in a collective meeting at which the victims were accused of provoking illnesses and deaths that not even medical doctors could explain. When the assassinations were reported to the authorities in the capital of Durango, they ordered the apprehension of the people responsible. Fourteen people were imprisoned, among them traditional authorities of Santa María Taxi-

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[1] Olvera (1992), who researched this case, tried to reconstruct the events from an anthropological and a legal perspective, to show how these two perspectives contradict each other in interpreting the facts. During recent fieldwork among the Tepehuano, Olvera discovered other motives for the killing of the witches, such as their refusal to attend the *Mitote* (the principal religious festivity of the Tepehuano).

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caringa. The case initiated a public debate in which anthropologists, lawyers, and representatives of the INI (Instituto Nacional Indigenista) participated. From the viewpoint of the Indian community, the assassinations were justified because only the deaths of the two witches could prevent further illnesses. From the state's perspective, witchcraft is not a crime. The assassinations of two people were homicides. But it was difficult for the state authorities to identify the murderers because the decision had been a collective one. In the end, the case received a political resolution rather than a legal one. The Governor of Durango intervened, and the accused, including the authorities of Santa María Taxicaringa, were released (Olvera 1992; Gómez 1990).

This case reveals the cultural conflict between two legal systems connected by relations of power. At first glance, this case confirms the understanding of customary law found in some works on legal anthropology: that it is a self-contained system with its own norms and procedures, separate and distinct from the state legal system (Pospisil 1971; Chase-Sardi 1978). This interpretation resembles that of some Indian organizations interested in developing an indigenous system of law founded on customary law (Pacari 1992; Willemsen 1987; Declaración de Tlahuitoltepec 1993). The idea of customary and state law as separate, autonomous legal systems is reinforced by positivistic legal theory which considers custom a residual category that does not influence legal theory and the practice of law (Kelsen 1958; Castillo Farreras 1973). In the Roman system of law, custom is recognized only as a source of law, a pre-law, or a nonlaw (Ballón Aguirre 1990). Historically, this view of custom as a residue has also been part of the colonial enterprise: "Western" law was opposed to the "uncivilized" custom rooted among the colonized natives (Fitzpatrick 1990).

However, as shown by recent work in legal anthropology, this vision of two separate legal systems can no longer be sustained (Merry 1991, 1992). Even in extreme situations like the one I began with where the conflict of cultural models and norms seems to emerge in a transparent way, an in-depth analysis shows the interference and continuous presence of the state legal system within customary law. My research on the Otomi Indian of the Mezquital Valley in Central Mexico (Sierra 1992) and the Nahuas of the Sierra de Puebla (Sierra 1993a; forthcoming) confirms what the recent trend in legal anthropology has shown, that (*a*) both state law and customary law are complexly interrelated and mutually determining in concrete societies (Merry 1988, 1991; Santos 1987; von Benda-Beckmann 1984), and (*b*) so-called customary law is a product of colonization, embedded in relations of power and change (Chanock 1985; Fitzpatrick 1980, 1990; Moore 1986, 1989; Starr & Collier 1989). The example of

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the British colonization of Africa, where customs were reconstructed as customary law and enforced by colonial power, radically calls into question the conception of customary law as a continuation of ancient traditions (Chanock 1985; Fitzpatrick 1990).[2] In Latin America customary law was similarly incorporated and transformed by Spanish colonial rule. The colonial power and the missionaries introduced new institutions to the political and cultural dynamics of the Indians (Gibson 1977; Borah 1982). These institutions were not only imposed on indigenous communities but also recreated by them, taking into account Indian practices and hierarchies, and finally appropriated by the communities as their own.[3] As a result, what today is identified as Indian tradition is better understood as the product of processes of domination and colonization. Whether or not a "pure" Indian tradition can ever be identified, it is important to recognize that customs and practices identified as "indigenous" continue to have meaning in the lives of Indian groups. More than the persistence of ancient traditions, the dynamics of change and power characterize customs and customary law (Starr & Collier 1989).

I argue here that customary law—as the product of processes of domination, colonization, and resistance—is embedded in the dynamics of state law and the global society. It cannot be seen as an autonomous and homogeneous system, as the continuation of timeless traditions. As a result, it is important to understand the interrelations, confrontations, and mutually constitutive processes between customary law and state law as they are shaped by power imbalances and social change.[4] How does state law reshape local normative practices? And how do these local norms and practices manage to adapt, conflict with, transform, or reconstitute themselves in relation to state law? (Merry 1992). The current debate over Indian rights with its idealized vision of customary law must be rethought from this perspective.

I illustrate my argument with examples drawn from my research on the Nahuas of Huauchinango in the Sierra de Puebla in central Mexico. I first present the context in which my research topic emerged. Next, I analyze the relationship of state

[2] Comaroff (1992) describes with particular clarity how the colonial enterprise not only set in motion contradictions among colonizers and colonized people but among colonizers themselves. These contradictions had a direct effect on the construction of a colonized society based on law and in a new discourse of rights. In this process missionaries had an active role in building the natives' identity.

[3] By creating a separate jurisdiction for Indians, the *Republica de Indios*, the Spanish Crown formalized its colonial policy of control over Indian peoples. Hispanic institutions such as *cabildos* (town halls) were imposed and accommodated to Indian practices and hierarchies; Gibson (1977) has defined this process as the Hispanization of Indian policy.

[4] This perspective of a mutual constitution of law and custom has by now become standard in the English-language literature. In Latin America, however, it is only recently gaining ground against a predominant position that emphasizes a dualism of state law and customary law.

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law and customary law in the practices of the Nahuas of Huauchinango. Finally I discuss the debate on Indian rights in Mexico and Latin America.

I. Background

Since the late 1980s, there has been a renewed interest in the discussion of customary law and its relation to state law in Mexico and Latin America. This increased attention is due to a particular political conjuncture that can be summarized in the following points.

A. Human Rights and Customary Law

A study of Indian rights in Latin American legislation (Stavenhagen 1988) reveals that one cause for human rights violations against indigenous people is the lack of recognition of customary law. As shown in the example with which I began, state law can conflict with the norms and customs of ethnic groups for some crimes, such as witchcraft murders. Judicial records on Indian prisoners also reveal how some Indian customs, such as the use of stimulants or psychedelic plants in rituals (Rajsbaum, forthcoming) or the performance of certain family rituals (Gómez 1990), can lead to criminal prosecutions. My research with Indian prisoners held at the regional prison of Huauchinango confirms the observation that Indian customs often figure in cases of supposed crimes committed by Indians, although such customs are rarely recognized by state authorities as motivating factors.

B. Indian Organization

The 1980s also coincided with a new stage of Indian mobilization during which many groups organized so that they might confront the state with their demands, primarily the demand for recognition at the constitutional level of the collective and individual human rights, including the rights to self-government and to develop their own legal practices. As revealed by the Indian movements in Brazil, Nicaragua, Ecuador, Guatemala, and recently in Mexico, ethnic demands emerge in the context of national movements for democracy and the recognition of cultural differences. Custom and customary law play a fundamental role in these ethnic discourses. I will elaborate on this point later on.

C. Constitutional Reforms

Faced with demands by indigenous groups, various Latin American countries have been obliged to amend their Constitutions to include references to Indian rights. Nicaragua (1985),

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Brazil (1988), Colombia (1991), and recently Bolivia (1994) are the most interesting examples. Mexico, with a long-standing tradition of indigenist policy, could not face 1992, the 500th anniversary of colonization in 1492, without having granted constitutional recognition to its Indian peoples. The matter had long been discussed. In January 1992, the legislature of Mexico amended article 4 of the Constitution to recognize the multicultural composition of the state based originally on its indigenous peoples and the validity of customary law in legal and agrarian processes. This amendment, however, recognized only cultural rights and disregarded political and economic ones.

Now the terms of this debate have changed because of the political dynamics of Indian mobilization, particularly after the Zapatista movement (G. Collier 1994b), from a demand based on amending particular articles of the Constitution, such as article 4, to a focus on the reform of the state and the Constitution as a whole, where Indian rights have to be recognized as structural elements within national law.

D. International Recognition of Indian Rights

At the international level, new possibilities have unfolded for the recognition of Indian rights and of customary law. The past few decades have witnessed a change of view in the international community, shifting from paternalistic and assimilationist policies to a position of greater respect for the cultural integrity of indigenous peoples. Article 27 of the United Nations Covenant on Civil and Political Rights (1966), in particular, refers to minorities' rights to cultural survival. And article 169 of the International Labor Organization Convention on Indian and Tribal Populations (1989) advocates the right of indigenous peoples to maintain cultural differences and to participate in the decisions affecting them. The Latin American countries ratifying this convention are Mexico (1990), Colombia (1991), Bolivia (1991), Costa Rica (1993), and Perú (1994). The United Nations is currently discussing a Declaration on Indian Rights which questions traditional patterns of protecting Indians, for it would recognize the right of Indian peoples to self-government. These international conventions and declarations have offered Indian peoples an opportunity to defend their rights; in some cases the tools provided by international agencies have been more effective than the legal tools available at the national level, such as for the Yanomami in Brazil (Cultural Survival 1989; CCPY 1989; Sierra 1993b), or the Nahuas of the Alto Balsas in Mexico.

Given this background, it is quite clear why researchers in Mexico and Latin America have recently become interested in studying legal processes and Indian rights. Little previous research had been done. In Mexico, for example, few studies have

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appeared in this specific field, other than the important research done by American anthropologists who explored customary law and legal processes among the Zapotecs in Oaxaca (Nader 1969, 1990; Parnell 1988) and the Tzotziles in Chiapas (Collier 1973, 1977), and the works of such Mexican anthropologists as Pozas (1959) and Aguirre Beltran (1980). Basically, ethnographies of Indian groups did not focus on customary law, although most described legal practices and authorities (Valdivia 1993). As new studies of customary law and its relation to national law are carried out,[5] their findings will have to be discussed not only by scholars within the academy but also by members of Indian organizations and within the Indian organizations themselves. Such studies raise complex political issues, whose open discussion poses a new challenge for the theory and practice of anthropology.

II. Customary Law and Legal Processes in the Sierra de Puebla

In the Nahua region of Huauchinango, Puebla, I focused on legal forums to study and describe the particular mechanisms and practices of law and custom, taking into account various legal levels such as the local court in the Indian community, the municipal and district court in the mestizo town, and finally the prison. I try to show the processes of articulation, transaction, and negotiation between law and custom, their mutual influences and transformations, and the power relations embedded in them.

As is common knowledge, the administration of justice for Indians in Mexico, and in general for the popular classes, is plagued with corruption, racism, discrimination, and violation of human rights. Most prisoners in rural jails are Indian. For example, in 1992, Indians made up 95% of the prisoners in the regional prison of Huauchinango, which brings together prisoners from various ethnic groups and areas of the Sierra de Puebla. Indian customs are routinely ignored during judicial processes. The stories that Indian prisoners tell about their cases differ radically from official records (Gómez 1990; Sierra 1993c). In fact,

[5] It is in this context that the Interamerican Institute of Human Rights and the Interamerican Indigenist Institute organized an International Seminar on Indian Customary Law and Human Rights in Lima in 1988, at which lawyers and anthropologist from Latin America participated (Stavenhagen & Iturralde 1990). This interest on Indian and human rights has also motivated the formation of several groups of scholars in such Latin American countries as Mexico, Perú, Brazil, Chile, Colombia, and Guatemala (for Mexico see Chenaut & Sierra forthcoming). Also, the Interamerican Institute of Human Rights and the Mexican Academy of Human Rights have organized workshops with grassroots Latin American Indian organizations to promote additional discussion about Indian rights. Among other current researches on the subject of customary law or Indian rights in Mexico see Chenaut (1990, forthcoming) and Valdivia (forthcoming).

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Indians do not receive justice (Hunt & Hunt 1969).[6] Not only do Indians lack the economic and social resources commanded by people from cities (usually mestizos, who have "contacts" with officials and can "pay" for justice), but Indians are also commonly subjected to intimidation and may even be tortured to make them confess to a crime. Recent reforms to the Federal Code of Penal Procedures (1991), intended to diminish discrimination and including Indians' right to an interpreter, have not been implemented and so have had little effect in reducing injustices.[7]

Despite the discrimination against them, a surprising number of Indians approach state authorities with their cases, taking even small claims that could have been handled in the community court. In at least some Indian villages, "harmony ideology" (Nader 1990) is being questioned. Indian villagers do not always try to settle their cases internally in order to exclude state law and maintain local control over dispute resolution. When community consensus breaks down and power differentials are involved, villagers do not see conciliation at the local court as the only or best way to solve their disputes, as proven by the continual presence of villagers at the district court of Huauchinango. State law offers another possibility for confronting local authorities and injustices. Some Indian villagers even think that "justice" is better provided in the city than in the village; they thus criticize local authorities for taking bribes from those involved in a dispute.

Everyday the office of the *agente del ministerio público* (the public prosecutor's office where claims are filed) is filled with people from outlying villages waiting to present a complaint. Most have traveled a long way, sometimes walking for hours. Some of the cases brought to the regional court follow a legal process, involving private or official counselors. Not all the claims made by villagers end in a judicial process. Appeals to state authorities do not necessarily result in the application of formal laws. Rather, they make room for negotiation with state officials, particularly in less serious cases. Invoking both law and custom when claims are presented at the district court reveals that what is at stake is not the rule of law but rather relations of power and compromises between litigants, the authorities, and sometimes law-

[6] Hunt & Hunt (1969) have detailed the functioning of the district court and municipal court in Zapotec communities of Oaxaca. These authors illustrate how Indians are at a disadvantage when confronting the district authorities over legal issues. They argue that for these reasons Indians are reluctant to take their cases to the district officials.

[7] In 1991 the Federal Code of Penal Procedures was amended to include, among other matters, the right to a translator or an interpreter for Indians who do not speak or understand Spanish. Although communication is a principal obstacle to the fair administration of justice, this reform is not being applied generally because local people do not know of this right and the authorities are not particularly interested in promoting it. When there is an urgent need of a translator for Indian people who do not speak Spanish, the authorities prefer to use bilingual office staff rather than call in the official interpreters.

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yers.[8] District authorities only acknowledge customs informally but never recognize their legal validity for litigation.

In the community court, however, invoking both custom and state law is a normal practice for local disputes. Bargaining over norms is done by both local authorities and disputants. In fact, state law may be invoked during negotiations; sometimes, only the threat of sending the case to the district court leads to the resolution of a claim (Sierra 1990).

Both within and outside the communities, laws and customs, rights and traditions, are constitutive aspects of power relations and of the negotiation of justice. National law is seen as a resource for bargaining. In various situations, groups or individuals who have put forth official legal arguments may switch to arguments in favor of customs. I will illustrate the mutual influences of law and custom with some examples taken from the Nahuas of Huauchinango, Puebla. First, however, I briefly describe the regional context in which Nahuas and mestizo interact.

The Sierra de Puebla is situated in the Northeast zone of Central Mexico. The city of Huauchinango, like many cities located in Indian areas, retains a colonial flavor. Situated in a small valley, it still controls the economic, political, and cultural life of the communities scattered around it in the mountains. Four ethnic groups interact in the region, the mestizos in the center, and three Indian groups: the Nahuas (the majority), the Totonacos, and the Otomís. The Indian groups share a similar history of encounters with Spanish colonial power and its religious missions (Chamoux 1987).

The mountainous region of Huauchinango is quite humid; it is, in fact, known for its heavy cloud cover and copious summer rains. The land is of good quality and quite fertile, although crop yields vary with the weather, particularly frosts. On the higher lands, chili peppers are the main crop, but maize, vegetables, flowers, and fruits are also grown. Large quantities of coffee and maize are produced on the lower slopes. I carried out my research in the highlands, particularly in the Nahua community of Xilocuautla which belongs to the municipality of Huauchinango, and in the city of Huauchinango itself. In Xilocuautla, land is privately owned. On average, land property among neighbors ranges from 1 to 4 hectares; yet a few community members own 10 or more hectares scattered in small plots throughout the village. Others, however, do not have a single parcel and only own the plot and the house they live in. Such villagers must work for a *jornal* (day wage) or migrate to the cities temporarily for work in construction. The community is in fact socially differentiated, not homogeneous. The main source of income of the region's

[8] Note that an increasing number of Indians are turning to either lay or professional lawyers for help in a dispute. Of course, however, not all Indian people can afford to do so.

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inhabitants (known as *chileros*) is chili pepper. The growers produce Mexico's very popular *chile serrano.* Once harvested, the chili is conveyed to markets for distribution and sale.

According to law, Indian communities in the state of Puebla are governed by a *junta auxiliar* composed by three officials elected by the community.[9] The principal authority is the *presidente auxiliar* (auxiliary to the municipal president in the city of Huauchinango), who is responsible for the everyday management of community affairs and for the coordination of *faenas,* financially uncompensated collective work required of community members. The other two local authorities are also auxiliary to district authorities in the city of Huauchinango: The *juez de paz* (local judge), who is under the *juez de paz municipal* and the *juez de primera instancia,* and the *agente subalterno,* who is under the agente del Ministerio Público (the public prosecutor). The juez de paz and the agente subalterno perform legal functions within Indian communities. The juez deals with local disputes and small offenses. The agente subalterno is supposed to investigate major crimes, such as homicides and assaults, and transfer them without delay to the district authorities. In practice, however, all three local officials, including the presidente, administer justice. Community members (*vecinos*) with complaints select the authority they wish to approach. Officials do not handle cases together, only acting jointly in important cases.

The majority of cases that reach the local court relate to family, kinship, and neighbor relations. Disputes among the Nahuas normally arise over property, inheritance, community tasks, women, and marital relations. Most cases are small offenses, but robberies, homicides, and assaults also occur. Usually court sessions take place early in the morning, particularly during weekends. The sessions are public. Male community members attend local trials to listen to the events but also for the drink they get after an agreement is reached. In fact, part of the ritual of disputing is that the people involved in an offense, particularly the offender, give the authorities a box of soft drinks as a sign of respect; this practice substituted for the giving of the *refino* (an alcoholic beverage made of agave) that elders still remember.[10] The collective drinking soothes tensions provoked by the discussion. Other types of disputes, for example, family disputes or

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9 The junta auxiliar is incorporated into the traditional system of political and religious offices not recognized by the state—a "cargo system" (Cancian 1965). The cargo system is a colonial institution introduced by the Spanish to control and regulate local work as well as the political and religious life of Indian communities. Under a hierarchical and rotating system, men take on for given periods various communal tasks. Before becoming eligible for election to an official post, a man must serve in other, unofficial and often religious, community positions called "cargos."

10 Nader (1966) has acutely described the role of alcoholic drinks among Zapotecs in manifesting respect toward an authority during a dispute.

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those involving witchcraft practices, are dealt with in other forums.

Although the office held by the three members of the junta auxiliar is defined and recognized by the state, the state leaves an ambiguous arena for them to act within their communities. In this sense, the state allows local customs to flourish. As of now, however, the Constitution of the state of Puebla, like that of most other states in Mexico, does not recognize the validity of customs in judicial procedures.[11]

The following cases were heard at the community court of Xilocuautla. The first was handled by the local juez de paz and the second by the agente subalterno.

A. Disrupting Families, Disrupting Customs: A Case of Rape or Elopement

María, a 14-year-old girl, ran away to her boyfriend's (Antonio) house during a school festival in the village. María's father, Gilberto, went to the local authorities to accuse Antonio of rape, demanding that he be punished. In fact, as was later revealed, Gilberto had already complained to the district authorities but had dropped the charges when the police asked for a large sum of money to apprehend Antonio and take him to jail.

As is often true in Indian communities, the case was handled at a public hearing attended by relatives from both families and their silent but watchful neighbors. The case turned on whether María had run away of her own free will or whether she had been forced to leave her father's house. Gilberto argued that María had been forced to go with Antonio and had been raped. María and Antonio, who barely participated in the discussions, said that she had left of her own will, which was corroborated by the boy's father, Pedro, and other relatives. Gilberto also complained that his daughter was under age and still in elementary school. Most of the time the women of each family—mothers and grandmothers—carried on a loud discussion that did not interrupt the simultaneous negotiations by the men: the offended father Gilberto, the official, and the boy's father Pedro.

After hours of discussion and negotiation, it became clear that Gilberto was complaining not so much because his daughter had run away but because her flight had interrupted the ritual of the *tlapalole* (bridewealth), the traditional gifts owed by a groom

[11] As I mentioned above, the revision of the federal Constitution's article 4 recognizes customary law for juridical procedures in which Indians are involved, but each state must certify its assent to the change. Until now, only the constitutions of Chiapas, Oaxaca, Queretaro, Chihuahua, Hidalgo, Veracruz, and Nayarit have recognized the legitimacy of recourse to custom during a legal or judicial case. Nevertheless, this recognition has not brought a real change in the administration of justice to Indians, as the recent events in Chiapas have shown.

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and his family to the bride's family.[12] Gilberto wanted to be compensated for the gifts he would not now receive, a demand that seemed quite natural to everyone present. In the end, it was agreed that Pedro would pay Gilberto 1,000 pesos (U.S. $350). The authorities also imposed a fine of 100 pesos (U.S. $35).[13] Finally, Pedro brought the sodas to show respect. The neighbors and relatives considered the agreement reasonable. As is the practice, the agreement was written down as an *Acta de Conformidad*, a formal document that legitimizes the negotiation. In this document the boy's mother committed to "correct" María (*corregir a la muchacha*) because she was still under age.

The case did not end there, however. A few hours after the agreement was reached, two members of the judicial police from the district court arrived in the Indian community to apprehend Antonio under an accusation of rape. Although it was not yet clear that Gilberto had formally filed a claim at the district court, the judicial police tried to extort Antonio's family. When the local authorities informed the police of the families' agreement, the police responded by demanding money for *not* taking Antonio to jail. Pedro resisted, complaining that he should not be held responsible for paying three debts: one to the local authorities, another to his son's father-in-law, and another to them. The police criticized the local authorities for condoning a settlement based on the Indian custom of bridewealth—"*ni que estuvieran comprando a la muchacha*" (as if they were buying the girl) and for asking Pedro for the soft drinks. The police left after demanding food and beer and obtaining a promise from the boy's father to pay them some money.

This example illustrates the complexity of local legal processes and their subordination to the official legal apparatus. The girl's father initiated the interplay of the two legal systems, the official and local one, when he approached both in seeking a solution to his problem. It is because state law is seen as legiti-

[12] The *tlapalole* (bridewealth) involves the giving of significant number of gifts (usually bread, fruits, and beverages) to a woman's family over a period of years before the marriage takes place. Traditionally, the tlapalole begins with the *petition* of the girl by an intermediary, the *casamentera*, who could be a specific person (a *curandera* or a *curandero*) or the boy's godfather. The girl's parents negotiate the duration of the tlapalole and the kind of gifts it must include. During the term established, the boy and his family visit the girl's house, particularly during the village festivities. The first visit is one of the most important because that is when everyone in the village learns of the engagement. Some families ask directly for a certain sum of money for the tlapalole instead of gifts. This practice is not common, and the villagers criticize it.

[13] It is a custom in the village that authorities fine those involved in a dispute. Officially, the law sets the fine as an small amount which will be used for community purposes. In practice, however, the fine depends on the type of offense committed and is established by the local official and his auxiliaries, the *topiles* (local police). The fine is distributed among the authorities to compensate them for the time they spent on a case. Villagers usually complain about the fines, especially if they are particularly high. Some authorities whose fines are viewed as too high are regarded as abusive and are criticized for their behavior.

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mate that the judicial police can interfere in the community, imposing their authority and taking advantage of the situation. From the viewpoint of the community, the interruption of the flow of bridewealth gifts was more significant than the girl's running away. In particular, this dispute reflects a process of change in Indian communities. Many young couples are no longer following the traditions of their elders. Traditional courtship with bridewealth gifts are no longer the only way to get married. Young couples are resisting traditional courtship for many reasons, one being the high cost of the bridewealth gifts. They also want to choose their own mates and to marry without having to wait many years. This change in courtship customs has affected the role of women within families.[14]

For the purposes of my argument here, it is important to note the manipulation of norms and the strategic use of customs and of laws. The charge of rape, as defined by state law, came into conflict with an argument based on the Indian custom of bridewealth and the right of a bride's family to be compensated for courtship gifts they will not receive. In this case the state law gave the judicial police a way to take advantage of the situation and allowed them to disparage the local agreement based on customary law.

B. Polygamy: A Dispute in Terms of Rights

Rosa had been living with Diego as his wife, even though he was already married and living with his legitimate wife, Angela. Rosa wished to leave and demanded of Diego that he return to her the cash equivalent of the goods and money she had originally brought to his home. Diego refused, claiming that he owed her nothing as she was not his legitimate wife and he had been supporting her since she came to live with him. (In fact, she had been living with him and his family, including his legitimate wife, for the past few years.) During this time Rosa had various conflicts with Angela. Some neighbors, particularly women, told me that the two women were always quarreling: both of them tried to wait on Diego and even raced to get up earlier to prepare his coffee. Because of these tensions Angela had even resorted to witchcraft to force Rosa out of the house. Recently, according to Rosa, Diego had maltreated her, criticizing her eating habits and insulting her. He even sent her out of the home. Rosa came from another village, so she did not have support in the community.

The case was presented to the agente subalterno, who cited Diego to appear in court. The agente had in the past had various

[14] Community elders argue that a woman who marries without bridewealth gifts will suffer in her husband's family because she will lack the support of her own family. Collier (forthcoming) has observed a similar process of change in the bridewealth practice among the Zinacantecos of Chiapas.

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problems with Diego, so he was prejudiced against him. When the case was heard, the agente subalterno supported Rosa's claim. He recognized her rights as a wife and pressed Diego to acknowledge his debt and pay it. He also criticized Diego for shouting and insulting him and Rosa. He wanted to take the case to Huauchinango. There was no negotiation because Diego displayed a disrespectful attitude and did not even respond to the claim: he only said that Rosa was not his wife; his wife was at home. Diego refused to pay, so the parties had no agreement. The agente subalterno then decided to imprison Diego to encourage him to reach an agreement (a common practice), but to everyone's surprise Diego ran away.

Although in other circumstances a man who flees to escape jail might be criticized by the community, in this case community members tended to take the husband's side. Many, including several women, dismissed Rosa's claim and criticized her, arguing that "she knew he was married."

Having failed to obtain redress in the community, Rosa and her mother, who accompanied her, decided to take the case to Huauchinango. As often happens when cases are taken from the community to the district level, the local agente subalterno who handled the case wrote to his superior in Huauchinango explaining the charges. He also went to the Agencia del Ministerio Público in the city, where he tried to negotiate with his superior in support of Rosa's claim. In Huauchinango, I found Rosa and her mother waiting to file their claim to the Agente del Ministerio Público. The agente subalterno was received by the district authority, his superior, without a long wait.

After telling Rosa's story, the agente subalterno emphasized her right to receive the money even if she had not been a legitimate wife. She had worked hard in the field and had helped Diego with his crops. Trying to justify Rosa's status as a second wife, he added: "The woman was duped by the man when he asked her to live with him, because he did not tell her he was married." When the prosecutor confirmed that Diego was legally married to only one of the women, he took no further interest in the details of the case or in the fact that Diego had been living in polygamy. The agente subalterno also told the prosecutor that Diego had been rude and had even fled when he tried to imprison him. To this the prosecutor reacted, insisting that he had no authority under the law to imprison anyone for small claims. The conversation focused on this matter, not the principal claim. In the end, the prosecutor suggest that Rosa had the right to ask for compensation but only on the grounds of abandonment because the couple had been living together and had a common child.

In brief, the prosecutor paid little attention to Rosa's claim, and he ignored the issue of polygamy, even though it is legally

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defined as a crime. Instead, he was more interested in reminding the agente subalterno that he, the prosecutor, had no authority to imprison one whose crime was no more serious than failing to pay a debt. Thus the prosecutor changed the focus of the dispute from an argument between two citizens to a case of wrongdoing by a person in authority. As it turned out, everyone I spoke with, including the agente subalterno, believed that the prosecutor had been bribed by Diego. That was Rosa's belief as well, as she still had to wait several hours to file her claim. A woman friend of Angela's told me: "[In Huauchinango,] instead of getting justice they [Rosa and her mother] will be chastised" by the district authorities.

The analysis shows several different aspects of the dynamic relationship between custom and law within the community. It is also interesting to note how local and official authorities manipulated legal arguments, including references to custom, to achieve their aims. In the Indian community, polygamy is a common practice, though one not accepted by everyone. It causes problems when conflicts emerge within polygamous families. When the case was handled at the local level, the agente subalterno recognized Rosa as Diego's legitimate wife, and it was in these terms that he presented the written notice to the district authorities in Huauchinango. It was Diego who claimed that Rosa was not his legitimate wife and thus had no right to demand payment for the goods she brought to his home. Nevertheless, at the official level, where polygamy is supposed to be considered a crime, the prosecutor ignored the fact, or paid no special attention to it, and ultimately used the case as an opportunity to criticize other "bad" customs in the community, especially the practice for imprisoning people for small claims. Note also the subordinate position of women—in the polygamous family, during the negotiation of the dispute at the local court, and finally at the district level where Rosa and her mother had to wait for hours to be heard.

These two cases, like many other claims that emerge in the everyday life in the Sierra, reveal the complex intertwining of customary law and state law—their manipulation and recreation in particular social settings, as well as the inequalities inherent in customary practices, such as the subordinate position of women.

The invocation of laws or customs can assume different meanings depending on the context and on the positions at stake. Within Indian communities, arguments over the interruption or payment of the tlapalole (bridewealth), for example, are not always taken to the local or district court. Official law is a resource that people can invoke or not, but if they invoke it, their actions may allow the police to intervene in the name of the law and to attempt to blackmail the people involved. Invoking the

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official law could also have the effect of framing a negotiation by limiting it.

Custom, however, is not totally ignored at the official level. In Huauchinango, there is room in informal negotiation where customs and laws can be manipulated and confronted. When faced with small claims that reach the official courts, state authorities are forced to deal with customs as well as laws. Their informal negotiations reveal the dynamic interaction of law and custom, their mutual relationship, their confrontations and influences at the regional and local levels.

State law, as a symbolic reference and material force, has penetrated and shaped various spheres of life within Indian communities, challenging customs and establishing limits on customary practices (Sierra, forthcoming). Many aspects of life are affected by official laws, such as those on inheritance, land tenure registration, private contracts, formal elections, civil registration, and civil marriage. Official laws constitute a frame of reference that people incorporate or manipulate in their daily lives. Customs are continually being transformed and redefined as they are confronted by official requirements as part of economic and social processes. A study of disputes allows an observer to trace these dynamics of accommodation and change.[15] Comaroff and Roberts (1981) demonstrated that disputes have to be situated in their total social and cultural context, but moments in the sequence of particular disputes can provide windows for observing processes of change and accommodation, as the cases presented here have shown.

In my research, I have tried to observe and analyze the strategic uses of law and custom as these are invoked to handle disputes. I found that such strategic invocations were particularly numerous at the local level, where a discourse in terms of rights is developing. Both men and women are invoking state law to vindicate a right: the right of not being beaten, of being recognized as legal subjects, among other demands. Although not everyone in the community speaks in terms of rights, this discourse is marking the way in which people present their claims. At the same time, room for negotiation has developed at the level of the official courts, in which mestizo authorities take into account arguments based on custom, or at least do not question them, even if such custom violates the rule of law, as the polygamy case reveals. These negotiations of custom and law emerge at the mar-

[15] Following the work of some legal anthropologists (Nader & Todd 1978; Nader 1990; Collier 1973; Merry 1992), I consider the analysis of disputes to be a privileged methodological way to observe power relations, processes of negotiation, and the manipulation of norms and legal arguments. By observing the disputes diacronically and synchronically, one may reconstruct the relations and mutual constitution of law and customs.

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gins of official courts (Yngvesson 1993) and are built on relations of power and conflict.[16]

This study confirms what other authors have shown regarding the manipulation of laws and customs in Mexican Indian communities (Collier 1973, 1977; Parnell 1978, 1988; Nader 1989, 1990).[17] Nevertheless, little work has been done to explore how law and custom interact outside Indian spaces within official court.[18]

My research on the articulation of law and custom within the legal processes of both Indian communities and the official courts corroborates the impracticality of analyzing state law and Indian customary law as if they were separate legal systems.

It is therefore surprising to detect what seems to be a paradox: the revival of an ethnic discourse among Indian organizations that claims the idea of an autonomous indigenous legal system based on customary law. This debate does not recognize the intertwining and dynamic interaction of state and customary law in the everyday life of Indian communities. In other words, the intersection of law and custom in the daily life of Indian people contrasts radically with the political expression of an ethnic discourse which dissociates customary law from state law.

The revindication of customary law has in fact acquired a political significance for indigenous movements today, and for this reasons it must be rethought from an academic perspective. Thus in the next section I will therefore elaborate the concept of customary law as it is used in the current debate on Indian rights in Mexico and Latin America. It is not my intention to solve what may be an insoluble paradox but to present some critical points. First, I briefly outline the context within which the debate over Indian rights has emerged.

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[16] In her study of the courts in Massachusetts, Yngvesson (1993) shows how a process of confrontation leads to the creation of new meanings, as official courts are pressed to consider practices they normally do not recognize.

[17] Although Collier (1973) and Nader (1990) recognized conflicts between official laws and customary practices in the groups they studied, they tended to treat such conflicts as points of departure for analyzing disputing processes within Indian communities, rather than focusing on the conflict of law and custom itself. Collier (1977) did focus on such conflicts but argued that although invoking state laws did lead to changes in Indian customs, customary procedures were not affected (at least at that time). Parnell (1978, 1988), in his work among Zapotec communities of Villa Alta, Oaxaca, proposed to study the legal dynamics between different legal levels, including the local and the district courts. He shows how, at the district level, an informal legality based on economic and political networks is recreated, outside the formal courts, while at the village level a certain autonomy for dealing with local disputes prevents the interference of the official law in the community.

[18] In another setting, Keebet von Benda-Beckmann (1981) has described similar processes of negotiation and bargaining of norms and rules in various forums, from the village courts to the state official courts. She describes how in a Minangkabau village in Sumatra parties shop between institutions and how institutions shop for disputes. This reciprocal shopping proceeds in terms of arguments of jurisdiction. See also Franz von Benda-Beckmann (1984).

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III. Customary Law and Indians Rights

The current discussion on Indian rights in Mexico and Latin America is occurring within a political process that involves various actors: Indian peoples, civil society, and the national state, as well as some international organizations. Within this context, a new ethnic discourse is emerging that calls into question the legitimacy of the state and its legal order.

Since colonial times, indigenous populations have contested state and regional powers. As Iturralde (1990) has shown, Indian tactics have evolved from rebellion and resistance, to a fight for legal recognition of their lands, to demands for civil rights and the acknowledgment of their cultural practices, to the present situation in which Indians are questioning the legality of the state, a move that has radically transformed the terms of debate. Today, the Indian movement is fighting for the right to self-government, setting themselves against a state legal order that has not only failed to recognize their cultural and political differences but has penalized Indians for practicing them. Throughout the historical process of confrontation, Indians have consistently invoked their customs and traditions: Indians have incorporated cultural demands at the core of their political discourse.

Members of the Indian movement are also taking advantage of the new discourse on human rights, which is supported by international norms that legitimize the right of indigenous populations to govern themselves. In addition, they have recently drawn on ecological and environmental discourses that recognize the important role played by Indian peoples in preserving natural ecosystems and biodiversity (particularly in rain forests), as is the case, for example, with Brazilian Indians like the Kayapó (Gomes Pereira 1988; Sierra 1993b). As I mentioned above, national states in Latin America have responded to Indian demands in various ways, usually by amending their constitutions to include some recognition of Indian rights.

The Indian movement is not, and has not been, homogenous. Different groups have voiced different demands depending on their particular historical and social contexts. Despite differences among Indian organizations and the demands they express, however, Indians today are playing an important role in the fight for democracy within the new social movements appearing in the final decades of the 20th century. As demonstrated by the recent Zapatista rebellion in Chiapas, ethnic demands are simultaneously demands to the nation for justice, democracy, and the recognition of cultural diversity. The events in Chiapas reveal the difficult conditions and political tensions that the movement for Indian rights evokes at local, regional, and national levels. In Chiapas, for example, demands for social justice by the Zapatista

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Liberation Army confronts archaic and modern structures of domination, producing violent reactions as threatened groups attempted to maintain their privileges.[19] For the first time after the revolution in 1910, an Indian and peasant movement has shaken the structure of the state and the Mexican society (García de León 1994; G. Collier 1994b).

A. How Indian Rights Are Defined

In general, the concept of Indian rights refers to specific collective rights that correspond to the so-called third generation of human rights. These rights can be defined in economic terms (the right to development, to manage natural resources, to receive a fair return for labor and products, etc.), in political terms (such as a group's right to participate in making decisions at local, regional and national levels and the recognition of traditional authorities and customary law), and in cultural terms (such as the official recognition of Indian languages for political, administrative, legal, and cultural purposes, as well as the recognition of customs, traditions, and spirituality). Recently, these concepts of Indian rights are being expressed and elaborated in the demand for autonomy that is being promoted by some Indian organizations (Stavenhagen 1990; Díaz Polanco 1991).

Although various groups define and express demands for autonomy and Indian rights in different ways, all such demands question the legitimacy of the modern nation-state. Proposals to recognize legalities grounded in heterogeneous legal and political orders necessarily contradict the project of a unitary, monocultural, liberal state based on the idea of equal rights for equal individuals.

The current political situation in Mexico, particularly after the Zapatista movement in Chiapas, has provided a context for the emergence of indigenous and peasant organizations demanding specific rights. In the last months of 1994, there was a noticeable change in the discourse of Indian organizations in Mexico, from the revindication of cultural and political rights to the demand for autonomy.[20] Nevertheless, this demand is understood from several perspectives. Within Latin America, one may distinguish two principal positions taken by indigenous organizations fighting for autonomy: the Indianist or ethnicist position

[19] Mexican and international press have reported the violent reaction of such regional forces such as cattle ranchers and landowners in Chiapas.

[20] Some of these organizations have explicitly incorporated at the center of their demands references to autonomy and the constitution of pluri-ethnic regions. See, e.g., the Zapatistas in Chiapas, the Zapotecos de la Sierra de Juarez (Oaxaca), the 280 organizations that make up the CEOIC in Chiapas, the Consejo de Organizaciones Agrarias, FIPI, the Mixtecos Poblanos del Movimiento Zapatista del Sur, and some academic and political organizations) (Díaz Polanco y López y Rivas 1994) (for CEOIC and FIPI, see list preceding the References).

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and the peasant or populist position (Hale 1994), which I prefer to call ethno-nationalist.[21]

Ethnic group autonomy is the central demand of the Indianists. Some of these groups, who define themselves as peoples or even nations, elaborate an idea of autonomy so that they may confront the dominant culture and the political order of the state. Such groups use a discourse of ethnic reconstitution which opposes the intervention of non-Indian forces in Indian affairs, demands the recovery of traditional territory, and asserts the right to manage their own resources and to organize in accordance with their own, differing, political and cultural logic. They treat custom, tradition, and customary law as central elements for the building of an alternative political and legal order. Some hold an idea of communal autonomy (also called "communalism") that emphasizes the place of the Indian community as the central support of Indian self-government. This discourse of ethnic autonomy is invoked with variations by a number of Indian groups, among them the Mapuches in Chile (Ortúzar 1994), some Indian nations in Brazil (Krenak 1991), and some Mexican Indian groups like the Yakis (Figueroa 1993).

Ethnic autonomy occupies a different place in the discourse of organizations that embrace an ethno-nationalist/peasant or populist position. Such groups argue that demands for autonomy must be treated and understood within the wider national context of social movements demanding democracy and the transformation of the state. For some of these organizations, the demand for autonomy implies a recognition of pluri-ethnic regions in which various groups, indigenous and nonindigenous, interact and share a territory.[22] From this perspective, "autonomy" does not imply ethnic group segregation but rather the decentralization of the state (Díaz Polanco 1991, 1994; Díaz Polanco y López & Rivas 1994). It is this discourse that has gained force within the Indian movement in Southern Mexico.[23]

During the commemoration on 12 October 1994 of 502 years of resistance, CEOIC (see list of institutions immediately before the References) presented a declaration to create pluri-ethnic

[21] On the revival of ethnic and nationalist movements around the world, Comaroff (1993) describes three types of political discourses as ideological formations: Euro-nationalism, ethno-nationalism, and hetero-nationalism. The description of these discourses, particularly the last two, could also be applied to the various expressions of Indian movements in Latin America.

[22] What is not clear in this discourse is how various ethnic groups, particularly Indians and mestizos, will interact in the same political context, especially if they must share political power in a certain region. The history of caciquism (hierarchical leadership), exploitation, and racism that characterizes Indian areas in Mexico makes it difficult to imagine a radical change in the political geography of rural regions.

[23] See, e.g., the Resolutivos del Primer Encuentro de Resistencia Indígena (unpublished; 21–23 Sept. 1994), the Declaración de la Convención Nacional Indígena (CNI) (e.g. *Jornada*, 18 Dec. 1994), CEOIC (1994), and FIPI (1994).

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autonomous regions in Chiapas.[24] Since that time, various Indian groups from different communities and municipios in Chiapas, all of them members of CEOIC, have defined themselves as autonomous, confronting the state and the regional powers.[25] Although there is no homogeneity in the discourse about what autonomy means among Indian communities, there is a certain clarity about the reason of their fight: "We are aware that we want a self-government. If that means autonomy, we want autonomy" (Rojas & Morquecho 1994a).

In sum, the demand for autonomy has now become the center of a political debate that involves both Indians and non-Indians. It has turned into a national issue to be discussed by various political forces and in this sense it has evolved radically in practice and reflections.[26] In the discourse of at least some of these organizations, both Indianist and ethno-nationalist,[27] the invocation of custom and customary law provides a basis for constructing an alternative legal system or concepts to be taken into account in the building of a new plural legal order.

What does this discussion of indigenous rights and autonomy have to do with the debate about customary law? What role does customary law play in the discourses of Indian organizations?

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[24] In its proposal for an autonomic regime, CEOIC defines what it sees as the constitution of pluri-ethnic autonomous regions comprising "the *ejidos* (collective land given in usufruct by the state), colonies, communities and others that share a similar region." The autonomous government of the pluri-ethnic regions could be made up of (1) the Consejo de Representantes; (2) the Coordinación Ejecutiva; (3) the Consejo Indígena Municipal; (4) the Asamblea General and the Comisión Ejecutiva de Ejidos, Colonia y Comunidades, and (5) the Consejo de Autoridades Tradicionales (Díaz Polanco 1994).

[25] In November 1994, several regions were declared as autonomous in Chiapas. In these regions the people have decided, among other measures, to install self-government, to refuse to pay public taxes and government credits, and to bar from the region any official representative from the party in power, the PRI (Rojas & Morquecho 1994b). The creation of pluri-ethnic regions has accelerated because of electoral fraud during the August 1994 governmental elections in Chiapas. Although the future of these regional autonomies is not clear, these declarations have shocked the state and the society as a whole. They are not isolated expressions of rebellion but a central part of a larger movement of civil resistance involving Indians and non-Indians demanding democracy and dignity.

[26] The right of Indian peoples to self-determination and autonomy is nowadays one of the important issues in the Mexican political debate as shown by the proliferation of publications and forums. Although there are important differences regarding the scope and the way of implementing autonomy, there is a certain consensus among intellectuals in relation to the right of Indian people to self-government (Díaz Polanco 1981; Castellanos & López y Rivas 1993; Villoro 1994; Gómez 1994; Willemsen 1993). The revindication of this right has aroused those conservative forces that feel threatened. Economic and political groups have quickly responded with a nationalist discourse that emphasizes the dangers of separatism and the threat to sovereignty that the recognition of autonomy to Indian peoples could imply. As Stavenhagen (1993) points out, there is a danger of identifying self-determination with separatism.

[27] Although there have been attempts to unify these two perspectives, the Indianist and the populist or ethno-nationalist, the events of Chalantenango in Guatemala, during the celebration of the 500 years of resistance, show that they remain as structural divisions that characterize the present fight for Indian rights (Hale 1994).

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And what problems do such discourses pose for the legal practices of indigenous groups?

An essential aspect of the new rhetoric of Indian rights is the invoking of a legal order rooted in a cultural logic where customs and traditions have a fundamental place. This rhetoric imagines a whole set of norms and practices that make up a legal system different from the official state system, one that has more legitimacy for local peoples and that plays a larger role in ruling their lives. In this sense, customary law plays a fundamental role in the rhetoric of Indian rights.

In reality, as my research shows, customary law does not exist as a separate and isolated set of norms. Rather, it is embedded in mutually constitutive relations with state law. The dominant legal order plays a central role in the lives of Indian communities, sometimes even helping community members resist oppressive relations within their group. Power relations are embedded in legal processes, not only in the confrontation between local customs and national laws but also within communities, in the very practice of customs. In such dynamic confrontations, inequalities and hierarchies are reproduced and transformed. Given the mutual construction of customary and state legal systems, the idealized vision of customary law as a separate and autonomous system must be challenged and supplemented by a more complex vision based on research into the uses of law and custom in the everyday practices of various ethnic groups.

It is important to differentiate what seems to be an individual strategy from a collective strategy when considering the uses of law and custom. From a collective perspective, Indian organizations tend to revindicate tradition and customary law to differentiate themselves from the dominant culture, building an imaginary community rooted in harmony and consensus, isolated from the negative influences of the official legality. This discourse contrasts with everyday social practice where individuals are confronted with particular needs that they try to meet with whatever means they have, taking advantage of law and customs. These two levels of analysis correspond in fact to different aspects of reality. The question is to what extent can they be related? In my view they are necessarily related by the very fact of being activated by the same subjects: Indian people. Thus, a critical vision of customary law should contribute and enriched the discussion of Indian rights.

V. Perspectives

I turn finally to crucial topics that an ethnic discourse based on the revindication of customary law could suggest: the reification of customs, disputes over the legitimacy of conflicting cus-

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toms, the problem of codification, and individual human rights versus collective human rights.

A. The Reification of Customs

An idealized vision of custom as the continuation of tradition could have the effect of reifying what comes to be defined as the "heritage of the ancestors." Customs inevitably change. In many cases an outmoded custom is retained as a point of reference but seldom or never observed in practice. Other customs are not shared or practiced by the members of the whole community (as, for example, bridewealth, discussed above). If bridewealth were to be recognized as a legitimate norm in the community I studied, for example, many young people and their families would object and resist. And some customs act to subordinate certain groups. Norms that bar women from inheriting important resources, for example, tend to reproduce women's subordinate place. In such situations, state laws requiring more equal distributions of inheritance could open up possibilities for women. Similarly, appeals to state law can offer subordinated members of the community a way of combating local injustices, as cases relating to domestic violence clearly demonstrate (Hernández & Figueroa 1994) and as could also be true for challenges to traditional authority, particularly caciques who in the name of custom take advantage of their position.

B. Disputes over the Legitimacy of Particular Customs

Conflicts within groups have arisen over which norm is the "legitimate" tradition. This happened among the Tzotzil Indians in Chiapas, where supposedly religious conflicts have led to the expulsion of Protestants from communities (Gómez, forthcoming). In October 1988, for example, local authorities in the Indian community of San Pedro Chenalhó put on a public performance of their traditions for the governor-elect of Chiapas. They did so to demand official recognition for their traditions, but they were also using this display of "custom" to justify their attempts to expel Protestant dissidents who did not want to participate in what the Protestants considered religious activities ("cargos"—see note 9).[28] When the Protestants objected that their right to religious freedom was protected by the national constitution, Indian leaders asked the state authorities to remove the offending article from the constitution.

Attempts to define one set of norms as "legitimate traditions" that should be imposed on everyone in the group reproduce

[28] These events have provoked violence, such as the burning of houses and the expulsion of Protestants. What is at stake in these disputes over "religion" is political power and rights to land within the community (G. Collier 1994a, 1994b).

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what Gilroy (1992), in other settings, has called an ethnic absolutist discourse that hides contradictions and constitutive differences within the group. In this sense, a discourse in terms of custom risks reproducing and naturalizing existing inequalities, particularly those of gender, as revealed in the examples given above.[29]

C. The Codification of Customary Law

One important characteristic of customary law has been its flexibility, its dynamic ability to incorporate, modify, or transform customs in response to social processes. If customary law were codified into a written system of norms, as demanded by some Indian organizations seeking to create a system of customary law comparable to positive state law, customary law would lose this flexibility. Ordinary people would suffer as customs became difficult to change and adapt. Moreover, codification would raise questions about who would get to decide which customs should be written down. Whose interests would the codified customs reflect?

Colonial experiences in various English colonies where a process of codification—the listing of customs—took place may reveal the negative consequences of a codification process. Moore (1986) described how in Kilimanjaro European observers compiled a list of rules from their investigations among Chagga people. Traditionally, norms had been subject to negotiation depending on specific contexts, so elaborated codes regarding inheritance, for instance, would not reflect the everyday management of norms and rules. In this same sense, the codification of norms and rules, as some Indian groups demand, could have a petrifying effect on the dynamics of everyday life.

D. Individual Human Rights versus Collective Human Rights

The discourse on Indian rights has sparked an important debate on conflicts between individual and collective rights.[30] Can it be legitimate to recognize a collective right that violates the rights of a particular person? Some customs of indigenous groups (such as burning witches and some processes of ritual initiation) are not only abhorrent to Western sensibilities but pose

[29] Particularly for women, the practice of custom could, as Collier (1988) has shown, represent the reproduction of relations of power and inequality. The area of domestic violence is a particular example of this situation. Hernández & Figueroa (1994) tell of a case where a Lacandon girl was raped and killed by her husband (a white American and son of an anthropologist) without community intervention, a story that dramatically reveals the negative effect of some "legitimate" customs.

[30] The debate on Indian rights has demonstrated that any right given to Indian peoples has to be recognized as a collective right. Linguistic, cultural, economic, or political rights for ethnic minorities might not be guaranteed if they are not established in a collective way (Hamel 1994).

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difficult ethical problems. States have developed various strategies to handle this situation. One strategy—one usually followed by many modern states—is that of denial: the state simply denies the existence of such customs. Another strategy—one Latin American countries have followed in recent efforts to amend their constitutions to include Indian rights—is to recognize customs only when they do not contradict the rule of the law or violate individual rights. Nevertheless, such strategic solutions are being undermined and questioned by Indian groups who are demanding recognition of their capacity for self-government and for making autonomous legal decisions (Stavenhagen 1990). The question of how to handle conflicts between collective and individual human rights is far from being resolved, partly because it reflects the intrinsic contradiction between individuals and collectivities. Until now, at least in Mexico, such conflicts, particularly when they involve a whole community, have been handled through political rather than legal processes, as happened in the case of the witches of Taxicaringa with which I began.

My aim here has been to highlight some important questions raised by debates over customary law and Indian rights, questions seldom mentioned or discussed in works on legal anthropology. Although I do not have answers to these questions, I believe that anthropologists and social scientists should discuss these issues in light of their research findings, particularly in countries such as Mexico, where the political situation makes it almost impossible, as well as insupportable, to remain neutral.

My research suggests that the concept of customary law commonly invoked by Indian organizations when they propose an autonomous Indian legal system is better understood as political rhetoric than as an argument based on a description of practices in Indian communities. As a political strategy in the fight for democracy, the argument plays an important role in opening public debate on issues of diversity and cultural difference. But this justification should neither discourage critical discussions of the concept of customary law nor preclude the imagining of alternative legal systems in which state laws and local customs could interact within a framework defined by the people who are most affected. As I have tried to show, laws and customs are embedded in historical and cultural dynamics. They are part of larger processes of power and domination.

Current events in Southern Mexico have evolved radically regarding the revindication of Indian rights. Cultural and political rights are an integral part of a new ethnic discourse incorporated in the demand for autonomy. In the state of Chiapas, Indian communities are declaring themselves as autonomous, reconfiguring new regional areas. Customs, traditions, and customary law acquire a significant place in this new ethnic discourse. It is

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hoped that their link with demands of democracy, dignity, and self-government will bring as well a critical vision of Indian rights.

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CCPY: Comissao para ã Creacao do Parque Yanomami
CEOIC: Consejo Estatal de Organizaciones Indígenas y Campesinas
CEMCA: Centro de Investigaciones Mexicano y Centroamericano.
CIESAS: Centro de Investigacion y Estudios Superiores en Antropología Social
COLMEX: Colegio de México
CONACYT: Consejo Nacional de Ciencia y Tecnología
FIPI: Frente Independiente de Pueblos Indios
IIDH: Instituto Interamericano de Derechos Humanos
III: Instituto Interamericano Indigenista
INAH: Instituto Nacional de Antropología e Historia
INI: Instituto Nacional Indigenista

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