The Revival of Indigenous Justice in Mexico: Challenges for Human Rights and the State

In this article I discuss two new expressions of indigenous justice in Mexico: the Juzgado Municipal Indígena of Cuetzalan in the state of Puebla and the Policía Comunitaria of the state of Guerrero. These expressions emerged in opposition to the impunity, corruption, and human rights violations that prevail in the state’s administration of justice, particularly in rural areas. Importantly, they provide alternatives to the vigilante justice (justicia a mano propia) that still operates in some regions of the country. Using these two cases as illustrations, I elaborate on some fundamental issues regarding individual and collective human rights, gender demands, and the challenges of building a multicultural and democratic system of justice. I argue that the recent constitutional reform regarding indigenous rights, approved by the Mexican Federal Congress in August 2001, has already shown its limitations in terms of building a new relationship with indigenous peoples. In response, indigenous communities challenge the state by creating new forms of government that go beyond the established legal order. The experiences of indigenous justice reveal the creativity and vitality of indigenous peoples and their decision to defend their project. At the same time, they foreshadow the disputes to come in Latin America when the states start to recognize indigenous jurisdiction and legal pluralism. In sum, they reveal the paradoxes involved in multicultural reforms that are implemented in neoliberal Mexico.

Thanks to the Policía Comunitaria, 90 percent of the assaults have calmed down, so far, it’s calm so far, we are informing you of this because it’s the whole truth, the assaults, the robberies . . . before, they killed, raped, stole, and assaulted.

With these words, Gelasio Barreda recounts the achievements and operation of the Policía Comunitaria (Community Police Force), instituted by the largely indigenous communities of the Montaña and Costa Chica regions of the Mexican state of Guerrero to address the violence they suffered for many years.
The experiences of indigenous justice and autonomy taking place in Mexican regions such as Guerrero reveal the enormous strength and vitality of indigenous organizations and communities. Despite situations of extreme poverty, exclusion, and violence, indigenous communities are developing innovative political strategies for survival based on their own forms of government. In so doing, indigenous peoples are building legal alternatives for a dignified life and future reflecting their cultural and collective frameworks. Nevertheless, these experiences of indigenous justice and autonomy are not recognized by the Mexican state. They reveal the heterogeneity and creativity of regional processes going on in rural areas of Mexico and express the challenges, problems, and obstacles indigenous peoples confront in attempting to exercise their rights. They also demonstrate the limits of the 2001 constitutional reforms designed to recognize indigenous rights in Mexico. The institutional order has in fact been superseded by the political and legal practices of the indigenous communities and their tenacity in defending themselves.

These experiences of indigenous justice offer the opportunity to discuss the scope and limits of the politics of cultural recognition in Mexico and the responses indigenous peoples are developing to confront it. In this process, global discourses of human rights and cultural diversity become central references for thinking about new multicultural systems of justice. In order to address these issues, I will begin by briefly referring to the background in which the constitutional reform regarding indigenous rights—recently adopted in Mexico—was developed as a framework for discussing legal pluralism and indigenous justice. I then present two concrete examples in order to explore the impact of state legal changes and the responses implemented by indigenous communities in their search for justice: the *Juzgado Municipal Indígena* (Indigenous Municipal Court) of Cuetzalan in the state of Puebla and the aforementioned Policía Comunitaria in Guerrero. Finally, I will analyze the implication of indigenous justice on the reinvention of tradition, the practices of human and women’s rights, as well as the tensions between state law and indigenous law. The final aim is to consider the possibilities of multicultural diversity revealed by these experiments in alternative judicial systems.

**Background**

In Mexico, as in other Latin American countries, constitutional reforms have been passed to recognize the nation’s cultural diversity and indigenous political rights during the last decade. These legal changes are part of a broader set of democratic reforms and have been accompanied by important social and indigenous movements contesting authoritarian regimes and the homogenizing cultural model of the nation-state. The international order has played a fundamental role in implementing multicultural policies and in the recognition of indigenous people’s rights to autonomy and self-government. These processes are not only the product of emancipatory and democratic demands but also expressions of the new legal system of transnationalization and economic interdependence. In fact, as some scholars have pointed out,
the reforms recognizing cultural diversity and multiethnicity are closely linked to
globalization and neoliberal economic policies (Assies 1999, Sieder 2002). In this
context, multilateral agencies such as the World Bank are forcing Latin American
states to break with corporativism3 and to withdraw from key economic and social
areas, primarily by privatizing and decentralizing public institutions. Paradoxically,
as it seems at first sight, these states are at the same time promoting human rights
and identity policies.

In some countries, such as Colombia, constitutional reforms have led to significant
changes in the relationship between indigenous peoples and the state recognizing
indigenous autonomies and their jurisdictions (Sánchez Botero 1998). In other
countries, such as Mexico, the reforms have had a limited reach and have been
highly questioned. The term “neoliberal multiculturalism” (proposed by Charles
Hale in this collection), used to refer to the cultural logics involved in neoliberal eco-
nomic policies, exactly captures the direction taken by constitutional reforms in
Mexico. They end up being compensatory measures recognizing collective rights
without questioning the established legal order or the new economic global policies.

The new Law on Indigenous Rights and Culture, approved by the Mexican
National Congress in August 2001, actually marked the failure of a long and con-
troversial negotiation in which indigenous peoples participated for the first time as
principal actors, with the support of important national and international sectors. In
short, the reform did not respond to the aspirations of indigenous peoples and did
not establish a basis for a new relationship between indigenous peoples and the
state (Gómez 2004). Although the reform has served as an official justification in
legitimizing a discourse of multiculturalism, especially in the international arena,
it has been rejected by indigenous organizations, who consider it a new version of
state indigenismo (Hernández, Paz, and Sierra 2004). As in other Latin American
countries (such as Guatemala; see Sieder and Witchell 2001), important aspects of
legal changes are directed to modernize the administration of justice in order to
recognize some level of legal pluralism and indigenous normative systems. In this
process, existing indigenous administrations of justice within communities, based
on “traditional” law, become legalized and some compensatory practices are im-
plemented in the state administration of justice. These practices include the right to
an interpreter, the obligation to consider customary law in cases involving indige-
nous peoples, as well as the incorporation of indigenous lawyers and judges at the
local and sometimes municipal level. This is the current framework used to analyze
present experiences of multicultural justice in Mexico.

Building Spaces for Multicultural Justice: Effects of State-Sponsored
Reform on Indigenous Justice

Although forms of indigenous justice have long existed in Mexico, they have re-
cently emerged with new force, strengthened by indigenous organizations at the
local, regional, and national levels. Some of these processes have been promoted
by the legal reforms recognizing indigenous rights and legal pluralism. As noted in the preceding section, such state-sponsored reforms are also related to official policies of decentralization that strengthen municipalities. The state is able to relieve itself of certain responsibilities and economic costs by providing spaces for local and regional administration of justice. These moves supposedly respond to the social claim of democratizing the justice system, adapting it to new national realities. Some state-sponsored responses to the demand for plural justice open to cultural diversity should be located within this framework, such as the creation of indigenous courts at the municipal level. These responses are limited and have generated different kinds of reactions, as demonstrated by the indigenous municipal courts created in Chiapas (see Collier 2001, Figueroa 2003). Something similar is occurring with the establishment of the Juzgado Municipal Indígena in the city of Cuetzalan, Sierra Norte de Puebla, which was originally designed as a pilot project for putting municipal indigenous justice into practice.

New indigenous practices are emerging alongside this official construction of indigenous courts and independently of state-imposed legal models, creating autonomous bodies and jurisdictions that call into question state institutions. The most widely known case is that of the Zapatista Juntas de Buen Gobierno (Good Government Councils). These councils were created in the autonomous Zapatista regions in Chiapas, providing a regional structure for the development of local public and governance policies. The Councils are also a new response to building and strengthening plural and democratic justice and autonomic practices in open opposition to the state. These regional autonomies are limiting state intervention. The Policía Comunitaria of Guerrero is moving in a similar direction. Although the Guerrero Policías do not enjoy the spotlight or international coverage that the Zapatista Juntas do, they are also questioning the official rule of law and constructing new proposals for indigenous justice and government (see Hernández and Ortíz 2003).

The Juzgado Municipal Indígena of Cuetzalan and the Policía Comunitaria of Guerrero contrast in their aims and in the ways in which they are able to place indigenous justice into practice. Both provide elements for reflection on the tensions between indigenous organizations and the state, on the reinvention of tradition and indigenous law, and on the practice of human rights in multicultural contexts. These cases also offer evidence of indigenous organizations' empowerment as a form of self-defense and point to the role of women in these processes.

**Constructing a Space for Plural Justice: The Juzgado Municipal Indígena of Cuetzalan, Puebla**

In June 2002, by decision of the Mexican judiciary, a *Juzgado Municipal Indígena* (Municipal Indigenous Court) was established in the city of Cuetzalan, seat of the municipality of the same name in the Mexican state of Puebla (Rivadeneira 2003). The purpose of this new indigenous court is to administer justice in accordance with
indigenous customary law. Eventually, the Cuetzalan Juzgado Municipal Indígena was officially recognized in the Ley Orgánica del Poder Judicial del estado de Puebla on December 5, 2002. The Cuetzalan Juzgado was the first; four others were established in 2003 in municipios in the state of Puebla with high percentages of indigenous population. The court can be seen as a response to state decentralization programs established to promote multicultural legal policies. It was also designed to relieve state courts of the “minor” cases that increase state economic costs and overburden the administration of justice. The recognition of the indigenous court as part of the judicial branch is seen by state officials of Puebla as the response to the constitutional reform to Article 2 of the National Constitution regarding indigenous rights. In fact, it is a very limited response to indigenous demands, corresponding to compensatory legal changes that help reconstitute legal institutions and practices.

Nevertheless, the Juzgado Municipal Indígena of Cuetzalan, established in a region with a strong tradition of indigenous and human rights organizations, is generating an interesting dynamic in constructing a system of plural justice, one that goes beyond the plans and controls foreseen by the federal and state governments. In contrast to the state of Chiapas, where indigenous courts were implemented with minimal input from indigenous communities (Collier 2001), the Nahua and Totonaca indigenous organizations and authorities of Cuetzalan see this court as more appropriate to their needs and cultural frameworks (which they call indigenous justice) than state courts. Today, after a year of operation, the majority of cases tried in municipal courts pass through the Juzgado Municipal Indígena. It is noteworthy that even some members of the mestizo population of Cuetzalan take their cases to the indigenous authorities. Although it is not legally recognized, local indigenous and human rights organizations have been able to select the municipal judge and oversee the court’s functioning through a municipal council formed by the male and female elders of the indigenous communities of Cuetzalan, called the Consejo de Ancianos (Council of Elders).

The establishment of the Juzgado Municipal Indígena has had two consequences: first, the exercise of a system of plural justice controlled by indigenous authorities and supported within the procedures and cultural frameworks of indigenous law, and second, a lightening of the state’s burden, although at the cost of judicial officials’ privileges, which have been reduced along with their spheres of power.

In a region such as the Sierra Norte of Puebla, where the federal government has been able to impose its authority without much opposition, the installation of the indigenous court has opened important opportunities for indigenous people. Within this official space they intend to develop indigenous justice experiences. The revitalization and renovation of traditional justice promoted some years ago by the Takachihualis Commission, a mostly indigenous human rights organization, has had a strong impact at the local and regional level. The Takachihualis Commission, as well as the Democratic Lawyers Front (Frente de Abogados Democráticos or FRAD), working in the region since 1989, have obliged judicial authorities to
comply with the law and at the same time have made progress assessing what they consider to be traditional justice (Sierra 2001). Indigenous women’s organizations in Cuetzalan have also played an important role in discussing customary law. This has had repercussions in the training of female human rights promoters (defensoras de derechos humanos) who defend a gender perspective in the areas of health, economy, and justice. The impact of women’s training is enormous given the fact of women’s subordination in mostly indigenous regions. Moreover, women’s participation in the new court as members of the indigenous Council has been fundamental for developing a gender perspective in the practice of justice and therefore constitutes an innovative and unique experience in Mexico.10

I had the opportunity to participate in different scenarios and meetings held by the Council and have been impressed to see indigenous women such as Rufina, at the moment Regidora Municipal de Usos y Costumbres,11 with a leading role regarding the Juzgado Indígena, demanding, softly but firmly, rights for indigenous women, while at the same time defending indigenous culture and traditions. As Rufina stated during an assembly meeting:

The Juzgado Indígena is like a table that needs to be supported by four legs: one of these legs is the personnel working at the Juzgado, another one is the Council, another is the Presidencia municipal [currently held by a mestizo], and the last one are the organizations [indigenous women’s and human rights organizations].

With this metaphor Rufina intends to describe the functioning and structure of the Juzgado and the way it is related to different actors involving traditional and official authorities. In this representation, traditional customs and authorities are not in opposition to official authorities, nor to the defense of human rights or women’s rights. The Juzgado is in fact being appropriated by indigenous representatives, without confronting state authority. In this process the Juzgado gains legitimacy at the same time that it becomes incorporated into the official structure of the municipality.

These responses to the Cuetzalan Juzgado Municipal Indígena reveal how indigenous organizations negotiate with the state, accepting certain official frameworks while at the same time innovating and redefining them from their own cultural and legal references. We are thus witnessing a process of “indigenization” of the municipal court, one that aims to build plural forms of indigenous justice even if they remain within the limits imposed by the state. In this case, the reinvention of indigenous law in municipal spaces reveals the state’s tensions and mediations to recompose its hegemony while simultaneously showing the responses subordinate groups develop to manipulate or resist it.

**When Justice Becomes the People: The Policía Comunitaria of Guerrero**

Indigenous regions in the state of Guerrero, one of the poorest states in the country, were plagued for many years by violence, insecurity, and assaults.12 Given
the failure of state and federal authorities in controlling the situation and the corruption of the judicial police in charge of combating the violence, the largely indigenous communities of these regions decided to establish their own public security system: the Policía Comunitaria, a unique experience in Mexico.

In 1995 there was a lot of violence, assaults, rapes, and a number of brawls. The crimes were committed by bands of 15 to 30 delinquents who would stop as many as 20 cars to rob them, and the people grew tired of waiting for an answer from the bad government.\(^{13}\)

The Policía Comunitaria was founded on October 15, 1995, in the community of Santa Cruz del Rincón, in the municipality of Malinaltepec in the Montaña region of Guerrero, during an assembly attended by 32 comisarios (principal official authorities in communities) from the municipalities of San Luis Acatlán and Acatépec in the Costa Chica region as well as Malinaltepec. During the first years, anyone the Policía arrested was delivered to the state prosecutor’s office for trial. However, as several community members noted, the state authorities released those arrested almost as soon as they were turned in, on the grounds of supposed “lack of evidence.” In response, in 1997, just two years after the founding of the Policía, the Coordinadora Regional de Autoridades Comunitarias (the Regional Coordinator of Communitarian Authorities) was established to administer justice. It was created to try those who had been arrested and thereby avoid handing them over to state judicial authorities. In summary, it was the need for justice that led the communities of the Montaña and Costa Chica to create a regional, indigenous security and justice system (see Martínez Cifuentes 2001). This system currently covers four municipalities and encompasses more than 60 communities of Na savi (Mixteco), Me’phaa (Tlapaneco), Nahua, Afro-mestizo, and mestizo populations. Although this system is only nine years old, it has been a resounding success in terms of drastically reducing delinquency, insecurity, and violence in a region that had been abandoned by the state and spoiled by crime. Criminality has been reduced by 92 percent, a figure recognized by state judicial authorities. Men and women alike now feel protected and are free to move about without fear of being assaulted, violated, or killed. Testimonies collected from community members in October 2003, during a forum organized to celebrate eight years of the Policía Comunitaria, show the significance of this process and reveal the collective commitment to defend it.\(^{14}\)

The primary authority of the community security system is the General Assembly of Community and Municipal Authorities, made up of local authorities of communities participating in the system. Two bodies depend on this General Assembly: the Coordinadora Regional de Autoridades Comunitarias (CRAC, Regional Coordinator of Community Authorities), consisting of six comisarios municipales (principal authorities in communities), and the Comité Ejecutivo de la Policía Comunitaria (Executive Committee), also composed of six comisarios municipales in charge of coordinating police actions. The CRAC
has the task of assisting in the practices of justice and to supervise the functioning of the system. These two bodies have their headquarters in the city of San Luis Acatlán. In each participating community, the local assembly elects between eight and twelve police officers, who will be responsible over the following year for surveillance and detention functions. These officers work fifteen-day rotations in different communities, coordinating with their counterparts from the other communities. The labor of all participants in the system is provided without pay and is seen as an obligation of service to the community. As of October 2003 the police force had 500 active members and approximately 400 on reserve. The elected municipal authorities from three municipalities contribute resources to support the project, providing minimal financial coverage to maintain police facilities and the radio system.

Once delinquents have been arrested, they are taken to the assembly of authorities in their respective communities to be judged and sentenced. The CRAC may intervene in a case depending on the seriousness of the crime, primarily cases of murder, rape, and illegal drug production. Less important cases, such as insults or disputes between neighbors or in-laws, are taken to the local authorities, the comisarios. The type of justice that is imparted is based on the principle of reeducation. The objective is to reintegrate a delinquent within his or her community:

> the reeducation signifies that if someone commits a crime, steals a cow, he has to give a service to his people. . . . he has to do a social service. . . . The comisarios are the one who decide the time of reeducation . . . then the society is in charge of him, feed him . . . he (the detainee) does not have to pay, not get any influence to help him, it depends (the time) on the crime he committed . . . then in the afternoon the comisarios, the elders gather together to talk to him. [Tlachinollan 2004:126–127]

The involvement of the town elders in this process is fundamental; they talk with the detainees, counsel them, and try to convince them of the negative effects of their actions. People who have committed a crime are “taken to the mountain”—in other words, to a community where they remain for 15 days under the care of the local security corps, which feeds and supervises them day and night. The assembly of authorities evaluates reports on prisoners in order to weigh their willingness to work and to decide whether their sentences should be reduced. The detainees are liberated in a public general Assembly in the presence of their families, who then become responsible for their good behavior.

In a relatively short time (nine years) the Policía Comunitaria, or the comunitarios as they call themselves, have become a fundamental point of reference for the indigenous peoples of Guerrero. Men and women feel confident to move around without the fear that still prevailed a few years ago. They are therefore resolved to defend their project against the state or any force that attempts to destroy it. I witnessed this conviction during a meeting in July 2004, organized to reinforce alliances between the
Policía Comunitaria and other regional indigenous organizations in Guerrero. The comunitarios are looked upon with respect, as an example of strength and decision.

The Construction of Indigenous Justice and Its Implications for Human and Women’s Rights and for Indigenous Peoples’ Relationships with the State

At this point I would like to discuss briefly three issues raised by the creation of indigenous justice systems such as the state-sponsored Juzgado Municipal Indígena in Cuetzalan and, more importantly, the Policía Comunitaria created by indigenous communities in Guerrero. These issues are (a) the reinvention of indigenous law and governments, (b) the role of human rights and women’s rights, and (c) the tensions that mark the indigenous peoples’ relations with the state and legality.

The Reinvention of Indigenous Law. One of the most innovative aspects of the Guerrero experience has been the construction of an alternative system of law, which indigenous peoples call “community law.” Community law draws on the basic principles of traditional indigenous law: respect, participation as service, and the importance of the collectivity. The experience, however, does not aim at recovering traditional indigenous government; rather, it is about innovating local forms of surveillance and justice. The new “community law” rescues and revalues the role of the council of elders (consejo de ancianos), giving it responsibility for the “moral” education of prisoners. At the same time, this indigenous legal system is building new structures at the regional level, such as the CRAC and the regional surveillance system of the Policía. The Policía Comunitaria is thus creating an alternative, indigenous government that exercises regional autonomy in practice, an autonomy that far surpasses the legal limits defined by the Mexican state.

The process of creating the Policía Comunitaria has strengthened regional multietnic identities and built an indigenous “redignification” discourse, which draws its force from the active and collective participation and grassroots commitment of community members.

Something similar, albeit on a lesser scale, has been happening in Cuetzalan, as members of indigenous communities and organizations take over the indigenous courts created by the state government, implementing an alternative and plural justice. The Nahuas of Cuetzalan are also renovating their traditional law, building new meanings for customs and traditions and recovering their legitimacy in spaces traditionally dominated by mestizos. They are doing it without confronting state authorities but with the decision to appropriate and consolidate an alternative, indigenous justice. Indigenous justice has become a referent for the strengthening of ethnic identities. In this process interethnic power relations have been modified without signifying a direct confrontation to the state.

Human Rights in the Practice of Justice. At the same time that the Policía Comunitaria recovers aspects of traditional indigenous justice, they want to build a model of justice that respects the human rights of people who are arrested. They
do not want to reproduce people's usual experiences with state justice based on corruption and impunity. To achieve this goal, they have developed strong links with human rights organizations, particularly with Tlachinollan, one of the most important nongovernmental human rights organizations working in Guerrero.

Tlachinollan has to tell us when human rights violations are been committed... there is no intention to hide anything... we want to build a good project... we want Tlachinollan to help us to watch out for abuses... we want human rights [organizations] like Tlachinollan to become members to supervise... and tell us of any problems.15

These words illustrate the decision of the Policía to prevent human rights violations by their own members. Abuse of human rights is precisely one of the principal accusations that state officials make against the Policía Comunitaria in order to delegitimize the process. Thus, human rights become a recurrent weapon used by judicial agents to weaken the project. Similarly, this practice is used in other indigenous regions of Mexico, reproducing what Mary Robinson has called a colonial vision of human rights (see Speed and Collier 2000). The state accuses members of the Policía Comunitaria of abusing their authority through exercising justice and security responsibilities that the state does not recognize. Such accusations result in the arrest of members of the Policía. Some of these arrests are made by the federal army under accusations that the Policía are using illegal arms, without considering the fact that the Policía are doing so to carry out their function of acting in defense of their communities.16 Because the principal authorities of the Policía are worried by such criticisms and menaces, they have developed strategies to revise their practices in order to avoid committing human rights violations when delinquents are detained and sanctioned. Accusations of human rights violations were a strong preoccupation of the Policía, and they came up frequently during the discussions held at the meetings I attended in October 2003 and July 2004. It became obvious that the Policía are constructing an indigenous vision of human rights where respect for individual dignity does not prevent the defense of collective actions.17 This vision requires evaluating the contexts in which processes such as the Policía Comunitaria take place. Certain collective decisions, which could be seen from the state perspective as “abuse of authority,” are in fact necessary for indigenous officials to defend their policing and justice project and to achieve the approval of community members. This raises the principal problem related to collective and individual human rights. Members of the Policía Comunitaria strongly manifest their interest in respecting human dignity while at the same time being determined to defend their collective project as the only way to defend individual rights. For them, collective rights, or more specifically “communitarian rights,” should not be seen as the antinomy of individual rights but rather their necessary complement.
Similar processes can be observed in the Cuetzalan Juzgado Municipal Indígena, where indigenous organizations are also trying to reconcile human and indigenous rights. That is one of the central tasks indigenous organizations define when supporting the Juzgado Indígena. In fact, this interest recovers the intensive work done by the Takachihualis Commission, which has a strong tradition of defending human and indigenous rights, while at the same time promoting the practice of traditional indigenous law. As I have developed elsewhere (Sierra 2001, 2004a and b), indigenous organizations doing human rights defense have shown what it means to defend human rights within indigenous communities. It is not possible just to impose the language of individual rights to qualify the decisions taken by indigenous authorities to sanction a detainee without considering the context or the cultural reasoning to determine it. In this process, to imprison a delinquent for some days or to impose the obligation to do a collective work could not be automatically evaluated as an abuse of authority. This is not to deny the obligation to discuss and criticize practices that imply violations of human dignity, such as physical punishment or exclusion because of political or religious differences. Indigenous human rights organizations in the Sierra Norte de Puebla are discussing ways to recreate indigenous justice, taking into account collective and individual rights. In so doing they are building new alternatives for the practice of justice. The indigenous justice administered by the Cuetzalan Juzgado Municipal Indígena is, in a way, the result of these experiences.

Indigenous Women and Systems of Indigenous Justice. The existence of the Policía Comunitaria has radically changed the lives of Na savi, Nahua, Me’phaa, and mestiza women of Costa Chica and Montaña. It has put a stop to the wave of delinquency and violence that plagued the region, and primarily women, for years. As several women said to me at the October meeting in 2003, they can now move about without fear of being assaulted, raped, or robbed. This has implied a fundamental change for them and their families. Hence, women actively support the Policía and the participation of their husbands and sons in the surveillance system. In fact, women have become a central referent for the functioning of the policy, primarily because they feed the detainees and help sustain the family while their man is away on duty.

Women have also been gradually integrated within the organization’s work in administrative affairs. They are increasingly participating in the practice of justice through cases involving women who commit crimes. Since 1999, the Coordinadora de Mujeres Indígenas Tlapanecas y Mixtecas de la Región Costa Chica-Montaña (Tlapaneca and Mixteca Indigenous Women’s Coordinator of the Costa Chica–Montaña Region”) has emerged. The aim of this organization is “to investigate and give opinions, to prevent [crimes], to reeducate [convicts], and to support the practice of justice in general in cases involving women regarding infanticide, adultery, and complicity with murders” (Tlachinollan 2004:120). Women’s participation, however, does not mean that a gender per-
spective is being incorporated into the practice of justice. Instead it means that there is recognition that their voices must be heard. The problems of domestic violence and exclusion, which women commonly experience in their communities, are a fact of their daily lives. However, as in other indigenous regions, these issues are generally minimized. According to several women, the Policía has to this date not considered the issue of justice from a gender perspective. A female public official in the municipality of San Luis Acatlán, for example, was recently prevented from attending a training course on women’s rights precisely because she had been a victim of domestic violence perpetrated by her husband—a recognized member of the organization. Effective intervention by the Policía Comunitaria did not occur on this occasion, which points to how difficult it is to question prevailing patriarchal relations in the communities. Indigenous women will have to demand progress in this direction and ensure that “traditional customs” are not used to legitimize their oppression. Should the oppression of women continue, it will ultimately delegitimize a project as important as the Policía Comunitaria.

In the case of Cuetzalan, indigenous women have been principal actors in the building of the Juzgado Municipal Indígena. Not only does the Council of Elders of the Court incorporate four women and six men, but indigenous women have insisted that a gender perspective be taken into consideration in regards to the practice of justice. The proposal for establishing the court defines, for example, that the elected judge must be a person who has no record of domestic violence. Due to the strong work done by indigenous women’s organizations in the region of Cuetzalan, there is a clear vision that a gender perspective must be a central aspect to consider when defending indigenous and human rights. The fight for indigenous rights as well as women’s rights has promoted alternative networks against violence, involving indigenous and human rights organizations as well as official representatives of the municipality and personnel from the hospital of Cuetzalan. These actions, as well as the active presence of indigenous women’s organizations, have influenced the type of traditional justice they want to recover at the indigenous court. This is in fact one of the novelties that mark the practice of justice in the Cuetzalan Juzgado Municipal Indígena (Mejía, Villa, and de Oyarzábal 2003, Sierra 2004b).

**Tensions and Contradictions with the State.** Although the Policía Comunitaria did achieve initial recognition from the governor of the state of Guerrero, this recognition was soon undermined by state authorities, who argued that the Policía was acting outside the realm of law. Unfortunately, the Mexican army shares this view, and it is the most powerful opponent that the Policía confront in fulfilling their daily duties. The presence of the army in the region, justified by drug trafficking and the existence of guerrilla groups, has led to the creation of roadblocks, which the army uses as pretexts to interfere with the Policía’s work. Because the Policía Comunitaria does not have enough official gun permits—
needed to cover such a broad territory—for all their members, the army is able to harass Policía members constantly, accusing them of possessing illegal weapons.

The state’s reaction to the Policía is ambiguous. On one hand, it questions the legality of the Policía Comunitaria, and on the other hand it recognizes the achievements of the Policía and finds itself forced to negotiate with its representatives. There is no doubt that the Policía are resolving the region’s problems of violence and lack of security at a very low cost that is not charged to the state. As a result, the state government of Guerrero cannot denounce the Policía, nor can it deny the widespread acceptance the Policía enjoy among the region’s indigenous (and some mestizo) inhabitants. For the moment, the state recognizes the importance of the Policía Comunitaria, and the Communitarian Authorities know in turn that it is not in their interest to confront either the state or the army directly. Nevertheless, as a result of the increased success these experiments in security systems and alternative indigenous justice are having within and outside the region, the governor of Guerrero has decided to stop the process. The government, supported by local political elites, has threatened the representatives of the co-munitarios that, if they do not arrive at an official agreement that is within the law, they will be punished. In May 2004 the Secretario de Gobernación (Secretary of the Interior) of the state of Guerrero asked them to accept being included in the legal municipal structure of the state. This meant that the policías would be recognized as part of the policía municipal and each comunitario will receive a salary of 3,000 pesos per month, a large sum of money for the people in the communities. The state official also offered to include indigenous lawyers as judges in the judicial institutions and to place Tlapa, the most important prison of the region, under the authority of an indigenous functionary. The representatives of the Policía decided to consult with the communities about the proposal. I was able to examine some of the Assembly Communal Records, or Actas, presented at the meeting in Chilpancingo in July 2004. At that time the consultation process was still going on, but most communities had finally refused the offer.

The principal argument offered for rejecting the proposal is that with this offer the state aims to weaken the communities’ security and justice system. For them it is clear that incorporating the Policía into the municipal structures of the state will mean loss of community control over the security system and over their collective project. Even though the Policía needs economic resources to maintain the security system functioning, they argue that being a community police force is not a matter of money but a collective compromise and a service they give to the community as part of their moral responsibilities. They demand respect rather than recognition of their project, arguing that they are not outside the law but are protected by federal and international legislation. The Policía are aware that they need legal protection to confront state government reactions. For this reason they constantly invoke the legal references that protect them within state, federal, and
international law: Articles 2 and 115 of the Mexican Constitution, as well as Article 61 of the Municipal Organic Law of the state of Guerrero, and finally Convention 169 of the International Labor Organization, commonly referred to as ILO 169. As they say:

If they say we are outside the law, it is not our fault. We are outside the law because they have never taken us into account. If we as peoples were to define the law, of course we would be within the law. [CRAC 2004:6]

Their demands imply the recognition of indigenous jurisdiction and autonomy, which go far beyond what the new national law regarding indigenous rights actually stipulates. For this reason it is difficult to envision a solution to this claim within the present legal framework. Thus, the Policía Comunitaria will have to resist governmental pressure, based on the legitimacy drawn from the active support of indigenous communities. However, they are also aware that their experience needs to become known in the regional, national, and international arena to gain public recognition.

In the case of Cuetzalan the long tradition of mediation among indigenous communities and the state has helped to install the Cuetzalan Juzgado Municipal Indígena. The court is the result of official policies aimed at modernizing the administration of justice in the state of Puebla, opening spaces for plural and autonomous indigenous justice. Nevertheless, the court remains under the control of the state and maintains a reduced scope. In contrast to the Policía Comunitaria, the installment of the indigenous court does not confront the state directly but rather shows the strategies of resistance and negotiation that indigenous organizations implement in defending their project. Without questioning the established rule, it represents the responses being tried for building an alternative but controlled multicultural system of justice.

Conclusions

Practices of justice in indigenous regions go beyond established legal systems as a response to the needs of indigenous communities to address concrete troubles that involve their survival as peoples. In the process of handling their problems, indigenous communities are developing alternative forms of government and justice that pose real challenges for constructing pluralistic and democratic systems of justice. The two cases discussed here reveal the enormous vitality of indigenous communities’ responses to the need for justice that the state fails to offer them: One, the Juzgado Municipal Indígena of Cuetzalan, developed without questioning the state legal order, and the other, the Policía Comunitaria of Guerrero, came into existence outside of state control. These experiences reveal that processes of hegemony building and subject formation produce different responses depending on the political forces at stake and the historical context characterizing the relation of the state and indigenous communities.
In situations such as the Sierra Norte de Puebla, where the state has permeated local institutions without much opposition, indigenous organizations respond by adapting themselves to the official legal framework, in effect manipulating it to their own political interest. In contrast, in regions like the Montaña and Costa Chica of Guerrero, the state has historically been unable to hegemonize political and social processes, thus allowing violence, human rights violations, and vigilante justice to prevail (see Nicasio 2001, Tlachinollan 2004). There, responses like the Policía Comunitaria radically challenge official discourses of democratization and recognition of indigenous rights. The cases exemplify how resistance from below is being constructed and underline the importance of discourses of human rights and indigenous rights on building alternatives of social justice.

These experiences become important inspirations for indigenous communities as well as for society as a whole. For example, according to recent data published in one of the country’s main newspapers, *La Jornada* (November 10, 2003), 90 percent of all people arrested in Mexico do not have access to legal defense. This data points to a profoundly inequitable and unfair national justice system that is supported by lawlessness and corruption involving the state judicial and security system. In recent times, lack of security has become a serious problem, with increasing numbers of persons subject to violence, kidnapping, rape, and robbery, particularly in urban areas. This fact has generated public debate and civil society demonstrations against this tremendous problem. Given the failure of state institutions to provide security and justice, alternative experiences developed by the indigenous inhabitants of Guerrero and in a lesser degree by the Nahua of Cuetzalan, demonstrate that it is possible to build a more humane and effective justice system when public service is seen as a commitment to the community and not a form of personal privilege and impunity. These processes, however, leave the state with the dilemma of whether to support or disqualify them. So far the state’s reactions have varied. State actors have shown a visible interest in controlling the development of indigenous justice through the promotion of certain legal reforms. Such action has been possible in the Sierra Norte of Puebla, where the practice of indigenous municipal justice is still limited in its scope. But it would be almost impossible for the Guerrero state government to control the security and justice experiment being implemented by the Nahua, Me’phaa, and Na savi populations. This process has already gone beyond the state itself. Indigenous people are not willing to relinquish their community police force or their justice system. Indigenous people insist that they “look for respect and not recognition,” to use the words of the leaders of the Policía Comunitaria, because “recognition,” for them, implies accepting the subordination of their system to the state legal framework. They are aware that only with a new reform at a national level, which recognizes the right to autonomy and self-government for indigenous peoples, can their demands be met. These are the same demands that were at the core of the San Andrés Agreements, supported by the Zapatistas and the indigenous national movement since 1996.
The challenges to experiments in indigenous justice are enormous given the powerful economic and political interests at stake, particularly in the state of Guerrero, which is known as the most violent and economically polarized in the country. For these reasons, and confronted by adverse situations, indigenous communities are creating innovative practices of justice inspired by traditional cultural references. These in turn are reinvented within the framework of contemporary proposals and oriented toward creating more humane forms of society. Indigenous organizations appropriate the globalized language of human rights and localize it to renovate their justice system. One of the weakest aspects of these indigenous experiments, however, continues to be the internal processes that reproduce exclusion and subordination of women in many indigenous communities. The lessons provided by the indigenous women of Cuetzalan, through their participation in the Juzgado Municipal Indígena, offer novel alternatives to rethink multicultural justice through a gender perspective.

The fact that these experiences with indigenous justice develop outside the existing legal framework does not mean that legal recognition is unimportant. Rather, they reveal the vast distance between reality and an established legal order that fails to respond to the demands of indigenous peoples. The failures of state administration of justice indicate the need for a profound constitutional reform that would involve true recognition of indigenous rights and a new relation between the state and indigenous people based on autonomy and self-determination. This reform has to promote, as well, the building of intercultural bridges to guarantee solutions for local dissidence, plurality, and respect for human rights.

Notes

A first version of this paper was presented at the 102nd annual meeting of the American Anthropological Association, Chicago, November 19–23, 2003. I appreciate the comments of Gisela González, Susanne Oboler, Jane Collier, and anonymous readers.

1. Barreda spoke these words at a meeting at CIESAS when he and other representatives of the policía comunitaria came to support the Zapatistas’ Caravan to Mexico City in February 2001.

2. In recent years, international legal agreements to recognize indigenous rights have been established within international multilateral institutions and agencies such as the United Nations Organization (UNO), the World Bank, and the International Labor Organization (ILO).

3. “Corporativism” refers to a nondemocratic, vertical, and usually corrupt trade union organization.
4. “Neoliberal multiculturalism” refers to the fact that collective rights granted as compensatory measures to disadvantaged cultural groups are an integral part of neoliberal ideology (Hale, this volume).

5. See, for example, the National Consultation for an Integral Reform to the General System of Justice Administration, promoted by the Judicial Attorney of Mexico (August 2003).

6. The Juntas de Buen Gobierno were announced by Subcomandante Marcos in August 2003 in some Mexican journals (see, for example, La Jornada, July 2003).

7. The city of Cuetzalan is located in the region of Sierra Norte de Puebla, Mexico. It is the political and economic center where 70 percent of the population is Nahua.

8. The president of the Superior Judicial Branch (Tribunal Superior de Justicia del estado de Puebla), Guillermo Pacheco Pulido, initiated the Juzgado Indígena as a response to the constitutional reform regarding indigenous rights and culture passed in August 2001. The Juzgado Indígena is part of new judicial legislation in the state of Puebla to modernize the administration of justice. In order to emphasize the relevance of the Juzgado Indígena, the magistrate stated that this institution is new not only in Mexico but also all over Latin America (see Pulido 2004). The magistrate seems unaware of the Indigenous Courts (Juzgados de Paz y Conciliación Indígena) established by the government of Chiapas since 1998 with similar purposes, nor of the reforms recognizing indigenous courts in other parts of the country, as in Quintana Roo.

9. In 2004 both human rights organizations, Takachihualis and FRAD, experienced economic difficulties in their effort to maintain independent NGO status. This means, unfortunately, that their influence in legal processes involving indigenous peoples has decreased, at least for the moment.

10. Similar experiences are being developed in the state of Chiapas, where women’s NGOs have been supporting programs to train indigenous women as “defensoras populares.” See also the experiences of human rights defense being developed in Chiapas (Speed and Reyes 2002).

11. Usos y costumbres is the expression used to refer to customary law and traditional practices in indigenous regions. The Regidora de Usos y Costumbres (Town Councillor of Uses and Customs) is a municipal official whose position is intended to deal with traditions and regional festivities.

12. The state of Guerrero, located in the southwest of Mexico, is characterized by strong contrasts: It is very rich in natural resources and economic investments and at the same time is one of the poorest and most marginalized states of the country. A history of violence, rebellion, arms and gun traffick-
ing, and drug smuggling has promoted the militarization of some important regions, such as the Montaña and Costa Chica at the southeastern end of the state, bringing lawlessness and violation of human rights, particularly to indigenous communities (Tlachinollan 2004).

13. Testimonies collected during the meeting in Buena Vista, San Luis Acatlán, Guerrero, in October 2003 (see the following note). See also the publications from Tlachinollan A.C., the Human Rights Center of the Montaña of Guerrero (Tlachinollan 2004).

14. On October 15 and 16, 2003, the eighth anniversary of the Policía Comunitaria was celebrated in the community of Buena Vista. During these days, many people coming from different indigenous communities were protected by 100 Policía members, while 300 participated in the sessions organized for the occasion. The whole community and people invited participated in the parade at the beginning of the event. The police dressed in new green uniforms with their guns. I had the opportunity to participate in the workshops where different issues regarding the Policía Comunitaria project were discussed.

15. Taken from an interview of a representative of the Policía Comunitaria conducted by Tlachinollan (Tlachinollan 2004:142–144).

16. These constant menaces forced the Policía authorities to register the arms on behalf of the federal army. When the Policía began operating in 1995, they were officially recognized by the governor of Guerrero, at that time Rubén Figueroa, who gave them 20 firearms and a patrol vehicle. Afterwards, this recognition gave way to a policy of intimidation against the Policía.

17. For an elaboration on a multicultural vision of human rights see Santos de Souza 1998. See also Sierra 2004.

18. See a summary of this state proposal and the position defined by the authorities of the Policía Comunitaria in Coordinadora Regional de Autoridades de la Montaña y Costa Chica de Guerrero (CRAC 2004).

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