THE PRACTICE OF HUMAN RIGHTS

Tracking Law Between the Global and the Local

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5

RIGHTS TO INDIGENOUS CULTURE IN COLOMBIA*

Jean E. Jackson

INTRODUCTION

This chapter uses three cases from indigenous Colombia to examine the at times awkward relationship between the set of "basic" human rights seen to reside in individuals (e.g., the right to be free from killing, torture, or forced exile) and a set of collective rights known as "rights to culture" (also known as "rights to difference"). Both sets of rights appear in various covenants and treaties to which the country has been a signatory, and they share some – but only some – of the same intellectual and moral underpinnings. I also examine the problematic way both the Colombian government and indigenous communities (henceforth *pueblos*[1]) appeal to a discourse of culture when disputes arise over who is entitled to claim the "right to culture." The conflicts these three cases illustrate have arisen in no small part due to the fact that campaigns supporting basic human rights, and the mobilizations around indigenous rights, have emerged out of significantly different histories.

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[1] *Pueblo*, a Spanish word meaning both "community," and "people," is shorter. All translations are my own.

I have been conducting research since 1968 on various topics in the Vaupés, a department[2] in the southeastern part of the country. In the early 1980s I became interested in the indigenous rights mobilizing taking place in the region, and subsequently expanded that interest to include the organizing at the national and international levels (see Warren and Jackson 2002; Jackson and Warren 2005). Security concerns have prevented me from returning to the Vaupés (my last visit took place in 1993) and, although I continue to travel to the country, I have not embarked on a new long-term, ethnography-intensive research project. In consequence, for the most part this chapter utilizes secondary sources.

Background

In Colombia, as elsewhere in Latin America, indigenous mobilizing at the national level took off during a period of political liberalization in the 1980s and 1990s known as the democratic transition. These reforms included a return to civilian rule and, with some exceptions, a reduction of repressive state responses to dissent. Sixteen Latin American countries instituted constitutional reforms.[3] Throughout Latin America, but especially in Colombia, the reforms were intended to address problems of corruption and lack of legitimacy, and to promote rights discourses that would go a long way toward solving the "crisis of representation" that characterized many governments in the region.

A key component of the reforms was the acknowledgment of the diversity found within Latin American countries, often described in the new constitutions in terms of a pluriethnic and multicultural citizenry. The reforms seriously challenged dominant imaginaries of the proper citizen as Spanish- (or Portuguese-) speaking, Catholic, and "modern." Many countries redefined their pueblos' legal status. In more general terms, the reforms ushered in an era in which the very meanings of citizenship, and of the state itself, were rethought.

Indigenous people have always been Latin America's most disadvantaged and powerless sector, and throughout the past five centuries mobilizations to protest exploitation, illegal appropriation of lands, and other forms of institutionalized discrimination have been mounted. A characteristic of the campaigns of the past twenty-odd years has been

[2] A Colombian *departamento* is the equivalent of a US state.

[3] Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela (Van Cott 2000).

a shift in argument from a "rights as minorities" discourse to one claiming "rights as peoples." Pueblos that argue from a position that claims *inherent* rights, which derive from their status as autochthonous peoples, are employing a discourse that avoids the assimilationist implications of earlier appeals to minority rights. While the latter signals membership in a larger polity, the inherent rights argument strengthens claims to autonomy and self-determination. Demands at the top of activists' lists have included support for bilingual education, traditional medical systems, collective land titling, and self-government at local and regional levels. Legal leverage backing up these demands is provided by the various international covenants and treaties ratified by many Latin American states, among them the 1989 International Labor Organization's Indigenous and Tribal Peoples Convention 169.[4]

Somewhat difficult to pinpoint because of their diffuse nature are the effects on Latin American indigenous organizing of the embrace throughout the region of multiculturalism, a set of ideas that celebrates and works to protect ethnic and cultural diversity.[5] In many Latin American venues, certainly Colombian ones, indigenous otherness has come to be seen to involve a nonmaterialist and spiritual relation to the land, consensual decision making, a holistic environmentalist perspective, and a goal of reestablishing harmony in the social and physical worlds. Embedded in these values are critiques of occidental forms of authority, and the tendency to see nature as something to control and commodify. The notion that sovereignty should be invested in the nation-state has also been challenged, along with the state's monopoly on legitimate violence and claim to be the sole authority to define democracy, citizenship, penal codes, and jurisdiction (see Van Cott 2005). Unfortunately, although the region's recent

[4] Other agreements include the UN's draft Declaration on the Rights of Indigenous Peoples, and the draft Inter-American Declaration on the Rights of Indigenous Peoples (see Ramos 1998; also Swepston 1998).

[5] The earlier official discourse championed "universal and undifferentiated citizenship, shared national identity and equality before the law" (Sieder 2002a: 4–5; also see Yashar 2005). Needless to say, racial, ethnic and class inequities throughout the region have always revealed a considerable gap between the discourse and reality. The degree to which multicultural projects dovetail with neoliberal interests is hotly debated; see, for instance, Hale 2002, 2004; Povinelli 2002. Although multiculturalism does not constitute an ideology in the sense of masking a dominant class interest (Povinelli 2002: 25), an obviously crucial question remains as to why, in contrast to earlier hegemonic visions of the post-colonial state as culturally homogeneous and politically centralized, so many Latin American elites have found it in their interest to promote multiculturalism.

democratization does constitute a significant achievement, for the most part the impact has been confined to the formal domains of constitutional recognition of indigenous rights, a modest amount of protective legislation, and limited gains in the way of judicial decisions. Equally unfortunately, following the reforms, in response to directives from international lending agencies promoting neoliberal policies, legislation was passed in several countries, including Colombia, that decreased the effectiveness of the constitutionally mandated protections. All in all, despite the reforms, Latin America's indigenous people continue to make up the poorest sector, and many communities face a seriously eroding economic base.

In Colombia all of this change has taken place within the context of a sixty-year-old conflict that successive governments, corrupt and structurally weak, have not been able to end (see Chernick 2005). Several kinds of armed actors are involved, including Marxist insurgents, paramilitaries, and state security forces. Narcotraffickers have often complicated the picture through their large campaign contributions and other types of political and financial support which, although illegal, politicians and their supporters have often found hard to resist. Both the guerrillas and the paramilitaries have been heavily involved in the illegal drug trade since the early 1980s. The war has taken more than 350,000 lives, the vast majority of them civilians (Green 2005: 139), and created 3.2 million internally displaced people (out of a total population of 43 million). Speeded-up globalization and capitalist expansion have also played a part.

The country's pueblos took an adamant stance against the US-backed Plan Colombia (a six-year aid package begun in 2000[6]), protesting what they saw as a disproportionate part[7] of the aid package going to help the military and police effort to eradicate illegal drug cultivation. The strategy included aerial spraying of illegal crops, which resulted in complaints about negative health consequences and damage to food crops. Critics of the Plan argued in favor of a majority of the funds being used to promote economic and social development, in particular projects aimed at manual eradication of illegal crops and crop substitution.

[6] Developed by former President Andrés Pastrana (1998–2002) and the Clinton administration, Plan Colombia was implemented on July 13, 2000 and ended six years later. The Plan's stated purpose was to eradicate illegal drugs; additional goals were finding a way to end the country's forty-year-old armed conflict, and to promote economic and social development.

[7] In any given year between 68 and 75 percent of the funds; see Ramírez 2005: 54.

Many Latin American countries have been the recipients of various neoliberal economic restructuring packages mandated by international funding organizations like the World Bank and the Inter-American Development Bank. Most Colombian pueblos oppose the free-trade agreements the country has entered into, arguing that the poor are hit hardest by structural adjustment and other austerity measures intended to reduce fiscal and political instability and increase foreign investment. For example, leaders worry that new forest management laws being pushed by the Uribe administration would hand over territory controlled by pueblos to major corporate interests (Murillo 2006: 5–6). In October 2004 a campaign organized by the *Consejo Regional Indígenadel Cauca* (CRIC) (Regional Indigenous Council of Cauca) and the *Associación de Cabildos Indígenas del Cauca* (ACIN) (Indigenous Authorities Association from the North of Cauca), which called for a public vote on the free-trade agreement being negotiated between Colombia, Peru, Ecuador and the United States, resulted in 98 percent of some 50,000 participants voting "no" to the free-trade agreement.[8] Similar non-binding public referenda have been held more recently. Neither the government of Andrés Pastrana (1998–2002) nor of Álvaro Uribe Vélez (2002–2006) has been willing to enter into serious dialogue with the sectors that have organized these protests.

Indigenous activists throughout Latin America often speak of the importance of the concept of collective rights for achieving autonomy and advancing other demands (see, for example, Van Cott 2005: 235). Stavenhagen points out that granting rights to culture often presupposes collective rights "since some of these rights can only be enjoyed by individuals in community with others, and such a community must have the possibility to preserve, protect and develop its common culture" (2002: 37). Pueblos struggle to convince government bureaucrats and the courts of the validity of indigenous collective understandings of their "*usos y costumbres*" (uses and customs) – known as customary law. In general the concept of collective rights has been resisted by nation-states (see Rosen 1997). Western jurisprudence has consistently displayed an ambivalence toward the idea, which stems in part from the unfamiliar concepts underpinning the nature of those rights. Western notions of rights are based on an ideology that foregrounds the individual as the economic agent, bearer of rights and obligations, and owner of property, as well as the notion that policies

[8] Molano. 2004. Also see *Miami Herald*: "300,000 protesters jam Bogotá square" October 14, 2004.

and laws should (at least theoretically) apply to all citizens uniformly. An example of such resistance is the United Kingdom's decision in 2004 that collective human rights do not exist.[9] Another is a Canadian court's 1980 ruling that courts "cannot consider the merits of a case respecting the collective rights of an indigenous party until that party establishes to the satisfaction of the trial judge the extent to which 'they and their ancestors were members of an organized society' prior to the arrival of European settlers" – virtually impossible in Canada, given the criteria Europeans employed at the time to characterize "organized society."[10]

Goodale in his Introduction to this title points out that while western conceptualizations of human rights have for the most part located them in the individual, in fact the motivation for defining and protecting them came from vulnerable populations experiencing horrendous victimization throughout the twentieth century. The Colombian cases show how attempts to reduce one kind of group vulnerability – the ethnocide and genocide faced by Colombian pueblos (see Stavenhagen 2005; Jackson 2005) – clash with attempts to ease another kind of vulnerability through the recognition and legal protection of certain basic rights individuals are considered to possess by virtue of their membership in the human race.[11]

In sum, indigenous activists' insistence on collective rights, including control over resources, and pueblos' right to develop their institutions and development projects based on local *usos y costumbres*, challenge the foundational assumptions of official juridical systems throughout Latin America.

Perspectives and aims of essay

The three Colombian cases presented here were chosen in part for their ability to illustrate some of the on-the-ground effects of the importation of transnational human rights regimes into the country. The cases permit an exploration of "the extent to which not only national but

[9] "Collective Rights & the UK – 2004" www.survival-international.org/news.phi?id=171, accessed February 8, 2007.

[10] *The Hamlet of Baker Lake* (1980), as cited in Asch 2005: 432–433. Blackburn discusses the distinct "flavor of empire and of frontier" characterizing British Columbia (compared to the rest of Canada), which was, until very recently, reflected in disputes over land ownership (2005: 587–588).

[11] Speed's chapter in this book (chapter 4) provides a Mexican case that illustrates the tensions between universalism and relativism and between individual and collective rights. Also see Speed 2006: 72.

also international legal regimes ... dictate the contours and content of claims and even of identities" (Cowan, Dembour, and Wilson 2001: 11). In the Introduction to this volume, Goodale argues that the notion of "transcultural universal human rights is itself a product of particular histories and cultural imperatives, so that it is simply not possible to consider the idea of human rights 'in the abstract' ". Goodale also argues that the concept of transnationalism should not be confined to a literal meaning (i.e., involving interaction between two or more national states), which may lead to an over-emphasis on the activities "most symbolic of the trans-boundary and horizontal interconnections that define ... contemporary human rights networks" (Goodale, Introduction to this volume), and a neglect of other, less immediately visible, activities. In this chapter, "transnational" at times refers to indigenous "nations" (pueblos) interacting with other pueblos, the Colombian nation, or both. The cases I present provide instances of transnational human rights discourse penetrating into, and in turn being modified and transmitted out of, the most isolated and marginalized of locales, a clear instance of human rights theories being shaped and conceptualized "outside the centers of elite discourse" (Goodale, Introduction to this volume). They also illustrate Merry's point that the notion of "local" is "deeply problematic" (2006: 39). Each case illustrates how pueblo members and institutions creatively engage the specific logics of liberal multiculturalism, adopting what Wilson characterizes as "pluralizing strategies adopted by indigenous elites that employ the deceptively novel language of human rights" (2006: 79). The cases support Goodale's point that "the sites where human rights unfold in practice do matter, and these sites are not simply nodes in a virtual network, but actual *places* in social space, places which can become law-like and coercive" (Introduction, p. 13 above). Hence, the best theoretical framework for analyzing the Colombian materials proves to be a discursive approach to human rights, one that assumes that "social practice is, in part, constitutive of the idea of human rights, rather than simply the testing ground ..." (Introduction, p. 8 above).

We shall see that claiming and successfully securing these rights requires a performance on the part of Colombian pueblos that powerfully indexes such isolation and marginality, geographical and otherwise, in order to maximally promote the likelihood that they will continue to qualify as legitimate grantees of their rights to culture. Unlike many kinds of people who claim various rights – women's rights, children's rights, worker's rights, and so on – who are members of fairly

unproblematic categories, the kinds of people claiming indigenous rights may be challenged as not indigenous, or not indigenous enough. The cases presented below, particularly the third, illustrate a pueblo strategy aimed at gaining official recognition, maintaining protection of "*usos y costumbres*," and improving access to resources, including land. The strategy was developed upon pueblos' discovery that they needed to establish and regularly reestablish their legitimacy – legal and otherwise – through a rhetoric of cultural difference and continuity with a traditional past. We shall see that at times the rhetoric asserts an incommensurability between the western and pueblo rights systems. That is, not only is there at times no compelling reason for pueblos to translate their cosmologies or social practices into the westernized language of mainstream rights, at times pueblos will have strategic reasons to present their cosmologies and traditional *usos y costumbres* as simply untranslatable.[12] Adopting this position helps to establish and maintain claims to sovereignty, especially during disputes involving the interface between customary law and western law.

Finally, this chapter illustrates Goodale's point about scale, that notwithstanding the frequency with which human rights is articulated in global terms, in practice the scale within which human rights is actually encountered is far smaller. Of course a danger lurks, that of spiraling "into the regress of particularism that often characterizes accounts of human rights practice" (Introduction, p. 11 above). I believe these Colombian cases help us to address broader issues, for example, those concerned with the problematic arising from any effort to protect human rights through constitutional guarantees when sovereignty is located in an idea of "people" conceived of as diverse.

THE CASES

Colombia's 1991 Constitution and subsequent legislation confirm the country's status as a multicultural and pluri-ethnic nation.[13] Members of pueblos are rights-bearing autonomous citizens with special indigenous rights; that is, the Constitution guarantees pueblos' right to participate in civil society as ethnic citizens. The most recent phase of Colombian indigenous organizing, begun in the late 1970s, vividly

[12] See Graham 2002, and Rappaport 2005 on the notion of incommensurability.

[13] The actual language reads: "The state recognizes and protects the ethnic and cultural diversity of the Colombian Nation." *Constitución Política de Colombia* 1991, Art. 7.

illustrates the international turn toward a rights discourse. Rights language has deeply influenced the choices about what kind of demands to make and how best to articulate claims. Indigenous leaders have climbed on the rights rhetoric bandwagon in a number of ways.

The first way, claiming the "right to have rights," argues from the position of an excluded minority population (Ramírez 2002; see Dagnino 1998: 50). While at times protests have focused on an abusive, even terrorist, state, at other times the complaint has pointed to an absent state; in such locales residents find they are effectively non-citizens with next to no *de facto* rights, an especially acute problem in Colombia where the state is totally absent or minimally present (e.g., police garrisons in the larger towns) in a fourth of the national territory (see Ramírez 2001, 2002).

The second way concerns the right to participate in the political process by running for public office. Given that only two percent of the country's population is indigenous, the gains in this area have been nothing short of spectacular. Three indigenous representatives of national organizations served on the Constituent Assembly that wrote the constitution, and they significantly influenced parts of the resulting document (Laurent 2004; Gros 2000; Murillo 1996). Currently, indigenous representatives serve as legislators at both national and departmental levels, participate in municipal politics, and one, Floro Tunubalá, a Guambiano, served a term as governor of the department of Cauca in the southern part of the country. Indigenous candidates' platforms often crusade for openness and transparency and denounce "politics as usual" – usually seen to result in *de facto* disenfranchisement and a government of elites that serves elites.[14] Exclusionary rhetoric has often been avoided, particularly at the national level, and indigenous leaders have sought to form alliances with nonindigenous popular organizations, leftist cadres, and intellectuals. Such activist-politicians present an alternative that appeals to unattached, disaffected voters, both indigenous and nonindigenous.

The third way indigenous leaders have employed a rights discourse involves their insistence on the "right to difference," which opens the door to an expansive, heterogeneous definition of "rights." For example, some activists, indigenous and not, have championed "Andean democracy," which envisions the community assembly of heads of

[14] This discussion of indigenous politicians mainly comes from Van Cott 2005.

households as the authoritative decision-making body, working by consensus rather than majority rule (Assies 2000: 9).

In Colombia discourses about indigenous rights are often highly dynamic; close examination reveals processes of institutionalization in which actors mutually influence each other. Interactions between indigenous leaders and state functionaries will wring concessions from the latter, which in turn inspire activists to re-frame their demands in novel, often more expansive ways.

The 1991 constitution and subsequent legislation specify that "customary law" will have power within indigenous territories (known as *resguardos*, which are collectively owned and inalienable). The Colombian constitution recognizes locally elected councils called *cabildos* as the governing authority, in keeping with the communities' *usos y costumbres*.[15] This constitution promotes indigenous juridical autonomy to the greatest extent in Latin America (Stavenhagen 2002: 33).[16] In most countries, when the two systems interact, the national legal system has almost inevitably taken precedence, revealing the basic hierarchy, rather than parity, characterizing the relationship (see Yrigoyen 2002). We shall see that at times Colombia is an exception.

Constitutional recognition of customary law in Colombia (and elsewhere in Latin America) has been interpreted by many analysts as a covert critique of the state, an acknowledgment that the state itself needs to be restructured. Utterly ineffective and corrupt courts have been unable to act independently to carry out the rule of law in rural affairs, whether it be in land disputes, theft, or interpersonal violence.[17] The hope for a restructured Colombian state, especially palpable during the constitutional assembly deliberations in 1990, is understandable in a country suffering the effects of a long-running civil war and saddled with a weak government unable to administer a substantial part of its territory. One extraordinary critique of government legitimacy argues that indigenous people's highly participatory norms for decision-making can potentially help achieve democratization throughout the

[15] The actual wording of Article 330 reads: "In conformity with the Constitution and the laws, indigenous territories will be governed by councils created and regulated in keeping with the uses and customs of the communities . . ."

[16] Note that one should not conceive of indigenous "customary law" in terms of a single coherent body of indigenous customary law (see Sieder 2002a: 39).

[17] Donna Van Cott, personal communication February 2006.

country (Van Cott 2000; Rappaport 2003[18]). The same has been claimed for Colombia's indigenous juridical structures: one reason behind the official state support of local juridical systems is to reduce case backlogs, eliminate extra-institutional conflict resolution and violence, and formally recognize the legitimacy and effectiveness of local institutions that are often perceived as more legitimate than state courts (Van Cott 2000: 74, 112, 113–116).

The legitimacy of pueblo rule of law in the eyes of mainstream Colombian society has been strengthened by pueblo members' responses to the violence perpetrated on them. In 2001, for example, when members of the larger (of two) guerrilla armies, the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) (Colombian Armed Revolutionary Forces), began firing homemade mortars on a police station in the Nasa (also known as Páez) community of Toribío, over 4,000 unarmed community members flooded its streets, ending the attack (Rappaport 2003: 41). On other occasions dozens of community members will travel to a guerrilla stronghold to obtain release of a kidnapped leader.[19] Following the demobilization in 1990 of an indigenous guerrilla organization known as Quintín Lame, the Nasa resolved to oppose the presence of all armed actors in their territory.[20] Beginning in the late 1990s they developed a campaign of pacific civil resistance, organizing an Indigenous Guard (*guardia indígena*), whose members are unarmed, save for ceremonial staffs.[21] The Guard currently numbers about 7,000 men and women.[22] This ability to arrive at a consensus and forge a collective will to act in the face of great danger has occasioned laudatory commentaries in the media,[23] church sermons, school lessons, and everyday conversations, as does pueblo members' obvious respect for leaders and traditional authorities.

[18] For a Mexican case, see Nash 2001.

[19] See "Colombia: FARC releases indigenous leaders," about four hundred Nasa obtaining the release of Arquímedes Vitonás, mayor of Toribío, in September 2004 (*Weekly Indigenous News*, culturalsurvival.org, reporting on a Reuters press release, September 17). Also see "Indígenas rescatan su alcalde." *El Tiempo*, April 14, 2003.

[20] Mercado. 1993. [21] Valencia. 2001.

[22] Forero. 2005; Dudley. 2005; Klein. 2005. Also see Rappaport 2003; and Murillo 2006.

[23] An example is the interest displayed when governors of fourteen indigenous cabildos in northern Cauca received the National Peace Prize for their "Proyecto NASA" a coalition working to maintain community neutrality and autonomy in the face of threats by armed combatants: "'Más que neutrales, autónomos'." *El Espectador* December 12, 2000.

The case of Francisco Gembuel

Following the approval of the 1991 Constitution, the country's indigenous cabildos suddenly began to be presented with cases involving accusations of serious crimes. Although in the distant past local authorities had dealt with such cases, their legal machinery had long fallen into disuse, as prior to 1991 they had been handed over to the state. The pressure on cabildos to rise to the challenge of adjudicating cases like these has been substantial. To begin with, the bare fact of being able to exercise authority in this important domain has great appeal. Also, as the entire process that led to the codification of new ethnic rights came about through direct, successful engagement with the state and political elite (Van Cott 2005; Yashar 2005), by showing they could succeed here as well, leaders hoped to retain, and if possible increase, the overall political strength, moral capital, and public support they had acquired up to that point.

The Gembuel case is quite complex and aspects not relevant to my argument have been omitted.[24] Some of the complexities are crucial, however, as they illustrate how the resolution of such disputed sentences invariably occurs in extremely politicized contexts including, in the Colombian case, situations in which indigenous special jurisdiction is being created at the same time it is being applied. My concern here is to pay particular attention to the pueblos' perception that defending their jurisdiction and their juridical norms is crucial to the maintenance of their general legal status, both in the eyes of their fellow Colombian citizens and abroad. I particularly consider the general point made above: pueblos' evolving awareness that while at times they need to translate their legal and moral reasoning – often a very difficult task – into language that mainstream institutions can understand, at other times they need to argue that their reasoning is in fact too "other" to be able to be adequately translated. Asserting such incommensurability, what Rappaport terms "the expression of sovereignty through cultural difference" (2005: 236), strengthens their claim to being truly indigenous in the eyes of those who would challenge it.

The national media regularly report cases of "traditional" punishments being meted out. For example, one article in the daily *El Tiempo* titled "Stocks, to irresponsible fathers: Páez women do not tolerate being abandoned," describes the decision by a female governor of a

[24] Rappaport 2005, chapter 7 provides a much fuller discussion of this case. Also see Van Cott 2000: 114–116 Assies 2003: 174–177; Sánchez 2004: 421–436.

cabildo to impose a sentence of stocks on men who neglect their wives and children. The article notes that while stocks are a traditional punishment for homicide and theft, sentencing irresponsible fathers to this punishment is new.[25] The individuals punished with these stocks (introduced by the Spaniards[26]) hang upside down by the ankles (the *El Tiempo* article notes that "many of the punished remain with serious injuries on the ankles"). Another article relates how the former governor of a cabildo was given fourteen whip lashes (administered with a cattle whip on the legs) for the crime of adultery and neglect.[27] A third article reports on an adulterous pair receiving seventeen lashes. One of the whippers, the mother of the woman, said, "I'm sorry, daughter, but this is our law and we have to follow it."[28]

On August 19, 1996, the cabildo of Jambaló, a Nasa resguardo in the department of Cauca in the southwestern part of the country, found Francisco Gembuel Pechené, a Guambiano resident of Jambaló, and several companions guilty of murdering Marden Betancur Conda, a Nasa. Gembuel subsequently challenged the verdict, claiming procedural irregularities and insufficient evidence to convict. Gembuel said he supported the cabildo's use of these punishments in general, and that whipping and stocks had been used during his tenure as president of CRIC.[29] The case produced a great deal of discussion throughout the country. Gembuel and several other men (the number given by newspaper accounts varies from five to twelve; Van Cott [2000: 114] gives seven) had publicly accused Betancur of being a *pájaro*, a hired assassin in the employ of the paramilitaries in the area. The National Liberation Army (*Ejército de Liberación Nacional* – ELN), the smaller of Colombia's two guerrilla armies, had carried out the actual killing, gunning him down during a municipal celebration. The Jambaló cabildo accused the men as the intellectual authors of the crime. Both Gembuel and Betancur were well-known leaders; Gembuel had been a member of Jambaló's cabildo, and president of the CRIC, and Betancur was Jambaló's mayor when he was killed. The initial provocation was said to have been resentment on the part of Gembuel and his allies, who

[25] *El Tiempo* "Cepo, a padres irresponsables: mujeres paeces no tolerán el abandono" May 10, 2000.

[26] Rappaport 2005: 250; *El Tiempo*, "'Siempre he obrado de manera limpia'" July 12, 1998.

[27] "The whip for an indigenous governor," *El Tiempo* May 14, 2000. Interestingly, the rector of the school defends the accused, Feliciano Valencia, saying he "shouldn't be blamed because women love him so much."

[28] "Castigan pareja indígena paez por infidelidad." *El Espectador*, June 5, 2000.

[29] Mompotes. 1997b.

belonged to a rival CRIC faction, that Betancur had won Jambaló's highly contested 1994 mayoral election. Gembuel was sentenced to fifteen minutes in the stocks, sixty whip lashes, and banishment from Nasa territory.[30] The others received the same or lesser sentences.

Residents of Jambaló were divided with respect to which authority should have conducted the trial – some believed the accused should have been turned over to the state judicial system. On December 24 Gembuel was given eight lashes, but his daughter and others physically blocked the administration of further punishment. The families and friends of the convicted individuals, a group of some ninety people, both indigenous and not, occupied a church in Popayán (the capital of Cauca), protesting both the sentence and the process.[31] The (non-indigenous) Public Defender of Cauca (*Defensor del Pueblo de Cauca*), a kind of ombudsman, also intervened, asking Gembuel to bring a constitutional suit ("*acción de tutela*") to avoid the punishment. He did, and the judge ruled that whipping was, in fact, torture, a decision upheld in an appellate court. International protests had been mounted; Amnesty International demanded that the sentence of whipping be suspended, and called on the civil authorities (the governor of Cauca) to prohibit further punishment of this nature.[32]

Subsequently, on January 11, an assembly of approximately a thousand Nasa decided to reopen the investigation. The assembly postponed the punishment to February 20, and stated that, come what may, they would complete the sentence on that date. A new commission was appointed to review the accusations and the entire process.[33] The cabildo governors reaffirmed that four men would receive sixty lashes, five would receive thirty, and all would be exiled. A protracted debate by representatives of sixty cabildos had preceded this decision,[34] during which many issues had surfaced, among them the dangerous influence of "white law" on indigenous law. By this time ELN had sent a communication to the cabildos saying that the killing of Betancur had

[30] For comparison, another article reported that cabildos in the north of Cauca carried out a sentence of fifty lashes on an Indian who had murdered his grandmother. He was also sentenced to five years of forced labor for the community. García. 1997d.

[31] "Protestan por pena de látigo a indígenas: Noventa nativos ocuparon la Basílica Menor de Popayán." *El Tiempo* January 9, 1997.

[32] On January 3, 1997 Susan Lee was cited as saying that: "the application of corporal punishment on a convict, no matter what nature of crime, constitutes a cruel, inhuman and degrading punishment, contrary to that established in Article 5 of the Universal Declaration of Human Rights." ("Amnistía rechaza latigazos a paeces." *El Tiempo* January 8, 1997).

[33] García. 1997c. [34] García. 1997a.

been a mistake, as he had not been a hired assassin in the pay of the paramilitaries.[35]

The case wended its way to the Constitutional Court, which ruled on October 15, 1997 that concepts like human rights, due process, and torture are not universal, but context-dependent, and that the use of the whip "accorded with Nasa cosmovision and was, therefore, not an instrument of torture" (Rappaport 2005: 249). But while the appeals process was still underway, Gembuel left Nasa territory and was never punished.

The debate received widespread coverage in the newspapers and television. How the conflict was framed varied. One sympathetic article discusses how good a deterrent stocks are, for there reportedly had been only eighteen cases of robbery and infidelity in a community of around 4,600 inhabitants. After describing the stocks the article concludes: "although Colombian law does not understand this, these sanctions permit the rehabilitation of the person, because everyone witnesses the punishment being carried out, and a lesson is learned by all."[36] Another fairly sympathetic article, subtitled, "White law does not wash away the blame" quotes the Jambaló governor as saying that while they respect white law, they *have* to carry out the sentence passed down by their own judicial authorities.[37] However, accompanying this story are rather disturbing photographs of a whip and the town's stocks.

Nasa leaders defended the sentences by elaborating the intentions embedded in Nasa customary law, which, as we have seen, were picked up by the press. Unlike spending years in a penitentiary, the punishments allowed reintegration of the convicted into society. Luis Alberto Passú, governor of Jambaló, commented that even though the accused might prefer jail, "indigenous law affirms that jails are a cruelty that alienates the individual from his family and fills him with vices."[38] A nationally-known Nasa leader and former senator, Anatolio Quirá, complained that sixty-three natives were in Colombian jails, when they should have been working on behalf of their communities. He added that the only consequence of the punishment intended for Gembuel and his associates would be "the rehabilitation and reincorporation of the guilty."[39] Rappaport notes that the reconciliation between an individual and the community is achieved not only

[35] "Aplazan latigazos contra cinco indígenas paeces: Eln dice que fue un error asesinato de alcalde." *El Tiempo* January 11, 1997.
[36] Mompotes. 1997a. [37] *El Tiempo* "Paeces levantarán 300 veces el látigo" January 10, 1997.
[38] Mompotes. 1997b. [39] García. 1997d.

through the punishment itself but also through the four hours of ritual accompanying it, during which some cabildo officials briefly put themselves in the stocks, advice is provided, a shamanic ceremony is conducted, and, following the punishment, women ritually wash the offender's wounds (Rappaport 2005: 241).

Nasa questioned by journalists as to whether they saw their traditional punishment as torture replied in the negative; on the contrary, it was a way to secure harmony in the community.[40] Many Nasa reported being anxious about further bloodshed resulting from an inevitable deepening of the divisions between factions if the sentences were not carried out. As Passú put it, "it is possible that this [sentence] might be seen by western culture as a rebellion against the *tutela* and against ordinary law, but we are certain that it is this other law that is threatening the social equilibrium among the *indígenas*."[41] Interestingly, even one of the accused, Alirio Pitto, who was not sentenced to whipping but would lose his political rights and be exiled, confirmed that a main goal was to find a way "to end the opposition that questions the work of the governor."[42]

Another line of defense in favor of carrying out the sentences arose out of a fear that Gembuel's winning the *tutela* would set a precedent: "with this *tutela* and that *tutela* we'll eventually have to bury our stocks and our whips."[43] The stakes were high, due to a well-founded fear that the ruling in the Gembuel case would define once and for all who had the authority to judge crimes when both nonindigenous justice and indigenous justice were involved, thereby establishing the degree of autonomy permitted to the country's pueblos in this area of law. Arguments enlisted the themes of jurisdiction and incommensurability between the two legal systems. As Anatolio Quirá argued, "ordinary" (western) justice "didn't touch" the indigenous governors "because we are acting within indigenous law." Jesús Piñacué, then-president of CRIC (and future senator) said that Amnesty International's intervention "has created a confusion of laws because the Westerners don't understand indigenous law."

[40] García. 1997b. Note that Gembuel is quoted as saying that completing his sentence of sixty lashes on February 20 would definitely constitute torture "because one dies before all of the sixty lashes have been administered." He requests that sanctions not in violation of human rights be applied.
[41] García. 1997b. [42] García. 1997b.
[43] *El Tiempo*, "Aplazan latigazos contra cinco indígenas paeces." January 11, 1997.

A final, crucial theme also appears: the pride felt by the Nasa of having reduced the influence of ELN in their territories. Cristóbal Secue, a Nasa leader and activist, emphasized how crucial it was that the cabildo successfully decide such cases, for failing to punish wrongdoers would virtually guarantee that "guerrilla justice" would be meted out. The wrongdoers would be killed and the influence of the armed groups in indigenous communities would once again be dramatically manifested (Rappaport 2005: 258). Rappaport concludes that a major causal factor behind the efforts to define and implement legal jurisdiction is "to establish a legitimate local authority in the face of the threat of guerrilla, paramilitary, and army hegemony, in the absence of efforts on the part of the Colombian state to contain armed actors" (2005: 244).

The Gembuel case illustrates several general themes, one of which is clearly the contradiction between *usos y costumbres* being understood as legitimate forms of legality "that must ultimately supplant Colombian legal usages in the resguardos" (Rappaport 2005: 229), and "indigenous people's individual rights as Colombian citizens to due process and to fair and reasonable punishment" (Rappaport 2005: 229). Both traditional authorities and the state juridical apparatus always play roles in cases involving indigenous and nonindigenous parties, as well as when convicted pueblo members appeal their sentence by turning to western courts, as we saw here. Disputes over jurisdiction frequently arise in such instances. Local decisions may be accused of being discriminatory, authoritarian, or intrusive into private space. Usually the underlying issue is a perceived incompatibility between local fact-finding procedures or the decision itself, and fundamental tenets of western law. In Colombia customary law involves issues of social citizenship, ethnic minority demands, and human rights, but also playing a role is a community's awareness that it needs a consensus about conceptions of, and proper performance of, "otherness" if their collective pueblo identity is to remain in good standing in everyone's eyes, their own and outsiders'. The effort to clarify the relationship between indigenous special jurisdiction and western law is still very much under construction, an effort taking place in grassroots legal committees, cabildo meetings, assemblies attended by authorities (from, as we have seen, as many as sixty cabildos), appellate courts, and the Constitutional Court itself (see Rappaport 2005: 235). It is clear that, no matter where the Colombian experiment in legal pluralism ends up, special indigenous jurisdiction will always exist in tension with the mainstream

justice system, and such tensions will probably periodically "explode" in the future (Cowan, Dembour, and Wilson 2001: 10), as they did here.

In her discussion of the Gembuel case, Rappaport notes that the Constitutional Court decided not to conceive of Colombian indigenous jurisdiction in terms of ancient practices that have persisted across time and that need to be discovered and re-implemented. Rather, special jurisdiction must be seen as a kind of "counter-modernity," which incorporates a unique indigenous morality, something being instantiated and shaped in situations peopled with such a variety of agents, some of whom most definitely do not have Nasa interests uppermost in mind. The Gembuel case reveals a range of actors representing a range of interests – Jambaló residents, other Nasa resguardos, other Colombian pueblos, national indigenous organizations and their allies, state authorities, armed combatants, a curious public, and international organizations like Amnesty International. The degree to which pueblos will be allowed to *create* their own laws, as opposed to discovering them in past traditions and practices (Santos 2001: 208, as cited in Rappaport 2005: 240), is unknown. Individual Constitutional Court judges' decisions have varied in this respect, some taking into consideration what they term varying levels of cultural "purity" (degrees of acculturation), others not (Van Cott 2000: 113–116). The Jambaló decision received the attention it did in part because the ruling magistrate, Carlos Gaviria Díaz, did not take such "purity" questions into account. Rather, he allowed Nasa authorities to describe the intention behind their laws, which led to the finding that whipping did not constitute torture because its purpose was not to cause excessive suffering, but to ritually purify the violator and welcome him or her back into the community, thus restoring harmony.[44]

The case of Jesús Piñacué

During the 1997 presidential campaign, Jesús Enrique Piñacué Achicué, a Nasa senator in the Colombian parliament, voted publicly for the Liberal candidate, Horacio Serpa, despite having agreed with Nasa authorities and the *Alianza Social Indígena* (Indigenous Social Alliance – ASI – a coalition of left-leaning groups), one of two political parties supporting him, that he would cast a blank vote. Piñacué

[44] Quite pertinent to our concerns here, Gaviria maintained that "only a high degree of autonomy would ensure cultural survival" (Van Cott 2000: 115).

defended himself by saying that he had always worked in a "clean" manner in his public life.[45] A coalition composed of ASI and the *Franja Amarilla* (Yellow Stripe) party had put him up for office, and in the moment of choosing an option, Piñacué later stated that "in a conscious and free manner" he decided to vote for Serpa, *Franja Amarilla*'s candidate. Accusing Piñacué of "high treason," the president of ASI said that choosing to honor the other party's request constituted a violation of autochthonous laws.[46] According to ASI officials, Piñacué's action constituted a serious misstep, for he had bypassed indigenous honor codes as well as revealing an unacceptable attitude.[47] ASI was also angry about Piñacué's alliance with a traditional party (the Liberals), but what had really hurt them, officials said, was the fact that he had not kept his word. Piñacué announced that he would not assume the senate seat he had been elected to, scheduled for July 20, because he considered himself "morally impeded to represent the indigenous community before the country" until the matter could be resolved.[48] He commented that he did not repent of renouncing his senate seat because he preferred losing it to losing his fatherland: "*Asistiré a Paniquitá y me someteré al fallo para no perder mi patria.*"[49]).

An assembly was scheduled for July 15 to consider ASI's demand. During the ensuing discussions, ASI held firm, but it became clear that various cabildos supported Piñacué, who noted that it was ASI that was questioning his vote for Serpa, rather than the overall indigenous community, and that "although ASI requests the punishment, not everyone in the indigenous community is in favor of it."[50] CRIC subsequently scheduled another assembly for both the 15th and 16th, in a town in Paniquitá (Totoró) in the eastern part of Cauca, some four hours by road from the location of the assembly ASI had scheduled. The ASI assembly was cancelled after Piñacué asserted that he would not attend it. Piñacué had said that, rather than ASI, his "legitimate judges are the indigenous communities, with their governors."[51] Although he did not explicitly refer to ASI's juridical legitimacy, this statement clearly challenged ASI's authority to conduct such a meeting, its cancellation an obvious loss of face for the organization. Piñacué

[45] *El Tiempo*, " 'Siempre he obrado de manera limpia' " July 12, 1998.
[46] *El Tiempo* "Piñacué no se posesionará como senador," July 9, 1998.
[47] Mompotes. 1998b. [48] *El Tiempo* "Piñacué no se posesionará como senador," July 9, 1998.
[49] Mompotes. 1998b. [50] *El Tiempo* "Piñacué no se posesionará como senador," July 9, 1998.
[51] *El Tiempo*, "Juicio 'político' indígena: Jesús Piñacué será juzgado en su comunidad por votar por Serpa," July 12, 1998. The rest of this paragraph is taken from the same article.

said he respected the decision to punish him according to Nasa law, and he would not dodge the judgment, even if he were sentenced to be whipped.

Prior to the meeting possible punishments were discussed: physical (whip and stocks), and "moral." The latter would consist of not allowing Piñacué to assume public office. Such "moral" punishment is a form of ostracism: while the convicted are not forcibly exiled, they are politically isolated.[52] Twelve cabildo governors from the north favored whipping, and discussed a sentence of fifty lashes. During this period Piñacué spoke with many Nasa, analyzing the possibility of his being absolved in light of Nasa law.

Piñacué requested punishment in the form of being thrown into the sacred lake of Juan Tama in the eastern part of Cauca, a traditional ritual that had lapsed at the beginning of the twentieth century but revived in 1983. Piñacué cited a statement by culture hero Juan Tama: "the Nasa should never permit external visions to intrude into Nasa spirituality."[53] Juan Tama had made these remarks before disappearing into the lake 200 years earlier, out of desperation about divisions within the Nasa pueblo.[54]

On the appointed day of July 15 the deliberations, in the form of private discussion (no cameras or tape recorders), began.[55] In the middle of the discussions the judges found that no whip could be located; none of the 500 who attended the Paniquitá session had brought one.[56] Although the governor of Paniquitá commented that "during the decision-making it is better to have a whip ready at hand," he himself hadn't whipped "even his children." In fact, no one had been punished in this manner in Paniquitá. Several authorities left to look for a whip. Another reason given as to why no one had thought to bring a whip was because many people felt that Piñacué did not deserve to be punished "for acting in a democratic manner."

Thirty-five governors agreed to a sentence of a "sacred wash" in Juan Tama lake, a ritual of "refrescamiento" ("cooling").[57] This ritual would be secret and conducted in silence, preceded by deep meditation.[58] Piñacué would first walk for more than six hours to get to the lake, a difficult journey that needed permission from various Nasa shamans and required very experienced guides. At dawn, after he and ten

[52] *El Tiempo* "Una justicia de dolor y leyenda" July 12, 1998.
[53] Mompotes. 1998b. [54] Campo. 1998. [55] Mompotes. 1998a.
[56] Mompotes. 1998b. The rest of this paragraph draws on this article.
[57] Campo. 1998. [58] García 16. 1998. The rest of this paragraph draws on this article.

shamans had spent the night in the freezing cold (at 4,400 meters) they would throw him, nude, into the water. This dunking would bring new energy to him "in order to begin to walk the road back" to re-incorporation within the Nasa community. In the process of getting out of the extremely cold lake Piñacué would use up every bit of energy, liberating him from the "bad spirits." Following the punishment Piñacué would be able to assume his seat in the senate, and continue to represent indigenous cabildos. He would also have to acknowledge his error in front of the governors and the public, both indigenous and nonindigenous, as well as agree to improve his conduct. Finally, Piñacué would have to visit all of the resguardos to beg pardon and ratify his commitments with his community. ASI agreed with this punishment. Piñacué subsequently did ask for forgiveness "before public opinion," and acknowledged that he had committed an infraction of the rules. But he also excused himself somewhat by saying the mistake happened due to the impossibility of consulting with the authorities in time.[59]

The Gembuel and Piñacué cases have a lot in common, although the outcomes differed fundamentally, and electoral politics played a major role in the latter. Once again, newspapers and television turned their gaze to customary law. Once again questions were raised about the legitimacy of these laws: because they had been passed down orally from generation to generation, "details about amount and manner of administering or about the kinds of crimes that warranted the punishments were lacking."[60] Once again justifications were proffered based on rehabilitating the accused by punishing and shaming them before the community.

Once again, voices were heard expressing anxiety that serious internal divisions might be exacerbated. And although debates on the degree of ASI's juridical legitimacy were not referred to in the national media, clearly they represented another potential source of ill will. Once again the importance of arriving at a correct solution was described as crucial to the maintenance of traditional order and justice. Once again the press reported pueblo members' conviction that indigenous customary law was superior in several important respects – an example being ASI member Manuel Santos Poto's comment that being thrown in prison "far from one's community and lands" was worse than whipping.[61]

[59] Mompotes. 1998a. [60] *El Tiempo* "Una justicia de dolor y leyenda" July 12, 1998.
[61] *El Tiempo* "Una justicia de dolor y leyenda" July 12, 1998.

The Piñacué case demonstrates many of the complications that can arise when indigenous communities attempt to apply traditional justice systems in highly visible, politicized contexts. An insistence that Nasa laws be followed and Nasa traditional authorities be respected stood side by side with worries about increased factionalization and concerns to minimize negative publicity produced by punishments seen by mainstream society to violate basic human rights.[62]

The case also produced instances of a discourse encountered in the larger society about the valuable lessons to be learned from the life ways of the country's indigenous citizens. In a piece titled "Social laboratory," the columnist Manuel Hernández begins by speaking about how the new constitution finally provides "recognition and identity to Colombia's ethnic communities, which suffered discrimination and abandonment."[63] Under continuing great hardships, he continues, Colombia's pueblos are working hard, and have constructive lessons to teach the rest of the country. The "moral sanction" Piñacué underwent demonstrates the vitality of indigenous customs. Hernández criticizes the way some journalists sensationalized the story, saying they intended to "damage the relations within the [indigenous] community, as well as advance the media's political ends." Hernández comments that in the Piñacué case, unlike mainstream society, punishers and the accused had joked among themselves during the long walk, and although the punishment was indeed meted out, "the power of individual jurisdiction remained intact." Also, he continues, the antagonism and ill will, so frequent in judicial proceedings "of the so-called 'civilized' sectors" were absent. "This demonstrates that pueblos know to withstand the siege mounted by the mass media, which so often attempts to put words in the mouths of people in the news, a morbid fascination actually invented by the journalists themselves."

The role played by whips, stocks and coerced exile in both cases resonates with Elizabeth Povinelli's employment of the concept of "repugnance" in her examination of Australia's multiculturalist laws and federal policies. When behaviors become "repugnant" they threaten to "shatter the skeletal structure" of state law. The resulting experience of "fundamental alterity" transforms the subaltern into

[62] See Sierra (1995), for a Mexican judicial proceeding involving somewhat similar discussions.
[63] Hernández. 1998. The rest of this paragraph is based on this article.

something so profoundly "not-us" that an impasse is reached (2002: 17).[64] Like Australian Aborigines, the Nasa and their customs not only need to be seen by the dominant society as a "real acknowledgment of traditional law and real observance of traditional customs" (2002: 39, 45), they must be acceptable – no "repugnant" features allowed (2002: 34). For Povinelli, indigenous people face society's impossible demand "that they desire and identify with their cultural traditions in a way that just so happens, in an uncanny convergence of interests, to fit the national and legal imaginary of multiculturalism" (2002: 7–8). The Piñacué case in particular shows Nasa leaders expending a great deal of effort to present a radically different cultural system that manages to fit Colombian society's multiculturalist imaginary. While journalist Hernández attempts to convince readers that Nasa forms of cultural difference are indeed "acceptable," the debates over whether or not Nasa punishments constitute torture demonstrate what can happen when a sense of "repugnance" enters the picture. We are reminded of Goldilocks' quest: neither too much nor too little, but, if you try hard enough, you can get it just right. However, Povinelli says that real indigenous people will never manage to do this; they will invariably fail to qualify for inclusion in the nation's imaginary of indigeneity. The hegemonic domination characteristic of postcolonial multicultural societies, she argues, "works primarily by inspiring in the indigenous subject a desire to identify with a lost indeterminable object – indeed, to be the melancholic subject of traditions" (2002: 39). Inculcating this motivation results in actions that "always already constitute indigenous persons as failures of indigeneity as such" (2002: 39).

The case of contested indigenous status in Putumayo

Margarita Chaves's research in the Putumayo department of southern Colombia has focused on several communities that petitioned the government to grant them official indigenous status. The state's rejection of these claims reveals an unstable notion of indigeneity, illustrating an important underlying question that also arose in the Gembuel case: in disputed cases, who is authorized to decide who is entitled to which rights?[65]

[64] Also see Strathern on the problem of "repugnant" customs in the Western Highlands of Papua New Guinea (2004: 230).

[65] See Occipinti 2003 and Speed 2002 for examples of such debates in indigenous Argentina and Mexico, respectively.

Chaves documents a process of re-indigenization of communities of *colonos* (settlers) in the region (2003, 2005; also see Ramírez 2002). These were ethnically diverse families who arrived in successive waves from various parts of the country over the past seventy-odd years, many of them fleeing the mid-century bloody conflict raging in Andean areas known as "*La Violencia*" that left 200,000 dead (Chernick 2005: 178). National and regional Indigenous Affairs Offices (*División de Asuntos Indígenas* – DAI) are in charge of creating and implementing government policy for the country's pueblos. Successive Putumayo censuses had shown that both numbers of indigenous individuals and of cabildos had been rapidly increasing (Chaves 2003: 122, also see Chaves 2005), producing great consternation among regional and national DAI authorities. Members of recognized cabildos in the region also were expressing dismay, for they considered these reindigenized cabildos competitors for scarce state resources (which include benefits in the areas of health, scholarships, exemption from the military, availability of certain economic resources, and a greater likelihood of obtaining land [see Jackson 1996, 2002b]). Chaves argues that these processes of recovery and "recreation" of identity should not be seen only in instrumental terms, as the shift that had taken place during the previous twenty-five years (particularly during the constitutional process) from a valorization of *blanqueamiento* (whitening) to a valorization of indigenization, had had powerful effects, both symbolic and emotional (2003: 192).

Chaves notes that the dynamic identitarian discourses in these remote places reflect similar ones taking place at national and international levels; the latter enter regions like the Putumayo via many routes. An example is the different "qualitative scales" of indigeneity that were being created to pinpoint the "quality" or "grade" of indigenousness of recognized indigenous communities.[66] Long-time resident Putumayo Indians were increasingly becoming aware of ways in which the *colono* was also being excluded from the world of "white" domination (2003: 209), an ever-growing exclusion due to oil exploration in the area. From the perspective of the state, Chaves comments, all groups continued to occupy positions of subalternity, in which all rights were subject to challenge – *anyone's* "right to have rights" could increasingly be impugned.

[66] Chaves 2001: 172. Recall the criterion of "level of purity" employed by some Constitutional Court magistrates in the Gembuel case.

Unlike many indigenous communities in the area, which had often wanted to marginalize themselves further to escape the reach of the state, Chaves comments that *colonos* had always resisted their marginalization (also see Ramírez 2002); what was new in Putumayo is that the most recent resistance has taken the form of reindigenization, including the creation of new cabildos. Chaves documents the way in which a process that resulted in an increasingly "objective reality" of the "*indio*" ironically emerged out of the state's requirement that petitioner *colonos* demonstrate their indigeneity, with the obvious goal of setting standards they could not meet. The state required a "purification" of the censuses of already existing cabildos, in essence a form of ethnic cleansing; everyone had to demonstrate they were indigenous by language and *usos y costumbres* (Chaves 2003: 126). (Note that many of the petitioner *colono* families saw themselves as always having been indigenous, as their forbears originally came from highland pueblos like the Nasa, seeking land and fleeing the conflict).

When the state, represented by the DAI regional director (a member of the Inga pueblo, one of the several local pueblos opposed to the formation of new cabildos), decreed that multi-ethnic cabildos were not permitted, the *colonos* continued to push, asking why such cabildos did not qualify. When DAI obliged with ever more precise specifications, these cabildos proceeded to meet them and reapply. Chaves likens this back-and-forth process to a hall of mirrors (2003: 134). The *colono* groups increasingly valorized and talked up those physical characteristics and indigenous-derived practices – *usos y costumbres* – that would mark them as ethnically different in the eyes of both the state and the other pueblos in the area. At one point, over the space of only three months, DAI sent out four *circulares/ordenanzas* (policy statements) intended to halt the formation of new cabildos and end the emergence of new ethnicities. But these circulars had the opposite effect, for each proclamation detailing the increasingly precise requirements allowed the *colonos* to more precisely adjust their cultural identity. The petitioners began to find genealogical "footprints" in their shared last names, and began to rename their cabildos, sometimes several times. For example, one first went from *Cabildo Multiétnico Urbano de Puerto Caicedo* (consisting of Nasa, Awa, Inga and some Afro-Colombians from Cauca) to the *Cabildo Páez de la Zona Urbana de Puerto Caicedo* (indicating a cabildo made up only of Páez [Nasa]), and then to *Nasa Ku'esh Tata Wala*, a Nasa name intended to convey that the "purification" of the cabildo was complete (2003: 129).[67] Another cabildo created a name that joined the first syllables of the ethnicities they shared: the acronym QUIYAINPA signals that its members are Quillacingas, Yanaconas, Ingas and Pastos. However, as the name sounds like an Inga name, the cabildo received legal recognition (Chaves 2003: 129).

Unfortunately (because Chaves' account makes for fascinating reading), space does not permit going into more detail. What is important for our purposes is that these back-and-forth interactions, in which the state called for increasing levels of "purification" and "cleaning" (as well as an increased consultation of authorized sources – anthropological studies, for example[68]), resulted in ever-greater amounts of ingenious camouflage and mimicry being generated, which mounted an effective challenge of colonial (here neocolonial) discourses about rights. Chaves argues that these colonos brought about a "profound and disturbing" subversion of state authority because of the imperfect quality of their performative strategies. The goal of convincing themselves and others of their indigenous identity was almost, but not entirely, achieved. Chaves comments that such subversion is especially upsetting to state functionaries, regional elites, and the sector of academe characterized by a love of "the idea of alterity at all costs" that Amazonian Indians embody (2005: 147).

The colono communities that had requested official recognition as indigenous cabildos responded to the state's denial of their rights claims by hoisting the state on its own petard. Their imaginative strategies disclosed the inner workings and discursive practices of DAI, as well as those of the local municipalities actually in charge of granting cabildo status. The case illustrates how variable, situational, and political the criteria for being granted the "right to indigenous rights" can be.

As many scholars have pointed out (Scott 1990, Aretzaga 2003), the state is not a unitary center of power, but in fact is composed of institutions like legislatures and judiciaries whose individual actors engage in discourses and practices of power, the multiple effects of which give the appearance of a state (also see Trouillot 2001). In the

[67] According to Joanne Rappaport (who discussed this with Abelardo Ramos, a Nasa linguist), the name has no meaning in Nasa (personal communication February 13, 2006).

[68] One group rediscovered an origin myth telling of their having originated in Putumayo, only later migrating to Cauca; their subsequent migration to Putumayo was in effect a homecoming (Chaves 2003: 132).

Putumayo case the actors are (1) the petitioners, (2) the national and regional directors of DAI, who unsuccessfully called upon an accepted *modus operandi* to achieve their goals, and enlisted still other actors as allies, these being (3) the municipal government functionaries, and (4) the members of traditional Putumayo pueblos. The fluidity revealed by Chaves' investigation of actual rights practices, a back-and-forth interaction in which, à la Alice in Wonderland, the rules and their application seemed to continually change, were the result of the complex relations between local and national state agencies, as well as the transnational indigenous movement and its various allied nongovernmental organizations (NGOs). The latter have created a global indigenous rights discourse that is continually being incorporated and reworked at these various levels, merging with notions about indigeneity already present in the region. Chaves (2001: 242) outlines easily identifiable areas where the reethnicized *colonos*' representations are hybrid: "the influence of cultural images of very diverse origins and of wide circulation in regional, national and international levels" is quite apparent. These images include that of the "indigenous defender of the tropical forest,"[69] and the "wise *curandero*" (shaman). In the end, the reethnicized cabildos, now with all sorts of evidence of their otherness, having in fact reorganized themselves politically and culturally and recovered traditional festivals, origin myths and the like – in short, having come to fit the "fixed" state definition of the "other" – can successfully claim that they are being discriminated against. For Chaves, these cases reveal the impossibility of defining that which is indigenous as something not political, as well as the impossibility of defining the essentializations employed by the state as not ideological (2003: 134).

The Putumayo case resonates with Povinelli's discussion of cultural differences considered by mainstream society to be "too hauntingly similar to themselves to warrant social entitlements – for example, land claims by indigenous people who dress, act, and sound like the suburban neighbors they are" (2002: 13). Neither mainstream Colombian society (represented by the national DAI), nor traditional Putumayo pueblos accepted the new cabildos' petitions at first. But Putumayo indigeneity emerges from interactions between state agents

[69] Speed makes a similar point in her discussion of a Mexican community: essentialized ideas about indigenous people having a special relationship to the land may result in some communities finding it difficult "to meet those definitions and thus 'qualify' for rights" (2006: 72–73).

and citizens, both indigenous and nonindigenous, both nearby and far away, and over time the new pueblos become indigenous for most intents and purposes. These communities provide a superb example of subjects creatively engaging "the slippages, dispersions, and ambivalences of discursive and moral formations that make up their lives" (Povinelli 2002: 29). The Colombian materials confirm Cowan's point that "the recent revision of political and legal structures to recognize 'culture' and 'multiculturalism' has its own transformative effects, shaping and at times creating that which it purports merely to recognize" (2006: 17–18).

CONCLUSIONS

We see that in Colombia, as well as in many other countries, debates about the recognition of customary law have opened up spaces for citizens, indigenous and not, to rethink the state in its entirety, and to contest the parameters of government and other political institutions. If a nation's citizens are so diverse, a diversity legally recognized by the most fundamental law of the land, what does citizenship, in fact, consist of? Clearly, any comprehensive analysis of identity politics in Latin America must include discussion of how the identity of the state itself is being reformulated (see Warren and Jackson 2002: 20).

The two Nasa cases contain a worry one finds throughout the literature on indigenous customary law: that a pueblo's "culture," or their "otherness" will be restricted or otherwise diminished as a result of increased participation in modern life. "Culture" is not the same as autonomy, but the two are deeply imbricated. Most Colombian pueblo members do not want their indigenousness diminished; not only would they lose something of value, but they would run the risk of losing their right to occupy the "savage slot" created for them by the nonindigenous Colombian society (and international actors[70]). Pueblos and their allies know that successful representation of indigenous authority and authenticity must occur if leaders are to be granted the right to represent their pueblo.[71] The enactment of indigenous law and the

[70] See Trouillot 1991; Merry 2001: 41; also see Castañeda 2004 on the Yucatec Maya's unwillingness to occupy this "slot."

[71] I do not mean to imply that pueblos are not riddled with conflicts, nor suggest that local hierarchies do not result in unequal access to resources and power. Decision-making mechanisms that exclude and marginalize result in some members – most often women, poorer families, the younger generation – having less of a voice. A romantic view of pueblos as

subversion of federal and municipal law are clearly two very important sites at which successful performance of self-authenticating practices helps to achieve this goal. But the cultural content of such performances needs to be "acceptable"; these cases illustrate what can happen when "repugnance" intrudes, for when liberal members of mainstream society confront "intractable" social differences that their moral sensibility rejects, their experiences of "moments of fundamental and uncanny alterity" result in impasses (Povinelli 2002: 13).

All three cases, especially the Putumayo one, illustrate "the complex and contradictory consequences of being granted rights on the basis of having a culture and a cultural identity" (Cowan 2006: 18). Coming up with acceptable forms of cultural difference, not too "other" (which runs the risk of "repugnance"), yet different enough to offer the best possible likelihood of a pueblo's claims being recognized, is quite a balancing act. Communities are requested to produce "a detailed account of the content of their traditions and the force with which they identify with them – discursive, practical, and dispositional states" (Povinelli 2002: 39) congruent with mainstream society's imaginary of "real" indigeneity. Povinelli characterizes "dominant multiculturalism" as inspiring subaltern and minority subjects "to identify with the impossible object of an authentic self-identity ... a domesticated nonconflictual 'traditional' form of sociality and (inter)subjectivity" (2002: 6). A close examination of the above cases has allowed us to better understand how Colombia's particular version, visible in the actions taken by various kinds of judges, policies implemented by state officials, and articles written by journalists, works.

These cases, especially the third, reveal a dynamic process of appropriation, contestation, and re-fashioning of western meanings, in particular that of "culture." The diverse meanings and roles the culture concept takes on can resist elements of its western ideological underpinnings, and become a subaltern political tool. As such these cases pose challenges to conventional boundaries of cultural and political representation and social practice (Alvarez, Dagnino, and Escobar 1998: 8), as well as to the international community's use of "culture," "peoples," "rights," and other concepts (e.g., "democracy," "citizen"), which continue to compel indigenous groups to repackage their concerns and identities for wider audiences in order to facilitate communicating claims and enlisting support. The growth of rights discourses and the linking up (sometimes done so awkwardly that we should perhaps say "lashing up" (see Li 2005: 386)) of indigenous culture-specific collective rights regimes (e.g., rights to culture) with other kinds of rights regimes, will inevitably result in tensions and periodic "explosions."[72]

Helping us to understand these processes are the approaches to studying rights regimes outlined at the beginning of this chapter. Scholars have been problematizing the notion of "culture" to better understand these processes. One kind of problematization involves examining the ways in which indigenous movements, like all social movements, challenge the boundaries of cultural and political representation and social practice (Alvarez, Dagnino, and Escobar 1998: 8). These three Colombian cases illustrate that culture is "a dimension of all institutions, 'a set of *material* practices which constitute meanings, values and subjectivities'" (Jordan and Weedon, 1995: 8, as cited in Alvarez, Dagnino and Escobar 1998: 3).

The Colombian examples illustrate how the concept of human rights, although often seen as universal, is coming to be seen by some scholars and activists as a product of Western cultural and intellectual history (see Speed, chapter 4 in this volume). Scholars like Merry (1997: 28) propose such notions; authorities like magistrate Gaviria Díaz put them into practice. We see the wisdom of Wilson's recommendation to pay attention to "human rights according to the actions and the intentions of the social actors, within the wider historical constraints of institutionalized power" (Wilson 1997: 4).

We have seen that certain Colombian Constitutional Court judges take their charge to respect the intent of the 1991 Constitution quite seriously (see Sánchez 1997, 1998, 2000). Of course, the Constitution was framed within the context of western democratic ideals and practices, so the Court's perceived mandate to respect the country's pluriethnic and multicultural nature extends only so far (see Benavides 2004: 414–417). Some of the Court's decisions are nonetheless surprisingly open to fundamentally different visions of justice, surprising

cohesive and consensus-based communities can be sustained only from a distance; up close they reveal actions and underlying values that are anything but fair or democratic. How these more vulnerable sectors feel about the status quo, or even about the desirability of transforming their culture according to their own normativity and rules must, of course, be investigated ethnographically in each case. Assies, vander Haar, and Hoekema point out that "indigenous women may contest aspects of their culture without abandoning the defence of a culture of their own" (2000: 313).

[72] See Merry 2001 for a discussion of the international rights community's essentialization of both "culture" and "rights."

particularly in a country characterized by excessive amounts of impunity and immunity. But this receptivity is perhaps not as paradoxical as it seems at first. May be, in a setting where 98 percent of crimes go unpunished, attention will very likely be riveted on cases that *presume* a well-intentioned and functional judicial system, one capable of seriously considering what indigenous special jurisdiction might mean. Colombian citizens are seeing in action new forms of governmentality that involve dispersed, graduated sovereignties. Some authors, like Manuel Hernández, suggest that *these* judicial processes, albeit unusual and highly circumscribed, are providing an embryonic vision of a just, tolerant, multicultural and intercultural[73] state and civil society – as well, we must add, as a discomfiting vision of unintended consequences[74] that may appear when robust intercultural definitions of justice and tolerance are actually put into practice.

My methodology has not allowed me to provide direct evidence of the transnational influences on these interactions, but the indirect evidence is compelling. We have seen how social actors in Colombia have envisioned the legal and ethical frameworks implied by the idea of human rights (see Goodale, Introduction, p. 22), "which requires the projection of the moral imagination in ways that not only contribute to how we can (and should) understand the meaning of human rights, but also, at a more basic level, suggest that the emergence of transnational networks takes places 'in our minds, as much as in our actions'" (Goodale, quoting from Boaventura de Sousa Santos 1995: 473).

Vulnerable indigenous populations in rural Colombia, in their effort to find and maintain stability in a situation of tremendous violence and government neglect, enlist particular traditions and authorize particular actors to carry out actions that without doubt challenge the transcultural scaffolding of the human rights regime. If the opposite of vulnerability is stability, we need to keep in mind that in Colombia indigenous communities are anything but stable, and that the war is a backdrop to every single event that led to the various packages of legislation, treaty-signings, and governmental policy promulgations that gave pueblos the territory and degree of autonomy they presently enjoy.[75]

[73] See Rappaport 2005 and Whitten 2004 for discussions of interculturality.
[74] As Povinelli asks, "On what basis does a practice or belief switch from being an instance of cultural difference to being repugnant culture?" (2002: 4).
[75] See Jackson 2002a.

A great irony derives from the fact that war-weary Colombians have perceived certain pueblos to be presenting ways to resist violence (despite at times terrible costs): ways to achieve consensus and act, thereby conquering, if only temporarily, the fear-induced paralysis that a civil war can produce. These pueblos have shown the courage to declare to those who violently challenge their autonomy, "*hasta aquí, no más*" ("you will not advance farther"). In the eyes of a pueblo like the Nasa, something "more terrible than death" (Kirk 2003) would be to give in to the guerrillas, paramilitaries and repressive state security forces, and abandon their project of securing at least some of their rights. In their vulnerability, but also in their conviction and determination to not yield, we indeed have a "messy"[76] set of symbols, a "messy" series of actions, and a "messy" set of moral and ethical imperatives, in large part due to the "messy" and inadequate government response to the violence perpetrated on the country's pueblos over the last sixty years.

REFERENCES

Alvarez, Sonia E., Evelina Dagnino, and Arturo Escobar. 1998. "Introduction." In Alvarez, Dagnino, and Escobar, eds., *Cultures of Politics Politics of Cultures: Re-visioning Latin American Social Movements*. Boulder: Westview Press.

Aretxaga, Begoña. 2003. "Maddening States." *Annual Review of Anthropology* 32: 393–410.

Asch, Michael. 2005. "Lévi-Strauss and the Political: *The Elementary Structures of Kinship* and the Resolution of Relations between Indigenous People and Settler States." *Journal of the Royal Anthropological Institute* (N.S.) 11: 425–444.

Assies, Willem. 2000. "Indigenous Peoples and Reform of the State in Latin America." In Willem Assies, Gemma van der Haar, and André Hoekema, eds. *The Challenge of Diversity: Indigenous Peoples and Reform of the State in Latin America*. Amsterdam: Thela Thesis, pp. 3–22.

Assies, Willem. 2003. "Indian Justice in the Andes: Re-rooting or Re-routing?" In Ton Salman and Annelies Zoomers, eds. *Imaging the Andes: Shifting Margins of a Marginal World*. Amsterdam: CEDLA, pp. 167–186.

Assies, Willem, Gemma van der Haar, and André Hoekema. 2000. "Diversity as a challenge: a note on the dilemmas of diversity." In Willem Assies,

[76] Goodale points out that while the abstract idea of human rights may lend itself to projects concerned with definition, classification and modeling, when emerging within situated normativities it is an inevitably messy and contradictory idea (see p. 25 of his Introduction).

Gemma van der Haar, and André Hoekema, eds. *The Challenge of Diversity: Indigenous Peoples and Reform of the State in Latin America.* Amsterdam: Thela Thesis, pp. 295–315.

Benavides, Farid Samir. 2004. "Hermeneutical Violence: Human Rights, Law, and the Constitution of a Global Identity." *International Journal for the Semiotics of Law* 17: 391–418.

Blackburn, Carole. 2005. "Searching for Guarantees in the Midst of Uncertainty: Negotiating Aboriginal Rights and Title in British Columbia." *American Anthropologist* 107(4): 586–596.

Campo, Carlos. 1998. "Misterioso Baño de Piñacué: la Laguna de Juan Tama es una Leyenda." *El Tiempo*, July 19.

Castañeda, Quetzil E. 2004. "'We are not indigenous!' The Maya Identity of Yucatan, an Introduction." *Journal of Latin American Anthropology* 9(1): 36–63.

Chaves, Margarita. 2001. "Conflictos Territoriales o la Política de la Ubicación: Actores Étnicos, Re-etnizados y no Étnicos en Disputa por un Territorio en el Putumayo." In Beatriz Nates, ed. *Memorias II Seminario Internacional sobre Territorio y Cultura: Territorios de conflicto y cambio sociocultural.* Manizales: Universidad de Caldas, pp. 167–186.

Chaves, Margarita. 2003. "Cabildos Multiétnicos e Identidades Depuradas." In Clara Inés García, ed. *Fronteras: Territorios y Metáforas.* Medellín: Hombre Nuevo Editores.

Chaves, Margarita. 2005. "'Qué va a Pasar con los Indios Cuando todos Seamos Indios?' Ethnic Rights and Reindianization in Southwestern Colombian Amazonia." Ph.D. thesis, University of Illinois at Urbana-Champaign.

Chernick, Marc. 2005. "Economic Resources and Internal Armed Conflicts: Lessons from the Colombian Case." In Cynthia J. Arnson and I. William Zartman, eds. *Rethinking the Economics of War: the Intersection of Need, Creed, and Greed.* Washington, DC and Baltimore: Woodrow Wilson Center Press and The Johns Hopkins University Press, pp. 178–205.

Cowan, Jane K. 2006. "Culture and Rights after *Culture and Rights*." *American Anthropologist* 108(1): 9–24.

Cowan, Jane K., Marie Bénédicte Dembour, and Richard A. Wilson. 2001. "Introduction." In Jane K. Cowan, Marie-Bénédicte Dembour, and Richard A. Wilson, eds., *Culture and Rights: Anthropological Perspectives.* Cambridge: Cambridge University Press, pp. 1–26.

Dagnino, Evelina. 1998. "Culture, Citizenship, and Democracy: Changing Discourses and Practices of the Latin American Left." In Sonia E. Alvrez, Evelina Dagnino, and Arturo Escobar, eds. *Cultures of Politics Politics of Cultures: Re-visioning Latin American Social Movements.* Boulder: Westview, pp. 33–63.

Dudley, Steven. 2005. "Indians Battle Rebels." *Miami Herald*, April 21.

Forero, Juan. 2005. "Colombia War Spills into Indians' Peaceful World." *New York Times*, May 2.

García, Yimy Melo. 1997a. "El Castigo será en Febrero: los Indígenas Aplazaron un mes el Cumplimiento de la Sentencia a Implicados en Crimen." *El Espectador*, January 11.

García, Yimy Melo. 1997b. "Es Mejor el Fuete que una Cárcel: Castigo Paez no es una Tortura, es la Forma de Asegurar Armonía en la Comunidad." El Espectador, January 12.

García, Yimy Melo. 1997c. "Por Tutela se Aplazaron los Fuetazos en Jambaló." *El Espectador*, January 11.

García, Yimy Melo. 1997d. "Sí les 'dieron' los Fuetazos en Toribío." *El Espectador*, January 13.

García, Yimy Melo. 1998. "Le Cambian Fuete por Agua a Piñacué." *El Espectador*, July 16.

Graham, Laura R. 2002. "How should an Indian speak? Amazonian Indians and the Symbolic Politics of Language in the Global Public Sphere." In Kay B. Warren and Jean E. Jackson, eds. *Indigenous Movements, Self-Representation and the State in Latin America.* Austin: University of Texas Press, pp. 181–228.

Green, W. John. 2005. "Guerrillas, Soldiers, Paramilitaries, Assassins, Narcos, and Gringos: The Unhappy Prospects for Peace and Democracy in Colombia." *Latin American Research Review* 40(2): 137–149.

Gros, Christian. 2000. *Políticas de la Etnicidad: Identidad, Estado y Modernidad.* Bogota: Instituto Colombiano de Antropología e Historia.

Hale, Charles. 2002. "Does Multiculturalism Menace? Governance, Cultural Rights and the Politics of Identity in Guatemala." *Journal of Latin American Studies* 34: 485–524.

Hale, Charles, 2004. "Rethinking Indigenous Politics in the Era of the 'Indio Permitido'." *NACLA* 38(1): 16–20.

Hernândez, Manuel. 1998. "Laboratorio Social." *El Espectador*, September 8.

Jackson, Jean E. 1996. "The Impact of Recent National Legislation on Tukanoan Communities in the Vaupés Region of Southeastern Colombia." *Journal of Latin American Anthropology* 1(2): 120–151.

Jackson, Jean E. 2002a. "Caught in the Crossfire: Colombia's Indigenous Peoples during the 1990s." In David Maybury-Lewis, ed. *Identities in Conflict: Indigenous Peoples and Latin American States.* Cambridge, MA: Harvard University Press, pp. 107–134.

Jackson, Jean E. 2002b. "Contested Discourses of Authority in Colombian National Indigenous Politics: The 1996 Summer Takeovers." In Kay B. Warren, and Jean E, Jackson, eds. *Indigenous Movements, Self-Representation and the State in Latin America.* Austin: University of Texas Press, pp. 81–122.

Jackson, Jean E. 2005. "Colombia's Indigenous Peoples Confront the Armed Conflict." In Cristina Rojas, and Judy Meltzer, eds. *Elusive Peace: International, National, and Local Dimensions of Conflict in Colombia*. New York: Palgrave/Macmillan, pp. 185–208.
Jackson, Jean E., and Kay B. Warren. 2005. "Indigenous Movements in Latin America, 1992–2004: Controversies, Ironies, New Directions." *Annual Review of Anthropology*. Palo Alto: Annual Reviews, pp. 549–573.
Jordan, Glenn, and Chris Weedon. 1995. *Cultural Politics: Class, Gender, Race, and the Postmodern World*. Oxford: Blackwell.
Kirk, Robin. 2003. *More Terrible than Death: Violence, Drugs, and America's War in Colombia*. New York: Public Affairs.
Klein, Naomi. 2005. "The Threat of Hope in Latin America." *The Nation*, November 21, p. 14.
Laurent, Virginie. 2005. *Comunidades Indígenas, Espacios Políticos y Movilización Electoral en Colombia, 1990–1998: Motivaciones, Campos de Acción e Impactos*. Bogota: Instituto Colombiano de Antropología e Historia, Instituto Francés de Estudios Andinos.
Li, Tania Murray. 2005. "Beyond the State and Failed Schemes." *American Anthropologist* 107(3): 383–394.
Mercado, Bibiana. 1993. "'Estamos en el Centro de una Guerra': Indígenas." *El Tiempo*, November 21.
Merry, Sally E. 1997. Legal Pluralism and Transnational Culture: The Ka Ho'okolokolonui Kanaka Maoli Tribunal, Hawai'i 1993." In R.A. Wilson, ed. *Human Rights, Culture and Context: Anthropological Perspectives*. London: Pluto Press.
Merry, Sally E. 2001. "Changing rights, changing culture." In Jane K. Cowan, Marie-Bénédicte Dembour, and Richard A. Wilson, eds. *Culture and Rights: Anthropological Perspectives*. Cambridge: Cambridge University Press, pp. 31–55.
Merry, Sally E. 2006. "Transnational Human Rights and Local Activism: Mapping the Middle." *American Anthropologist* 108(1): 38–51.
Molano, Alfredo. 2004. "La Fábula del Cóndor y el Colibri." *El Espectador*, September 20.
Mompotes, Andrés. 1997a. "El Cepo Evita los Crímenes en Pitayó." *El Tiempo* January 10.
Mompotes, Andrés. 1997b. "Ley Blanca no Lava las Culpas: Paeces Insisten en Castigar hoy con Latigazos a Implicados en Crimen." *El Tiempo*, January 10.
Mompotes, Andrés. 1998a. "Gota fría para Piñacué: Fué condenado a sumergirse en la laguna Juan Tama." *El Tiempo*, July 16.
Mompotes, Andrés. 1998b. "En Paniquitá Buscan un Fuete: Hoy es el Juicio a Jesús Piñacué." *El Tiempo*, July 15.
Murillo, Mario. 1996. "Confronting the Dilemmas of Political Participation." *NACLA Report on the Americas* 29(5): 21–22.

Murillo, Mario. 2006. "Colombia's indigenous caught in the conflict." *NACLA Report on the Americas* 39(4): 4–7.
Nash, June. 2001. *Mayan Visions: The Quest for Autonomy in an Age of Globalization*. New York: Routledge.
Occhipinti, Laurie. 2003. "Claiming a Place: Land and Identity in Two Communities in Northwestern Argentina." *Journal of Latin American Anthropology* 8(3): 155–174.
Povinelli, Elizabeth A. 2002. *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*. Durham: Duke University Press.
Ramírez, María Clemencia. 2001. *Entre el Estado y la Guerrilla: Identidad y Ciudadanía en el Movimiento de los Campesinos Cocaleros del Putumayo*. Bogota: Instituto Colombiano de Antropología e Historia.
Ramírez, María Clemencia. 2002. "The Politics of Identity and Cultural Difference in the Putumayo: Claiming Special Indigenous Rights in Colombia's Amazon." In Maybury-Lewis D., ed. 2002. *The Politics of Ethnicity: Indigenous Peoples in Latin American States*. Cambridge, MA: Harvard University Press, pp. 135–168.
Ramírez, María Clemencia. 2005. "Aerial Spraying and Alternative Development in Plan Colombia: Two Sides of the Same Coin or Two Contested Policies?" *ReVista* Spring/Summer, pp. 54–57.
Ramos, Alcida R. 1998. *Indigenism: Ethnic Politics in Brazil*. Madison: University of Wisconsin Press.
Rappaport, Joanne. 2003. "Innovative Resistance in Cauca." *Cultural Survival Quarterly*, Winter, pp. 39–43.
Rappaport, Joanne. 2005. *Intercultural Utopias: Public Intellectuals, Cultural Experimentation, and Ethnic Pluralism in Colombia*. Durham: Duke University Press.
Rosen, Lawrence. 1997. "Indigenous Peoples in International Law." *Yale Law Journal* 107(1): 227–259.
Sánchez, Esther. 1997. "Conflicto entre la Jurisdicción Especial Indígena y la Jurisdicción Ordinaria (enfoque Antropológico)." In Ministerio de Justicia y del Derecho/Dirección General de Asuntos Indígenas, *"Del olvido surgimos para traer nuevas esperanzas": La jurisdicción especial indígena*. Bogota: 287–292.
Sánchez, Esther. 1998. *Justicia y Pueblos Indígenas de Colombia*. Bogota: Universidad Nacional de Colombia.
Sánchez, Esther. 2000. "The Tutela-system as a means of Transforming the Relations between the State and the Indigenous Peoples of Colombia." In Willem Assies, Gemma van der Haar, and André Hoekema, eds. *The Challenge of Diversity: Indigenous Peoples and Reform of the State in Latin America*. Amsterdam: Thela Thesis, pp. 223–245.

Sánchez, Esther. 2004. *Justicia y PueblosIndígenas de Colombia Segundo Edición: Jurisprudencia Actualizada*. Bogota: Universidad Nacional de Colombia & UNIJUS.

Santos, Boaventura de Sousa. 1995. *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. New York: Routledge.

Santos, Boaventura de Sousa. 2001. "El Significado Político y Jurídico de la Jurisdicción Indígena." In Boaventura de Sousa Santos, and Mauricio García Villegas, eds. *El Caleidoscopio de las Justicias en Colombia*, vol. 2. Bogota: Siglo de Hombre editores, pp. 201–216.

Scott, James C. 1990. *Domination and the Arts of Resistance: Hidden Transcripts*. New Haven: Yale University Press.

Sieder, Rachel. 2002a. "Introduction." In Rachel Sieder, ed. *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*. New York: Palgrave Macmillan, pp. 1–23.

Sieder, Rachel. 2002b. "Recognising Indigenous Law and the Politics of State Formation in Mesoamerica." In Rachel Sieder, ed. *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*. New York: Palgrave Macmillan, pp. 184–207.

Sierra, María T. 1995. "Articulaciones entre ley y Costumbre: Estrategias Jurídicas de los Nahuas." In Victoria Chenaut, and María T. Sierra, eds. *Pueblos Indígenas Ante el Derecho*. Mexico City, Mexico: Centro de Investigaciones y Estudios Superiores en Antropología Social; Centro Francés de Estudios Mexicanos Centroamericanos, pp. 101–123.

Speed, Shannon. 2002. "Global Discourses on the Local Terrain: Human Rights and Indigenous Identity in Chiapas." *Cultural Dynamics* 14(2): 205–128.

Speed, Shannon. 2006. "At the Crossroads of Human Rights and Anthropology: Toward a Critically Engaged Activist Research." *American Anthropologist* 108(1): 66–76.

Stavenhagen, Rodolfo. 2002. "Indigenous Peoples and the State in Latin America: an Ongoing Debate." In R. Sieder, ed. *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*. New York: Palgrave Macmillan, pp. 24–44.

Stavenhagen, Rodolfo. 2005. "Human Rights and Indigenous Issues." Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. United Nations Economic and Social Council, Commission on Human Rights.

Strathern, Marilyn. 2004. "Losing (out on) Intellectual Resources." In Alain Pottage and Martha Mundy, eds. *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*. Cambridge: Cambridge University Press, pp. 201–233.

Swepston, Lee. 1998. "The Indigenous and Tribal Peoples Convention (No. 169): Eight years after Adoption." In Cynthia Price Cohen, ed. *The Human Rights of Indigenous Peoples*. Ardsley, NY: Transnational Publishers, pp. 16–36.

Trouillot, Michel-Rolph. 1991. "Anthropology and the Savage Slot: The Poetics and Politics of Otherness." In Richard Fox (ed.). *Recapturing Anthropology*. Santa Fe: School of American Research Press, pp. 17–44.

Trouillot, Michel-Rolph. 2001. "The Anthropology of the State in the Age of Globalization: Close Encounters of the Deceptive Kind." *Current Anthropology* 42(1): 125–138.

Valencia, José Luis. 2001. "Indígenas Prohibirán paso a Actores Armados," *El Tiempo*, May 16.

Van Cott, Donna Lee. 2000. *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America*. Pittsburgh: University of Pittsburgh Press.

Van Cott, Donna Lee. 2005. *From Movements to Parties in Latin America: The Evolution of Ethnic Politics*. Cambridge: Cambridge University Press.

Warren, Kay B., and Jean E. Jackson. 2002. "Introduction." In Kay B. Warren, and Jean E. Jackson, eds. *Indigenous Movements, Self-Representation and the State in Latin America*. Austin: University of Texas Press, pp. 1–46.

Whitten, Norman E. 2004. "Ecuador in the New Millennium: 25 Years of Democracy." *Journal of Latin American Anthropology* 9(2): 439–460.

Wilson, Richard, A., ed. 1997. *Human Rights, Culture and Context: Anthropological Approaches*. London Pluto.

Wilson, Richard A. 2006. Afterword to "Anthropology and Human Rights in a New Key": The social life of human rights." *American Anthropologist* 108(1): 77–83.

Yashar, Deborah J. 2005. *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge*. Cambridge: Cambridge University Press.

Yrigoyen, Raquel. 2002. "Peru Pluralist Constitution, Monist Judiciary – a Post-reform Assessment." In R. Sieder, ed. 2002. *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*. New York: Palgrave Macmillan, pp. 157–183.

Legal case

Case cited: *The Hamlet of Baker Lake* v. *Minister of Indian Affairs and Northern Development* (1980) 1 FC 518 (FCC).