

Nahua Women Blazing Paths for Indigenous Justice in Cuetzalan, Puebla*

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The tailoring of indigenous as rights-bearing subjects in Mexico's national legal realm has had an important influence in how some indigenous people think and display their identities. In the case of Cuetzalan, a Nahua municipality in the Sierra Norte of Puebla, indigenous women have taken more advantage of their new protected status as recognized in the 2001 reform of the Federal Constitution.¹ Nahua women have not only reinterpreted and rethought themselves through the essentializing legal and colloquial discourse of indigeneity, but also by deploying their culturally subdued female subjectivities as an asset for advancing their aspirations and demands before a patriarchal national society. This has allowed some of these women to gain private and public funding to configure productive projects and civil organizations aimed to the betterment of women's lives, even in the realm of their access to justice.

After the constitutional reform of 2001, indigenous jurisdictions became part of the state in a relation of subordination to the mestizo normative system that was extending them recognition, while reserving for itself the power to determine which indigenous normative practices would be considered *valid* and which would not. Positive law, informed by Western conceptions of rationality, individuality and gender relations, became the parameter of a process of authentication of indigenous customs.

In this process, indigenous women's bodies have become a site of political contestation (Menon & Bhasin, 1998; Kanaaneh, 2002) that could justify the state's intervention. This

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¹ I am referring to the reform on "indigenous issues" that is popularly known as "the indigenous law", even though it is not a law, but a series of reforms to different articles of the Federal Constitution, the norm of highest hierarchy in the Mexican legal system.

occurred even with the activities that were paradoxically recognized as autonomous for indigenous peoples, as it was the application of their own normative systems. The mestizo Mexican state not only assumed to know what was best for indigenous women, but also reproduced and fixed their identities as subordinated to the patriarchal despotism of indigenous cultures. Following Partha Chatterjee's (1993:118) argument, the state was transforming "this figure of the [indigenous] woman" as a symbol "of the inherently oppressive and unfree nature" of indigenous cultures.

An essentialized understanding of these cultures, from the perspective of the state, has made some identities more disposable than others. For the purpose of this paper, I will focus on the identities of indigenous women that have mattered for the Mexican nation, arguing that those female identities have been dialectically constructed and produced in the process of their legal recognition. Only the "modern" indigenous women, the ones who are conscious of their rights, the ones who exercise them and, therefore, the ones that are "liberated" from the oppression of their cultures, only they have entered as full-fledged citizens into the new pluricultural nation. Only these "modern" indigenous women, and not their "subordinated" sisters, have reached recognition by fitting into the officialized identity traced in the Constitution: this is, into the category of the *india permitida*—using Charles R. Hale's (2004) concept, originally formulated in a masculine gender.

After the constitutional reform on indigenous issues, many states of the Mexican Republic began to reform their local constitutions, as well as their local laws for regulating indigenous people's rights to have their own traditional authorities and to apply their own "normative systems" for resolving their "internal conflicts". In the case of Puebla, instead of recognizing the *existing* traditional judges inside indigenous communities, the local government decided to *create* Juzgados Indígenas (Indigenous Courts) as a new institution to administer justice to indigenous people. With the inauguration of five Juzgados Indígenas in different

municipalities in Puebla (the first one, in Cuetzalan, in 2002), the state was trying to exhibit its progressiveness by *allowing* indigenous people to be part of its judicial system, just as if *inclusion* meant *equality*, and just as if *equality* was an antonym of discrimination. The attempts *to show* and *exhibit* a “tolerant” and therefore “modern” inclusion became possible through the state’s usage of Juzgados Indígenas as showcases for *neoliberal multiculturalism* (Hale, 2005).

In Cuetzalan, some local organizations became aware of the deceit implied in the state’s new multicultural discourse, and also in the opportunities it could open for their own projects. Three of these organizations, decided to redirect their struggles, which were originally centered in the defense of human rights, and to engage in negotiations with the mestizo President of the municipality. Their aim was to take control of the Juzgado Indígena, which, ironically, was originally led by mestizo functionaries.

The case of *Cuetzalan del Progreso* is representative at the national level because, as its complete name testifies, it has traditionally constituted for the state a “privileged window” for introducing and testing *indigenismo* and other state policies targeted to Westernize indigenous populations (Sierra, 2004). However, one of the paradoxical effects of these policies, in Cuetzalan, has been a strong organizational process inside indigenous communities which began during the 70s; it was first directed to productive and agricultural endeavors and then derived to the advocacy of human rights. In the most recent stage of this process have emerged some civil organizations completely focused on the diffusion and advocacy of indigenous women’s rights. The three organizations that took part of the negotiations with the Presidente Municipal of Cuetzalan, succeeded in their attempt to take control of the Juzgado Indígena. They reappropriated and redirected this new space for indigenous justice, opened within the frames of the state, seeking to confer the Juzgado Indígena with a “real” indigenous character and with a gender perspective (Terven, 2005; Chávez, 2008).

A process of authentication began to take place inside the Juzgado Indígena as the leaders of these organizations tried to revive an already lost traditional institution, *el Consejo de Ancianos*, and created the *Consejo del Juzgado Indígena* as its principal decision-making organ.² It is constituted by 10 Nahua elders, 4 women and 6 men and 3 mestizo advisors. Their main tasks are to elect the Juez Indígena and the Juez Suplente and to give them support and advice, especially in “difficult” cases.

Since its creation, the Consejo meets once a month without the presence of any mestizo authority. During these meetings, the Consejo determines how to make indigenous customary law compatible with a human rights perspective, learned from the *mestizo consejeros*. Even though a dominating male and mestizo dynamic is still strongly felt throughout these reunions, a reflection on gender roles and a reevaluation of the place of women in indigenous societies are also taking place. Local indigenous customs are being contested by female *consejeras* during those meetings. These *consejeras* add a perspective that is usually lost in the process of mediating these cases, where the voices of female parties are commonly silenced through male-centered interpretations of the facts. However, at the end, the Juez Indígena and the Juez Suplente are the ones who lead those mediations, usually disregarding the *consejeras*' contributions to the practice of justice. In this sense, the male judges are still the filters of the gender perspective within the Juzgado Indígena's project (Chávez, 2008).

This situation became obvious in the case of Elia, an 18-year-old woman from the Nahua community of Cuahutamazaco. She appeared one morning in the Juzgado Indígena, furiously petitioning the Juez to change the terms of the agreement she had previously signed three months earlier. In the second clause of that agreement, Elia's manifestations were framed by the Juez in these terms:

² Accounts of the meeting celebrated on November 22, 2002 in the Office of the President of the Municipality of Cuetzalan. Electronic Archive of the Consejo del Juzgado Indígena.

Estoy de acuerdo en que mi hijo [...] se quede a vivir con su padre [...] y que lo cuide su abuela [...]. Yo me voy a trabajar a otro lado y ya no me responsabilizo del niño. Estoy consciente que al dejarlo pierdo todos los derechos con él.

Now, Elia, full of regret wanted her baby back. The Juez Indígena was not able to meet her needs immediately, since the Juzgado Indígena traditionally proceeds only by the consent of all the parties in dispute, and Raul, the father of the baby, was not present in that moment. For that reason, Elia decided to take her case outside the indigenous jurisdiction and submit it to the consideration of the Juez mestizo of Cuetzalan.

This Juez mestizo is continuously trying to instruct the Jueces Indígenas³ how to perform their job. But that morning something extraordinary happened; he had urgently asked the presence of the Juez Indígena in his office. The Juez Indígena, a 70-year-old man that speaks and understands Spanish with great difficulty, arrived agitated to the Juzgado mestizo. A performance of reaffirmation of racial hierarchies started to take place, since the Juez mestizo started to rebuke the Juez Indígena for issuing Elia's agreement. Showing no respect for the Juez Indígena's age and authority, the forty-years-old Juez mestizo told him that he was in serious trouble for having exceeded his competence and violated Elia's human rights, ordering him to repair "the mess" he had provoked. The situation was quite striking, taking into account that the Juez mestizo is by no means the hierarchical superior of the Juez Indígena.

The Juzgado Indígena sent several citations to Raul, without any success. Elia could not wait. She decided to turn this time to an NGO, *La Casa de la Mujer Indígena*, also known as CAMI, in order to get free legal advice. In 2007, when this happened, CAMI was already a dynamic informal institution of justice in Cuetzalan, offering free consultation and training, especially focusing on indigenous women's rights. Constituted by Nahua women, CAMI similarly

³ I am referring to the Juez Indígena, Don Alejandro Pérez, and his substitute, the Juez Suplente, Don Hermilo Diego, who usually attend together the cases that arrive to the Juzgado Indígena.

provides free “integral support” to other indigenous women, who have been victims of domestic violence or have suffered the violation of their rights. Their integral support is concomitantly deployed in three realms: health, emotions, and advocacy. Women like Elia, who request CAMI’s support, make the commitment to participate in the discussions and workshops aimed to empower, train and reconstitute these women’s dignity and self-confidence.

In the realm of advocacy, Ana (the only mestiza attorney working in CAMI) decided to take Elia’s case to the Juez mestizo again; together, they planned to remove the child from Raúl’s arms during the mediation in the Juzgado Indígena. This was another plan that also failed because of Raúl’s absence. The interesting thing is that they presupposed the Juzgado’s inability to resolve the case. Even though CAMI and the Juzgado Indígena had committed to work together, supporting each other in the practice of justice, Ana was determined to take this case out of the indigenous jurisdiction. She thought that the Juez Indígena and the customary law he applied weren’t apt to deal with Raúl’s reluctance to return the child to Elia. The new plan was to proceed to the Ministerio Público (Public Prosecutor’s local office) to accuse Raúl of committing the felony of hiding a child (*delito de ocultamiento de menores*). This charge overlooked the validity of the Act of Agreement issued by the Juzgado Indígena. Since the wording of the agreement was contrary to state law, Ana and the Juez mestizo were not even thinking of using it as a precedent in the case.

The members of the Juzgado Indígena ignored Ana’s plans, and were convinced that they could resolve the case by issuing a new agreement that fulfilled the new desires of both parties. As the Juez Suplente said: “Everything can be changed if the parties request so”. During the monthly meeting of the Consejo del Juzgado Indígena that was taking place that same evening, Elia’s case caused commotion between the *consejeros*. It was the first time I witnessed all of them expressing their opinions and actively discussing with each other. Some *consejeros* argued that the Juez Indígena did something wrong not only by issuing an

agreement in which a woman renounced her rights over custody of her son, but also by obeying Juez mestizo's call and by accepting his mistreatment. The autonomy of the Juzgado—they thought— must be defended at all times. Their worries were placed at the structural level, fearing that this mistake—spreading through the different institutions of the judicial field of Cuetzalan—could harm the legitimacy of the Juzgado Indígena.

The Juez Indígena explained to the Consejo that he wrote in the Act of Agreement only what the respective parties wanted and agreed to be represented within the document. His predicament was that he had violated Elia's and her son's human rights while issuing that Act, but at the same time, he had proceeded in accordance to the "usos y costumbres" by consenting to the parties' agreement and not by imposing his own decision on them. His argument reflects how the discourse of human rights has become menacing to indigenous authorities; therefore, these authorities no longer want to impose their judgment while processing a case because of the fear of being prosecuted and sentenced to prison in doing so. This fear has been infused by local human right advocates struggling against despotic indigenous authorities, while simultaneously denigrating the legitimacy of all indigenous authorities.

The Juez Suplente, trying to defend the Juez Indígena, argued that, in accordance with the "usos y costumbres", the parties in conflict are the ones that should come to a settlement in order to structure the phrasing of the Act of Agreement. He said that the Juez Indígena is not the one who determines what an Act should say, and that he, in fact, has to respect what the parties convene. However, the Juez Suplente could sense that something was wrong with this case, even under that logic. He exposed another difficult case to the Consejo in which the parties were asking to write in the Act of Agreement that if their son stayed under the custody of the mother, then the father would be the one that should provide alimony, and if the son stayed with the father, the mother would be the one that should provide it. The Juez Suplente explained

to the Consejo that this was against *el costumbre*, so he did not allow this to become written in an Act of Agreement. In accordance with Nahua customs—the Juez affirmed—women are not supposed to provide alimony, since that is the role of men when a couple does not live together anymore.

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By having this discussion, the Consejo was reaffirming and authenticating customary law and was also defining the acceptable roles of gender. The Consejo agreed that the Juez Indígena should place limits to the will of the parties when it was against *el costumbre*. However, they also said that while writing the Acts of Agreement, the judges should not use *coyomej* (mestizo) concepts and logics: that they should use their own legal language. This was a complex situation, taking into account that there is nothing that can be distinguished as a sole and pure *indigenous law*, apart from state law and human rights discourses. What exists in these indigenous spaces is a situation of interlegality (Santos, 1995; Sierra, 1995, 2004;

Chenaut, 1999; Vallejo, 1999), which implies a process of mutual constitution of overlapping legalities. However, it was still true that in the case of Elia, the inaccurate use of alien legal references had originated a serious problem. Therefore, through the discussion inside the *Consejo*, the procedural custom of the Juzgado Indígena was being updated to the new needs of interlegality.

The case of Elia was finally solved before Martha, a young mestiza in charge of the *Agencia Subalterna del Ministerio Público* in Cuetzalan.⁴ Raúl wouldn't imagine that this institution, usually related to male power and dominance would act this time against his male privilege. Suddenly there was this young man surrounded by an inquisitorial *Agente Subalterna*, an enraged Elia, a tenacious lawyer (Ana), and a perplexed female anthropologist (me...) registering every argument Raúl could dare to deploy in such a hostile setting. He was forced to accept that he and his mother had not taken good care of the child, so it was not a good place for his child to live. Resultantly, Raul was also pushed into giving Elia an exorbitant monthly alimony, which he did not have the financial means to afford.

The judicial field of Cuetzalan is a very complex one, characterized by disconnections, rivalries, and discrimination from mestizo authorities to the old and new indigenous institutions. Indigenous jurisdiction is also fragmented, in part because the insertion in the field of a new institution created by the state for the practice of "*justicia indígena permitida*" ("allowed indigenous justice"). The Juzgado Indígena, after being appropriated by indigenous organizations, has invested its efforts in trying to legitimate its new project of indigenous justice in the eyes of villagers with a growing consciousness about their human rights, and also in the eyes of other institutions that have traditionally administered justice in the communities, this is, the *Jueces de Paz*, as well as in the eyes of the new institutions that are creating new

⁴ In 2007, Cuetzalan did not have a Public Prosecutor office-holder; they only had Subaltern office that reported to the office-holder in the contiguous municipality of Zacapoaxtla, 45 minutes away of the center of Cuetzalan, via public transportation.

alternatives for defending women's rights inside indigenous contexts, like the CAMI (House of the Indigenous Woman).

In the case I have analyzed, almost all the institutions of the judicial field of Cuetzalan became involved in its processing, because of the initiatives Elia took with her case. She had used the different institutions at her convenience, until she accomplished her objective of receiving custody of her child. By doing this, Elia, as many other Nahua women in Cuetzalan, "found another, novel way to bring their national presence to public attention" (Najmabadi; 2005: 226).

In this way, Elia, as well as the women of the Consejo del Juzgado Indígena, were embodying the role of the *modern* indigenous woman that was defined by the discourse of the reform on indigenous issues. Aware of their rights, these women learned how to use the system and its language. They were like the Maya-hackers to which Nelson makes reference, in the sense that they didn't "control the systems they work in but intimately understood their technologies and codes" (1999:249), even to the point of breaking them down.

In this sense, I think that anthropological analyses of justice should focus not only on bold responses to state policies—as it was the appropriation of the Juzgado Indígena by local organizations—but on the ordinary, practical operation of legal systems, as it is to consider the Juzgado Indígena as embedded in a judicial field, where institutions are struggling for legitimacy, and where men and women, through the meetings of the Consejo or through the usage of this court, are also creating spaces for themselves, using in their advantage the ambiguous language of plurality.

As I have shown in this essay, women's organizations have been crucial to tailoring the Juzgado Indígena to meet local needs and aspirations. In a similar way some Nahua women had found the opportunity to advance their claims by strategically selecting one or another court

or NGO to avail themselves of different judicial styles and culturally framed discourses to confront injustice. These women are decisive players in a subtle but effective effort to domesticate state initiatives in order to address gender violence.

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