

# States of violence: Indigenous women migrants in the era of neoliberal multicriminalism

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## Abstract

The oral histories of indigenous women migrants from Latin America relate human rights violations at every step: in their homes, where violence and impunity compel them to migrate; as they cross the wide expanse of Mexico, encountering a gamut of dangers and a vast sea of impunity, and once they enter the United States, where as asylum seekers they are incarcerated under laws designed to impeded terrorism, or face new vulnerability to partners or strangers if they are undocumented. This is not what was supposed to happen. The multicultural reforms of the 1990s in various Latin American countries that recognized a range of rights for indigenous peoples generated hope and unprecedented social mobilization for indigenous women seeking to fully access their human rights. However since that time, life has gotten more difficult. The promises of neoliberal multiculturalism of the 1990s, however constrained, now seem a distant memory. Theorists have dedicated significant effort to understanding the limitations of neoliberal rights regimes for indigenous peoples, but today, the generalized irrelevance of those regimes suggests that we need to shift our lens. Based on migrant women's oral histories, I explore how indigenous women are being interpellated by states and other social actors in ways that render even their most basic human rights unattainable. Further, I expand on that analysis to consider how state and non-state power is working in the current moment, which I argue is characterized not so much by neoliberal multiculturalism, as by *neoliberal multicriminalism* in which violent, corrupt, and lawless states are driven by profit motives in massive scale illegal economies that lack any reasonable regulation or protection of basic human rights.

## Keywords

Indigenous women, violence, human rights, gender, migration

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Ysinia<sup>1</sup> – a Maya – Mam woman from near Quetzaltenango, Guatemala, left home fleeing a husband who beat her repeatedly and threatened to kill her. When his last beating nearly succeeding in realizing that threat, she made the difficult decision to leave, devastated to part from her family but in fear for her life. The trip north was not easy. She was detained by Mexican Immigration agents who mocked her and questioned her about why an “Indita” would venture to leave her community – didn’t she know it was dangerous? Further north, in Reynosa, she was abducted by armed men and held in a house for ransom. There she witnessed another woman, who spoke a different Mayan language and very little Spanish, being brutally beaten by their captors for failing to get the required money. After her ransom was paid, Ysinia was released and made her way to the border. However, after a very harrowing but ultimately successful crossing into the US, the two men whom she and others had paid to bring them across separated her from the group and tried to rape her. She fought back, and her screams got the attention of others, who came to her aid. Unfortunately, the ruckus created by the incident drew the attention of the border patrol, and Ysinia was apprehended. When I met her, she was being held at the T Don Hutto immigration detention facility in Taylor, Texas. Inside Hutto, she spoke of the unbearable tedium of the days that led her again and again to thoughts of all that has happened to her, the bitter sorrow of being separated from her children, and her struggle to fight off paralyzing fear and depression as she awaited her fate as an asylum seeker in the United States.

## Introduction

Indigenous women migrants from Latin America to the United States suffer human rights violations at every step. Many experience domestic violence serious enough to compel them to leave home, community and family and undertake a dangerous journey with an unknown outcome. Others undertake that precarious journey fleeing gang violence, or cartel threats. Authorities in their home countries are unwilling or unable to protect them from this violence and accountability for it is virtually non-existent. Their journey inevitably takes them through Mexico, where they may experience violence at the hands of traffickers, petty criminals, gangs, and cartels, as well as the military, police and immigration authorities. Again, impunity reigns. Once they enter the United States as immigrants, they face potential incarceration under draconian immigration laws and policies designed to impeded terrorism, as well as new vulnerability to violence from partners or strangers if they are undocumented. Indeed, violence so thoroughly marks the lives of indigenous women migrants that it is hard for many to imagine a life where they are not vulnerable.

While violence is not a new aspect of indigenous women’s experience, it has increased dramatically for them (as it has for many) in the current moment and contrasts sharply with the expectations of what neoliberal globalization would bring. The constitutional reforms associated with the arrival of neoliberal multiculturalism in various Latin American countries in the 1990s recognized a range

of rights for indigenous peoples and generated hope and unprecedented social mobilization for indigenous women seeking to fully access their human rights. However, the democratization, rule of law and rights regimes that were supposed to accompany neoliberalization never fully materialized and rapidly seemed to vanish as Mexico and then Guatemala moved inexorably toward new forms of illegality and impunity associated with drug, weapons, and human trafficking. Theorists in the recent past dedicated significant effort to understanding the limitations and dangers of neoliberal rights regimes for indigenous peoples (García, 2005; Hale, 2002, 2005; Postero, 2006; Speed and Sierra, 2005) but today, the generalized irrelevance of those rights regimes in the lives of indigenous women generates an urgent need for us to understand how indigenous women are being interpellated by states and other social actors in ways that functionally eliminate their human rights.

Exploring these questions through the lens of the lives of indigenous women migrants is of particular relevance, as indigenous migration out of Mexico and Central America is on the rise, in large part due to the dynamics noted above. Even as Mexican migration in general has slowed in recent years (Terrazas, 2010), indigenous migration increased, making up a larger portion of those migrating than ever before. It is estimated that in the United States there are currently as many as 1,250,000 Latin American immigrants whose native language is not Spanish.<sup>2</sup> For these indigenous migrants, the dangerous journey from their home countries is even more risky, life in the US is more difficult, and immigration detention even more isolating and frightening than it is for others. Indigenous women, in particular, are rendered vulnerable in a multiplicity of ways by an array of potential abusers at every step.

In the Hutto Visitation Project<sup>3</sup> and the collaborative Indigenous Women Migrants' Oral History Project, my colleagues and I have been working with women in detention and in the community to tell their migration stories. For the women, it is often cathartic to relate their experiences, gratifying to know that other people care about them, and comforting to hear – through the stories of others – that they are not alone in what they have experienced. The Oral History workshops also offer the opportunity to discuss the larger structures of power that shape women's lives and that mark them for violence. And while the women learn something of these structures from us, we also learn from them about dynamics in distinct national and local spaces as they move through them. The violence that these women experience takes place on multiple registers, but is permeated at every level by ideologies of race, class, and gender. Such ideologies are, of course, always shifting to accommodate new forms of power. In this paper, I will take the women's stories as a point of departure for analyzing how indigenous women migrants are constructed as racialized, gendered, and classed subjects by the state, non-state groups, and individuals in their country of origin, in the US, and in between. This is important not just for understanding indigenous women's lives, but for understanding the states in which their lives unfold. Their stories – the forms of interpellation they experience and the violence that results – reflect the ways that

power is working in the current moment, which I will argue is no longer characterized by neoliberal multiculturalism, but rather by *neoliberal multicriminalism* in which violent, corrupt, and functionally lawless states are driven by profit motives in massive scale illegal economies that lack any reasonable regulation or protection of basic human rights.

### **Back ground: The empty promises of neoliberal multiculturalism**

The 1990s were a time of hope, at least in some regards, for indigenous people in Latin America. “Globalization” and the so-called “end of history” seemed to mandate a wave of democratization and expansion of rights, in tandem with the spread of neoliberal economics. As states undertook an often massive reorientation of their economies (Mexico is particularly notable), ending land reform, eliminating state subsidies for farming and industry, privatizing capital and natural resources, limiting tariffs on foreign goods, and slashing government social welfare programs, they also moved toward popularly elected governments and expanded notions of human rights and the rule of law. A number of states, including Mexico and Guatemala, reformed their constitutions to recognize indigenous peoples and extend to them some level of collective indigenous rights. Often posited as the inevitable spread of neoliberal democracy on a US model (at times with an evolutionist flavor of development toward the highest state of being, naturally epitomized by the United States), these processes seemed to promise at least a minimal increase in political stability, rights, and accountability.

Debates about the benefits and limitations for indigenous peoples of the new recognition and rights regimes were the subject of considerable theorizing regarding the period of “democratic opening” in Latin America. While some theorists hailed the recognition of indigenous peoples rights as a significant victory “shaping the quality of democracy in Latin America” and signifying “a major power shift” and “a more generalized opening of the political system to excluded and vulnerable sectors of society” (Van Cott, 2007: 127, see also Van Cott, 2000), others signaled a need to “qualify somewhat premature and narrow discussion of democratic consolidation” (Yasher, 1999). Analysts also sounded alarm bells about the ways in which multicultural rights regimes might work against indigenous peoples, by reinforcing state power and creating structures that, by focusing on collective identity rather than collective well-being, obscured the economic inequalities that were certain only to grow under neoliberalism. Charles Hale questioned the multiculturalism that underpinned the politics of recognition and analytically tied it to neoliberalism, coining the term “neoliberal multiculturalism” as he warned of the dangers of an overinvestment in limited cultural rights at the expense of an analysis of socio-economic inequality and state subject making (Hale, 2005; 2006). Hale (2002) also suggested that the limited rights afforded by neoliberal multiculturalism served to keep people focused on the possibility of qualifying for state-sponsored rights, rather than engaging in struggles for potentially more just systems of

governance. Other theorists focused on the dangers for indigenous people of relying on the legal regimes of the state for their liberation and highlighted to multiple forms of state subject-making at work in these arenas (García, 2005; Hernandez et al., 2004; Park and Richards, 2007; Postero, 2006; Sieder, 2002; Speed, 2005; Speed and Sierra, 2005). While all recognized the significance of the constitutional and political changes for indigenous people, analysts busily debated how extensive and effective those were likely to be in contributing to greater equality or power for indigenous peoples.

These debates were significant just a decade ago. However, as history unfolded in the region – and to some extent the United States is included in this – neoliberal free market economies quickly expanded and grew out of the control of any legal regimes, becoming a multiheaded monster wreaking havoc on all. Meanwhile, the nascent democratic tendencies and fledgling rights regimes, however limited, were quickly sucked into the vortex of the mass scale illegal economies. Drug, gun, and human trafficking expanded as the cartels grew in Mexico, feeding on widespread corruption of the government and military and the deregulated money flows and reserve army of newly impoverished generated by neoliberalism (Campbell, 2009; Váldez Cárdenas, 2010). In Guatemala, the exclusionary state constructed by “predatory economic and military elites” and a culture of violence left by the war, combined with the increasing presence of organized crime cartels, led to weak reform and a surge in criminal and social violence (Briscoe and Rodríguez Pellecer, 2010; Gavigan, 2011: 99). Increasingly, authoritarian and militarized governance became the norm in this new national security era. Human rights and indigenous rights faded into obscurity in the face of obscene levels of bloodshed and massive impunity. In that context, our protagonists left their homes, and set out across Guatemala, Mexico, and the US in search of a life free of violence.

## **Femicide begins at home**

Ysinia’s story begins with domestic violence. Though we do not have access to data about how many of the asylum claims at Hutto are “gender-based claims,” anecdotal evidence suggests it is a significant number. Many women report that they are fleeing violence by a domestic partner or family member. By no means simply a “private” matter, this type of violence is one component of a multilayered social dynamic. It is difficult to find statistics for levels of domestic violence in Latin America generally and statistics on indigenous women are virtually non-existent. Indeed widespread underreporting is a problem everywhere, complicating the compilation of data, but in much of Latin America this type of problem may not even be considered a crime, or has only recently been defined as one. However, we do know that in the United States, Canada, Australia, and New Zealand, Native women are more likely than their non-indigenous counterparts to experience domestic violence, and we might expect the same in Latin America since underlying conditions such as poverty, marginalization, racism, and lack of accountability also prevail there.<sup>4</sup>

Violence perpetrated by a family member is by far the reason most women in the Hutto facility fled their homes, whether from an abusive partner or another relative. Estrella, a 19-year-old Maya Mam woman from San Marcos, fled an uncle who she believed responsible for killing her father in their family patio because of a land dispute. After her father's death, the uncle – her father's sister's husband – began beating her and raping her, eventually leaving her pregnant. He was sick, she explained, and drank heavily because he had had terrible experiences during *La Violencia*, Guatemala's 36-year civil war. She fled when the child was two months old, after repeated attempts to get the police to intervene went nowhere.

Such violence does not take place in an historical vacuum. As Smith (2005) has effectively shown, gendered violence against Native women was a fundamental part of the process of colonization and conquest in the United States. This argument can clearly be extended beyond the US, as the ideological construction of indigenous women as violate-able has underpinned genocidal policies against indigenous peoples from colony through the modern state throughout the Americas. In countries like Guatemala and Mexico, recent decades have involved highly gendered state violence against indigenous peoples. During *La Violencia* in Guatemala, women were subjected to rape and gendered violence on a massive scale. In Mexico's recent civil uprising in Chiapas, gendered violence was also a clear counterinsurgency technique, designed to subjugate the indigenous population.

The legacy of centuries of gender violence, the epidemic of intrafamilial abuse exists in a current ideological context from which it cannot be disentangled in order to pathologize the individual men. While the behavior of Estrella's uncle is abhorrent, even she feels compelled to locate it in a context of state violence and war. Further, the reverberating effects of that state generated ideology of misogyny continue to resonate in the current context, as the devaluation of women both generates and excuses the refusal of authorities to hold anyone accountable for gender violence, as we saw in Estrella's futile attempts to seek police intervention. Indeed, impunity for gendered violence, particularly against Native women, is quite high in all three countries.

Mexico and Guatemala currently suffer violence that ranges from intra-familial, to generalized insecurity, through armed youth gangs, organized crime, and warring drug cartels, to state police and military violence, permeating every part of society but particularly affecting the poor and women. While general violence rates are up in both countries, women are differentially affected, resulting in the phenomenon of femicide.<sup>5</sup> Thousands and thousands of women and girls have been murdered in recent years, their bodies tossed out like so much waste in garbage heaps, ravines, and empty lots. While for some years the city of Juarez in Chihuahua was the most high-profile femicide case, and much speculation went into who the perpetrators were, women's bodies began showing up in other places, though out Mexico and in Central America, and Guatemala now far exceeds Juarez in numbers of women killed.<sup>6</sup> The realization eventually emerged that, rather than a sinister group of evil-doers in Juarez, we were witnessing a much broader social dynamic, with perpetrators throughout the social fabric (Bejarano

and Fregosa, 2009). Those perpetrators include, but are not limited to, domestic partners, husbands, fathers, brothers, uncles, etc. It is crucial to locate “domestic” violence within the broader panorama of femicide because, as analysts of gender violence have noted, formulating violence against women as a purely interpersonal phenomenon only serves to de-politicize gender violence (Godoy-Paiz, 2008; Menjívar, 2012). Individual or interpersonal gender violence cannot be understood outside of the historical and ideological structures that give rise to it and in which it is enacted.

### **From MS to Zetas: Socially organized violence**

Other social actors are also enmeshed within these structures of race, class, and gender that generate violence. Returning to Ysinia’s story, it took a turn when her threatening husband sent a relative who is an armed gang member to surveil her and frighten her. That he had an armed gunman handy raises the specter of the complex and interrelated dynamic of the expansion of organized crime, increasing prevalence of armed gang members, and increased militarization. Each of these in their turn put indigenous women at risk.

Youth gangs are a clear component of the violence. Along with its lost promises of democracy and rights, neoliberalization brought increased levels of poverty, inequality, unemployment, and drug trafficking, conditions which have created fertile ground for the growth of youth gangs. These gangs have strong misogynistic tendencies, creating in Mercedes Olivera’s words, “a permanent threat to young women” (Olivera, 2006: 108). She notes that in Chiapas, femicide victims’ bodies have appeared in recent years with MST or S carved into them, the symbol of the youth gang *Maras Salvatruchas* (Olivera, 2006). One of the greatest threats on the trip north, especially on the trains running from Tapachula, are the *Maras*, who ride the trains committing assaults, robberies, and rapes. People are so vulnerable to abuses on these trains that they are known as “La Bestia” or “The Beast” (Nazario, 2007).

Just as often, armed men on the streets are a by-product of the ever-expanding tentacles of the drug cartels (Grayson, 2010; Hawkins and MacDonald, 2013; Report to the UN Human Rights Committee, 2010). In border cities like Reynosa, popularly known as “the city where cartels rule,” the cartels control many people on the street, including newspaper sellers, taxi drivers, and street kids, who report on the movements of police, soldiers, and also, immigrants.<sup>7</sup> We see the presence of the cartels in the women’s stories: both Ysinia and Estrella were held for ransom by the cartels in Reynosa. In the four years that I have been visiting with women in Hutto and gathering oral histories in Austin, I have only met one woman who came through Reynosa without being held for ransom. A woman I’ll call Rosa told me the story of how, after trying unsuccessfully to cross into the US with a false id, she was deported to Reynosa. She had been there less than an hour when she was detained by armed gunmen. “They knew the minute we entered the city,” she said. Another woman was even deposited on

the US side of the border near McAllen after her ransom was paid by a relative in the US. The vulnerability of Central American migrants to these cartels, which control everything and everyone in their territories, is tremendous. Mexican National Human Rights Commission recently reported that nearly 10,000 migrants had been abducted, mainly for ransom, over a period of just six months. Notably, nearly 50% of those interviewed said public officials had played a direct role in their kidnapping.<sup>8</sup>

The abductions, however, don't always end in ransom and release, as the mass graves full of Central American bodies that began to appear a couple of years ago revealed.<sup>9</sup> The mass killings took a newly horrific turn in 2012, with the warring Zetas and Sinaloa cartels engaging in mass body dumping, apparently of people kidnapped randomly off the street, as a way to mark territory incursions and sow terror. In what Campbell (2014) refers to as "narco-propaganda," a "distinctive form of communication and discourse" by the cartels, they sent messages to other cartels and to the public via grisly murders. In April of 2012, near the Texas border and the towns of Reynosa and McAllen, 49 bodies were dumped on a highway. They could not be readily identified because their hands, feet, and heads had been cut off. However, the fact that there had been no mass kidnapping reported and that this took place on a major migration route led authorities to believe many of the bodies may be Central American migrants.<sup>10</sup>

Indigenous people stand out from other migrants, and are correspondingly more vulnerable. They stand out phenotypically, and sometimes because of their dress and language ability. For women with limited Spanish, the entire experience of migration may be compounded by a limited understanding of what is happening and ability to communicate about it. This can greatly increase their vulnerability to violence, as we saw in Ysinia's story about the woman who was beaten by their captors. Social class also plays a role: in a recent workshop with non-indigenous women migrants, I was surprised to learn that several of the women, who were middle class professionals in their places of origin, were well treated by their coyotes, even staying in their homes with their families and eating at their tables, while waiting to transit into the United States. While their stories perhaps show a more human side to the coyotes than is often seen, it is nevertheless almost unimaginable that an impoverished indigenous woman would be brought into a coyote's home and share the table with his family. Indigenous women are far more likely to be left to fend for themselves, which renders them more vulnerable to abuse.

Like interpersonal violence, socially organized violence as it affects indigenous women migrants is a product of histories of gendered state violence and the ongoing and pervasive racism and misogyny that continue to structure daily life and underpin privilege. Patriarchy structures life in both street gangs and in cartels, reflecting and reproducing in extreme form the norms of society at large (Jiménez Vázquez, 2014; Vázquez Cárdenas, 2010). Further, all these forms of violence and impunity are given new ferocity when unleashed in the context of a neoliberalism taken to the extreme: where the only law that matters is the law of supply and



demand and the only logic that of the profit motive. Human lives, particularly those of the most oppressed, are rendered irrelevant.

### **Crossing the blurry line: State interpellations of indigenous women in Mexico**

As we saw in relation to socially organized violence, the blurry line between the Mexican government, its agents, and organized crime means that the state is heavily implicated in the violence, even in spaces of “illegality” that purportedly function outside state control. However, it is not necessary to look to such “illegal” spaces to see gender, race, and class violence being done. These forms of violence are part of state ideology and discourse, as well as the practices of the agents of the state.

The first detention of Ysinia’s journey is by Mexican immigration agents in the state of Chiapas, and in this context she encounters new forms of interpellation by the state she has entered. The “national security state” in Mexico was defined for the last six years by the ostensible war on narcotrafficking. Upon taking office in Mexico in 2006, Felipe Calderón militarized anti-drug efforts, waging a “war” against the cartels, which became notorious as much for its brutality as for its ineffectiveness (Campbell, 2009). It also undermined the rule of law and quickly dispensed with the observance of civil liberties. The military proceeded to commit numerous human rights abuses, including abductions, torture, rape, and extrajudicial killings. The number of human rights complaints against the military at the National Human Rights Commission (Comision Nacional de Derechos Humanos (CNDH)) dramatically increased from 182 in 2006 to 1,230 in 2008, of which only 3% resulted in a sentence (Corrales, 2012). Further, the line between the government and the narcos, it is ostensibly fighting, is so blurry as to be functionally non-existent. Campbell argues that in Mexico, “organized crime and official government are so tightly interwoven yet secretive that they indeed for an ‘underground empire,’” (2009: 7 quoting Mills, 1986). The clear participation of both police and military in illegality and violence are evidenced by the dramatic increase in violence whenever they were deployed during the Calderon administration’s “war on drugs,” a dynamic that contributed to nearly 60,000 deaths and led to the six years he spent in office being referred to as the “*sexenio de la muerte*” (six years of death) (Campbell, 2011; Hernández and Speed, 2012). In addition, the participation of many high-ranking government and military officials in narco-politics is well-documented, as most spectacularly evidenced by the 2012 indictment of four high-ranking military generals, one of them the former Undersecretary of Defense, on charges of collaborating with narcotraffickers (see Hernandez and Speed, 2012 for other cases).<sup>11</sup>

Aída Hernández and I have argued elsewhere that the Mexican government, in a desperate effort to show some gains in the flailing “war on drugs,” increasingly criminalized poor, indigenous people, imprisoning them with exorbitant sentences for minor drug offenses.

Calderón's 2008 Penal Reform (Reforma Constitucional en Materia de Justicia Penal y Seguridad Pública) marked the shift from a neoliberal multicultural approach to a conservative authoritarian one. Designed to strengthen rule of law in the context of the war on drugs, the reform, particularly Articles 16 and 18, created a "state of exception" for people accused of involvement with organized crime and limited their constitutional rights guarantees against things like being detained without charges and being incarcerated in special facilities far away from their homes and families. Indigenous people, accused of relatively minor drug offenses (often in situations where they have been forced either through violence or poverty to carry drugs), are locked away for extended periods completely disproportionate to their "crimes." Hernández writes: "[During Calderón's administration], indigenous people have been interpellated by the state either as poor peasants who must be integrated to mega-development projects, or criminals who should be incarcerated, applying a special legal regime intended for organized crime" (Hernandez and Speed, 2012 – translation is mine). Thus these reforms, rather than strengthening the rule of law, increased imprisonment rates and fortified the carceral state.

The "war on drugs" also led to increased patrolling of the southern border. The previous Fox administration, under pressure from the US to stop drug flow, broadened border patrol activities, increasing danger for migrants in a region where they are as likely to meet violence and abuse by agents of the state as by criminals. Then, the discovery of mass graves filled with Central American migrants highlighted exactly how out of control the country was and significantly embarrassed the Calderon administration, which responded by upping immigration patrols again. Their detention of Ysinia was enmeshed in these dynamics – their racialized, gendered and even "classed" remarks about the "indita" were but the latest iteration of subjugation tied to the current moment by linking them to the implied "dangers" of winding up in a mass grave and suggesting that if she did it would be her own fault for having had the audacity as an indigenous women to venture to leave home. While in Mexico race has historically played a different role in defining indigenous – state relations than in Guatemala because of the hegemony of the discourse of *mestizaje*, race is a significant factor in discrimination in Mexico. And in the neoliberal moment, even as the state pursued limited reforms toward multiculturalism and rights, the Zapatista uprising and national indigenous organizing disrupted the narrative and state responded by interpreting indigenous people as potential subversives and terrorist threats, which is particularly palpable in the state of Chiapas, where Ysinia was apprehended. In making these comments, the immigration officials were mobilizing long-standing discourses of race and gender in indigenous communities and outside them that hold that indigenous women who leave the community bring danger on themselves, and thus are to blame for rape or other violence when it happens to them.

As both Ysinia and Estrella's stories reflect, those dangers are real. Many women migrants are sexually assaulted or raped while crossing Mexico or crossing into the US. A 2010 report by Amnesty International estimates that six out of

10 migrant women and girls have experienced sexual violence at the hands of criminals, other migrants or corrupt public officials.<sup>12</sup> When Ysinia makes it through her harrowing boat trip across the river, she is subject to gender violence by the men who brought her across, and is nearly raped. Estrella was less fortunate, and was raped by someone she believed to be a Mexican immigration official while making her way north on a train.

State violence against indigenous peoples is by no means limited to genocide. The Mexican state perpetrates violence against them through its discourses of criminality in the context of its charade of opposing drug trafficking. Agents of the state at all levels both act from and redeploy ideologies of race, class and gender in their acts of violence against indigenous women migrants, and they do so comfortably in the context of ideologically generated impunity. As I have argued elsewhere, while state violence might seem quite distinct from interpersonal violence or gang violence, when understood as offspring of the same ideologies of power and oppression, all appear to be close siblings, if not Siamese twins, so closely interrelated that they are analytically inseparable (Speed, 2014).

### **The other blurry line: Into the space of the US carceral state**

Ysinia, while escaping sexual assault, is detained by the US Border Patrol, throwing her into the next realm of state interpellation. The US “national security state” in the post-11 September period had serious implications for immigrants. The US immigration detention system has greatly expanded in recent years, an expansion that began in the late 1990s, but escalated after 11 September. In 2003, the Immigration and Naturalization Service was dissolved and its functions were brought under the new Department of Homeland Security (DHS), the mission of which is defined in the Homeland Security Act as “preventing terrorist acts in the United States [and] reducing the vulnerability of the United States to terrorism.”<sup>13</sup> This move signaled an important shift – all immigrants, including refugees and asylum seekers, would be regarded as potential terrorist threats. In 2004, Congress linked that interpretation to incarceration, authorizing funds for the construction of up to 40,000 additional immigration detention bed spaces over the next five years through the Intelligence Reform and Terrorism Prevention Act. The following year, the DHS implemented its Secure Border Initiative (SBI), which has as its stated goal, “improving public safety by working to better identify, detain and ultimately remove dangerous criminal aliens from your community.”<sup>14</sup> Immigrants, including asylum seekers in civil proceedings, are recast as terrorists and criminals.

Between 1999 and 2009, US immigration officials more than doubled the yearly detention of noncitizens from 146,760 to 369,483 (TRAC, 2010). This trend continued, and a recent report by non-partisan Migration Policy Institute showed that the Obama administration, which spent nearly \$18 billion on immigration enforcement in 2012, significantly more than its spending on all the other major federal law

enforcement agencies combined, had also increased annual detentions to 429,247 in 2011 (Meissner et al., 2013).<sup>15</sup>

The accelerated growth of the detainee population quickly began to tax existing facilities and detention centers. In a process closely linked to the rise of the for-profit prison industry, the US government increased its contracts with private companies like the Corrections Corporation of America (CCA) in order to accommodate its expanding immigration detention population (Miller, 2005). Now operating a 34,000-bed system, US Immigration and Customs Enforcement (ICE) manages the fastest growing incarcerated population in the United States.<sup>16</sup> While the size and scope of the US's immigration detention population is unprecedented and shocking, it is perhaps unsurprising, considering that the US incarcerates nearly 2.5 million people – the world's largest prison population per capita and by sheer numbers of people locked up.

This shift to interpreting immigrants as terrorists and criminals, and therefore incarceratable humans, brought immigration firmly into the grasp of the carceral state. The emergence and consolidation of the US carceral state has been such an important political dynamic in recent decades that political scientists have argued it “rivals in significance the expansion and contraction of the welfare state in the postwar period” (Gottshalk, 2008: 236) and constitutes a “durable shift in governing authority,” (Orren and Skowronek, 2004: 123, cited in Gottshalk), in which the state began to exercise vast new controls over millions of people. These measures and the interpretation they accompanied did much the same work that the 2008 Penal Reform in Mexico did in fortifying the carceral state.

From the perspective of the carceral state, the detention of immigrants holds dual benefits: it keeps potential terrorists under control and makes money for corporations at the same time. In fact, the detention of asylum seekers is, in and of itself, a human rights violation. In international law, detention of refugees is strongly discouraged. The United Nations High Commissioner on Refugees (UNHCR) characterizes the detention of asylum-seekers as “inherently undesirable,” while the Convention on the Status of Refugees establishes that recognized asylum seekers whose cases are pending should not be detained except for a brief period of time to confirm their identity. Nevertheless, according to recent research by the Inter-American Commission on Human Rights (of the OAS), thousands of asylum seekers are detained for periods ranging from a few months to years while their cases make their way through the US court system (IACHR, 2011).

Detention also creates a captive population vulnerable to further abuses. Multiple reports in recent years have documented human rights abuses in immigration detention, ranging from sexual rape and other sexual abuse,<sup>17</sup> to frequent and arbitrary re-location,<sup>18</sup> lack of legal counsel,<sup>19</sup> and lack of adequate health care.<sup>20</sup> According to documents recently obtained by the American Civil Liberties Union, there have been nearly 200 reports of abuse of detained women since 2007.<sup>21</sup> A Human Rights Watch report in 2010 chronicled numerous incidents and allegations of sexual assault, abuse, or harassment from across the ICE detention system, involving more than 50 detainee victims. The number of reported cases almost

certainly does not come close to capturing the extent of the problem, because victims of abuse in detention face a range of obstacles and disincentives to reporting (HRW, 2010). The state is at times directly responsible for creating the legal conditions that facilitate such violence against women. For example, the Department of Justice recently argued that immigrant detention centers should be excluded from the application of the Prison Rape Elimination Act (PREA), which establishes standards for preventing, detecting and responding to sexual abuse. Apparently, once interpellated by the state as terrorists, immigrant women no longer merit protection from sexual abuse. The expansion of the PREA to immigrant detention centers had to be established by a presidential act under the Obama Administration, which was then working to “nice-up” some of the detention centers following lawsuits against Homeland Security. However, the act merely calls upon DHS to create its own standards for protecting immigrants from abuses, leaving many doubting whether it would have any effect at all.<sup>22</sup>

### **T Don Hutto and human rights in the carceral state**

The T Don Hutto facility, where Ysinia and Estrella were detained, is a microcosm of these larger dynamics. The CCA built the facility in 1995 as an income generator for the town of Taylor and Williamson County. Detention centers, like prisons, are often built in poor rural communities with struggling economies, under the guise of stimulating the local economy and creating jobs. The Hutto facility holds nearly 500 women, the vast majority of whom are seeking asylum protection in the United States. A “residential facility,” Hutto is a former medium-security prison. It is secured by chain-link fences and patrol cars, and situated between an empty field and a highway overpass, separated from the town by train tracks. The facility is difficult to access and largely invisible to the town’s residents. In its first reincarnation from prison to immigration facility, Hutto was a family detention center, where children wore prison garb and played behind bars, making it an infamous symbol of expanded immigration policing, detention, and deportation. Although children are no longer detained there due to an ACLU lawsuit against DHS,<sup>23</sup> the women who are isolated from their friends and families and are vulnerable to intimidation and abuse. The Hutto facility been the subject of two federal sexual abuse investigations and a former guard has been convicted on misdemeanor charges and pled guilty to federal charges for repeatedly groping detained women.<sup>24</sup> Following the successful lawsuit, the Obama administration moved toward a “kinder, gentler detention” for “low-risk” populations, and facilities were spiffed up – chain-link fences remained, but barbed wire came down, and the cell blocks were painted in bright, happy colors. Conditions were improved, and fortunately, none of the women I have worked with have reported physical abuse in the facility.

However, their vulnerability to abuse remains, and their human rights, I would argue, are still being violated by detention itself. Women detained at Hutto clearly suffer psychological trauma by having their freedom taken away. Even if their

detention is as short as a month, they may not have any clear understanding of when it will end – the psychological impact is great. The condition of being incarcerated has led to deepened emotional trauma for many, and often their desperation to be free is palpable, in spite of the pink paint on the cell blocks and the crocheting and zumba classes they are offered. On a recent tour of a new “low risk” facility being built on the model of Hutto, complete with flat screen TVs, a soccer field, and picnic tables on a bright green lawn, the eager-to-impress ICE officials leading our tour asked our group with apparent sincerity, “We would like to have your suggestions: what else could we do to make it more comfortable?” An immigrant advocate, not convinced by the bright paint and shiny sports equipment piped up, “How about a really big door marked “EXIT””? ICE officials were not amused, but his point had been made. Detention is detention.

### **Beyond detention: Return to the dangers of the unrestrained market**

In Ysinia and Estrella’s stories, we have seen that indigenous women are vulnerable to violence and human rights violations at home, in migration, and in US detention. The vulnerability does not end with release from detention. It is hard for me to imagine a person more manifestly vulnerable than Estrella. At 4’11” and 19 years old, she spoke Spanish hesitatingly and often appeared on the verge of tears. Desperate to get out of Hutto, she nearly took voluntary departure. But a sympathetic immigration judge, noting the strength of her case, set her free without bond. She moved into Casa Marianella, the immigrant shelter, but there she often seemed to be in shock, bewildered by her life’s whirlwind of assaults and the particularly bizarre twist of having come to rest in the middle of the state of Texas. Less than a month later, she disappeared. Her roommate said she had told her she might be going to “work” in Washington with “a friend.” This seemed odd, since she had reported having no friends in the US, and she couldn’t say whether the friend was in Washington DC, or Washington State. When people from Casa called the number they found on a tiny piece of paper in her room, a man answered. They asked for Estrella. They heard muffled voices, then Estrella came on the phone, sounding nervous and unnatural. After a moment, the line went dead. Those of us who cared about her will probably never know what happened to Estrella, but we believe she was the victim of human traffickers.

A few years ago, the journal *Foreign Policy* published an article by David Feingold which began, “Judging by news headlines, human trafficking is a recent phenomenon. In fact, the coerced movement of people across borders is as old as the laws of supply and demand. What is new is the volume of the traffic – and the realization that we have done little to stem the tide” (Feingold, 2005: 26). This opening clearly highlighted several significant facts about human trafficking: that is a market-driven phenomenon, that is increased dramatically in the current context, and that traffickers can expect relatively little risk of being held accountable for their actions.

The US Government estimates that between 15,000 and 18,000 people are trafficked into the country each year for forced labor or the sex trade (US State Department, 2012). Experts agree that the numbers are likely far higher, since the secretive nature of the crime make it difficult to track. While estimates vary, all agree that more than half of trafficked people in the US are female, and some estimates are as high as 80% female. Fifty percent are children. While the US government has passed legislation such as the Victims of Trafficking and Violence Protection Act of 2000, human trafficking remains a massive industry in the United States that is “hidden in plain sight,” a phrase often used by both government officials and advocates to describe the fact that it is all around us all the time.

Trafficking of persons for labor or sex work is not only an international dynamic; trafficking within the United States is also a large scale problem. Traffickers target vulnerable populations, such as runaway youth and, of course, recent immigrants. While I have no direct evidence of such practices, rumors abound that traffickers come into immigration facilities posing as friends or religious workers and recruit people, offering to pay their bond and give them a job when they are released. Recent immigrants can be highly vulnerable whether or not they are detained, as we saw in Estrella’s story. Those in detention may be desperate to get out, and see this as a reasonable option; those that are not detained need jobs and may not have the knowledge of the cultural context or language ability to judge if the offer being made to them is a risky proposition. This may be particularly the case for indigenous women coming from rural villages and with limited Spanish ability.

Thus, losing their freedom to traffickers is yet another form of violence indigenous women migrants may face, and their vulnerability to it is increased by their race, class, and gender. Like the violence they may face from family members, gangs, cartels, government officials, and state policies, trafficking is a facet of market logics of supply and demand unfettered by rules or law, and represents yet another group of abusers operating with inexcusable levels of impunity.

## **Neoliberal multicriminalism**

Through the stories of Ysinia and Estrella, we get a sense of the current moment in Guatemala, Mexico, and even the United States. The promises of neoliberal multiculturalism of the 1990s, however problematic, never materialized, and indigenous people confront something even more devastating – sort of a “neoliberal multicriminalism” in which all the damage of unrestrained neoliberal economics remains, without the democratic politics, rights regimes and rule of law it was supposed to bring with it. In their stead, we have illegal economies on a massive scale, and states simultaneously moving toward authoritarian governance and militarizing to combat illegality while corruptly participating in it to reap some of the profits. Thus in neoliberal multicriminalism, as neoliberal states abandon their populations to market forces, sending indigenous people into ever increasing

levels of poverty and marginalization. The only economy offered is illegality, and the state increasingly interpellates the poor and indigenous as criminals. As Fregoso and Bejarano argue, “Today...state terror has been outsourced to other corporatist actors...to paramilitary bands involved in vigilantism, to private armies and private security forces working for globalized networks of the drugs-, weapons-, and human trafficking industries” (2010: 14–15). Organized crime, youth gangs, the military and police, and immigration enforcement are all interlaced in this web of lawlessness generating ever increasing violence. In neoliberal multicriminalism, “illegality” does the work of state repression, while obscuring the state’s corrupt participation in illegality’s ultra violence.

While it is distinct in some ways from the Mexican and Guatemalan context, the US border area is intimately bound up with that web, and generates its own dynamic of lawlessness and disregard for rights. The post-11 September national security state’s unrestrained elimination of civil liberties, the recasting of immigrants as potential terrorists and dangerous criminals, the overwhelming Border Patrol and police presence, institutionalized and informal racial profiling, the preposterously invasive border wall, and the largest numbers of detentions and deportations in history, all contribute to a climate of serious risk for all immigrants, and of particular interest to us here, indigenous women’s, human rights. And the massive investment in immigration enforcement and policing serves to obscure the fact that is readily visible from the Mexican side of the border: that the US is a fundamental player in the massive illegal economies generating the lawlessness and violence.

In this context, rather than seeing the lessening of inequality and oppression based on race, class, and gender through the rights regimes of neoliberal democracies, instead we see misogyny, racism, and oppression of the poor flourish. Indeed, these ideologies are doing new service to power, facilitating impunity. Gender violence is perhaps the most readily visible of the three. States such as Mexico or Guatemala do virtually nothing (and the US does not do enough) to investigate or punish violence against women. The lack of will to punish crimes of gender violence is ideologically based, and itself in turn generates more violations (Fregoso and Bejarano, 2010). The concept of femicide usefully highlights the fact that women are killed for no other reason than that they are women in a context in which, to use Segato’s suggested motto for Juarez, “Woman’s Body Equals Danger of Death” (Segato, 2010: 70).

However, not all women’s bodies face the same danger. Poor women and indigenous women are far more likely to be victims of femicidal violence and they are far less likely to see anyone held accountable. The violence indigenous women migrants suffer and the inaction of officials in response to it are both products of long histories of gendered genocidal violence and current race, class, and gender ideologies that generate conditions that allow for the maintenance of male authority over women, Ladino or white authority over Indians, and the rich over the poor. Indigenous women migrants’ experiences take place at the nexus of those forces of oppression, now in the context of multicriminal states where violence is ever-expanding and illegality permeates every facet of society.



Rather than closing on that note, I want to return one final time to Ysinia's story because, while it reflects many of the crushing dynamics I have outlined above, it also reflects a remarkable strength and will to live in the face of terrible circumstances. Indigenous women migrating to the US from Latin America suffer racialized and gendered state violence, symbolic violence, and interpersonal violence in a myriad of ways at home and on the journey. They show tremendous agency in confronting those assaults on their humanity, only to have their human rights violated yet again through detention and in detention in the United States. But what visiting women in detention in Hutto makes clear, above all else, is their strength and resilience as they seek to free themselves of the oppression and violence that mark their lives. Ysinia's parting words to me the last time I saw her before her release were, "I hope the next time you come, I will not be here. I will see you again, but this time as a bird set free from its cage." Ysinia is no longer detained at Hutto, and is working hard to create a space of freedom for herself even within the structures of power that cage her.

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### Notes

1. All names in this article are pseudonyms.
2. Hispanic Economics. *Mexican Native Americans Decline to Cooperate with the US Census*, at: <http://www.hispaniceconomics.com/overviewofushispanics/mexicannativeamericans.html>
3. The Hutto Visitation Project was formed in 2010 by community activists and advocates, in response to the need to monitor human rights conditions inside the T Don Hutto facility and to provide accompaniment to the women housed there. Volunteers from all walks of life visit with women in the facility, providing friendship, solidarity, and a link to the outside world. The project is supported by Grassroots Leadership, Texans United for Families, and the Social Justice Institute at the University of Texas.
4. Studies abound that demonstrate domestic violence is at crisis levels in Native communities. The following are some recent examples: Keel (2004) (Australia); Brennan (2009) (Canada); Bachman et al. (2008) (US); Amnesty International (2008) (US).
5. While the US would like to see itself as outside the phenomenon of feminicide, However, according to US Department of Justice statistics, one out of three Native women will be

- raped in her lifetime and three out of five will be physically assaulted, they are murdered at rates 10 times the national average, and subjected to domestic violence and assault at rates 2½ times higher than any other group in the United States. At a 2011 Inter-American Commission hearing on Violence against Indigenous Women, even the US government representatives had to admit that the levels of violence should constitute an “assault on the national conscience” (quoted in IACHR Hearing on Violence Against Native Women, 16 November 2011. Available at: <http://sharemorgancounty.org/tag/native-american-women/>). A report by James Anaya to the Human Rights Council of the United Nations not only highlights the staggering numbers, but signals the systemic legal barriers in US law and chronic lack of enforcement (Report available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47-Add1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47-Add1_en.pdf)).
6. Report to the United Nations Human Rights Committee, 2010. “Violations of Women’s Human Rights In Guatemala.” Submitted by MADRE, Bárcenas Women’s Working Committee, Muixil, and the International Women’s Human Rights Clinic of the City University of New York School. Available at: [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/MADRE\\_Guatemala100.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/MADRE_Guatemala100.pdf)
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  8. “Mexico Migrants face Human Rights Crisis, Says Amnesty” *BBC News*, 28 April 2010. Available at: <http://news.bbc.co.uk/2/hi/8647252.stm> (accessed 12 May 2012).
  9. See, for example, BBC reporting “Murdered bodies found in Mexico were migrants,” 25 August 2010, regarding the discovery of 72 murdered immigrants in Tamaulipas (available at: <http://www.bbc.co.uk/news/world-latin-america-11090563>, accessed 1 April 2013), also “Mexico: 59 bodies found in mass grave,” 7 April 2001, in *The Telegraph* (<http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/mexico/8433955/Mexico-59-bodies-found-in-mass-grave.html>, accessed 31 March 2013), and “Argentine team excavates migrant graves in Mexico” 21 August 2012 regarding more than 80 bodies recently excavated from graves in Chiapas (Available at: [http://seattletimes.com/html/nationworld/2018961444\\_apltxmexicounidentifiedbodies.html](http://seattletimes.com/html/nationworld/2018961444_apltxmexicounidentifiedbodies.html), accessed 31 March 2013).
  10. “Violence that has claimed 50,000 lives is horrific but not mindless: it is inter-cartel turf wars played out in body count,” Jo Tuckerman, *The Guardian*, Monday, 14 May 2012. Available at: <http://www.guardian.co.uk/world/2012/may/14/mexico-drug-cartel-masacres-analysis?newsfeed=true>
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21. ACLU Report available at: <http://www.aclu.org/sexual-abuse-immigration-detention>
22. Elisa Foley, "Prison Rape Elimination Act To Expand To Immigrant Detention Centers," *Huffington Post*, 17 May 2012. Available at: [http://www.huffingtonpost.com/2012/05/17/prison-rape-elimination-act-immigrant-detention\\_n\\_1524470.html](http://www.huffingtonpost.com/2012/05/17/prison-rape-elimination-act-immigrant-detention_n_1524470.html) (accessed 10 January 2013); ACLU, "DOJ PREA Regulations Encouraging but Fail to Protect Immigration Detainees."
23. In 2007, the American Civil Liberties union (ACLU) sued the US Immigration and Customs Enforcement (ICE) of The Department of Homeland Security on behalf of 26 migrant children detained with their parents at the T Don Hutto detention center. The lawsuits contended that the conditions inside the detention center violate numerous provisions of *Flores v. Meese*, a 1997 court settlement that established minimum standards and conditions for the housing and release of all minors in federal immigration custody. Conditions at the former medium security prison included compelling children to wear prison uniforms, keeping families in their cells 12 h a day, guards threatening children with separation from their parents, and failing to provide adequate nutrition and medical care. The landmark settlement with ICE/Homeland Security led to greatly improved conditions in the facility and the eventual release of all children/families from the facility, which now houses only women. "ACLU Challenges Prison-Like Conditions at Hutto Detention Center," ACLU. Available at: <https://www.aclu.org/immigrants-rights-racial-justice-prisoners-rights/aclu-challenges-prison-conditions-hutto-detention> (accessed 6 March 2007).
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