

R. AÍDA HERNÁNDEZ CASTILLO



INDIGENOUS WOMEN, LAW, AND POLITICAL STRUGGLE IN LATIN AMERICA

M U L T I P L E
I N J U S T I C E S

MULTIPLE INJUSTICES

CRITICAL ISSUES IN INDIGENOUS STUDIES

Jeffrey P. Shepherd and Myla Vicenti Carpio

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R. AÍDA HERNÁNDEZ CASTILLO

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*Indigenous Women, Law, and Political
Struggle in Latin America*



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MULTIPLE INJUSTICES

INTRODUCTION

THE LAST TWO DECADES have been witness to two political and discursive transformations that have deeply affected the lives of the original peoples of Latin America. On the one hand, there is the emergence of a discourse in relation to indigeneity that has linked local struggles across the continent with a transnational movement that places racism and political and cultural rights at the center of its demands. At the same time, a series of constitutional reforms recognize the multicultural character of Latin American countries that have led to a de jure recognition of legal pluralism.

Now, it is common to write and talk about the struggles and rights of the indigenous peoples without exploring the historical roots of the concept of *indigenous*.¹ What we see in the last decades is the transformation of a legal and analytical term into a concept of self-ascription. The creation of new collective imaginary and transnational spaces has allowed a sharing of experiences, thinking of common strategies, and establishing of links between groups so diverse as the Maori of New Zealand, Adivaci in India, and Mayans from Guatemala. Discourse about “the indigenous” has traveled on the rural roads of five continents, arriving at the most isolated villages through workshops, marches and meetings. In these collective spaces, community leaders, members of NGOs, and the followers of liberation theology have made popular the concept of “indigenous” as referring to “original peoples” and of denouncing the effects of

colonialism in their lives and territories. The local terms of self-ascription, such as Zapotecs, Mixes, Aymaras, Navajos, and Evankies, create a new identity: to be indigenous, which came into being through construction of an imaginary community with the other oppressed peoples around the world. Several analysts mention that the movement for indigenous rights was transnational at its birth (Brysk 2000; Tilley 2002), in that its origins went far beyond local struggles and self-ascriptions.

In the first moment of legislative reforms on the recognition of indigenous rights, denominated by some scholars as the new “multicultural constitutionalism” (see Van Cott 2000), the new legislations were considered as the Latin American states’ response to the demands of the continental indigenous movements and, thus, as a political achievement of their struggles; later analysis problematized these perspectives. In Latin America, the Ecuadorian lawyer and anthropologist Diego Iturralde was one of the first to mention that the logics of collective and autonomous rights of indigenous peoples were compatible with the neoliberal reformist logics of the Latin American states (Iturralde 2000). Sometime later, this critical line was popularized with the concept of “neoliberal multiculturalism” offered by Charles Hale to indicate that the neoliberal agenda required a more participatory civil society and decentralization process compatible with the demands of the indigenous peoples for greater participation and autonomy (Hale 2002). At the judicial level, the limited recognition of indigenous law and the spaces of community justice in the majority of Latin American states have not included political rights or territorial autonomy, resulting in an additive justice that contributes to decentralization as demanded by international financial organizations (Sieder 2002).

Other critical voices have gone beyond questioning the limitations of multicultural reforms by problematizing the construction of indigenous identity itself as a political space, revealing the effects of the power of legal activism (Engle 2010). One important critique claims that legal activism around indigenous rights derives from an identity definition with historical links to “millenary cultures,” “original peoples,” and an alterity clearly defined from differentiated cultural logics. Thus, these critical perspectives question the conception of indigeneity that emphasizes “alternative epistemologies” and “holistic cosmovisions,” because it excludes human collectives that, although they share the experience of racism and colonialism, have been marked by territorial mobility and cultural hybridity.

Analysts of Afro-descendant (see Hooker 2005, N'gwen0 2007; Wade 2006) and Mestizo identities formulated and reclaimed from "below" (de la Cadena 2000, 2005; French 2004) have shown that the struggles for indigenous rights have reified essentialist definitions of culture that replace the struggle against racism with that of cultural recognition. Karen Engle speaks of "the dark sides of virtue" in order to refer to the reification of indigenous cultures (Engle 2010). Critiquing the multicultural framework, she writes: "As the right to culture has developed over the years, I contend that it has largely displaced or deferred the very issues that initially motivated much of the advocacy: issues of economic rights, dependency, structural discrimination, and lack of indigenous autonomy" (Engle 2010, 2).

These criticisms seem to echo a broader debate that has developed, especially in the United States, around what has been termed "identity politics." Questions about the ways in which cultural and ethnic identities politicized spaces of mobilization against various types of oppression come from different positions along the political spectrum. From a feminist perspective, Micaela di Leonardo has questioned the new forms of exclusion created by identity politics and the difficulties it engenders when building political alliances (di Leonardo 1997). She comments that "identity politics is always doomed to failure both because it denies the need to organize nonmembers for particular political goals and because of its essentialism, its falsification, oversimplification of the workings of identity even in the present" (di Leonardo 1997, 67).

From a Marxist perspective, several Anglophone scholars have warned of the dangers that identity politics entail in terms of the fragmentation of anti-capitalist struggles (see Aronowitz 1994; Hobsbawm 1996; Gitlin 1993; Smith 1994). Some of these authors have painted oversimplified portraits of the political agendas of anti-racist, feminist, or sexual diversity social movements, stating that "identity politics is a reflection of the notion that the working class can be the agent for social change . . . Rather than representing an advance, [it] represents a major step backward in the fight against oppression" (Smith 1994, 4).

While this book does not intend to respond to these criticisms, which would first entail clarifying how these authors understand identity politics, what I will do is confront the homogenizing portrayals of social movements whose political demands are not limited to an anti-capitalist struggle (although they do not exclude it). The indigenous women's struggles analyzed in this book evidence how colonialism, racism, and patriarchal violence have been fundamental

elements for the reproduction of capitalism. To represent indigenous movements in the Americas as identity movements that focus their struggles on cultural rights is to simplify the many dimensions of their strategies of struggle. Recognizing the historical and political heterogeneity underlying indigenous women's movements that demand rights and the use of laws as tools for struggle is a first step toward the construction of political alliances.

I consider that these critiques of identity politics point to challenges that could arise when claiming cultural rights and mobilizing politically from an identity space. However, there are other forms of constructing a more inclusive indigenous identity. Through case studies in Mexico, Guatemala and Colombia, I illustrate the ways in which indigenous communities and organizations question essentialist discourses.

In this book, I deliver an account of the tensions between the productive capacity of law and discourses of rights as forms of governmentality (which construct a certain type of indigenous identity that responds to the requirements of neoliberal citizenship), and the counterhegemonic answers to these discourses from organized indigenous women. In dialogue with critical perspectives on legal activism, I recognize the political uses of cultural differences by the nation-states. However, I am interested in analyzing the answers that social actors, defined as "indigenous," are giving to these politics of representation.

The construction of indigeneity is not a process that occurs only in one direction; the hegemony of governmental definitions is fragmented by discourses and representations constructed from daily life and the political practices of social movements that these politics claim to regulate.

I conducted fieldwork mainly in indigenous regions of the Mexican states of Chiapas, Guerrero, and Morelos, but I have also included an analysis of organizational experiences of indigenous women and their appropriation of rights discourses in Guatemala and Colombia. I participated in two collective research projects that included these two countries. They represent two national contexts in which multicultural reforms have been very different and their impact in the spheres of justice dissimilar. Creating a dialogue between the experiences of indigenous women of various regions of Mexico and those of Guatemala and Colombia enables observation of how various national contexts and political genealogies influence the appropriation or rejection of discourses on women's rights.

Regarding multicultural reforms, Colombia was the first country in the continent to promote a constitutional reform that, since 1991, recognizes the collective

rights of indigenous peoples and indigenous jurisdictions in semiautonomous regions known as *resguardos*.² Although only 3.4 percent of the population defines itself as indigenous (1,378,884 people in 2014, according to the National Institute for Statistics and Censuses), the strength of the national indigenous movement is evident in the consolidation of political and cultural projects. The establishment of the Intercultural Autonomous Indigenous University (*Universidad Autónoma Indígena Intercultural—UAIIN*) and the fortification of their spaces of justice thanks to the Indigenous Law School (*Escuela de Derecho Propio*), promoted by the Regional Indigenous Council of Cauca (*Consejo Regional Indígena del Cauca—CRIC*), are closely linked to these constitutional and multicultural reforms. As we shall see in chapters 2 and 3, these organizational experiences have led Colombian indigenous women to prioritize discourses on indigenous rights over gender discourses.

Paradoxically, although 41 percent of Guatemala's population defines itself as indigenous (4,710,440 people in 2015, according to the National Statistical Institute), there has been no constitutional reform in that country that recognizes indigenous rights or spaces of indigenous justice. In this context, indigenous organizations have resorted to international legislation, such as the International Labor Organization's "Convention 169," as a legal recourse to claim their rights. As a result, indigenous women have established multiple dialogues with international cooperation, the continental indigenous women's movement, and the Mayan movement, which vindicates the right to Mayan *cosmovision* and law.³ These various dialogues have given rise to very heterogeneous indigenous women's organizations, which appropriate discourses on indigenous and human rights or lay claim to a communal feminism from the perspective of their own cosmovisions.

The productive capacity of law and the appropriation of discourses on rights have been very different in each of these contexts. While it is possible to speak of "neoliberal multiculturalisms" in Mexico, Guatemala, and Colombia, the effectiveness of their forms of *governmentality*⁴ has been highly dependent on the political and organizational genealogies of each region.

If we consider the hegemony of the state as an unfinished process, we can understand that the neoliberal multiculturalist agenda is not completely successful. Its need to strengthen civil society and promote decentralization opens new opportunities for indigenous peoples to increase spaces of autonomy and self-determination. It is a contradictory process, and I will analyze the counter-hegemonic answers to the multicultural reform by indigenous women.

The productive capacity of the law, which creates the identities it purports to represent, as theorized by Michel Foucault (1977) and documented by feminist legal anthropologists (see Alonso 1995; Collier, Maurer, and Suárez-Navaz 1995; Engle Merry 1995), not only produces sub-alternized identities, as many of these critics have emphasized. There are also new indigenous identities that emerge in the framework of the new multicultural reforms, that are confronting the hegemonic definitions of culture and indigeneity. This book demonstrates that legal pluralism in Latin America has been the result of contradictory processes of hegemony and counter-hegemony in which the social actors have appropriated and vernacularized discourses on rights, confronting (and often transforming) hegemonic perspectives of liberal justice.

Several authors have documented “the use of the law from below,” demonstrating how, through litigation in national or international spaces of justice, or through the political use of discourses on rights, social movements are diversifying their strategies of struggle and challenging the limited meanings of liberal law (Rajagopal 2003; de Sousa Santos and Rodríguez-Garavito 2005). Indigenous women, whose political struggles I analyze in this book, have taken action at different levels of justice, challenging the narrow meanings of culture, identity, and rights, which are often shared by administrators of justice in their communities, in public prosecutors’ offices (*ministerios públicos*), and in international tribunals.

In this introductory chapter, I will present theoretical reflections that emerged from the research projects that provide the empirical basis to this book. Some reflections relate to the impact of the indigenous women’s movements on hegemonic practices and discourses, as well as their appropriation of the discourses on rights. Others refer to legal pluralism and the cultural construction of discourses on law and custom in the framework of postcolonial relationships. I finish with a reflection on state violence as a patriarchal semantic answered by the new discourses on indigenous women’s rights.

Organized indigenous women are developing diverse forms of cultural politics from within organizations where women’s rights are central to their political agenda, and also from those where local demands are the priority. The political agenda of organized indigenous women decenters not only the discourses of power about law and custom but also hegemonic discourses on indigeneity, gender, modernity, and tradition. In a wider sense, they are redefining what they understand to be justice and rights from their collective struggle and daily practice. This introduction is focused on these destabilizing elements.

CONFRONTING ETHNOCENTRIC PERSPECTIVES ON SOCIAL MOVEMENTS

One of the first challenges of working with indigenous women's movements is the construction of a conceptual framework that permits us to understand their organizational processes and does not reproduce the analytic ethnocentrism that has been dominant in the study of social movements. There is a tendency in the literature on social movements to establish typologies that implicitly create hierarchies, ordering movements, for instance, according to level of emancipatory potential, or reifying the dichotomy between material and cultural demands as mutually exclusive. Many of these dichotomies underlie the critiques of identity politics made from the perspective of some Marxists. First, they construct a limited representation of the political agendas of the social movements in question (in this case, rural and indigenous women's movements), and then they disqualify their emancipatory potential.

The organizational experiences that I analyze in this book reveal the limitations of the perspectives on social movements in which the analysts project their values and utopian horizons as universal parameters in order to measure the transformative capacities of social actors. From these perspectives, as the political agenda of the organization comes closer to that of the analyst, the emancipatory potential is seen as greater, and the analysis takes on very ethnocentric representations of social movements in Latin America. During the turmoil of peasant movements in the continent in the 1980s, Alain Touraine claimed that Latin American social movements did not exist since their collective mobilizations (related to economic needs) lacked a sense of the "historicity" that would allow them to be a part of a wider political project (Touraine 1987).

Feminist analysis has also been marked by "political evolutionism" in the typification of women's movements in Latin America. The clearest example is the work of Sheila Rowbotham who differentiates between "women in movement" (to refer to those women who act together to achieve common objectives) and the concept of "women's movement" (to describe those who create gender demands of a feminist character) (see Rowbotham 1992).

These dichotomist typifications have been widely questioned by feminists of the Global South (see Álvarez 1990; Hernández Castillo 2008; Kabeer 1998; Wieringa 1992). They argue that these perspectives underestimate the central contributions of poor organized women to the destabilization of the current

social order when they ignore how these women negotiate with power and reconstruct their collective identities within their strategies of survival.

What this type of analysis ignores is the cultural dimension of the mobilizations for material needs. In the case of the women of marginal neighborhoods in Ecuador, Amy Conger Lind has shown how poor women not only struggle for their basic necessities but they also modify the preexisting conceptions of gender and development when resisting collectively the forms of power present in patriarchal institutions (see Conger Lind 1992, 11).

From within their productive and economic organizations, indigenous women have responded to hegemonic definitions of tradition and culture on the part of official *indigenism*⁵ and national indigenous organizations, proposing the need to change those elements of “custom” which exclude and marginalize women. They have confronted the hegemonic definitions of development by rejecting mega-projects such as Puebla Panama Plan⁶ and monocultural visions of citizenship, while participating actively in political struggles for constitutional reforms that recognize collective rights of their peoples.

In many of these mobilizations, organized indigenous women have appropriated discourses on rights to promote their material demands for land or services, their cultural rights for an intercultural education, and their own justice in terms of indigenous rights. In other cases, they have confronted state violence against them and their peoples, or violence by their spouses, appropriating women’s rights or human rights discourses. As I will show in the various chapters of this book, these processes have implied not only an imposition of the discourses of NGOs and the international bodies that finance them, but also a re-appropriation (what some authors call a “vernacularization”) of rights discourses (Levitt and Engle Merry 2009) or an alternative human rights ontology (Speed 2007, 2008).

Several women’s organizations analyzed in this book have, as a central piece of their political agenda, demands on cultural rights that are based on a wider concept of culture that includes the agrarian and territorial demands of their peoples. Again, the dichotomy between the material and cultural demands does not recognize the existence of social movements for which the politics of recognition is linked to the politics of redistribution.

In this context, the concept of cultural politics (see Álvarez, Dagnino, and Escobar 1998) can be useful in describing the destabilizing potential of mobilizations by indigenous women, be they in relation to agrarian demands, the collective rights of their peoples, or their own gender rights. While using alternative

conceptions of social peace, nature, economy, development, and/or citizenship in their mobilizations for the demilitarization of their regions, or for the recognition of indigenous autonomy, organized indigenous women destabilize culturally dominant meanings. Through these cultural politics, we are reminded of the cultural dimension of their material struggles and the material dimension of their cultural struggles.

Within political science, sociology, and cultural studies there exists a tendency to group indigenous organizations and women organizations together with ecological and other organizations born of “new” postindustrial movements due to an emphasis on identity as a mobilization space and the cultural character of their demands. However, many women’s organizations with whom we work combine longstanding demands for land, agrarian credit, and the financing of productive projects with new demands of autonomy and the recognition of the collective rights of their peoples or specific gender rights. Although they are organizing around the central theme of culture, historical demands for land and sustainable development are integral parts of their autonomic demands.

This consideration allows us to question the abrupt division between classist movements of the past and the identity movements of the present. These are divisions that some analysts of the “new” social movements take for granted. For many organized indigenous women, their political genealogies reveal previous experiences of militancy within peasant organizations centered on agrarian and labor demands. Their survival as a community required the consideration of land and labor as critical to indigenous peoples; in this sense, their “class politics” were also politics of identity. The cultural politics developed by indigenous women through local, national, and international organizations have implied a decentering of hegemonic discourses and a confrontation with relationships of domination occurring at diverse levels of power. Some have had to pay a high cost for their actions by suffering political violence on the part of army and paramilitary groups (see chapter 5), and even by suffering the domestic violence of their own partners (see Hernández Castillo 2001a). Many others have had to confront subtler forms of symbolic violence; for instance, some have experienced communitarian rejection that manifests through the isolation and gossip on the part of those that consider them a “bad example” for other women to follow (see Artía Rodríguez 2001; Hernández Castillo and Zylberberg 2004; Zylberberg 2008).

A closer inspection of the ways in which the cultural politics of these organized women destabilize the dominant cultural meanings about tradition,

justice, and rights could help us to understand the violent response on the part of powerful sectors inside and outside of their communities.

DECENTERING FEMINISM AND RECONCEPTUALIZING GENDER FROM INDIGENOUS PERSPECTIVES

Some feminist discourses in Latin America have reproduced ethnocentric perspectives on popular women's movements when analyzing the emergence of indigenous women's organizations. This has resulted in the exclusion of indigenous women's organizations by feminist movements for what they see as the limitations of a political agenda that does not place gender rights at its center.

In the best of cases there is a condescending recognition of the importance of getting closer to these new spaces in order to "raise consciousness" that will bring organized indigenous women closer to "true feminist awareness." While self-appointing the right to define "true feminism," they have disqualified those indigenous women who have opted to work together with men in mixed organizations that combine demands of recognition with demands of redistribution.

In chapter 2, I reconstruct the distinct genealogies and experiences of the indigenous women's movement in Mexico, Guatemala, and Colombia in order to understand the manner in which they have or have not appropriated the discourses of rights as well as the tools and critiques of Latin American feminisms.

Some sectors of the indigenous women's movement have developed a discourse and practice on "indigenous feminisms," such as some members of the Kaqila group in Guatemala and the Coordinating Committee of Indigenous Women in Mexico (*Coordinadora Nacional de Mujeres Indígenas en México—CNMI*). The centrality of women's rights in their struggle have brought them closer and more attuned to the agenda of feminist organizations. This opens the possibilities of diverse political alliances.

Some members of the indigenous women's movement, especially in Mexico and Guatemala, have begun to speak of the existence of an indigenous feminism and a communitarian feminism, prioritizing thought and practices that transform gender, class, and racial inequalities. This emerging indigenous feminism has questioned both patriarchal violence in their communities and the racism and ethnocentrism of mestizo urban feminisms (see Álvarez 2005; Cabnal 2010). These critiques point to the intersection of multiple forms of oppression; some

authors, such as Lorena Cabnal (2011), a Maya-Xinca indigenous woman from Guatemala, have termed this a “patriarchal crossroads.” She says in this respect:

As a communal feminist I want to contribute with my thoughts to the paths of shrewdness where women are contributing from various places. I do it from this ethnic identity as an indigenous woman, because from this essentialist place I can be critical based on what I know and live. However, I also do it from my political identity as a communal feminist. This allows me not only to be critical of the ethnic essentialism that is in me, but also to approach the analysis of my reality as an indigenous woman with a communal, anti-patriarchal focus that continuously weaves its own concepts and categories. It names with authority my oppressions, but also my acts of rebellion, as well as my transgressions and creations. (Cabnal 2010, 11)⁷

This search for a language of their own to articulate the multiple forms of oppression suffered and to analyze the exclusions exercised by urban feminisms is reminiscent of similar positions developed by Chicano and Black feminists in the United States in recent decades. The similarity of the experiences of internal colonialism, racism, and patriarchal violence has perhaps prompted some organized indigenous women in Latin America to resort to some of the theorizations made by “women of color.” This is the case with the concept of “intersectionality,” popularized by the work of African American feminist Kimberlé Crenshaw, which refers to how different systems of domination, such as racism, sexism, and homophobia, mutually constitute each other, creating systems of oppression that reflect the “intersection” of multiple exclusions (Crenshaw 1989).⁸ The intersectional perspective points to how, in specific historic contexts, different social categories such as gender, race, and class intersect to produce social hierarchies. This perspective was revisited by the International Indigenous Women’s Forum when it proposed that violence against indigenous women should be understood not only as a product of gender inequality, but also as the intersection of colonialism, racism, poverty, and social exclusion (FIMI 2006). Recognizing these intersections entails seeking more complex strategies of struggle that go beyond liberal feminism’s claim to “women’s rights.”

Importantly, the organizational experiences analyzed in this book are not limited to those which claim an indigenous, and/or communal feminism, but also those which reject the term feminism altogether (and even discourses on women’s rights), and instead, seek ethical referents in their own epistemologies to confront violence and to build a life with dignity.

These sectors have rejected the concept of feminism and opted to claim indigenous cosmovision as a space from which to rethink the power relations between men and women. This explicit disassociation with feminism, based on a stereotype of feminists as separatists who are not concerned with political alliances, informs many of the perspectives shared by popular women's movements, and which, unfortunately, many feminists reinforce. The reluctance to understand the genesis of these political proposals and non-Western epistemologies, as well as the imposition of a feminist agenda that is insensitive to cultural diversity in Latin America, justifies many indigenous women's rejection of the concept of feminism.⁹

Similar processes have arisen in other parts of Latin America. Patricia Richards documented how Mapuche women in Chile rejected not only feminism but also the concept of gender. They relate it to separatist standpoints that are in conflict with their own worldviews: "Whereas feminist movements in some nations have advanced women's rights by challenging gender norms and relations, many Mapuche women find the concept of *gender* objectionable; this term implies for them an adherence to the Western ideas imposed on them. The language of rights better represents their multiple concerns, particularly when they contextualize it within the Mapuche worldview" (Richards 2005, 210). In spite of hegemonic feminisms¹⁰ resistance to and rejection of these culturally situated perspectives, their proposals begin to occupy an important place within the continental indigenous women's movement.

Indigenous women are developing their own theorizations through their organic intellectuals who have participated in continental events in the past decade. These theorizations inform the resolutions of the First Summit of Indigenous Women, where the declarations of the concepts of complementarity and duality were the central focus of the debates in the panel on education, spirituality, and culture. In contrast to the stark individualism promoted by globalized capitalism, indigenous women reclaim the value of "*community*: understanding this term as a life where people are intimately linked with their surroundings, under conditions of respect and equality, where nobody is superior to anybody." In contrast to a predatory neoliberal model of development, they declare "*equilibrium*: which means to watch over the life and permanence of all beings in space and nature. The destruction of some species affects the rest of the beings. The rational use of material resources leads us toward balance and rectitude in our lives." In contrast to violence and domination of the strong over the weak, upon which is premised the liberal conception of survival of the fittest, they

propose “*respect*: which is based on the indigenous concept of the elders being those who are most respected, an attitude that extends to all other beings in nature. The Earth is a woman, mother and teacher who is the sustenance of all beings. It is equal treatment amongst beings, under the same conditions.” In contrast to the superiority of the masculine over the feminine, which is claimed by patriarchal ideologies, they propose “*duality or dualism*: in which the feminine and the masculine in the same deity are two energy forces found in one, which permit the balance of vision and action. They represent the integration of everything that guides us towards complementarity. By considering the Supreme as dual, father and mother, one can act with gender equity. This attitude is fundamental for the eradication of machismo.” In contrast to the fragmentation of the productive process, promoted by maquiladora development, the segregation of the labor force, the fragmentation of collective imaginaries, and the rejection of a systemic analysis which allow us to locate the links between different forms of struggle, they propose “*la cuatriedad*: this concept signifies the totality, a cosmic balance, that which is complete as represented by the four cardinal points, unity and the totality of the universe. By seeing ahead and behind as well as to the sides, it is possible to struggle for unity. It is a force capable of transforming the inequalities that our people suffer due to neoliberal and globalized politics” (Cumbre de Mujeres Indígenas de las Américas 2003, 132).

Taking as a point of departure the conception of cosmovision and spirituality, some Mayan women proposed a gender concept that implies:

A respectful, sincere, equal, and balanced relationship, that in the West would be considered equity of respect and harmony, in which both the man and woman have opportunities, without it presupposing additional responsibilities for the woman. Only then can one be spiritually healthy with humankind, the earth, the sky and those elements of nature that provide us with oxygen . . . For that reason, when we talk of a gendered perspective, we are talking about the concept of duality based on an indigenous cosmovision in which all of the universe is ruled in terms of duality. This sky and earth, happiness and sadness, night and day, they complement each other, one cannot exist without the other. If we had ten days with only sun, we would die; we would not be able to stand it. Everything is ruled in terms of duality as, undoubtedly, are men and women. (Estela, an indigenous woman from the *Asociación Política de Mujeres Mayas, Moloj, Mayib' Ixoquib'* [Political Association of Mayan Moloj, and Mayib' Ixoquib' Women, Guatemala]; Gabriel Xiquín 2004, 45)

From these perspectives, it is evident that the concept of complementarity does not serve as an excuse to avoid speaking about power and violence as part of gendered relations, but rather, on the contrary, it becomes a tool to analyze the colonizing attitudes of indigenous men, and it proposes the need to rethink culture from the perspective of gender equity.

This claim in favor of an indigenous cosmovision and spirituality being capable of laying the foundation for a greater equilibrium between men and women seems to resonate with the writings and political proposals of some Native American feminists in the United States. Like Paula Gunn Allen analyzes with respect to English colonialism, a sector of Mayan women argues that it was the Christianity brought by the Spanish colonizers that imposed the patriarchal structures currently existing in indigenous societies, and that, by contrast, Mayan spirituality and cosmovision are based on a balance between the male and the female (Gunn Allen 2002 [1986]). Although in both cases the historic accuracy of these representations has been questioned, what interests me in the analysis of the processes of vernacularization is to what extent these discourses regarding cosmovision and spirituality have allowed indigenous women to confront contemporary practices of exclusion and violence that attempt to find legitimacy in “tradition and culture.”

Morna Macleod has analyzed the link between gender and cosmovision in the practices and political discourses of the Mayan movement and has shown us the emancipatory significance that cosmovision is having for an important part of the Guatemalan indigenous women sector (Macleod 2011). Recognizing indigenous women’s theorizations, and learning from their emancipatory potential, does not imply an idealization of contemporary indigenous cultures. The proposals of these indigenous women engender an indigenous epistemology based on important values that they want to recuperate as well as activate, and which in no way suggest that they represent the cultural expression already shaping their daily lives. To disqualify these proposals because they do not share urban feminist perspectives of equality, or because they are not based on concerns for sexual and reproductive rights (at least not in the same way in which urban feminists understand these rights in urban and *mestizo* regions), means reproducing the patriarchal mechanisms that silence and exclude those political movements.

There are those indigenous women who claim, from their cosmovision, the need to construct an indigenous feminism that derives from their own culture. Alma López, a Maya-K’iche’ activist and ex-council from the Department of Quetzaltenango, comments:

The feminist movement that comes from the academy has little to do with us. That is why we do not appreciate something that has nothing to do neither with our reality nor with our culture. I think it is necessary to reconstruct the feminism of indigenous women. All of us have to construct this without separating ourselves from the historical and theoretical arguments. The philosophic principles that I would recuperate from my culture are equity, the complementarity between men and women, between women and women, and between men and men. Today this famous complementarity of the Mayan culture does not exist, and to affirm the contrary is an aggression. It only remains in history; now there is only total inequality. However, the complementarity and equity can be constructed. I would recover the double approach, the idea of *cabawil*, the person that can at the same time look ahead and look back, can look to one side and another, see black and white. Recuperate with all the sadness that can be my reality as a woman and reconstruct myself with all the good that I have. Recognize that there are women different from myself, that there are mestizas and indigenous, that there are blacks, that there are urban and peasants.¹¹

Alma and other indigenous women in different parts of Latin America are constructing their own epistemological and political projects about which we have much more to learn. A questioning of our own ethnocentrism and racism is a necessary first step in establishing intercultural dialogues on conceptualizations of women's rights, and for constructing political alliances based on what we have in common, while at the same time recognizing our different visions of the world. The chapters of this book are part of an effort to establish constructive dialogues and political alliances derived from what we share but recognizing our internal differences and distinct visions of the world.

DECENTERING THE DICHOTOMY BETWEEN LAW AND CUSTOM

The analysis of the experiences of indigenous women in different contexts of justice in Latin America has been inserted into a broader political debate between the defenders of legal monism and those who advocate for judicial recognition of the legal pluralism that exists *de facto* in all Latin American societies. In this political context, different discursive constructions have arisen regarding law and custom that seem to give continuity to the old anthropological discussions about the normative systems of colonized peoples. In other works, I have

analyzed the legal anthropological debates in relation to law and custom and the manner in which this academic production contributes to the construction of this dichotomy (see Hernández Castillo 2002a). The discourses used by colonial governments to control the colonized population claimed that indigenous peoples have their own normative systems (Malinowski 1982 [1926]), and that, confronted with similar problems, they find the same solutions as a European judge (Gluckman 1955). Other discourses argued that law is characteristic of societies with centralized governments and so the existence of law was a sign of a superior level of development (Radcliff-Brown 1952). If the “aboriginal” peoples had laws, these were part of the “indirect rule” that was used by the local colonial administrative authorities and their institutions to control the colonized population. If, on the other hand, colonial governments accepted that indigenous customs could not be considered laws, then it was necessary to impose upon them the normative systems of the colonizing countries. Neither the recognition nor the rejection of their indigenous law implied real access to justice because of the context of colonial domination in which it occurred.

In the case of Latin America, the context of the continuity of internal colonialism and the coloniality of power and knowledge have been powerful influences (see Quijano 2000). Both the representations of the indigenous “uses and customs” (*usos y costumbres*) as a colonial legacy and the claim to “indigenous law” as an ancestral product of their own epistemologies are being used as powerful discourses that limit and control indigenous autonomy.

The analysis of the colonial and neocolonial contexts in Latin America shows us that discourses in relation to equality, as well as to cultural difference, have been used as forms of domination and control of indigenous peoples. An emphasis on equality can lead to an ethnocentrism that imposes the vision of the world emerging from the West as an optic through which to see the social processes, institutions, and judicial practices of other societies. At the same time, to emphasize cultural difference can be an instrument to *Orientalize*² non-Western societies and construct them as “Other” to the discursive construction of a “Western subject” characterized by discourses of rationality and progress.

With respect to the defenders or the detractors of legal pluralism in Latin America, there are, on one hand, the defenders of legal monism derived from the liberal perspective on law, who tend to represent the so-called uses and customs as pre-political residuals that are to be discarded. In many cases, the critiques of the recognition of indigenous legal systems have shown the racism that continues to exist in Latin American societies (see Escalante Betancourt

2015). In the Mexican context, the renowned jurist Ignacio Burgoa Orihuela, an important opponent of indigenous autonomy in the late 1990s, warned of the danger of indigenous peoples returning to “human sacrifice” if the right to their normative systems was recognized (Avilés 1997). Even anthropologists such as Roger Bartra have participated in this debate pointing out the colonial origin of present-day indigenous cultures, warning about the “seeds of violence and anti-democracy” that would bring forth the recognition of these “uses and customs” (Bartra 1997).

Within these political debates, women’s rights have been utilized as arguments against the recognition of indigenous normative systems and local autonomy. Analysts and academics who have never written a line in favor of gender justice began to write on the manner in which recognition of indigenous legal systems could affect women’s rights.

At the same time, there has been limited recognition of indigenous jurisdictions that do not respond to the indigenous peoples’ autonomic demands for political and territorial redistribution. On one hand, institutionalizing the spaces of indigenous justice has created the mechanisms of vigilance to limit its jurisdiction and, in many cases, has created new spaces under state control, as is the case of the denominated Indigenous Courts (see Buenrostro 2013; Martínez 2013). In this context of legal pluralism, indigenous law has come to play a role similar to alternative dispute resolution (ADR) or restorative justice in the United States, approaches that offer civic spaces for the resolution of conflicts and contribute to the decentralization of the legal state apparatus. In many countries of Latin America, state recognition of indigenous legal systems and spaces has occurred primarily because of the inability of some states to impose their law in all of the national territory (and not because of a formal recognition of indigenous autonomy). Often, indigenous legal systems are tolerated only until the power of the state is affected. This type of decentralization, although it is a positive characteristic of democratic federalism, has little to do with the autonomic demands of the indigenous peoples for whom the recognition of their legal systems should accompany the recognition of their political and territorial rights.

In a parallel manner, in response to the racism that has prevailed in the representations of the mistakenly called “uses and customs,” (*usos y costumbres*) some sectors of the indigenous movement have idealized their legal systems, representing them as an ancestral law that reflects harmonic and conciliatory cosmovisions (see Ticona Colque 2009; Zapeta 2009). With respect to Mayan

Law (*Derecho Maya*), the Maya-Cakchiquel anthropologist Aura Cumes has questioned idealized representations that do not allow seeing its historical development and its internal dynamic (Cumes 2009). These ahistorical and essentialist visions of Mayan Law do not recognize or confront those exclusions that occur in spaces of community justice. In relation to the justification of the exclusion of women Cumes states: “The political discourse about Mayan Law proposes that women are the counselors of men in private space. In other cases, it is mentioned that women are not being excluded from the legal spaces because they accompany their husbands in cases that require their presence. . . . The political claims of Mayan Law usually do not problematize women’s exclusion. To have fostered a purist idea of Mayan Law also has had its costs” (Cumes 2009, 47).

As we will see in chapter 3 of this book, several legal anthropologists reproduce representations of indigenous law as ancestral laws founded upon their cosmivision, and as completely isolated from the state’s positive law. These reproductions have contributed to the construction of an essentialist political imaginary in relation to indigenous peoples that once again colonize them by erasing the dynamism of their own cultures. Some advocates of inter-legality and legal pluralism in Latin America have emphasized the essentialist and functionalist viewpoints on indigenous law that represent it as an autonomous legal space. They have pointed out the existence of a multiplicity of legal practices in the same sociopolitical space that often constitute each other, and that interact by means of conflicts or consensuses (see Collier 1998, de Sousa Santos 1998b; Sierra 2004a; Sieder and MacNeish 2013; Wolkmer 2001).

Both racist and idealized views of indigenous law are ahistorical perspectives that negate the complexity of indigenous legal spaces of justice. In this formulation, it seems that there are only two possible representations: the nineteenth century one that views indigenous cultures and their “uses and customs” as primitive and backward (thus, to be dispensed with), and the essentialist ones that represent indigenous law as millenary, conciliatory, and democratic. However, the voices and practices of organized indigenous women in different parts of Latin America have come to challenge both representations by questioning those “uses and customs” that exclude them, and by pointing out the dynamic and changing nature of their indigenous law. In different regions of Latin America, indigenous women are struggling, from within their customary law, to include their demands for a dignified life without violence.

As we shall see in different chapters of this book, these are polyphonic voices, from different political genealogies, that are demanding from the state their

collective and territorial rights. They are doing so before their communities and indigenous organizations as they emphasize their right to change cultural forms that cause violence and exclusion toward them. The voices of indigenous women challenged the liberal representations of their traditions that have been used to dismiss indigenous “practices and customs,” saying instead that indigenous communities’ normative systems are being reconstituted, and that indigenous women are playing a fundamental role in that process. In the framework of struggle for indigenous autonomy and a legislative reform that recognizes the collective rights of the indigenous peoples, Zapatista Commander Esther focused on enumerating the inequalities and exclusions permitted by the current legislation. She argued that the constitutional reform demanded by Zapatista women would serve to “allow us to be recognized and respected, as women and as indigenous persons—our rights as women are included in that law, since now no one can impede our participation or our dignity and integrity in any endeavor, the same as men.” In this historic intervention before the Mexican legislative congress, the Zapatista leader proposed: “What I can say is that indigenous people recognize now that there are customs that we must combat and others that we must promote and this is noted in the more active participation of women in the decisions of our community. Now women participate more in the decisions of the assembly, now we are elected to positions of authority and in general we participate more in communal life.” (Commander Esther 2001, 9).

In chapters 2 and 3, I describe the manner in which the indigenous women of Mexico, Guatemala, and Colombia are determining the reconstruction of their own legal systems and confronting the liberal perspectives of indigenous law that negate indigenous autonomy. At the same time, they are rejecting the use of “tradition and custom” as arguments to justify their exclusion from community life.

CONFRONTING STATE VIOLENCE AND PATRIARCHAL SEMANTICS¹³

Although my analysis of the organizational experiences in Mexico, Guatemala, and Colombia emphasizes the political creativity of indigenous women and their capacity to resist and confront the discourses of power that tend to define them as subordinated victims of their own cultures, I cannot omit the context of structural violence in which these political processes occur. The testimonies

of indigenous women who are victims of military violence that will analyzed in this book reveal the use of sexual torture by governmental agents as part of a patriarchal semantics of violence and impunity developing in distinct regions of Latin America within a process of accumulation by dispossession (see Harvey 2003).

From a feminist perspective it is important to analyze the links between occupation through violating the bodies of indigenous women and the occupation of their territories and expropriation of their natural resources. These simultaneous processes correspond to the logics of neoliberal capitalism embedded as it is with gender and racial inequalities.

Taking into consideration the political economic analysis of late capitalism as developed by David Harvey I recognize that the stage of capitalist development in which we now live is very similar in its violence and expansion to the stage of original accumulation in which the colonial forces were strengthened by dispossession, privatization of land, forced expulsion of subjugated peasant farmers, dispossession of their natural resources, and mercantilization of the alternative forms of production and consumption of colonial populations (Harvey 2003). These processes appear to repeat themselves in the current stage of globalization.

The liberation of markets did not bring the “harmony” predicted by liberals and neoliberals; rather, it deepened inequalities within capitalist countries and brought forth a crisis of over-accumulation when they produce more than can be consumed. The exploited workers receive less of what they produce, for which there is a sub-consumption that obliges capitalists to increase their territories of reinvestment and consumption. The logic of capital requires always an “exterior activities fund” to overcome the over-accumulation; therefore, there was immense pressure to sign the North American Free Trade Agreement (NAFTA), opening the borders to products and capital and allowing the process of accumulation to continue through the dispossession and privatization of natural resources (such as water, land, and forests). This dispossession has never been a peaceful process (not now, or in the process of original accumulation). The resistance of those peoples whose territories and resources are mercantilized has been confronted with colonial violence in the past, and now, they are with the violence of the neoliberal states (violence that is legitimized through the law).

We are before a new onslaught of capital that appropriates the territories and resources of native peoples through neocolonial strategies that criminalize social movements and use sexual violence as a repressive strategy in the processes

of dispossession. As repression in Latin America has a long history that begins before the current moment of dispossession, the phenomenon to which we are witnesses in the last decade is the legitimization of the criminalization of dissidents through judicial reforms that pretend to combat delinquency while creating a legal framework to incarcerate and attack social movements. Examples of this are the penal reforms of 2008 in Mexico that criminalize social protest, and the recent anti-terrorist law in Chile that has incarcerated thousands of Mapuche activists who struggle for control of their territories. The strategy utilized by these governments involves lodging federal charges such as “the obstruction of means of communication,” “destruction of federal property,” or “kidnapping” so that, in the judicial files, they do not appear as charges of political dissidence. Thus, filing these other criminal charges, instead, enables the state to label and treat them as criminals, and then to subject them to violence under this framework (see Hernández Castillo 2010a).

These processes of dispossession and violence have been configured by the racial and gender hierarchies that continue to prevail in our societies. Indigenous peoples and peasants have resisted the privatization and mercantilization of their resources, drawing from epistemologies and visions of the world that actively challenge the utilitarian and individualistic perspective of capital; it is for this resistance that they have been constructed in hegemonic discourses as “retrograde and anti-progress” or, in the worst case, as “violent terrorists.” At the same time, indigenous territories are being violated by transnational mining, energy megaprojects, and the War on Drugs—all often producing displacements of populations that leave their lands “free” for capital to acquire.

In this assault of violence and dispossession, the bodies of women have been converted into territories to be invaded and violated. The rapes of women participants in resistance movements are not only punishment for transgressing gender roles, but they are also a message in the semantics of patriarchal violence. Paraphrasing Rita Laura Segato, the language of sexual violence toward women employs the signifier of the female body to indicate the possession of what can be sacrificed for the sake of territorial control (Segato 2008). Controlling women’s bodies through sexual violence is a way to demonstrate control over the territory of the colonized Native American authors, such as Andrea Smith, show us how the construction of indigenous women’s bodies has been a part of the linguistic etymology of colonization since its inception (Smith 2005a, 2005b). This is a message that repeats itself in this new stage of accumulation by dispossession.

In the Mexican case, women's participation in social movements of resistance (most evident in the Zapatista movement and in peasant and teachers' movements like those of Atenco, Guerrero, and Oaxaca) has disrupted gender roles in indigenous communities. It is not a coincidence that, in the face of the "destabilizing danger" that these women represent for the local and national powers, they become targets of male violence. Zapatista women and the members of the Indigenous Organization of the Me'phaa People (*Organización Indígena del Pueblo Me'phaa*—OPIM) have raised their voices to denounce the impacts of neoliberal economic policies and so-called security policies on their peoples (and specifically on the lives of women). Their voices have reached international tribunals, constructing new self-representations that destabilize patriarchal semantics. Chapter 4 analyzes the experience of Inés Fernández Ortega and Valentina Rosendo Cantú who were raped by members of the Mexican army in 2002 and were members of OPIM. After eight years of impunity, they opted to take their case before the international justice system at the lack of answers to their demands on the part of the Mexican judicial apparatus. Both women placed representatives of the Mexican state on the bench of the accused before the Inter-American Court of Human Rights, achieving a guilty sentence for "military institutional violence."

The testimonies before international justice, as well as the memoirs, resolutions, and internal documents that emerge from national and international congresses of indigenous women, are a source of theorization that speaks of other ways of understanding women's rights and their links with the collective rights of indigenous peoples. Theorizations emerging from these voices give an account of the utopian horizons that organized indigenous women are constructing upon the recuperation of the historical memory of their peoples.

The existence of organized women in some communities or regions has become a synonym of political radicalism. Organized women have transformed themselves into a symbol of resistance and subversion, placing them at the center of political violence in the three countries addressed in this book. The army, police forces, and paramilitary groups have turned women's bodies into their battlefield. Counterinsurgency strategies against political-military movements or, in the case of the War on Drugs, the combat against narcotics trafficking are used as an excuse to militarize or paramilitarize the indigenous regions of Mexico, Guatemala, and Colombia. Sexual violence, more than a simple repressive act, is a message in the patriarchal semantics in order to promote demobilization and eventually displacement and dispossession.

In the Mexican state of Guerrero, where Inés Fernández Ortega and Valentina Rosendo Cantú were raped, there have been important mobilizations against mining concessions in indigenous territories. According to government reports, there are forty-two mining areas ready for exploitation in that state. However, these mining sites coincide with 200,000 hectares of territories inhabited by members of the Nahua, Me'phaa, and Na Savi indigenous communities. These peoples of the mountain and Costa Chica regions of the state experienced the granting of mining concessions located in their territories without previous consultation. The same events are happening in the Guatemalan departments of Huehuetenango and San Marcos, where Mam women have led the resistance movements against mining companies (see Macleod and Pérez Bámaca 2013).

We observe a territorial coincidence when locating on a single map the regions with granted mining concessions and mobilizations of resistance against these dispossessions, and the regions where the War on Drugs has left thousands of victims, missing people, and displaced communities. This overlap should oblige us to establish analytical links between both phenomena. In this onslaught of violence and dispossession, women's bodies have also become territories to be invaded, destroyed, disappeared, and violated.

Simultaneously, in collusion with drug trafficking, these security forces that discard racialized bodies also use sexual violence as a tool for political repression. Amnesty International's reports document sixty sexual aggressions against indigenous and peasant women by members of the armed forces within the last five years, especially concentrated in the states of Guerrero, Chiapas, and Oaxaca (precisely the states where there is great organizational activity and significant movements in resistance against dispossession and militarization).

From a patriarchal ideology that continues to consider women as sexual objects and as depositories of the family's honor, actions like rape, sexual torture, and bodily mutilations of indigenous women are seen as an assault on men of the enemy group; they are a form of colonizing their territories and resources. However, it is important to remember that this semantic of violence pervades not only the dominant groups but also society as a whole.

Organized indigenous and peasant women have responded to this counterinsurgency strategy by denouncing it in national and international forums. Their voices have come to destabilize the patriarchal semantics that attempt to utilize sexual violence on their bodies as a form of colonization. The leaders of OPIM, Inés Fernández Ortega and Valentina Rosendo Cantú, have opted to take their cases before international justice because of the lack of response

to their demands on the part of the Mexican judicial apparatus. The Inter-American Court of Human Rights has not only been a space for pursuing justice, but also, through the process of lawsuits, new political alliances have been formed and new women's leaderships have been consolidated.

In the cases of Inés Fernández Ortega and Valentina Rosendo Cantú, their cultural identities and their peoples' history have marked the specific manner in which these women lived through their rapes and their consequent search for justice. Both women have begun to organize around their rights and those of their people. Their rapes interpreted and lived by them and their families from the standpoint of historical memory relate the presence of the army and security forces to the violence and impunity experienced in their regions. The rapes and torture experienced in the framework of recent history form part of a "continuum of violence" that has marked the relationship of the indigenous peoples of the region with the Mexican army. As I analyze in chapter 4, this culturally-situated interpretation of their rapes as part of a series of community grievances has resulted in demands for collective compensations that include the demilitarization of the mountain region of Guerrero, where the Me'phaa communities are located.

Contrary to the demobilization effect often caused by repressive violence, these women's response has been a greater organization and strengthening of leadership. They have appropriated human rights discourses whereby their specific rights as women directly relate to the collective rights of their peoples.

While Inés and Valentina have utilized human and women's rights discourses in spaces of international justice, they have destabilized the liberal rights discourses that view rape only as an individual's problem. In this sense, their legal performances have contributed to the construction of subjectivities that reject the liberal conceptions of personhood. Their experiences contrast with the construction of subjectivities described by Sally Engle Merry in the cases of women who decide to denounce domestic violence in Hawaii, where the state's law constructs them as "free and autonomous subjects" who elect the rational option of using legality instead of maintaining family ties and preserving the "honor" of the family (Engle Merry 1995).

Among the compensations claims before the Mexican state is the construction of the Me'phaa Women and Men's Rights Center. It will have as its principal objective the creation of spaces for collective reflection in order to analyze the different levels of violence that exist in the region and promote indigenous and gender rights.

The lesson these experiences have taught us is that, in order to undo the neocolonial strategies of violence toward indigenous and peasant women, it is not enough to denounce the complicity between transnational capital and the processes of accumulation by dispossession. It is also necessary to change the set of shared meanings that conceive of women's bodies as a disputed and controllable territory, the epicenter of masculine power. The patriarchal complicities between neoliberal power and social movements must be deconstructed in order to break the chain of signifiers that allows the rape of women to be messages in patriarchal semantics. In many of the organized spaces analyzed in this book, indigenous women are reflecting on the use of sexual violence as a tool for counterinsurgency. New gender discourses are destabilizing the patriarchal meanings of the female body in indigenous movements. To name sexual torture, and to link it to distinct forms of state violence (as well as other strategies of dispossession and accumulation), is one way of breaking with the patriarchal meanings that have been constructed upon the violation and occupation of organized women's bodies.

THE CONTENT OF THE BOOK

The chapters that form this book systematize my experiences of twenty-five years of research and activism with indigenous women's organizations. During these years, I have learned to widen my concept of gender justice and to question many of my liberal premises on rights and emancipation. These intercultural dialogues have taught me important lessons about how to decolonize my own feminism and have led me to question the manner in which I understand resistance to patriarchal powers in contexts of neoliberal globalization.

This book is a product of a long academic trajectory during which I have participated in various individual and collective projects whose common denominator was a concern with access to justice for indigenous women and their appropriation of rights discourses. The various chapters reflect my own theoretical, political, and methodological search, from my perspective of "awareness raising" through feminist activism in the late 1980s to my recent work in dialogic, collaborative research with incarcerated indigenous women. Despite the differences in time and space among the various chapters, three theoretical axes traverse the book: the vernacularization of rights discourses, the hegemonic and counterhegemonic uses of legality by the state and indigenous women in

contexts of legal pluralism, and the limits of resistance in the context of neoliberal governance strategies and state violence.

Since the late 1980s, I have participated in different legal activist processes from a dual position as a feminist and as a critical anthropologist who recognizes the limitations of liberal discourses on rights. In the 1980s and 1990s, as member of a feminist organization that runs a center for women and children who are victims of violence, I participated in the legal and educational services delivered by this organization. Through this experience, I learned from our practice the possibilities and limitations of the justice system in relation to violence against women.¹⁴ At the same time, my dialogues with indigenous women's organizations in different regions of Latin America have led me to question the ethnocentric perspectives of urban Latin American feminisms and to search within decolonial theories for some epistemological guidance to rethink my own feminism.

The collaborative research projects "Indigenous Women Between Positivist Law and Community Justice in the Highlands of Chiapas" (1998–2000) and "Old and New Spaces of Power: Indigenous Women, Collective Organization and Resistance in Guatemala, Mexico and Colombia" (2002–2005)¹⁵ were formulated in these periods of my feminist activism and contribute to chapters 1, 2, and 3. The objective is to analyze indigenous women's appropriation of discourses on rights, the development of their own conceptualizations in relation to a dignified life, and how spaces are used within state and community justice in their struggle against violence.

Thus, I began to develop the theme of collaborative or activist research from a project on state law and communitarian justice in the highlands of Chiapas, and it has been my methodological approach in later projects, documented in chapter 1 of this book. Similar concerns led me to work with María Teresa Sierra on the project "Globalization, Indigenous Rights and Justice from a Gender and Power Perspective: A Comparative Proposal" (2006–2010). In this project, we addressed "the transformation of the relationship the state has with the rights of indigenous peoples from the privileged view on the dispute over rights and justice in times of intense changes marked by neoliberal globalization, multicultural politics and the processes of political transition which affect the nature of the state and society in Mexico and Guatemala" (Sierra, Hernández, and Sieder 2013, 13). At the beginning of this project, our concern centered on the impact of multicultural reforms in the area of indigenous justice.

However, in the course of our research, fundamental changes came about in the relationship between the Mexican state and the indigenous peoples, displacing the multicultural discourse for discourses on development, national security, and the war against drug trafficking (changes that impact indigenous women and men in a differentiated manner). The 2008 penal reforms in Mexico criminalized social protest and specifically impacted the organized indigenous population; these new state reforms forced me to return to an analytical focus on the state's justice. This analytic focus, in turn, led me to propose that we were witnessing a transition from a "multicultural state" to a "penal state" (Hernández Castillo 2013, 299–335), necessitating a case study that explores the relationship of indigenous women to the penal justice system.

In this context, I found a new space of feminist activism by participating in a literary workshop for incarcerated women and by contributing to the formation of their Sisters in the Shadows Editorial Collective of Women in Prison (*Colectiva Editorial de Mujeres en Prisión Hermanas en la Sombra*). In chapter 1, I give an account of the methodological strategies developed in this new collaborative project. The life histories of indigenous women written by the incarcerated women themselves (see appendices 2, 3, and 4), and the creation of spaces for collective reflection focused on the experiences of exclusion, were the basis of the intercultural dialogues that inform chapter 5.

My path of legal activism led me to participate in the elaboration of an expert witness report at the petition of the Inter-American Commission on Human Rights (IACHR) and the Center of Human Rights of the Mountains of Guerrero Tlachinollan. The case was *Inés Fernández Ortega v. México*, presented in April 2010 before the Inter-American Court of Human Rights. The experience of this lawsuit gave me the opportunity to analyze a third space of justice, which until now was outside of my study of penal and community justice in indigenous regions: the space of international justice.

The project "Women and Rights in Latin America: Justice, Security, and Legal Pluralism," coordinated by my colleague Rachel Sieder, allowed me to document and analyze this experience in the framework of a collective project that included case studies from Bolivia, Guatemala, Ecuador, Colombia, and Mexico. Chapter 4 is the product of this project and enriched by the theoretical debates we had in the permanent seminar, "Gender and Legal Pluralism," that we organized at the Center for Research and Advanced Studies in Social Anthropology (CIESAS) from 2010 to 2013. The analyses of indigenous justice

done by Sieder in Guatemala and Leonor Lozano in Colombia contributed in a fundamental manner to chapter 3 on indigenous justices (Lozano forthcoming; Sieder forthcoming).

The context of legal pluralism in which the indigenous women of Mexico, Guatemala, and Colombia develop their struggles for justice, and appropriate or negotiate the discourses of rights, reveals the political creativity with which women are responding to the discourses of power of the state and to hegemonic discourses within their own communities and organizations. These polyphonic discourses come from distinct political genealogies and reveal contradictory consciousness that in many ways reproduce hegemonic perspectives on the “socially appropriate feminine activities,” while at the same time allowing for the construction of new meanings on culture, justice, and rights. In this sense, to recognize the construction of new subjectivities by discourses of power does not imply rejecting the possibility of constructing, from this contradictory consciousness, political projects that point toward social justice.

In chapter 1, entitled “Activist Research on Justice and Indigenous Women’s Rights,” I discuss the importance of activist research not only as a methodological tool but as a new epistemological path for the collective construction of knowledge in alliance with indigenous and women’s movements. I also refer to the challenges of legal activism in the framework of neoliberal multicultural states in Latin America. This chapter discusses my process of learning and the challenges I have encountered in almost thirty years of collaborative research and legal activism in the area of gender justice, as well as describing the methodological bases that orient this book’s chapters.

In chapter 2, “Multiple Dialogues and Struggles for Justice: Political Genealogies of Indigenous Women in Mexico, Guatemala, and Colombia,” I reconstruct the history of the processes of organization that have created new political identities and new discourses and practices in relation to indigenous and women’s rights in Mexico, Guatemala, and Colombia. From bibliographic and hemerographic research that has included internal documents elaborated by the indigenous women’s movements, the use of oral history,¹⁶ and the ethnographic register of several organizational spaces, I reconstruct the dialogues of power that have constituted these new forms of being indigenous and the struggle for social justice through the appropriation of the discourses on rights.

In chapter 3, “Indigenous Justices: New Spaces of Struggle for Women,” I analyze the possibilities and limitations of communitarian justice spaces for indigenous women. The acknowledgement of the so-called indigenous com-

munity law (what is known as Tribal Law in the United States) by the majority of the Latin American constitutions has meant changes in the spaces of communitarian justice in indigenous regions. Based on ethnographic research, I will examine the appropriation of community justice spheres by organized indigenous women in Mexico, Guatemala, and Colombia and their reinvention of indigenous law from a gendered perspective in the context of the new multicultural reforms.

In chapter 4, “From Victims to Human Rights Defenders: International Litigation and the Struggle for Justice of Indigenous Women,” I reflect on the possibilities and limitations that come with international lawsuits to understand how indigenous women appropriate discourses of rights in international spheres of legal activism. After having approached the challenges faced by women in spaces of communal indigenous justice, I am interested in including another level of inter-legality that arises in the scope of international justice. Based on the analysis of the cases of Inés Fernández Ortega and Valentina Rosenda Cantú, before the Inter-American Court of Human Rights, my aim is to approach the way in which violence, racism, and gender inequalities affect the lives of indigenous women and determine their lack of access to justice.

In chapter 5, “Penal Justice: Incarcerated Indigenous Women and the Criminalization of Poverty,” I analyze the other side of the multicultural reforms: the effects of the penal reforms on access to justice for indigenous women. Centering my analysis on the Mexican context, I examine the experience of indigenous women in the sphere of criminal justice. I explain the recent changes in the relationship between indigenous peoples and the Mexican state in what I call a transition from a “multicultural state” to a “penal state.” I analyze the way in which the official discourse has abandoned multicultural rhetoric and adopted one of development and national security, with matching legislative reform that criminalizes poverty and social protest. I then offer a national perspective on indigenous women and federal penal justice to focus on the experiences of imprisoned women at two correctional institutions—called Female Social Correctional Centers (*Centro de Readaptación Social*—CERESO) in Mexico: one in San Miguel, in the state of Puebla, and another one in Atlacholaya, in the state of Morelos.

The book ends with a “Final Thoughts” chapter, which I intentionally chose not to call “Conclusions” because, rather than the conclusions of a positivist research study, what I put forth are some reflections on the contributions that indigenous women’s struggles are making to Latin American feminisms and

gender justice in the Americas. Their theoretical and political lessons have been fundamental to rethinking Latin American feminist anthropology from new, decolonizing perspectives.

Getting closer to the discourses and practices of indigenous women in their struggles for justice has not been for me only an academic curiosity or a compliance with a research objective. Rather, I consider that the intercultural dialogues in which I participated through the frameworks of these different projects are a fundamental step to constructing political alliances based on the recognition of difference. To speak of feminisms and women in plural, and to recognize the differences among us should not imply an impossibility of seeing our similarities. Our diverse struggles develop in the same global context of economic domination that influences local powers and resistances.