

# ***Between the Dock and a Hard Place: Hazards and Opportunities of Legal Pluralism for Indigenous Women in Ecuador***

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## ABSTRACT

This article examines the challenges and opportunities of indigenous justice for women in Ecuador. The legal recognition of indigenous justice is a major component of democratization in the region. Yet it also raises the risk of institutionalizing detrimental gender biases within indigenous forms of law. Taking the Remache case as a point of departure, this article identifies some of the fault lines in legal pluralism and women's conflicted relationship with it. Rather than rejecting customary law, however, women advocate for their rights within it—lobbying for gender parity within indigenous justice in the 2008 Constitutional Assembly. As women's support for indigenous justice relocates legal authority, it also challenges conventional practices of state sovereignty. To understand the attractiveness of legal pluralism for women and its impact on the state, this study explores the confines of feminist alliances, the accessibility of indigenous justice, and its implications for state sovereignty.

On January 24, 2006, the Pachakutik congressman and president of Ecuador's National Human Rights Commission, Estuardo Remache, was charged with domestic violence. He was accused of severely beating his partner, Lucrecia Nono, for proceeding with contraceptive surgery without his consent. Remache, who never appeared before the relevant *Comisaría de la Mujer*, requested that the case be dismissed and that the matter be addressed through traditional indigenous justice in his community.<sup>1</sup> After seeing her children forcibly removed from her and her family members suddenly fired from their jobs, the victim presented herself at the local police station, accompanied by Remache's brothers, to drop all charges. In these and other particulars, the Remache case vividly illustrates the vulnerable situation of indigenous women stuck between two unjust legal systems.

The consolidation of legal pluralism throughout Latin America has generated much analysis and debate. A growing body of literature explores the kaleidoscope of meanings and opportunities embedded in indigenous justice (Van Cott 2000; Sieder 2002; Goldstein 2003; Sierra 2005;

Speed 2008; Goodale 2008; Faundez 2005; Couso et al. 2010). Most states now recognize some degree of customary law, and at the international level, the initial achievements of ILO Convention 169 were complemented by the 2007 U.N. Declaration on the Rights of Indigenous Peoples.<sup>2</sup> Slowly but surely, legal pluralism has become enshrined in constitutions across the region, gaining political legitimacy in—and against—the state.

The Andean region, in particular, has been in the vanguard in forging multicultural states, pressed by ethnic mobilization or acute democratic deficits (Van Cott 2005; Postero 2007; Lucero 2008). After Colombia first constitutionalized indigenous justice in 1991 (Art. 246), Peru moved toward legal pluralism in 1993 (Art.149), and Bolivia's 1994 constitutional reform further developed Colombia's legal language (Art.171). Ecuador and Venezuela followed the lead, recognizing indigenous judicial autonomy in 1998 (Art.191) and 1999 (Art. 260). Within a decade, the Andean region had normalized indigenous justice, enhancing indigenous self-determination and confirming the legitimacy of ethno-politics. Yet legal pluralism also opened gray areas. It shed light on violent indigenous practices, revealing inner discrepancies as well as tensions with the ordinary justice system. A number of debates arose questioning the legitimacy of indigenous justice. On the one hand, resolutions leading to physical punishment were seen as cruelty, and at times, cases of popular lynching were mistaken for indigenous justice (Goldstein 2003; Godoy 2006). On the other hand, inadequately defined borders between ordinary and indigenous justice politicized questions of authority (Faundez 2005, 2010; Colloredo-Mansfeld 2009).<sup>3</sup>

Perhaps one of the major fault lines of indigenous justice in Latin America is gender inequality. Despite an emerging literature in the region (Sierra 2008; Pequeño 2009a; Cumes 2009; Sieder and Sierra 2010), gendered analyses remain an inner fissure that has yet to be tackled. Scholars have dedicated effort to understanding the patriarchal and racist oppressions at play against indigenous women, as well as their struggles for resistance (Richards 2004; Speed et al. 2006; Gutiérrez Chong 2007; Andolina and Radcliffe 2009). Building on the broad literature that engages tensions between culture and gender (Benhabib 2002; Phillips 2003; Song 2007), this analysis contributes an empirically grounded methodological approach. This case study of the impact of indigenous justice on women in Ecuador, where the indigenous movement has powerfully entered the political arena (Yashar 2005; Zamosc 2007), argues that culture can be at once a hazard and an opportunity, depending on who defines and controls it.

Indigenous justice in Ecuador deals predominantly with cases of family law, in which women's rights and sexuality tend to be more vulnerable to patriarchal norms. The Remache case exemplifies how indigenous justice can be used to protect powerful interests to the detri-

ment of women. Although feminist scholars have contested the impact of customary law on women's human rights (or lack thereof) (Okin 1999; Nussbaum 2001; Volpp 2001), women on the ground often defend local systems of justice. Rather than resisting customary law, women tend to support, refine, and reinforce it (Otzoy 2008; Basu 2010). Are indigenous women defending legal systems detrimental to their rights as women? During my years of fieldwork in Chimborazo, I was puzzled to find indigenous activist friends consistently supporting Nono and indigenous justice. What seemed contradictory to me was perfectly consistent to them, making me realize that although we shared common goals, our understanding of how to achieve them differed greatly.

Our surprises reveal our assumptions. They also invite engaged curiosity. As a political scientist, my concern for examining indigenous quests for gender justice is anchored in the need to understand the local articulation of international norms without flattening generalizations. Women encounter high trade-offs as they navigate the troubled waters of legal pluralism, yet despite the undeniable gender bias, they locate their struggle within ethnicity. In the process, they contest state authority over justice and legitimate new locations of authority (Sassen 2006). Weaving comparative politics with ethnographic research, this interdisciplinary analysis brings gender into legal pluralism to claim that the politics of justice are reconfiguring sovereignty.<sup>4</sup>

Rather than a study of how indigenous justice does or does not work, this article should be approached as an exploration of the politics of indigenous justice. Although it encompasses ancestral elements, indigenous justice is a new politics. As such, it is a terrain of struggle that provides opportunities for different actors to experiment with new possibilities. It is, following the formulation proposed by William Roseberry (1994), a "language of contention." The very public Remache case and the 2008 constitutional reform are specifically selected as contrasting cases of how indigenous justice emerges as a contested political terrain for making visible political aspirations and deficiencies beyond ethnicity.

This analysis echoes Greta Gaard's (2001) insightful distinction between "ethical contexts" and "ethical contents." One may strongly endorse the "ethical contexts" of indigenous judicial autonomy while maintaining a critical stance of certain dynamics at play within those contexts. The goal of this essay is not to offer conclusive evidence of the value of indigenous justice, but rather to contribute to an emerging interdisciplinary research agenda that illustrates the centrality of gender and ethnicity to comprehending the challenges of democratic forms of politics.

The analysis that follows examines a number of critical hazards and opportunities of indigenous justice for women in Ecuador. It focuses on the political borders of justice to better assess reconfigurations of legal authority. First, the Remache case offers an insight

into the politics of indigenous justice, revealing how pluralism can legitimate violent practices and highlighting the borders of justice as a main point of contention. The second part of the article identifies some of the fault lines within state and indigenous justice systems as they now stand in Ecuador. The analysis then explores women's negotiations of culture and human rights through their advocacy for gender parity during the 2008 constitutional reform. In the attempt to reform communal justice, a grassroots organization of indigenous women in Chimborazo successfully lobbied Congress to adopt a clause on gender parity for laws on indigenous justice and collective rights. In conclusion, this study offers three ways to understand the attractiveness of legal pluralism: the fault lines of feminist strategies; the accessibility of local, indigenous justice; and its challenge to traditional locations of sovereignty.

### **THE REMACHE CASE: FROM HUMAN RIGHTS LEADER TO WIFE BEATER**

In addition to being the head of the government's human rights efforts, Remache was a celebrated leader of Ecuador's multiethnic democracy. His political leadership dated back to grassroots organizing in the province of Chimborazo in the 1980s. Starting as a local leader, he became a national figure of authority after being elected Pachakutik congressman in 2005.<sup>5</sup> After gaining regional visibility as leader of Chimborazo's indigenous movement (1996), Remache steadily climbed the ladder in the national indigenous movement, first as president of ECUARUNARI in 2000, then in the Pachakutik political party.<sup>6</sup> By 2006, when he was nominated for president of the Human Rights Commission of Congress, Remache had become a symbol of inclusive, multicultural democracy, and represented the mainstreaming of ethnopoltics.

Remache was charged at the *Comisaría de la Mujer y de la Familia* of Riobamba, Chimborazo, with physically and psychologically abusing the mother of his children. María Lucrecia Nono, then 28 years old, had been Remache's partner for 12 years and had five children with him, ages 10, 8, 6, 4, and 2. Multiple police reports detail the nature and the extent of the violence perpetrated by Remache against Nono: photos of bruises and black eyes accompany descriptions of repeated verbal, psychological, physical, and sexual aggressions. During 2006, Remache's partner presented herself three times at the special police station for women seeking help against domestic abuse.<sup>7</sup>

Each report indicates a history of multifaceted abuse. The first report identifies the contraceptive surgery as the starting point for sustained violence. Remache accused his partner of being a "whore" and a "woman of comfort" for undertaking the surgery without his con-

sent. Psychological violence was followed by beatings, forced sexual relations, and tight control over Nono's social interactions. The second and third reports reveal more structural and systematic forms of violence. Nono was locked in the house and forbidden to see family and friends, blackmailed, and forced to give up work outside the home. Nono reports increasing vulnerability to Remache's position of power in the community as a politician, being repeatedly accused of infidelity and sexual promiscuity, whereas Remache engaged publicly in extraconjugal affairs. At the time of her last complaint, in October 2006, medical and photographic evidence supported descriptions of severe physical abuse, such as kicks in the stomach and punches in the face.

In the wake of the charges brought against Remache came some immediate political costs. Ecuador's Forum of Parliamentary Women, then composed of all 19 women serving in Congress, expressed indignation and called for Remache's removal as president of the Human Rights Commission. After losing the presidency, he was suspended from Congress for 60 days. Remache kept a low profile as newspapers covered the story for a few days. The Pachakutik Party let the affair go, yet Remache embodied a momentary embarrassment that hindered the legitimacy of ethnopolitics.

Nono went to the *Comisaría* seeking the protection she did not receive in her community. Whenever Nono tried to report violence in the community, she was told that this was a personal matter to be solved within her home. Yet she found little support to secure her well-being. Instead, taking charges to the ordinary justice system led to strong reactions in her community of Chaupi Pomalo, parish of San Juan, where leaders sided with Remache to ostracize her. In February 2006, community members joined Remache's brother, Edy Remache, to impede Nono and a defense team composed of five police officers, a human rights lawyer from the *Defensoría del Pueblo*, and a journalist from entering her home. The police were able to verify only that all five children were in good health.

As a tumultuous crowd kept the children from running into their mother's arms, the small defense team became surrounded and increasingly impotent. Mauricio Yañez, Remache's lawyer in the village, rejected the authority of the *Comisaría* under Article 191 of the constitution. He reiterated Remache's core argument: "indigenous peoples exercise functions of justice applying their own norms and proceedings to conflict resolution" (Expediente 182/06, 17). After much negotiation, it was agreed that the smallest child, 2-year-old Inti Alexander, would be returned to his mother while the other children were kept in their father's family. The police team left the village unable to secure Nono's legal rights to see her children or enter her home.

In the aftermath of the complaint at the *Comisaría*, Nono's father and brother were fired from their jobs in the municipality, increasing economic stress on her family. She reported being pressured by her inlaws to drop all charges if she ever wanted to see her children again. Isolated, menaced, and harassed, Nono returned to the police station accompanied by Remache's brothers a week later to drop all charges. The tone of the declaration does little to hide its purposes. Rejecting the validity of ordinary justice, it accuses the *Comisaría* of violating family honor and intimacy by letting a private matter become a national spectacle. The text blames Nono's lawyer for procedural mistakes, such as forging her signature to proceed with her defense without her consent and bypassing the "good intentions of the community," which was willing to use Article 191 to solve a problem that "could happen to anyone anywhere." The lawyer is personally accused on multiple fronts: her professionalism and ethics are questioned for letting "a small and domestic problem" become a political issue, and her strategy to advocate individual rights over communal justice is classified as "obsolete" and part of "orthodox judicial norms" (Expediente 268/06). To conclude, the text announces that community leaders, together with 65 heads of household, met with both parties to solve their conjugal differences in "the most humane and natural" fashion in the parties' native language, Kichwa.<sup>8</sup>

After this coerced declaration, Nono came back twice to denounce more domestic abuse at the *Comisaría*. She struggled until October 2006, after which she gave up on a lengthy, inefficient judicial process that seemed to put her at risk more than provide her security. At last, she abided by her community leaders' directives to reject the state legal system and resume the relationship. Finding no judicial system to protect her or hold Remache accountable for violent behavior, Nono had few alternatives. Divorce is not a common practice in communities of the Ecuadorian highlands, nor were there viable options to support her family outside the community. Hemmed in by cultural and economic pressures, Nono felt compelled to return home.

As the case grew public, attention moved away from domestic violence to focus on which legal system should have jurisdiction. Remache's claim that ordinary justice had no legitimacy over indigenous conjugal issues was repeatedly used to transfer the case from ordinary to community justice. The defense consistently called for the independent authority of indigenous justice as recognized in the constitution. A national debate emerged in the media on the extent, borders, and authority of indigenous justice. While some indigenous leaders played ostriches burying their heads in the sand, others publicly voiced their support for Remache.

Lourdes Tibán, then president of the Council for the Development of the Nationalities and Peoples of Ecuador (CODENPE), stands among

the few visible women in the indigenous movement leadership.<sup>9</sup> As the head of CODENPE, she became a powerful voice for indigenous issues, echoing Ecuador's unique history of indigenous women leaders, from Dolores Cuacuango to Nina Pacari. A lawyer who had defended indigenous justice as strategic autonomy, Tibán publicly supported the authority of communal justice over the case, calling on ordinary justice to stay out of culture. Instead of using her visibility to tackle the problem of domestic violence, however, Tibán played party politics, backing Remache's impunity. Turning a blind eye to gender-based violence (and Nono), she went out of her way to pressure Riobamba's *Comisaría*, threatening in person to close the police station if the case was not dropped. Her efforts to protect the public persona of Remache and preserve party legitimacy were not matched by any support for the victim or acknowledgement of the pervasive violence women endure in rural areas. Blaming the victim, she condemned the events as an attempt to undermine a Pachakutik congressman.

Remache's strategic defense reveals how indigenous justice can be used as a tool to shield the accused from accountability instead of protecting victims.<sup>10</sup> Indeed, the defense focused not on domestic violence but on transferring the case to indigenous courts. Remache's strategy was to call for indigenous peoples' rights to autonomous justice systems, secured by both the 1989 ILO 169 Convention and the 1998 Constitution.<sup>11</sup> Exploiting indigenous legal frameworks as an instrumental means of being judged in the community, the defense arguments put forward in police reports blend culture and privacy to stress the authority of indigenous justice. In addition, the president of CODENPE, a woman, not only kept quiet on the problem of domestic violence within indigenous communities, but actively fought the few institutional mechanisms available.

Remache's confidence in the matter was tangible during an interview after he resumed his activities as congressman. Questioned about domestic violence in indigenous communities, he furrowed his brow to acknowledge the problem but blamed violence on colonization, taking the conversation to ethnic discrimination in a quick turnabout. Tibán, in contrast, cut the interview short, declaring that gender inequality was history; as CODENPE's minister, she was living proof that indigenous women now stood on equal ground with men.

The problem with the outcome of the Remache case is not the nature of indigenous justice per se. Rather, it is the political power embedded in its practice and the abuse of judicial interfaces that undermines mechanisms of accountability in the face of violence against women. The Remache case, which took place in a province marked by a history of violence and high levels of poverty and inequality, coexists with the variety of indigenous justice practices documented in ethno-

graphic research. Indigenous peoples constitute an extremely diverse, nonhomogenous group, and there are as many systems of justice as there are ways of being indigenous. Yet they all face the challenge of distinguishing among overlapping legal authorities. Remache himself, at once located within indigenous law and vested with state authority as a congressman, reveals the difficulty of isolating competing systems of authority. This case is emblematic of how judicial fault lines may fail to address, and may even exacerbate, violence against women.

## **JUDICIAL FAULT LINES: USES AND ABUSES OF LEGAL PLURALISM**

Violence against women is not exclusive to indigenous peoples, nor is Remache the first politician to have committed violence against a partner. Domestic abuse is common across societies, and comes in myriad forms. What is specific to indigenous women is their vulnerable position at intersections of gender inequality with racial discrimination, which conflate to create a specific geography of oppression (Crenshaw 2001). Indigenous women find it hard to protect their rights in both ordinary and indigenous justice systems (Sieder and Sierra 2010). Ordinary justice might have a normative framework based on gender equality, but in practice it is inefficient, costly, and discriminatory. Indigenous justice is accessible, immediate, and geared toward reconciliation, yet it tends to silence cases of domestic and sexual violence. When seeking redress from violence, indigenous women are often caught between the dock and a hard place.

### **Exclusionary State Justice**

It is quite problematic for indigenous women to take cases of domestic violence to the ordinary justice system. A first obstacle is that of access (Pequeño 2009a). Specially designed to deal with intrafamily violence, *Comisarías de la Mujer y la Familia* are the core of state policy to address domestic violence. Their geography, however, is strikingly unequal. The 31 *Comisarías* that spread across 19 provinces in 2008 were clustered in larger cities: 4 in Guayaquil, 3 in Quito, and 2 in Cuenca. Five rural provinces, most of them with large indigenous populations, still have no *Comisaría*: Cotopaxi, Napo, Morona Santiago, Galapagos, and Santa Helena.<sup>12</sup>

There is a strong correlation between indigenous presence and the absence of *Comisarías*; the poorer the province, the fewer state institutions and the least access to the judiciary. Police presence, already limited and ill-equipped to address cases of domestic abuse in urban areas, is either absent or incompetent to protect women in the rural highlands.

Only 11 percent of women who use the *Comisariías* reside in rural areas. Chimborazo's sole *Comisaría* is located in the province's capital, Riobamba, and has authority only over its immediate parish. Because Riobamba encompasses the parish of San Juan, where Remache resided, Nono was able to use it as legal recourse. Yet most indigenous women reside beyond the reach of *Comisariías*.<sup>13</sup> In most contexts, ethnic and gender discrimination coalesce to create even stronger disincentives to report abuses.

A second problem with ordinary justice is that of producing (or not producing) a result. The widespread inefficiency of the judiciary in Latin America is a major challenge to democracy, and despite the long, unfinished road toward reform, it continues to hamper state legitimacy (Seligson 2008). Violence against women is particularly vulnerable to judicial impunity and discontinuity. More than two-thirds of the victims in Guayaquil reported that violence continued in the immediate aftermath of filing their charges. Nationally, a mere 11 percent of the cases brought to the *Comisariías* result in a sentence or resolution, only 8 percent result in conviction, and 2 percent of victims get compensation (Camacho and Jácome 2008).

Indigenous women probably experience judicial inefficiency in its most negative and condensed form.<sup>14</sup> According to Delia Caguano, a leader from the parish of Quimiag, Chimborazo, there is little incentive to report domestic abuse to a *Comisaría*. She believes that authorities treat women with disdain, do not provide good services, and do not follow up cases properly. Indigenous women receive little or no medical attention or further protection from their aggressors. Women often seek state justice to increase their leverage in the home rather than to punish men. In fact, aggressors are rarely arrested. When they are, the short jail time for domestic abuse varies from a couple of hours to seven days, which means that the abusers often come home filled with anger. Many women are afraid of denouncing their aggressors, and police officers themselves make women aware of potential aftermath problems before they file a complaint. Although more than 40 percent of married women report domestic violence, less than half of them seek institutional help (ENDEMAIN 2004). Taking cases of domestic abuse to ordinary justice is often considered a waste of time, money, and energy.

The geography and functioning of *Comisariías* indicates that they are not accessible to most indigenous women, suggesting that they were not designed for them in the first place. Most often, the legal tools available *de facto* to women are indigenous systems of justice. But there, too, women have a hard time getting their needs met.

## Gender Biases in Indigenous Justice

Indigenous justice provides many benefits—democratized access to justice, fast resolutions, no ethnic discrimination—though gender justice is not one of them (Cumes 2009; Pequeño 2009b; Zolezzi 2009). Its valuable focus on reconciliation and dialogue often comes at the expense of women's well-being. The Remache episode makes a valuable case study in that it illustrates core challenges to indigenous justice as it now stands in Ecuador. First, there is patriarchal bias in the exercise of rulings that are detrimental to women. Second, the indigenous leadership can be sexist, covering up gender-based violence. Third, indigenous justice is used and abused, instrumentalized according to need. Fourth, poorly defined borders between state and communal justice create authority gaps and overlaps. Finally, the current state of indigenous justice enables opportunities for arbitrary, politicized outcomes.

One challenge made tangible by the Remache case is how patriarchal culture affects indigenous justice. Gender discrimination is a challenge to justice systems around the world, and indigenous justice is not immune to this trend (Otzoy 2008). Cristina Cucuri (2007) exposes how common sexual and domestic violence are, and Andrea Pequeño (2009a) shows that violence continues to be treated as a minor problem to be silenced or resolved in the home. When cases are brought to the community, women are judged by men in accordance with patriarchal structures, and are vulnerable to social sanctions if they become “bad wives” (Sieder and Sierra 2010). It is not uncommon for cases of domestic abuse to be ignored in community affairs or for a community to shame, marginalize, or punish the victim instead of the aggressor. The problem is twofold: indigenous justice tends to be biased against women, and it is often used to deal with conjugal issues. Although Mariana Yumbay, the only indigenous female judge in the Supreme Court of Justice in Bolívar, supports indigenous justice, she worries that conjugal problems of adultery make up a disproportionate amount of justice rulings among neighboring indigenous communities (Yumbay 2010).

Echoing longstanding debates between multiculturalism and gender equality (Nussbaum 2001; Volpp 2001; Benhabib 2002; Deveaux 2009), the Remache case embodies the political use of claims to cultural autonomy by certain members of the community. Departing from Susan Okin's controversial observation (1999) that culture can reinforce gender hierarchies, Sarah Song (2007) more recently has suggested an interactive view of culture in which minority cultures inevitably incorporate some aspects of majority norms. Cultures are never whole or static. Like justice, culture is historically negotiated and constructed. Indigenous culture is neither homogenous nor unitary but multiple, at times hierarchical, and always evolving in context, configuration, and

articulation. Cultures reinvent themselves from within and reform to adapt to changing realities, trading ideas and reshaping institutions along the way.

Following Song's thesis, if indigenous cultures were ever free of violence against women, centuries of colonization have forced enough interaction for native cultures to inherit gender inequality from the patriarchal majority culture. Indigenous women recognize this colonial inheritance by emphasizing "good" customs in Chiapas and framing gender within *cosmovisión* in Guatemala (Sieder and Macleod 2009). In Ecuador, women focus on the practical dilemmas of access to justice, while it is the indigenous leadership that strategically mobilizes pre-colonial notions of gender complementarity. It is because current practices of indigenous justice can be gender-biased that women's struggles for justice are claiming gender equality within culture (Cumes 2009). Just like state forms of law, indigenous justice must tackle gender inequalities if it is to produce fair, democratic societies.

A second challenge lies in the inequality that permeates Ecuador's modern indigenous movement. The Remache case illustrates the institutional double standard when it comes to human rights. Whereas the state is continuously pressured to respect international women's rights standards, indigenous leaders were quick to hide behind customary law while the movement let the case fall into oblivion. Ecuador's indigenous movement is undeniably a pillar in the process of democratization (Van Cott 2008), yet the movement reproduces violence and inequality, especially when it comes to gender (Picq 2008). Indigenous organizations such as CONAIE and Pachakutik have been key actors in the consolidation of inclusive democracy. But the discourse of social justice has so far coexisted with sexism, creating a gap between what the movement preaches and what it practices. The Remache case might have been a politically charged episode but not an isolated incident, echoing gender inequalities in the indigenous movement.<sup>15</sup>

This leads to a third tension, which lies in the uses and abuses of culture (Volpp 2001; Phillips 2003). In the Remache case, indigenous justice was claimed rather than practiced, as the community failed to convene an assembly or give Nono a chance to defend her case. Leaders used—and abused—the autonomy of indigenous communal jurisdiction to bypass accountability to gender norms. Indigenous culture does not stand on its own; it is socially constructed, and its roles are entwined with and part of processes of power. Culture can be invoked to defend interests—collective interests, such as water rights, but also private ones, as illustrated earlier. The contents of culture are always evolving, but the process of negotiation is enmeshed in power inequalities. The problem is not customary justice itself, but who defines the customs, and for what purposes. Culture is largely defined by leaders,

who tend to be men. Certain communities forbid women to participate in assemblies and many maintain double standards (Pequeño 2009b; Vintimilla 2009). When abused, culture can become a tool of impunity. In the Remache case, ancestral procedures were simply not followed, leaving indigenous justice subject to significant power inequalities.

A fourth challenge of indigenous justice is one of permeable, undefined legal borders. Where does indigenous justice start, and where does it end? The Remache case highlights how borders between state and communal forms of justice are vague and porous, leaving room for leverage as well as manipulation. It also shows that competing interests will use competing judicial structures. Nono engaged ordinary justice to claim her basic human rights as a woman because her husband was too powerful for the community to address her case. Domestic violence was overlooked, and Nono was dealing with a powerful congressman; she thought she could have a better chance outside the power structures of her community. Remache, by contrast, defended himself by calling for indigenous justice, knowing his political status gave him greater leverage within his community to solve the case in his own best interest.

The 1998 Constitution recognizes indigenous justice, but its legal structures remain ill-defined. Lack of specific legislation to coordinate state and indigenous law reinforces uncertainty with respect to the sphere of authority of one judicial system or the other.<sup>16</sup> One of the main challenges of judicial pluralism across the Andean region is perhaps that of legal borders, and it raises profound questions of autonomy and calls for a reconceptualization of the exercise of legal sovereignty.

Indigenous justice also faces a challenge of accountability. The Remache case may stand for either the supremacy or the impunity of cultural rights. The flexibility of indigenous justice, which enables contextualization, comes embedded with the difficult management of arbitrary outcomes. Indigenous justice in the Andes is, by definition, oral and contextual, decided on a case-by-case basis.<sup>17</sup> This very strength can also be an opportunity for abuse of power. If women are deprived of political power (Pequeño 2009a), they will be excluded from decisionmaking processes, notably judicial ones. How can customary judicial systems secure fair and due process for women? Whereas proceduralist forms of “due process” in the ordinary legal system generally fail to engage in intercultural negotiations or recognize alternative conceptions of remedy (Sánchez Botero 2009), practices of indigenous justice lack accountability mechanisms when it comes to women’s rights. In Ecuador as in other Latin American countries, indigenous systems of justice must address this deficit to consolidate their legitimacy at the communal level, as well as their authority in regard to state legal systems.

Nono engaged the ordinary justice system as a last resort because she found no support or help in her community. By failing to respond

to the situation, the community gave impunity to her partner, who continued the mistreatment. It undermined the problem of domestic violence, using indigenous justice once Rémache needed it to protect himself from state institutions. It is the context of recognition of semiautonomous jurisdictions that is complex, rather than the nature of indigenous justice alone. When, and for whose benefit, is indigenous justice used? Shannon Speed's persuasive work warns against false dichotomies. Both justice systems fail to protect women; each is sexist and violent, leading indigenous women to seek redress in myriad ways. Some women favor state justice, whereas others, in Cotacachi for instance, entangle indigenous norms with state laws to forge a space of interlegality, blurring judicial borders and creating a third legal space in which the two systems interact (Bonilla and Ramos 2009).

Women's multiple strategies are embedded in political agendas, local opportunities, and structural factors. Whereas Sieder and Sierra (2010) emphasize structural factors to explain indigenous women's access to justice in Latin America, Rousseau (2011) retraces indigenous women's collective action to foster political opportunities in Bolivia. This analysis complements a look at how the politics of indigenous movements shape access to justice for women. It is because they experience firsthand the insecurities of indigenous justice as it now stands that they claim a right to define its content. As contested politics, indigenous justice opens an opportunity to advance political aspirations for equality.

## **GENDER PARITY IN CUSTOMARY LAW**

There are no immediate good options available to indigenous women when it comes to justice. Trapped between two deficient alternatives, they have seized political opportunities to bridge gender and culture. In 2008, as Ecuador was going through a heated constitutional reform, a group of indigenous women from Chimborazo started advocating for gender parity within indigenous justice. If the Rémache case unfolded in a politically charged context, the case of gender advocacy in the constitutional reform indicates a broader trend of dissatisfaction among indigenous women that resulted in strategic politics. Let us now retrace women's mobilization to bring international gender norms into judicial pluralism, the challenges they encountered, and their quest for a more diverse democracy.

### **Chimborazo Women Lobby the Constitutional Assembly**

It is hard to overemphasize indigenous women's historical distrust for state institutions, judicial ones in particular. So it should be no surprise

if they locate their battle for equality within their own communities rather than with the state. Bringing gender equality into customary law is a growing concern among indigenous women that started being addressed regularly in civil society spheres across the region. One such instance was UNIFEM's 2008 conference on indigenous women and ancestral justice in Quito, which gathered dozens of women (and some men) from all over Latin America to systematize information and identify strategies for action.

Throughout the event, women defended community justice and emphasized their role in it, contesting their systematic exclusion from decisionmaking positions. They expressed concern that most indigenous justice systems were not addressing violence against women in a satisfactory manner because the vast majority of the judges were men. Denouncing the frequent "cover up of men by men that results in the violation of women's rights" (UNIFEM 2009), they insisted that both ordinary and ancestral systems had the responsibility to secure women's rights and participation in the administration of justice.

Another instance of women discussing their rights was the Twelfth Feminist Encounter of Latin America and the Caribbean, which took place in Mexico in 2009 and counted the largest indigenous presence to date. Claiming cultural rights, women called for the respect of indigenous norms and institutions, emphasizing diversity within their own group. After multiple, heated panels and long brainstorming sessions, the indigenous women present made history by issuing their own declaration and confirming the multiplicity of feminisms in Latin America.

These events reveal the growing participation of indigenous women in public strategizing spheres. While the development of a normative framework secured voices for indigenous women, it was through political processes that their rights would become institutionalized. Ecuador's 2008 Constitutional Assembly provided a political opportunity, motivating a small group of Kichwa women from Chimborazo to lobby for gender parity laws within judicial pluralism and collective rights.

When the *Remache* case exploded onto the political scene in 2006, the *Red de Mujeres de Chimborazo* (Red) had been struggling to bring visibility to domestic violence in indigenous and rural areas. As the case became emblematic, it was no longer possible to deny the problem of domestic abuse in indigenous communities. The case was public enough to motivate Chimborazo's Red to develop strategies to fight the problem. Workshops across the province mapped the extent and nature of violence against women. The sex of judges was a recurrent complaint (Cucuri 2007). Women wanted to participate in the judicial procedures and decisionmaking of communal justice. By the time the constitutional assembly process was announced in 2007, the Red was equipped to elaborate its own agenda. The *Remache* case and the Constitutional

Assembly converged to form a political opportunity structure that enabled a local group of women to elaborate and pursue a project of gender parity within judicial pluralism.

The Red had to lobby for gender parity in indigenous justice on its own. Both the feminist and indigenous polities tend to see the demands of indigenous women as secondary. With little hope of finding support within the indigenous movement, the Red tried to work with the national women's movement, but multiple instances unveiled the secondary status given to its demands. When the Red attended the national women's preassembly meeting, which took place in a traditional Chimborazo hacienda, the owner refused to let them inside the building because they "were dirty." Instead, the Red's delegation stood outdoors to give their agenda to the leadership of feminists who briefly met with them before returning to a heated discussion on lesbian rights indoors. Later the Red's requests did not make it into the women's national plan officially presented to the Constitutional Assembly; they were drowned out by the broad, universal approach to women's rights. Aware of the strong gender bias that had permeated the Remache case, the Red did not bother asking for support in the indigenous movement. The group of about one hundred women, most of them illiterate peasants from the highlands of Chimborazo, mobilized for more than a year, traveling to the coastal town of Montecristi to lobby for parity agenda in the assembly.

Legal support was scarce. The Red found inspiration in the Zapatista Revolutionary Law of Women, but it turned out to be difficult to find specific language to import into Ecuadorian law.<sup>18</sup> After a lawyer told them it was impossible to impose gender norms on exclusive, cultural rights, leaders Cristina Cucuri and Sara Sayay turned to the Bolivian constitution for inspiration. The new Bolivian constitution redistributed rights to indigenous groups, but there was no explicit language on women's rights. The only legal instrument available to support their claim was the 2007 U.N. Declaration on the Rights of Indigenous Peoples, which secures all rights for men and women alike (Article 46).

With this one international norm in hand, Cucuri and Sayay drafted a paragraph on the equal participation of women in the exercise of indigenous justice and presented their proposal to the president of the Constitutional Assembly at the opening ceremony. They were able to reach the committee on justice, winning the support of some legislators. The only indigenous legislator on the committee reacted to the notion of gender parity as an affront, a policy incompatible with collective rights and politically divisive, and opposed its integration into law. Despite the resistance of certain indigenous leaders and the lack of public support from the women's movement, however, the women's lobbying strategy led to fruitful negotiations that resulted in new laws.

Ecuador's 2008 Constitution consolidates the political recognition of indigenous groups, as the state is declared intercultural and plurinational (Article 1) and Kichwa, Shuar, and other indigenous languages are declared official languages of intercultural relations (Article 2). Two articles in particular reiterate indigenous collective rights to resources (Article 57) and legal pluralism (Article 171). In both, the Red successfully lobbied for the integration of gender-specific language. In Article 57, "the state guarantees the implementation of collective rights without any discrimination and in conditions of full equality and equity between men and women." Indigenous justice is given authority to exercise judicial functions based on ancestral law over its own territory, "with the guarantee of women's participation and decisionmaking" (Article 171). While indigenous law continues to be defined at the communal level, the condition to respect constitutional and international human rights now also explicitly mentions gender equality.

### **Democracy with Diversity**

The effort of Chimborazo's Red is notable for its policy achievement: a grassroots organization of indigenous women singlehandedly succeeded in bringing gender parity into the legal recognition of indigenous justice and collective rights in the Ecuadorian Constitution. The Red's efforts are also notable for the deeper political argument advocated. It calls for diversity within democracy, resisting homogenization. Pluralism does not imply consensus, but in our capacity to disagree we must be committed to working together, finding differentiated, attentive solutions.

Women around the world suffer from gender-based violence, but the mechanisms to protect them are diverse (Merry 2006). Domestic violence exists as much in urban, mestizo areas as in rural, indigenous communities. But that same problem materializes in a multitude of formats and contexts and calls for different solutions depending on context. By organizing their own agenda, indigenous women from Chimborazo questioned the homogeneity of state responses to address the multifaceted challenge of gender violence.

As they advocate gender parity within their own ancestral practices, women are also denouncing how gender complementarity is lagging behind (Cucuri 2007). The systemic violence and inequality women endure is increasingly incompatible with the leaders' public discourse on indigenous democracy, tolerance, and gender complementarity. Women's creative contestation of judicial pitfalls is intended to bring universal rights into local culture.

Across Latin America, indigenous women are organizing to secure the translation of international human rights into their vernacular, con-

textual realities. And as they realize that women or ethnic organizations are not representing their interests or addressing their needs, they create their own grassroots initiatives (Speed et al. 2006; Basu 2010). The challenges women face in rural, ethnic areas are contextual and need contextualized political action. In Peru, women in rural areas favor the Rural Nuclei for the Administration of Justice (NURAJ) when courts have women delegates (Faundez 2010). Mapuche women in Chile have long organized to engage feminist identities, although their agenda is strongly anchored in ethnic emancipation (Richards 2004). The case of indigenous women in Ecuador echoes trends throughout the region. Women support indigenous justice, but a justice in which they participate in shaping and implementing the rules of the game. The Kichwa women of Chimborazo support a justice system where they can find *voz y voto*. They know well they must participate in its administration if law is to be fair and representative. If indigenous justice is ethical in context, the Remache case illustrates that gender negotiations are still necessary to make its content equally ethical (Gaard 2001).

Women's advocacy for indigenous justice might appear contradictory in light of the Remache case. If indigenous justice has such gender fault lines, shouldn't indigenous women find safety away from it in the ordinary justice system? Why do they choose indigenous justice instead? Women could have battled for ethnic equality in ordinary justice. Instead, they opted to advocate for gender parity within indigenous justice. What makes indigenous justice a more attractive battleground than traditional feminist discourses or the state judiciary? By insisting on aligning alternative systems of justice with international gender norms, women strengthened exclusive, cultural rights with the legitimacy of universal human rights. They also consolidated practices of authority within, if not beyond, the state to redefine the sites and boundaries of legal sovereignty.

## THE POLITICS OF JUSTICE

Trapped between discriminatory justice practices, indigenous women support indigenous justice. Yet their strategies are marked by "inter-legality," with strategic resort to state and community justice forums depending on the advantages that this can secure (Couso et al. 2010). The choice for indigenous justice is not merely a choice for culture. Instead, arguably, it is a choice to contest the feminist movement, the punitive neoliberal state, and, by extension, a choice for alternative pathways of justice. I suggest three core factors to explain indigenous women's preference for indigenous justice. First, gender is a broad, crosscutting identity embedded in a hegemonic discourse. Second, indigenous justice is local, thus more accessible and efficient. Third, the

politics of identity need to be analyzed in relation to the state. Ethnic identities carry historical connotations of political contestation as much as cultural difference. Pursuing local forms of justice implies political reconfigurations that challenge state sovereignty over a homogenous justice apparatus.

### **Feminist Fault Lines**

If feminist norms support the claims of indigenous women, feminist identity often remains unappealing as a political strategy. Whereas the praxis of feminism is plural and international, a feminist discourse might be less adequate in local contexts for at least three reasons: it tends to be a hegemonic, cross-cutting, and still costly political identity.

First and foremost, global feminism is associated with Western, hegemonic, and upper-class politics that are rooted in a specific European history of nation building. It echoes concepts of Western individualism as well as its political and normative hegemony over other women. Indigenous women are reluctant to align with a feminist label, which identifies them with urban political agendas that too often ignore their specific interests.

The struggles of non-Western feminisms are embedded in historical and political cartographies that accentuate the contradictions of feminist politics (Mohanty et al. 1991). While some critics have stressed the importance of borders (Mohanty 2003), others have charged that gender is a colonizing methodology, underlining critical problematics of global feminism. Linda T. Smith (1999) posits colonialism as a central tenet for the labeling of “other/ed” women, emphasizing the impact of local histories to understand oppression. She proposes engaging traditional knowledge as a counterpractice of research, preferring group consciousness over a Western conception of self. Refuting sameness in women’s oppression and mobilization across borders, Amrita Basu (2010) provides an exploration of the complex, multifaceted forms local feminisms have taken in the postcolonial world. In Latin America, new epistemologies have contributed efforts to decolonize feminism in theory and practice (Suárez Navaz and Hernández 2008).

Ecuador’s feminist movement has a long history of struggle. Ecuador was the first country in Latin America to grant women’s suffrage, in 1924, and a parity-based quota system increased women’s presence in the National Assembly in 2009 to 32 percent, one of the highest in the region (León 2005; Prieto and Goetschel 2008). As women have increased their participation in economic and political spheres, they have successfully negotiated gender policies within the neoliberal state (Prieto 2005; Lind 2005). Yet Ecuador’s women’s movement seems to reproduce global hegemonies when it refrains from supporting

indigenous women's agendas (Rodas 2009). The feminist movement did not battle to bring justice in the Remache case, nor did it support indigenous women's specific claims for gender parity within indigenous justice two years later. It should not be surprising that indigenous women find their voice along class divides, reluctant to align with a political agenda designed by (and for) a middle-class, urban, at times foreign feminist movement.

The discursive solidarity among women who all share a "common condition" is another reason why feminism might be an inadequate political identity for indigenous women. While feminist claims are universal in essence, the assumption of commonality masks the profound inequalities that prevail among women. Gender is a broad, cross-cutting identity that encompasses multiple actors and interests, becoming at times a meaningless political denominator. Black feminism has challenged the idea that all women share a common political perspective (hooks 1981), pointing to the specific geography of oppression women of color experience. Emphasizing intragroup differences, Kimberlé Crenshaw (1991) locates the experiences of women of color at the specific intersection of racism and sexism. Latin America's profound socio-economic inequalities also prevail among women. The region has some of the highest indicators of women's political participation; gender quotas are widespread, and women are increasingly visible in positions of political leadership, notably as presidents (Sample and Llanos 2008). Yet other women suffer increasingly high levels of violence, notably as "femicides" spread through Mexico and Guatemala (Olivera 2008; Fregoso and Bejarano 2010).

Not only are there differences among women, but women themselves practice violence against other women, in the form of racial discrimination, economic exploitation, or by simply ignoring differences. To prioritize one's ethnic identity is to relate to cultural difference as much as to a shared reality of exclusion. In Bolivia, the union of domestic workers allied with ethnopoltics rather than with the national women's movement, finding more resonance for its struggles in ethnic justice rather than prioritizing sexual rights (Blofield 2009). Feminism as a homogenous, all-encompassing category fails to address violence among women. The Remache case illustrates how insufficient feminist strategies such as the *Comisariías* are in responding to the realities of indigenous women. Not only are laws often inadequate in format and content, but indigenous women are less flexible than their urban counterparts, tied to land and family structures and particularly dependent on their immediate environment.

Feminism is, furthermore, a costly political identity. Feminism is often perceived as some radical antipode of machismo that entails extremist reforms, and it still generates conservative reactions, discrimi-

nation, even insults. It is because the feminist label can ostracize that it has a high political cost for women at the periphery, who already face multiple forms of discrimination. Indigenous women are still vulnerable political actors who stand at the margins, pressed to navigate carefully political alliances and affiliations. Adopting openly a feminist agenda has generated controversy, opposition, and costly polarization from the national indigenous movement. Just as Remache's wife was accused of tarnishing his reputation, women leaders who fostered gender issues have been accused of treason by the indigenous movement and pressured to drop their claim so as to protect the internal cohesion of the movement (Picq 2008). It is less confrontational for indigenous women to stick to a human rights discourse, aligned with the indigenous movement, strategically framing women's human rights within the equation of collective rights. As Oaxaca lawyer and activist Flora Gutiérrez puts it, indigenous women are often led to practice "clandestine feminism."<sup>19</sup>

### **The Accessibility of Indigenous Justice**

When favoring community justice, indigenous women might appear to be opting for culture. This preference, however, is anchored in concrete benefits beyond (and despite) culture. Indigenous justice is accessible—in cost and format—favoring an oral and flexible management of justice, contextual to local realities and needs, and efficient in providing resolutions. It is perhaps the most valuable tool for democratizing access to justice in countries with large indigenous populations.

Choosing indigenous justice makes sense, first and foremost, because it is accessible. Access to justice is problematic throughout Latin America, but it is particularly scarce among marginalized groups, notably women, indigenous, and Afro-descendant groups (OAS 2007). Although Latin American countries have special legislation to protect women from violence (Friedman 2009), women lack immediate and efficient access to justice. This explains the high levels of impunity with regard to domestic abuse. It also means that women have no incentive to use the justice system to secure their rights.

Analyzing the criminal system in Ecuador, Farith Simon (2008) calculates that about 40 percent of charges receive a resolution, compared to only 8 percent of the denunciations for sexual and intrafamily violence. Of the total cases of sexual and family violence taken to courts, a mere 3.14 percent are convicted. In that sense, the inefficiency of ordinary justice in the Remache case is emblematic of deficiencies in the justice apparatus across the region.

Sierra (2005) analyzes the revival of indigenous justice in some regions of Mexico as an alternative to the impunity and human rights violations that prevail in the state's administration of justice. Indigenous

justice is more accessible financially than state justice, and its results are immediate and efficient, if not always equitable for women (Sieder and Sierra 2010, 19). Any member of the community can use it without the need to engage external courts or lawyers in an obscure bureaucratic process set in a foreign language. Mayra Chango, director of Riobamba's *Comisaría* for eight years, believes that indigenous justice is necessary to compensate for the state failure to be present because of geographic and cultural distance. Acknowledging that indigenous justice might be imperfect, she insists that it is an accessible process that provides immediate results.<sup>20</sup>

Indigenous justice is primarily oral, immediate, and accessible, practiced in local languages. Orality, one of the core benefits of indigenous justice, is no deficit. Orality can be tricky because it is enmeshed in changing, improvised, and potentially arbitrary practices. While the arbitrary characteristic is a vulnerability that can lead to abuse of power, it guarantees that illiterate people in the community can fully participate in all proceedings. It enables flexibility. There are no written rules or precedents in indigenous justice. The faculty to judge is practiced at each court hearing.

In the workshops organized in Chimborazo in 2006, indigenous women did not call for clear rules; instead, they called for accountability, along with participation and authority throughout the court process. They wanted to improve the process by gaining decisionmaking power within it. In fact, indigenous women do have a greater leverage in shaping indigenous rulings than ordinary justice rulings (Valdivia and González Luna 2009). The distance they need to navigate to acquire a voice in indigenous justice is shorter, partly because it is local and partly because it is more flexible (thus more efficient) than the state system.

That local character is perhaps the major attraction of indigenous justice. In the Andes, this means that it is practiced in people's native language, it takes collective structures into account, and it focuses on restorative justice to maintain peace in the community (Paredes 2008). Indigenous justice is practiced in indigenous languages, by peers who share socioeconomic realities as much as culture. Combined, the absence of ethnic discrimination, the linguistic cohesion, and orality reinforce the legitimacy and access of the process. Whereas most state institutions fail to provide information and services in languages other than Spanish and proceed mostly through written documents, in the community, everyone can access and understand legal procedures. This local process offers an integral approach to justice, in which community members participate in the resolution of problems.

Indigenous justice is also focused on mediation.<sup>21</sup> Communal punishments can seem harsh to Western eyes (and can sometimes be extremely violent), but indigenous justice does follow rules and proce-

dures, is led by a council, and is geared toward reintegration into the community. A quantitative study made in Peru and Ecuador notes that barely 4 percent of cases resulted in physical punishment (Vintimilla 2009, 75). The focus on the rehabilitation of the accused differs profoundly from the punishment and incarceration given in the ordinary justice system.

Justice aimed at reconciliation has gained political recognition across continents, providing alternatives where punitive state justice is failing (Clarke and Goodale 2009). In Rwanda, *gacacas* became a famous example of community members leading court hearings geared toward restorative and social reconciliation after the genocide, whereas in Uganda, the Acholis drink *mato oput* collectively to put the pain of violence into the past. In Latin America, where violence is on the rise and access to justice is precarious and unreliable, alternatives to state institutions are multiplying. The *policía comunitaria* in Guerrero, Mexico, emerged as an initiative of public security, followed by a *Coordinadora Regional de Autoridades Comunitarias* to administer justice (Sierra 2005). The *Rondas Campesinas* developed in Peru since the 1970s as a police watch in rural areas, followed by the NURAJs in 1997 to provide prompt and efficient access to justice in the aftermath of Shining Path (Faundez 2010). In Brazil, the NGO Viva Rio initiated the *balcão de direitos* as community spaces of mediation to bridge the inequality gap between the asphalt and favelas through restorative justice.

Ultimately, indigenous justice's accessibility is woven into its longevity, a source of strength and vulnerability. Indigenous justice is a tool of daily governance that predates the nation-state, its borders and constitution, surviving in areas ignored by state institutions. If vulnerable for its informality, its long history does not make it a relic of the past or an exotic cultural artifact. It is precisely because indigenous justice is less codified and bound to precedent than ordinary justice that it is better equipped to absorb change. The format of indigenous justice provides opportunities, enabling women's leverage and their capacity to influence law more immediately than the state apparatus does. It also embodies an active contestation of state authority. Women's preference for local justice echoes the deep mistrust of indigenous communities for ordinary justice and represents a vote for local autonomy against the state.

### **Defying Sovereignty from the Margins**

Faundez (2010) notes that community justice defies centralism. It also defies traditional forms of sovereignty, creating alternative legal systems on the basis of culture, language, and geography across Latin America. Advocating for indigenous justice is women's understated way of challenging state sovereignty. In doing so, they are rejecting the state's use of gender to reinforce racial inequalities, as well as ordinary justice's

focus on punishment. Instead of opting for culture, indigenous women are transforming justice into a political tool to negotiate citizenship and relocate authority.

There can be important limits to using state institutions to advance women's rights. State justice is focused on punishment (of minorities in particular) more than on the prevention of violence. Kristin Bumiller's discerning analysis (2008) identifies problems in pursuing the feminist campaign on sexual violence in alliance with the neoliberal state in the United States. While gender reforms succeeded in criminalizing domestic violence, their unintended consequences were to reinforce racial profiling. Bumiller argues that crimes against women become tools of "expressive justice," more useful at publicizing symbolically the dangerous classes than increasing the protection of victims (2008, 37). State laws focus on punitive measures—coercion—and individual approaches to domestic violence have yet to offer collective, sustainable solutions to women. As the state racializes crimes to construct ethnic minorities as dangerous outsiders, minority women grow reluctant to report intragroup violence for fear of subjecting their men to discriminatory treatment in the criminal justice system, as well as suffering discrimination themselves.

This punitive approach toward minority men is tangible in Ecuador as well, echoing racist systems of justice and patriarchal solutions. Indigenous women are well aware of the setbacks of using state power to advance their interests. They have not allied with the state; they are reluctant to rely on state surveillance and punishment and dubious of the misuses of domestic violence as another rationalization of social control and exclusion of indigenous peoples. Too often, policies designed to protect women have served to reproduce violence against minorities. In a context of predominant state-sponsored forms of violence, indigenous women look for security beyond the state.

Indigenous women believe that there must be more efficient ways to "protect" victims than the punitive methods used by ordinary justice, which largely fails to protect women from violence. In addition to refuting a criminal approach to justice, they call on the state to stop using culture as an excuse to justify its lack of progress on women's human rights. The premise of the international human rights framework is not to reinforce central control over means of violence (whether in a national or supranational government) but to redistribute power. By investing authority into indigenous justice, women are seeking alternatives to the criminal and racialized approach of state law. Instead of translating universal rights in criminal justice strategies, legal pluralism offers an opportunity to find vernacular solutions to global trends of gender violence (Merry 2006).

Community justice is vernacular in that it appropriates elements of national and international politics and adapts them to local realities.

When indigenous women in Chimborazo bring international women's norms into local justice through the national constitution, they are practicing what Colloredo-Mansfeld (2009) calls "vernacular statecraft." This "vernacular" administration builds itself in relation to "high statecraft," reacting to the state's disjunctive presence, which is at once intrusive in defining indigenous status and indifferent in failing to deliver basic services. The struggle for indigenous jurisdiction echoes pursuits of autonomy from the state, illustrating how local models of self-determination decentralize authority to remake state sovereignty. In that sense, local politics of justice are irremediably connected to a complex web of international structures and opportunities (Tarrow 1998), influencing and being influenced in return.

As much as the global human rights framework challenges the nation-state by forcing on it internationally designed norms, it also reinforces state sovereignty by entrusting it with greater responsibilities. Women are positioning themselves outside the authority of the nation-state when they frame struggles for gender equality within indigenous justice. In rejecting the alliance with the state and the feminist movement, indigenous women are contesting political authority from the margins.

Indigenous justice is thus chosen because it conveys a political message of contestation in regard to state sovereignty. Indigenous identity is continuously evolving through resistance to and negotiation with the state (Larson 2004), notably in the form of women's identity. Canessa (2005) argues that ethnicity is conceived as a particular relationship to the state. Ethnicity is a political stand as much as a cultural identity, which carries economic connotations. It encompasses claims for self-determination, territories, and autonomy more than it reiterates cultural difference. This is why sovereignty was the most contested issue in signing the 2007 U.N. Declaration on Indigenous Peoples. Member states agreed on a declaration only once Article 46 clarified that the document could not be interpreted as "authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States." States support self-determination only insofar as it is consistent with their sovereignty. In other words, the U.N. declaration is not about providing new rights to indigenous groups so much as it is about bringing indigenous individuals as full citizens into the state. Yet ethnicity calls for exclusive and differentiated rights (Htun 2004), inevitably entrenching the politics of indigenous justice in the negotiation of borders, legitimacy, and inevitably, sovereignty.

Saskia Sassen (2006) warns about the trap of thinking of global dynamics as exogenous to the national state. Dislodging territory, authority, and rights from the national, she analyzes processes of denational-

ization, arguing that global formations become operative only when they enter the national domain. As the tandem of globalization and denationalization destabilizes existing frameworks, it renders state political arrangements dubious, shifting legitimacy claims and reassembling social contracts. Citizenship has been naturalized as a core capability of the state. Yet as indigenous justice blurs judicial borders, it engages global agendas while at the same time denationalizing citizenship.

Sassen's discussion helps us think of the effect of indigenous justice in regard to the state in that it is not the nation-state as such but components of it that are undergoing denationalization. The judiciary has been critical in the consolidation of state authority, and indigenous justice is dislodging it to the margins, to new locations in subnational settings. Denationalization is multivalent, argues Sassen (2006, 23), able to work as a creative force. Indigenous justice is, in this sense, constitutive of a new organizing logic inside the state. It is not a process of state adaptation but a shift of the constitutive elements within it—the meaning of rights and the experience of territoriality.

The dislodging of legal authority from the state to subnational institutions in Ecuador implies a conceptual transfer to dynamics that are neither territorial nor exclusive and that accept multiple scales with fluid geographies of authority. If the nation-state is one form of imagined political geography among several (Biolsi 2005), indigenous justice may be a practice of what Bruyneel (2007) calls a "third space of sovereignty." Quintessentially inassimilable to ordinary justice, it postulates a political space beyond sovereignty altogether to conceptualize viable antistate autonomy. Indeed, to pursue judicial pluralism requires imagining something that does not quite exist yet. By multiplying the locations of rights and by institutionalizing informal social contracts, indigenous justice is destabilizing the meaning and experience of that which is national. It constitutes a denationalized legal space that permits a reinvention of citizenship, emerging thereby as a strategic site for the reconfiguration—and defiance—of sovereignty.

From within, indigenous justice challenges ordinary justice practices, enables voices from the margins, and pushes for a redefinition of citizenship (Postero 2007). From outside, indigenous justice is part of the reinvention of the state. It pushes for rearrangements of the social contract, seeking to diversify citizenship rather than to extend it. When indigenous discourse advocates postnationalism, it reflects cosmopolitan democracy, pressuring states to denationalize institutions and redefine sovereignty (Archibugi and Held 1995). Ethnopolitics is, in that sense, as much about entering the state as it is about surpassing it.

In its challenge to sovereign borders, indigenous justice can be thought of from the perspective of subaltern cosmopolitan legality (Santos and Garavito 2005). Indigenous women's stands in Ecuador

epitomize experiences of resistance to subvert hegemonic institutions—even when they go untold. They imagine institutions from below to reconnect law with politics. Without abandoning individual women's rights, indigenous women seek to reinforce collective notions of rights and autonomy and to legitimate alternative spheres of authority. They navigate across legal scales, engaging both international women's rights and local cultural practices. Their experience is admittedly fragile, unnoticed by the general public, and vulnerable to co-optation by institutionalized indigenous movements. This nascent—if marginalized—legal practice is nevertheless a hopeful sign of democracy in the making that offers lessons to some of the most established social movements in the region.

## CONCLUSIONS

This article examined the unexpected twists and turns of indigenous justice in Ecuador. The Remache case illustrates how indigenous justice can be used to bypass accountability and the extent to which ordinary justice fails indigenous women. Kichwa women's advocacy for gender parity through constitutional reform reveals that indigenous justice can become a site of resistance. Both victims and perpetrators are using indigenous justice, thereby underscoring its dynamism and contextual specificity. Both sides instrumentalize indigenous justice to circumvent the legal and political institutions of the nation-state that are profoundly alien to the realities of the Andean highlands.

While calling attention to current problematics, this article also identifies the strong democratic potential of indigenous justice. Women's strategies indicate the failure of ordinary justice to secure basic rights, as well as the creativity of excluded minorities in forging new legal arrangements. Concomitantly, this article also reveals that from their excluded positions, indigenous women are engaging in innovative politics, contesting sovereignty while designing new models of rights and accountability.

The analysis of contrasting case studies invites several concluding provocations. First, rather than only a cultural choice, women's support for indigenous justice indicates the failure of state justice. From this perspective, indigenous justice provides women more bargaining power and opportunities for reform, becoming an alternative "language of contention" in which they can articulate their claims in more meaningful and effective ways. Women are the first to confront violent cultural practices and to contest them from within. A Roseberrian approach suggests how gender and ethnicity are languages of contention and thus essential analytical tools that go beyond conventional feminist and ethnic studies. In that sense, social scientists must take the struggles of indige-

nous women seriously in order to comprehend more adequately the disjunctive quality of the deepening democracy in the region.

Second, this article contends that indigenous women claim universal rights in the idiom of indigenous cultural rights, thus rejecting the division between universal and ethnic rights and making possible a “third space” of rights politics. From the Remache case to the gender parity clause, this article narrates a complex story in which universal human rights, on the one hand, and cultural rights, on the other, are inextricably intertwined. Challenging the conventional assumption that multiculturalism and women’s rights are antithetical, this article has argued that gender and culture complement one another in the struggle to secure human rights in local contexts. Instead of fragmenting them from within, the controversial voices of women at the margins can strengthen both feminist and indigenous movements.

This analysis has also probed the mechanisms by which justice is negotiated in specific local contexts. Both Estuardo Remache and Lucrecia Nono sought to instrumentalize the legal systems most accessible, familiar, and amenable to their interests. Human rights materialize in the vernacular. Abstract universal norms need to be framed in familiar terms that echo our experienced realities. The tense encounter between indigenous justice and gender parity in Ecuador illustrates the hybrid contextualization of international human rights and their political appropriation.

Women’s struggles for gender equality highlight the heterogeneity of interests involved in ethnopolitics in the Andes. The gender cleavages examined here expose the inner dilemmas of legal pluralism. This article has argued that while indigenous justice is a recognized institution—that is, an “ethical context”—its practices or “ethical content” are constantly renegotiated by a shifting cast of characters and are not fixed cultural relics from the past. Going beyond anthropological debates about legal pluralism, this work focuses on the ways indigenous justice is dislocating, challenging, and repositioning state sovereignty in the region. Looking forward, the story told here opens many new questions regarding the not-so-marginal role of indigenous women as political actors. This work seeks to contribute, in preliminary fashion, to a future research agenda in which gender and ethnicity are integral to an intellectual project for the study of a more robust and democratic politics of citizenship.

## NOTES

I would like to express my gratitude to the six anonymous reviewers for their thoughtful comments and suggestions, which contributed significantly to clarifying my arguments. They, of course, are not responsible for any remaining errors.

1. The convergence of a number of regional and international factors, from the emergence of women’s organizations to CEDAW, led to the creation of police stations for women in many Latin American countries. In 1994, the

Ecuadorian *Comisaría de la Mujer y la Familia* (Police Stations For Women and the Family) were specifically created to help victims of domestic violence. In 1995, Congress passed Law 103 to stop violence against women, sanctioning perpetrators and obliging judicial authorities to protect victims.

2. Focused on self-determination, ILO Convention 169 (1989) recognizes indigenous rights to land, consultation, and political participation, the rights to exercise control over their economic, social, and cultural development (Art.7). The convention states indigenous rights to retain their customs and institutions, including justice, when not incompatible with fundamental rights established in international law.

3. The authority of indigenous jurisdiction is vague, and varies significantly following criteria of territory (Colombia and Peru), personal authority (Venezuela), or “internal conflicts” (Ecuador); or it fails to explicitly mention precise boundaries of jurisdiction.

4. Field research was conducted in parishes across the provinces of Chimborazo, Cayambe, and Morona Santiago. From 2005 to 2008, I interviewed indigenous leaders and women, including Estuardo Remache, Lucrecia Nono, and police staff involved in the case.

5. Created in 1996, the Movimiento de Unidad Plurinacional Pachakutik Nuevo Pais (MUPP-NP) is the main indigenous party in Ecuador. Pachakutik (rebirth, in Kichwa) was the first indigenous party formed in the Andes, and marked the transition of indigenous struggles from movements to parties (Van Cott 2005).

6. The Confederation of Kichwa Peoples (ECUARUNARI) is the largest organization in Ecuador’s Confederation of Indigenous Peoples and Nationalities (CONAIE).

7. The police reports were filed at Riobamba’s *Comisaría de la Mujer*, Chimborazo, on January 24 (182/06), February 7 (268/06), and October 18, 2006 (2141/06).

8. The community did not give Nono an opportunity for justice or follow communal assembly procedures. At first, the problem was dismissed as a personal issue. After police reports were filed, closed meetings in the community decided on the case without the victim.

9. Dating from the 1998 constitutional reform, CODENPE is the equivalent of a state ministry in charge of promoting the well-being of Ecuador’s 14 indigenous peoples.

10. In an incident of domestic violence at FLACSO, the CONAIE invoked the right to education of indigenous minorities without addressing violence against women.

11. ILO Convention 169 frames the safeguarding of indigenous peoples’ customs and the recognition, protection, and respect of their own institutions and values. Article 191 of the 1998 Constitution recognizes “the authority of indigenous peoples in exercising functions of justice, . . . according to [their] own justice and customary justice.”

12. *Comisaría*s exist in 23 of 216 parishes, available to 59 percent of Ecuadorians. This means that 6 out of 10 women can potentially access them. Only 5 provinces, most of them highly urbanized, have more than one *Comisaría* (Camacho and Jácome 2008).

13. Riobamba's *Comisaría* mobilizes all six staff members when possible to collaborate with indigenous authorities, providing itinerary services across all parishes (Chango 2010).

14. Some sources estimate that almost 90 percent of indigenous peoples live in poverty (INEC in Camacho and Jácome 2008).

15. Aura Cumes (2009) analyzes controversial cases involving the application of Community Law to K'iche' women in Guatemala. Her empirical approach challenges idealized defenses of indigenous law to point to the failure of the national indigenous movement to condemn gender discriminatory practices in Mayan law.

16. The *Ley de coordinación y cooperación entre justicia indígena e ordinaria* is being discussed to delineate boundaries and responsibilities between the competing systems of justice since 2008. In July 2011, the commission convened an extraordinary meeting with members of civil society to gauge the impact of legal borders on women.

17. Certain communities now issue *actas*, or verdicts, although they are perceived as archives, not precedents (Yumbay 2010).

18. The 1993 Ley Revolucionaria de Mujeres Zapatistas declared women's autonomy and equality, defending rights to equal pay, health, and education and autonomy over marriage and contraception. Article 8 states that no woman is to be physically abused by family members or strangers, and attempted rape is to be severely punished. Article 9 secures women's presence in positions of decisionmaking. See <http://mujeresylasexta.org.wordpress.com/ley-revolucionaria-de-mujeres-zapatistas>

19. The term *feminismo clandestino* was coined by Oaxaca indigenous lawyer Flora Gutiérrez at the 2009 Encuentro Feminista de America Latina e del Caribe.

20. As elsewhere, there are limits to indigenous justice. It may be difficult to prosecute powerful members of the community, at times leading people to seek redress in ordinary justice.

21. Popular justice through lynching is not to be mistaken for indigenous justice, being rather a sign of its erosion. See Goldstein 2004; Godoy 2006.

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