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JLA FORUM

Women's Rights and Sovereignty/ Autonomy: Negotiating Gender in Indigenous Justice Spaces

SHANNON SPEED

In recent years in both the United States and Latin America, indigenous peoples have taken increasing control over local justice, creating indigenous courts and asserting more autonomy in the administration of justice in their tribes, regions, or communities. New justice spaces, such as the Chickasaw District Courts in Oklahoma and the Zapatista Good Governance Councils in Chiapas, work to resolve conflict based largely on indigenous 'customs and traditions.' Many of the cases brought before these local legal bodies are domestic cases that directly involve issues of gender, women's rights and culture. Yet the relationship between 'indigenous traditions' and women's rights has been a fraught one. This forum article considers how these courts emerged in the context of neoliberalism and whether they provide new venues for indigenous women to pursue their rights and to challenge gendered social norms or practices that they find oppressive.

❖ Keywords: Indigenous, gender, justice, Chickasaw, Chiapas

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Introduction

In the year 2003, in a small town called Oventic in the highlands of Chiapas, Mexico, Tzeltal, Tzotzil, Chol and Tojolobal Maya authorities of the Zapatista movement, announced the creation of the Juntas de Buen Gobierno. The Juntas, according to these leaders, represented their assertion of their right to autonomy and self-determination through civilian self-governance. The Juntas would attend all in their territories and would, among other things, work to resolve conflicts based on their customs and traditions.

That same year, in Ada, Oklahoma, other indigenous leaders, the authorities of the Chickasaw Nation, announced the formation of the Chickasaw district and peacemaking courts, which represented their reassertion of sovereignty over administration of justice in civil cases, retaken from the 'CFR courts'[1] (also called the 'Court of Indian Offenses') of the Federal Bureau of Indian Affairs. These new courts would hear cases of all within Chickasaw territory and would intentionally incorporate conflict resolution and 'traditions, customs and culture' into the system of justice.

These events, taking place in disparate locations and carried out by distinct social actors, nevertheless were both part of larger processes in which, in both Latin America and in the United States, indigenous peoples have increasingly taken greater control over local administration of justice issues as part of their on-going struggles for self-determination. Significantly, they may provide new venues for indigenous women to pursue their rights and to challenge gendered social norms or practices that they find oppressive. Many of the cases brought before these local legal bodies are domestic cases that directly involve issues of gender, women's rights and culture. These courts therefore hold the potential to be contestory spaces in which gendered norms and power intersect with 'cultural tradition' and 'customary practice,' and possibly offer opportunities to reshape the relationship between them.

As indigenous feminists have highlighted in recent years, indigenous women are situated at the intersection of multiple axes of oppression: gender oppression within their local family/community/cultural context, state oppression as indigenous people, and structural oppression that may affect them variously as poor and or marginalized, as indigenous people and as women (Green 2007, Suzack, et al 2011). In too many instances, they have been asked to suppress or delay gender demands to struggle on other fronts, such as class, race, or ethnicity. My particular interest, in looking at the courts, is not so much about whether women have a better chance at justice in particular cases (which varies considerably and is often ambiguous), but rather in what ways indigenous women are using the courts as a space for challenging the multiple forms of oppression they suffer, and in particular are pushing beyond the false binary of commitment to community autonomy/sovereignty and their individual rights.

This article is based on preliminary research from a project that is still underway that compares indigenous justice systems and their implications for women in two very diverse settings: the Zapatista autonomous regions in Chiapas, Mexico, where I have worked for the last fifteen years, and the Chickasaw Nation in Oklahoma, where I am a tribal citizen. This research began as part of a larger collaborative project with colleagues in the US, Mexico and Guatemala which sought a shared framework for understanding the profound transformations occurring within indigenous communities under neoliberal globalization and in particular, the complex relationship between movements for indigenous rights, state reform, and juridical structures (Speed, et. al. 2009). As the research is on-going, rather than drawing conclusions in this article, I highlight suggestive material from the research and point to possible ways of thinking about the dynamics involved.

Asserting Sovereignty and Autonomy: responding to neoliberalism

Processes of globalization and neoliberalism have had multiple and at times contradictory consequences for indigenous peoples.[2]In some countries of Latin America, the reconfiguring of state-indigenous relations on a neoliberal multicultural model has facilitated the fulfilment of significant demands of indigenous peoples, including the recognition of some collective rights as peoples. At the same time, neoliberal multiculturalism has in many places generated dynamics that negatively affected indigenous peoples. Neoliberalism in some countries entailed the implementation of policies that made indigenous peoples' local economies impossible to sustain and generated new levels of migration that constituted serious challenges to indigenous communities. The extended opening of national resources to foreign capital led to a neo-extractivism that has also displaced indigenous peoples, creating a dynamic in which indigenous peoples became the 'refugees of neoliberalism' (Davis 2006). Further, state recognition and the framing of rights through state policies also afforded the state the opportunity to significantly limit what rights were recognized, how they can be enacted, and by whom (see Hale 2002, 2005, García 2005, Postero 2006, Speed and Sierra 2005). It is important to note, however, that neoliberalization also generated new possibilities for indigenous peoples to define themselves and their futures. The state-reducing tendencies promoted by neoliberalism and structural adjustment policies have also opened up spaces for greater exercise of self-determination through autonomy and sovereignty, in some senses a double-edged sword.

Neoliberal economic reforms, in both the United States and Mexico, necessitated a reformulation of governance and, thus, a reconfiguring of the relationship between states and their populations. Indigenous people, who had for the most part been distanced from enjoyment of the benefits of social citizenship under the welfare or corporatist state, were suddenly the objects of

a new 'market citizenship,' one in which they were increasingly responsible for their own welfare, self-regulation, and successful competition in the free play of social forces (Harvey 2001). Together with other sectors of civil society, indigenous people have been forced to take on responsibilities that previously resided in state institutions, as states have tended to 'privatize' their social welfare activities, delegating them to civil society as part of structural reform. (Speed et.al. 2009)

In the United States, the courts, Congress, and Presidential administrations in the 1970s and 1980s became increasingly (though not uniformly by any means) supportive of tribal sovereignty, just as social services budgets were emptied out. Hanson argues that since the 1980s, neoliberal 'ideas regarding the salience of competition, the centrality of the market for social life, and the valorisation of individual responsibility over social processes, undergird federal [Indian] policies' (2004: 295). For example, Hanson notes,

> During his 1980 presidential campaign, Reagan emphasized that the relationship between the U.S. government and Indian tribes was best described as 'government to government.' He also promised to assist tribes that were not federally recognized, just as he maintained that Indian peoples themselves should determine tribal membership; he voiced support for all provisions of treaties; and he stated that tribal governments should have the right to determine how their natural resources were to be developed. The overarching dynamic in all of this, however, would be Reagan's emphasis on the 'free market,' which he maintained would liberate Indian tribal communities from both U.S. governmental paternalism and poverty and eventually lead to a cessation of federal trust obligations in the realms of housing, education, and general welfare (2004: 296).[3]

Similarly, George W. Bush (2001-2009) emphasized that his administration was 'committed to continuing to work with federally recognized tribal governments on a government-to-government basis and strongly supports and respects tribal sovereignty and self-determination for tribal governments in the United States' (White House Memorandum 2004:1), while he consistently cut support to Native American programs in his budgets.[4]

In the neoliberal logic of sovereignty, tribes were expected to assume more and more of the fiscal responsibility of providing for the social welfare of tribal citizens as well as becoming more self-governing and more self-reliant. Biolsi has described this as 'the subcontracting of the responsibility of the larger society and of whites in particular for the welfare of Indian people to tribal governments—the responsibilizing of tribal governments for their 'own' tribal citizens' welfare' (2001: 28–29).

In Oklahoma, as state discourse shifted, the Chickasaw Nation made bold moves to regain sovereignty lost 100 years earlier. Significant in the processes leading to that loss of sovereignty were the Dawes Act of 1887, which forced the privatization of landholdings, and the process of Oklahoma statehood in 1907, during which it was established that the Chickasaw governor would be appointed by the president of the United States and would be essentially powerless. Several decades of general decline followed. But in the 1970s, as the federal government began to move toward greater support for sovereignty for Indian tribes, the Chickasaw Nation elected the first governor and in 1983 ratified the first constitution in 117 years.

Under recently elected governor Bill Anoatubby, the tribe acted on that sovereignty in the late 1980s, when it decided to exploit the riches inherent in the gaming industry after the passage of the Indian Gaming Regulatory Act. By 1995, the tribe had a net income of one million dollars. Ten years later, the tribe owned and operated 13 casinos in its territory, and the net annual income had risen exponentially to 178 million. By 2009, there were seventeen casinos that, along with other tribal businesses, generated $259 million in profits. The tribe now owns more than 50 businesses, from radio stations to retail stores, which produced another $160 million. In 2010, the tribe's net income was $288 million. Of that, $208 million was transferred back to the tribal government, with $80 million invested back into the businesses. Much of the tribe's income is reinvested in social services, which range from house-building and loan programs, to health care and elderly care, to student fellowships and college tuition. In 2010, a $145 million dollar Chickasaw Nation Hospital was opened in Ada. Further, massive amounts have been invested in cultural revitalization, setting in motion important processes of historical reflection and language recuperation.[5] The opening of the District and Peacemaking Courts in 2003 were part of this process.

Thus, the Chickasaw Nation was able to appropriate the spaces opened by neoliberalism in the US. The tribe utilized the opportunity offered by changing US discourse on sovereignty – especially as manifested in the Tribal Gaming and Regulatory Act – to re-appropriate its sovereignty and ultimately to 'out-neoliberal' the neoliberals, producing capital that covered the losses of state reduction in social spending. Those gains were then extended far beyond social services, to cultural revitalization and the retaking of control over administration of justice.

In Mexico, neoliberalization also meant a shift in state discourse and practice toward indigenous people. In the late 1980s, as the state abandoned decades of corporatist governance, it redefined its relationship to its citizens. In the constitutional reforms of 1991 that preceded the North American Free Trade Agreement (NAFTA), indigenous people were for the first time recognized by the state and given some limited rights, making manifest the state's official abandonment of its assimilationist indigenism, the predominant policy toward indigenous people in various forms over the preceding seven decades. However, those reforms also included the modification of Article 27

of the constitution, which ended land reform and opened the way for privatization of land and natural resources. Other constitutional reforms opened Mexico's markets to inexpensive foreign goods, handicapping many communities' ability to engage in successful economic production. At the same time, structural adjustment policies and the scaling back of the corporatist state meant a massive reduction in spending on social services and the overall social investment that corporatism had implied (De la Peña 2006). Indigenous people faced economic devastation, forced labour migration, and serious impacts to their cultures and practices.

In Chiapas, the Zapatista uprising that began in 1994 was a direct response to the challenges that NAFTA and neoliberal policy presented, but one which made full use of the space created by the new state discourse of multiculturalism and rights. While it remained ostensibly an armed insurgent force, the Zapatista movement refrained from armed action and consistently pushed through the 1990s for legal recognition of indigenous peoples' right to autonomy. When the government failed to live up to the promises of recognition and rights, most definitively after the 2001 passage of the Law on Indigenous Rights and Culture which actually succeeded in reducing indigenous rights in significant ways, in Chiapas Zapatistas began asserting their right to autonomy independent of state recognition, establishing local governments, schools and legal systems. The formation of the civilian Good Governance Councils was an explicit response to the passage of that law, as the following statement from Comandanta Esther, addressed to the indigenous people of Mexico, at the inauguration of the Councils indicates:

> The politicians betrayed the indigenous peoples of Mexico. All the political parties came to an agreement to deny us our rights when they approved the Law on Indigenous Rights and Culture… Now, we must exercise our rights ourselves…No one should ask permission from anyone to form their autonomous municipalities, as we are doing, without asking permission.

Esther's speech highlighted that the Zapatistas were responding to the law with an overt assertion of their intention to exercise their right to self-determination through autonomous processes, including the civilian administration of justice, regardless of the state's intransigence.

Customs and Traditions: Local justice and cultural renegotiation

The previous section represents highly condensed versions of complex and decades-long histories, which I hope despite their brevity, conveyed that in both cases, indigenous peoples actively utilized the spaces created by the emergence of neoliberal multiculturalism to realize greater sovereignty or

autonomy. In my research, I am particularly interested in one important area in which they have done so - indigenous justice practices. Throughout the hemisphere, state restructuring and decentralization have resulted in indigenous peoples taking greater control over local administration of justice. According to the National Tribal Justice Resource Center, in recent decades:
Approximately 275 Indian nations and Alaska Native villages have established formal tribal court systems. There is widespread variety in the types of forums, and the law applied in each is distinctly unique to each tribe. Some tribal courts resemble Western-style judiciaries where written laws and rules of court procedure are applied. An increasing number of tribes are returning to their traditional means of resolving disputes through the use of peacemaking, elders' councils, and sentencing circles. (2004, cited in Hess 2009: 487)

Throughout Latin America, there has been both a growth of state-sponsored 'official' indigenous courts (Sierra 2005) as well as of extra-official bodies involved in justice administration, such as the Policia Comunitaria (community police) in Guerrero, to the Juntas de Buen Gobierno (Good Governance Councils) in Chiapas, the indigenous alcaldias (mayorships) in Guatemala (Sieder 2008), or the autonomous rondas of Cherán, Michocán (for more extensive discussion, see Sierra and Sieder 2011).

In these alternative justice spaces new, revitalized and re-signified forms of justice are being developed that expressly seek to bring tradition and cultural norms into the legal process. But interestingly, one of the things that is contested and negotiated in those spaces is what those traditions and cultural norms are. Frequently, the larger dynamics of organizing, struggling for or asserting greater sovereignty or autonomy, of which gaining greater control over the administration of justice is a part, also leads to processes of reflection and analysis of the 'culture' and practices at the heart of the claim to autonomy/sovereignty. In other words, as indigenous peoples increasingly assert or reassert their right sovereignty and autonomy based at least in part on cultural difference, the nature of that 'culture' comes under discussion and becomes the subject of internal debate. These new legal spaces serve as one place where particular customs and traditions – themselves in a constant process of re-elaboration – are debated and potentially renegotiated.

One of the most important areas for those cultural discussions is in cases involving women, and, thus, gendered traditions. A number of issues are raised by this conjunction of cultural tradition and gender. First, without a doubt, many questions have been raised about the possibility of women getting greater justice in an indigenous cultural context and the extent to which indigenous traditions serve to oppress them. Exclusionary sex-gender ideologies continue to mark the daily lives of indigenous women in both the US and Mexico. The persistence of domestic violence, and normative systems and tribal laws which ignore or justify such violence, reflect the prevalence of violence against indigenous women and their inability to access or obtain justice (Speed et. al. 2009). Further, states also mobilize particular ideas of

'culture' and 'gender' in ways that do violence to women. In the following section, I explore some of the debates around these questions.

Culture and Gender Justice

In Mexico, the flourishing of demands for indigenous autonomy combined with the shifting terrain of governance and public policy to generate a national debate about collective and individual rights, about equality and cultural difference. In the autonomy debate, government officials, as well as some prominent jurists and intellectuals, argued – not without some justification - that indigenous peoples' customs and traditions served to justify local power relations and that collective norms frequently violated individual's rights. Some went so far as to argue that the state should not allow indigenous people any measure of autonomy based on their customs and traditions because they had antidemocratic tendencies and would almost certainly violate the basic human rights of individuals in the community (Krauze 1999; Bartra 1997).

It was not infrequent in the public debate to hear women's rights serve as primary examples of the dangers of the collective violating the rights of individuals. *Usos y costumbres* (customs and traditions) such as arranged marriage, exclusion of women from political participation, and male-line inheritance were cited as examples of practices that violated women's rights to personal autonomy, civic participation, and economic sustenance. The legislators who drafted the indigenous rights law, for example, included the following limiting language regarding the enjoyment of indigenous autonomy: 'respecting individual constitutional guarantees, human rights and, in particular, the dignity and integrity of women' (emphasis mine) (Law on Indigenous Rights and Culture, 2001). While few would debate the importance of respect for women's dignity and integrity, the inclusion of this phrase both reflects the prevalence of, and perpetuates the notion that, indigenous culture, when not restrained by the protective state, will violate individual rights and that women are in need of special protection.

This was remarkably reminiscent of the Indian Civil Rights Act (ICRA) passed by the US congress thirty years earlier. With ICRA, Congress moved to limit Native American sovereignty under the guise of protecting individuals from tribal abuses. By designing a special Indian Bill of Rights, Congress recognized that Native American tribes were distinct sovereigns, but it placed limits on how they could exercise such sovereignty – limits based on individual rights defined outside the tribal context. Not surprisingly, as the courts later grappled with the limits of tribal sovereignty, one of the most significant cases, Santa Clara Pueblo v. Martinez, directly addressed the conflict between Indian autonomy and gender discrimination. While the case ultimately was decided at the Supreme Court in favour of tribal sovereignty (perhaps indicative of shifts toward supporting more sovereignty underway by the late 1970s), both the ICRA and the case itself were about whether individual

women's rights should be protected by the state against the rights of their people to maintain their cultural norms.

This is a thorny issue because, of course, there are many instances in which the individual's ability to act autonomously is subordinated to collective norms in the community or tribal context. And indigenous women do suffer multiple forms of violence and injustice which may be perpetrated or reinforced in local justice arenas. Yet in many cases the arguments being made were opportunistic, and relied on essentialized and static notions of indigenous customs and practices, suggesting the Indians were inherently antidemocratic and that this was an unchanging and unchangeable part of their culture. Such ideas were relatively easy to 'sell' to the public, since the national discourse (assimilationist in Mexico, segregationist in the US) had long cast Indians as culturally backward, in need of modernization, and in need of protection from the state.

These kinds of arguments in the public sphere are echoed in debates in the literature on gender and human rights, which has focused on the problematic nature of the struggle for cultural rights, 'when respect for customary law or traditional customs and practices violates the individual rights of women' (Deere and Leon 2002: 76). There are several problems with this framing. The first is that, like the public debates, it tends to presume an essential and static indigenous culture. But also significantly, it sets up a direct contradiction between collective claims to culture and women's individual human rights, in such a way that one is forced to side with one position or the other. Thus, cultural rights are positioned against gender rights in the many academic writings, legal structures, and in public discourse. This logic puts indigenous women in the position of being forced to choose between their tribe, community or movement's struggle for sovereignty/autonomy and their own pursuit of their rights as women.

Choosing Sides in Struggle: sovereignty/autonomy, gender justice

Indigenous women in the United States and Mexico (as elsewhere) have had to negotiate this divide. Whether collective goals should be prioritized over individual rights or the other way around has been the subject of long debate. Some Native women have argued that sovereignty should take precedence. For example, Lorelei Means has argued, 'We are American Indian women in that order. We are oppressed, first and foremost, as American Indians, not as women…' (cited in Jaimes and Halsey 1992). Means' perspective posits sovereignty/autonomy as a Native struggle, while viewing feminist demands as tied to the individualist agendas of white women. The difficulty with this position is that it tacitly accepts and reinforces that notion of an opposition between combating racialized and gendered oppression that is present in the larger public debate.

Other women have rejected this dichotomy. Indigenous feminists in the US and in Mexico have been increasingly vocal in drawing attention to the multiple, interrelated oppressions suffered by indigenous women--typified by Comandanta Esther's famous statement: 'We have to struggle more, because we are triply looked down on: because we are indigenous, because we are women, and because we are poor' (2001), or in different terms by Andy Smith's description of indigenous women' as positioned 'in a patriarchal, colonial, and white supremacist world' (2007:42).

Importantly, those forms of oppression are not just concurrent, they are fundamentally intertwined. As Smith has convincingly argued, it was through gender violence that the colonization of Native communities took place, and thus attacks on Native women are attacks on Native sovereignty. Barker has also shown how colonial relationship and laws continue to create a perceived divide between gender and sovereignty. She argues that 'Native sovereignty struggles are gendered; Native rights to sovereignty are not defined or exercised outside of a historical context of patriarchal colonialism; and, the structures and impact of patriarchal colonialism are neither post nor neo: we live in them still' (2008:264). Colonial gender construct also continue to inform gender relations in Mexico. And the attacks on Zapatista autonomy have also regularly taken place through gendered violence – notably the rape of Zapatista women by army soldiers and the Acteal massacre carried out by paramilitary groups (Hernández et al 1998). Because these forms of oppression –gendered, racial - are not just interrelated, but also mutually constituted, it seems crucial that they be understood and fought together.

Some women in Mexico and in the United States are asserting their intention to renegotiate gendered relations of power in the cultural context of their movements and communities while simultaneously defending the right of the community to define for themselves what that cultural context is and will be (see Hernández 2004). This was reflected in the agenda of the Coordinating Committee of the National Indigenous Women's Congress in Mexico, which several years ago put forth a joint platform of fighting 'the economic oppression and racism that marks the insertion of the Indian peoples into the national project, at the same time that it struggles within its organizations and communities to change those elements that exclude and oppress women.' In other words, they are refusing the disarticulation of their gender demands and their sovereignty/autonomy demands, as well as the protectionism of the state that reinforces that divide.

Cultural Negotiations: Bridging the Binary

The indigenous justice spaces I am looking at are in many senses a concrete manifestation of those groups' struggles for greater sovereignty/autonomy. They regularly treat cases involving gender issues, and make decisions based on 'custom and tradition.' It is, thus, interesting to consider whether they

serve as one place where particular customs and traditions, themselves in a constant process of re-elaboration, can be debated, and to what extent women are able to use them to renegotiate - within their own cultural context – the gendered norms and practices that they find oppressive.

Perhaps not surprisingly, it seems that the extent to which cultural norms around gender get challenged in positive ways varies a great deal. This is notable in Chiapas, where micro-local culture varies even within Zapatista territory; the approach of the councils is distinct from one region to another. However, the general approach is the same in all. In most cases, someone with a complaint will approach the council. All parties are affected by the dispute – including relatives of the involved individuals and anyone else who might be concerned with the matter - and an effort is made to hear all the parties. This is often a lengthy process, but it is considered crucial to a successful outcome, a reflection of a conceptualization of the collective over that of the individual. This is, of course, the 'tradition' at the heart of the discussion about whether these kinds of courts can serve as space for women to renegotiate oppressive practices, precisely because it is the collective right to maintain 'traditional practices' that may be invoked against them. However, in Zapatista territory this is not always the case.

For example, in one case before a Zapatista autonomous council a woman complained that her husband had left her for another woman, and had taken their three children with him and deposited them in the house of his own mother. The husband countered that his wife had been negligent, frequently leaving the village for meetings in other towns. He insinuated that she might have been involved in illicit activity, casting doubt on her good moral character. He stated without hesitation that the children belonged to him, and that she had no right to question what he did with them. His mother and her mother both spoke, affirming the 'truth' of the fact that children belong to the father, and thus he was right to take them: 'Asi siempre ha sido' that was 'how it had always been.' The young woman became very upset, and the council members sent the group away without resolution, counselling them to 'pensarlo bien' or 'think well' about how they might work out their differences. The case actually went through several more meetings with the council. However, in the second and third meetings, the woman, who was a member of a women's herbal medicine cooperative (and thus the frequent meetings outside the community that generated her husband's suspicion) pointed out that the women's cooperative she belonged to was sanctioned by the local Zapatista authorities. She brought others from the group to vouch for her and counter the insinuation that she had engaged in an affair, or worse, in prostitution. She argued that times had changed, and women were involved in these activities 'like being on the autonomous council' – she highlighted the fact that several of the council members, in turn, were also women who were outside their home communities to fulfil their council duties. Her arguments apparently swayed the council, and a woman council member told the husband it was he who had violated his wife's rights by abandoning the

marriage, and recommended that he should seriously consider returning, which was his 'deber,' or obligation. A male council member agreed, stating, 'Yo pienso que ya no es asi, que las mujeres no pueden organizarse, hemos visto que ya no.' 'I think that it is no longer like that, that women can't organize, we've seen that it is not so.' In the end, the young man decided not to return to his wife, but agreed to return the children to her.

In this case, the council members played a strong role in helping the involved parties to accept cultural change, from 'this is how it has always been,' to 'it's not like that anymore.' More importantly, the discussion of culture change was specifically around gender norms, which the Zapatista movement had done much to open to discussion. While the Revolutionary Women's Law issued at the start of the uprising, and the peopling of both the Zapatista Army and the autonomous civilian governance structure with women did not eliminate gender oppression by any means, they did create a situation where it was continually on the table for discussion (Garza Caligaris 1999, Speed, Hernández and Stephen 2006). The presence of many national and international activists in the Zapatista – among them human rights activists, gay rights activists and feminists – clearly added momentum to the debates. So it is perhaps not surprising the administration of justice spaces created by the Zapatista autonomy movement would be spaces where 'traditional' gender norms might be raised and in some cases challenged.

While the cultural context from Chiapas to Oklahoma is vastly different and women's oppression takes different forms in the two places, both the functioning of the courts and the kinds of issues that arise are not as different as you might imagine. The Chickasaw courts also draw together and attempt to listen to all involved parties. Notions of what is 'right,' even while mobilizing fairly conservative gender tropes, are discussed and encompass for more than a strict interpretation of 'what the law says.' In many cases, this gives women more room to negotiate their case. There is an attempt to find solutions that meet the collective good, but also satisfy the affected parties, which means that, contrary to the idea that women will have to cede their individual rights to the collective right to maintain culture, it is possible to work toward solutions that serve both.

A story told to me by a friend about a case from the Chickasaw court, while anecdotal, is nevertheless interesting and in some senses echoes the Oventic case. As it was related to me, the story is this: A young Chickasaw woman and mother of three was in divorce proceedings. She did not wish to divorce; her husband was pursuing the divorce. The case was referred from the district court to the peacemaking court, where family members were gathered to discuss the potential outcomes. Family members on both sides opposed the divorce. The husband, though, argued that he could no longer live with his wife, as she was, in his view, overbearing and controlling. When the peacemaker spoke, she made comments regarding their tribal history and its significance. The young woman followed on these comments, countering

her husband's assertions about her by saying that Chickasaw women were traditionally strong and played a strong role in the family. The peacemaker supported her assertion as valid, and recommended that they try again to work things out. Ultimately, the two did not divorce.

While of course I don't have all the facts surrounding the case, it does reflects dynamics in the Peacemaking courts, where tradition and history are brought in and given significance as part of the process. I cannot say to what extent this played a role in their decision not to divorce (the outcome the woman sought), but it seems feasible that the conscious effort to draw on and develop a distinct cultural model for the legal proceeding, by drawing affected parties together and hearing them out and by having an elder impart knowledge to contextualize the dispute and situate the involved parties through history, culture and identity, may have been a factor. More important than the outcome, from my perspective, is the fact that this alternative type of proceeding allowed for a discussion of gender norms and 'traditions.' In other words, the young woman's interesting deployment of traditional gender roles may or may not have helped her to get the outcome she sought, but it does seem to indicate that these tribal courts – because their objective is to bring culture into the discussion – may be spaces for the potential renegotiation of gender norms. Further, as in the Chiapas case discussed above, these negotiations happened in precisely the justice spaces that represent indigenous sovereignty or autonomy – which would mean that potentially women are able to use these spaces to negotiate change and advocate for their rights without having to invoke state power against collective community self-determination processes.

Having provided the above reflection, a caveat is in order. I do not wish to exaggerate the impact of the courts on changing women's oppression. Even in the case I discussed from Zapatista territory, which might be viewed as having had a relatively positive outcome, the young woman involved had to step out of the council room and into a community where many felt she had transgressed social mores and disapproved of her. Her own parents rejected her, and life in the community as a woman alone was difficult enough that eventually she wound up living in the regional city-center - with her children, but facing new forms of oppression in her new context. The woman in the Chickasaw case may have gained her objective of maintaining her marriage, but that hardly liberates her of gender oppression.

The struggle for cultural change toward greater gender justice will be a long one. These indigenous justice spaces do, I believe, provide a space where cultural tradition may be debated and challenged, without necessitating women's invocation of state power against the communities' autonomy. This is, particularly, the case because of the discussion and debate around 'tradition' and cultural norm that flourish in the context of reassertions of sovereignty/autonomy, as indigenous people respond to the spaces opened by neoliberal policy. In this article, I have provided some reflections on on-going research in which I am concerned with how indigenous justice spaces emerged

in the context of neoliberal power and the ways that indigenous women demonstrate significant agency in renegotiating gender roles and strengthen women's rights in those spaces. I am looking at these indigenous courts as important not so much because women get better outcomes – though in some cases they may - but because they are both concrete manifestations of the struggle for local sovereignty/autonomy, and sites where indigenous women reject the classic dichotomy and opposition of loyalty to the collective good by asserting their right to struggle against the multiple forms of oppression that they suffer. The courts provide a unique space for that struggle, potentially allowing women to support the move toward greater sovereignty/autonomy for their peoples, while renegotiating gender and justice within their own cultural context.

Notes

[1.] So called because they are established through Article 25 of the Code of Federal Regulations. 1880s, the Courts of Indian Offenses were created, later became CFRs after the Indian reorganization act in the 1930s.

[2] Today, with a changed political landscape in the US and in Latin America, we debate whether we have entered the post-neoliberal moment. Turns to the left in many countries (even the election of Obama in the United States) and to the right in others (like Mexico and Chile), obviously engender new dynamics for indigenous people. Further, the now widely-recognized failures of free-market politics that resulted in the world-wide economic crisis have de-energized the once vigorous impulse toward neoliberalism, which just a few short years ago seemed inevitable. But whether or not neoliberal multiculturalism remains the dominant paradigm, it is important to recognize that many of the spaces opened, institutions created, processes set in motion, remain and continue to shape the lives of indigenous people in many places.

[3] Reagan dramatically cut reservation funds for education, the Indian Health Service, Indian Housing and Urban Development (HUD), the Comprehensive Employment and Training Act (CETA), the Economic Development Administration, the Commercial Services Administration, the Legal Services Corporation, and the Bureau of Indian Affairs (BIA) general assistance fund (Hanson 2004).

[4] The trend of federal budget cuts continued during the G.W. Bush administration, seriously affecting Native Americans both on and off reservations. Repeated proposals for massive cuts and shifts of money from education, welfare, construction and economic development programs to trust reform efforts drew resistance from both House and Senate Democrats, though ultimately most cuts were approved. The 2006 budget cut $108 million from the Bureau of Indian Affairs and $107 million from Indian housing. In 2007, the BIA budget was cut by $65 million (2.8 per cent) to $2.3 billion and funding for urban Indian health was cut by 33 million, while the budget for the Office of the Special Trustee (OST)

grew by $21.7 million (9.7 per cent). The White House tried to cut the Urban Indian Health Program each year of the Bush administration, only to see it restored by Congress. (Indianz.com News 2008, Indianz.com News 2005, Minority Rights Group International 2009, Democratic Policy Committee 2008).

[5] A beautiful Cultural Center has been constructed, to the tune of $40 million dollars, that traces the tribe's history and houses a digital archive repository. It is the only tribe in the US that has its own publishing house. All financial data presented in this section are from the Chickasaw Nation Annual Reports and Progress Reports 2008-2010.

[6] One prominent jurist, Juan Ignacio Burgoa, in a public debate about indigenous autonomy rights, went so far as to suggest that 'there might be indigenous groups out there that practice human sacrifice on babies' (cited in Aviles (1997); translation by the author)

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Comment: Indigenous Women search for Gender Justice under neoliberal governance

MARÍA TERESA SIERRA

The fight for gender justice is currently one of the main agenda of indigenous women, both in Mexico and throughout Latin America. Indigenous women have organized in order to demand their rights, but also lead the redefinition of indigenous law from their own cultural frames of reference. They have raised their voice in several forums criticizing gender violence and discrimination they experienced as indigenous women, both within their community and in larger society. However, they are also simultaneously acting as leaders in the struggle to defend indigenous autonomy and self-

determination (IIWF 2006). It has become increasingly clear that indigenous women's demands remain intrinsically connected to the defence of indigenous collective rights, and, thus, it is a fallacy to frame them as being in opposition to each other. To recognize this does not mean to put aside cultural forms of gender violence and its impact on indigenous women, but to question hegemonic liberal discourses that tend to delegitimize indigenous autonomy in the name of the defence of women rights. It is relevant to restate Comandanta Zapatista Esther's message when defending the Law of Indigenous Rights and Culture in 2001 before the Mexican Congress: she confronted the colonial and racist power of the Mexican State which excludes and subordinates indigenous peoples, while at the same time being overtly critical of some of her own peoples' customs and gender norms.

Thus, indigenous women's rights are in the crossroads of the controversy surrounding culture and rights. This controversy acquires a particular importance in view of multicultural legal reforms, which have opened spaces to deal with the rights of self-determination and autonomy of indigenous peoples. These issues are particularly noticeable in revitalized spaces of indigenous justice courts, which have emerged as a result of said reforms. These spaces have become a fundamental arena for the practice and innovation of indigenous law. It is within these arenas that indigenous women are attempting to redefine their rights based on a new gender-and-cultural-diversity-sensitive discourse (cf. Sierra 2013; Sieder y Sierra 2011).

Shannon Speed's piece, 'Women's Rights and Sovereignty/ Autonomy: Negotiating Gender in Indigenous Justice Spaces' is a contribution to this debate. The analytical perspective introduced in this work enriches the debate in two principal ways: a) by insisting on a critical view of neoliberalism as a framework to measure the extent and limits of indigenous autonomies; b) by underlining the necessity of getting beyond binary oppositions between individual and collective rights, and centring instead on the intersectionality of gender violence. These issues have framed the debate for some time in Latin America, but Speed uses them here in an innovative way as a framework for the analysis of indigenous justice and its impact on women rights in two very different contexts: the Chickasaw Justice Courts, in Oklahoma, and the Zapatista Good Governance Councils, in Chiapas. Finally, the two spaces refer to experiences where indigenous peoples exercise sovereignty /autonomy within the framework of neoliberal governance, limiting its scope; and in both cases the practice of justice involve the discussion of customs and gender norms. Shannon Speed's ongoing research aims to demonstrate how indigenous women in each context are using indigenous courts and trials in order to challenge systems of domination introducing new languages of gender rights. Although in both contexts indigenous women face gender discrimination and violence, it is also important to note significant structural and political differences regarding the relationship each ethnic collectivity has with its respective State. For example, Chickasaw's indigenous women, due to

the increasing amount of money coming from gambling, have the possibility to benefit from a more redistributive public policy implemented by the tribal government; and this can act to reinforce their status as women vis-à-vis their collectivity and the State. In Mexico, currently, indigenous peoples are facing the effects of new neoliberal threats and encroachments onto their land and natural resources. This, in turn, is generating much new tension, violence and insecurity forcing indigenous men and women to adopt new courses of action that demand the defence of collective rights. In this context, women rights could be marginalized in order to defend indigenous autonomy.

In neoliberal times, the indigenous justice system faces a paradox. On one hand, there are increasing options as to how indigenous collective rights are deployed and exercised. On the other hand, new challenges emerge, as indigenous autonomy is limited from without, and the extent to which indigenous people can confront economic interests and neoliberal dispossession. It is within these contradictions that indigenous women seek alternatives to innovate their own customs and fight for their rights as women while at the same time they are at the forefront defending the sovereignty of their peoples.

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Comment on Shannon Speed's Article Women's Rights and sovereignty/Autonomy: Negotiating Gender in Indigenous Justice Spaces

LYNN STEPHEN

Shannon Speed's article makes an important contribution to the conversation on neoliberalism and its relationship to indigenous peoples and women's rights. While what several scholars have called 'neoliberal multiculturalism' has allowed states to limit indigenous rights and specify how and where they can be enacted, the same set of policies has also opened up possibilities for indigenous self-determination and in some cases for women through various types of autonomy including that of local governance, local and regional courts and policing systems, territory, and media.

While federally recognized tribes in the U.S. have been able to take advantage of the Tribal Gaming and Regulatory Act to set up autonomous business that make significant profits that are ploughed into social services, health care, language and cultural revitalization, indigenous peoples in Mexico have to undertake these same kinds of projects without a funding base as the state pulls back. The circumstances are thus often quite different.

In Chiapas, Mexico and elsewhere, assertions of autonomy often come in spite of the state. In the case of the Zapatista movement, the Mexican state's failure to fulfil the commitment it made to real constitutional reform recognizing indigenous rights and autonomy had the ultimate effect of giving the Zapatistas and subsequently other indigenous movements and communities the moral high ground in proclaiming their own autonomous communities, municipalities and projects (Speed and Reyes 2008: 287, Hernández Navarro 1998). The examples provided by Shannon Speed of Zapatsita and Chickasaw-controlled courts suggest the importance of cultural models for justice spaces that have two characteristics: 1) the goal of findings solutions that meet a collective good but also satisfy the affected parties, usually extended families as well as the two individual people who have a disagreement, and 2) defy the dichotomy of individual versus collective rights and common good. The results for Chickasaw and Mayan women in such

courts is that they have a space with others from their communities where gendered cultural traditions can be debated and contested without the interference of the state.

These insights are important not only for understanding the ways that gendered norms rooted in cultural tradition may be contested and slowly flex through collective processes in relation to indigenous courts, but also provide important clues to other arenas of indigenous autonomy where women's participation is defying the dichotomy between individual and collective rights. Women have been a part of processes of declarations of autonomy that come through the practice of autonomy, not its approval and designation by national law.

Because of the Zapatista movement's political and cultural importance in demonstrating the meaning of indigenous autonomy, their shift from trying to engage the state through the signing of accords and working to have them legislated in 2001 to pursuing their own model of autonomy unilaterally in 2003 set an important precedent in Mexico and other countries in Mesoamerica. As noted by Shannon Speed and Alvaro Reyes, 'by unilaterally pursuing their autonomy projects, people in Zapatista base areas made a fundamental discursive shift: indigenous peoples' right to self-determination was being asserted as prior to, and regardless of, their establishment in the legal regimes of the state' (2008: 288). This pivot illustrates the distinction that philosopher Cornelius Castoriadis (1991) makes between autonomy as autonomous, or the making or giving of one's own laws in a deliberate and reflective manner, and heteronomy, or the submission to the laws of another. Castoriadis further discusses autonomy in terms of its collective political implications: 'we want everyone to be autonomous, that is to say, we want all people to learn to govern themselves, individually and collectively: and one is able to develop one's capacity to govern oneself only by participating on an equal footing, in an equal manner, in the governance of common business, of common affairs' (1991: 164).

Indigenous and community radio is clearly another leading ground for the defence of indigenous autonomy and rights in Mexico and Central America. The rights to speak and to be heard have emerged as fundamental parts of indigenous struggles throughout the world and are integral parts of the strategies and programs that accompany indigenous struggles for self-determination. The maintenance and proliferation of community-based radio, particularly in indigenous communities have created fertile ground in which non-nonmainstream political processes, strategies, and ideas have continued to exist and grow. In many cases the right to access to radio and television frequencies outside of a commercialized spectrum is fundamental to the defence and maintenance of indigenous languages.

In the state of Oaxaca, Mexico and in Guatemala, women have had significant levels of participation in indigenous community radio. For example, in the Zapotec community of Talea de Castro, a collective of six women and five men run an indigenous community station called Didhza

Kieru, Zapotec for 'Our Words,' that transmits in Zapotec 15 hours per day. This collective is recognized and supported by the local authorities in the municipality and by the assembly of communal landholders (see Ojo de Agua Comunicación 2009). The station is acknowledged as part of the structure of local governance and recognized within the same political and cultural structure that houses community assemblies. The radio station exists in parallel with the assembly, and working in the station is recognized as a form of contributing service to the community as part of a civil cargo or volunteer community governance position. Women are thus recognized through their participation in the radio station as part of the collective governance system in the community. Their ability to be heard on the air and to help to formulate the discussions and debates that take place on the radio is an important part of the autonomy process and in creating cultural spaces where community members interact and debate a wide range of issues, including those of gender.

Like the indigenous courts described by Speed in Oklahoma and Chiapas, indigenous community radio stations provide a space where women can be a part of wider processes of discussion about important aspects of indigenous autonomy. The emergence of community radio networks has indelibly shaped the form of political participation in indigenous communities. Community radio stations provide important roles in communication, community-building, and the promotion of local cultural forms. These roles include: hosting a call-in show that indigenous migrants in the U.S. can use to communicate with their relatives; broadcasting local dance or music performances; and airing programs to discuss health, education, and human rights.

In 2006 in Oaxaca, Mexico a social movement which included not only urban Oaxacans, but also participation in many indigenous communities included take-overs of radio stations, in some cases by women. There, collective rights centred on what women called the rights 'to speak,' 'to be heard,' and 'to decide who governs' were at the centre of a discussion about rights which bridged individual and collective rights (see Stephen 2013). There, as in the examples provided by Speed, it was often women and youth who pushed back on hierarchical models of governance, decision-making and political culture often imposed or indirectly imported from state-based models to suggest the importance of collective processes and rights which could bend tradition and open spaces for more flexible gender roles. In Oaxaca, as in Chiapas and Oklahoma, these processes are still playing out in indigenous community radios, systems of governance, justice, and territory. What is significant is that in some communities, for the first time, indigenous women are at the table, in the spaces, and a part of the conversation.

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Comment: Gender Justice at the Intersection of Human Rights and Custom

JESSICA JOHNSON

'Gender justice' is a difficult concept to pin-down, but its ethnographic probing is essential if we, as anthropologists, are to understand how it is that custom and rights are negotiated in efforts to resolve gendered disputes. In her article, Shannon Speed offers insight into such processes in Chiapas, Mexico, and Oklahoma, USA, where indigenous women have made use of new courts or councils, established within what Speed describes as an era of 'neoliberalization' of indigenous governance. In both locations it seems that the open-ended and inclusive nature of dispute hearings, bringing together as they do all those affected by a case, serve to provide 'spaces for the potential renegotiation of gender norms'. Rights and 'culture' have often been conceptualised as if they were somehow antithetical to one another, particularly when it comes to the rights of women, whether indigenous or not,

which are assumed to conflict with collective mores and women's particular responsibilities for the upholding of cultural standards. As Speed amply demonstrates, however, long-held understandings about the opposition between women's rights and culture do not stand up to ethnographic scrutiny.

In my own research (Johnson 2012, 2013), I have focused on gendered dispute resolution in rural Malawi, where the notion of 'indigeneity' carries little currency but gender, rights and custom are nevertheless debated and renegotiated through case hearings in surprisingly similar ways to those Speed illustrates for the Zapatista and Chickasaw contexts. The men and women who bring their disputes to police Victim Support Units or local magistrates' courts in Malawi are all citizens of the postcolonial nation state and they are simultaneously subjects of traditional authorities; more often than not, they are referred to the state police or courts by their village chiefs. In the police station in which I carried out sustained participant observation in 2009-10, husbands and wives were accompanied by representatives of their respective matrilineages who were central to the discussions that took place. Police officers described themselves as 'counselling' those before them, and in so doing they drew upon extensive knowledge of legal statutes, flexible, uncodified 'customary law', shifting traditional practices, human rights norms and constitutional provisions – at times seamlessly moving from one to another, as when a 'right' to polygamous marriage was asserted, a (contestable) right rooted in the customary realm. Traditional authorities were also engaged in community policing structures, manning Community Victim Support Units in addition to hearing cases at informal chiefs' courts. In either location, chiefs, like police officers, drew upon custom and constitution as alternative legal resources and sources of authority as they led discussions between disputing parties and their concerned kin (see also, Demian 2003). This legal and discursive multiplicity offers ample room for the negotiation of gender norms, custom, rights and justice at the same time that it opens up the possibility of 'import[ing] justice into judgement' (Gluckman 1973 [1955]: 195).

My experience in Malawi leads me to wonder about the extent to which the courts and councils Speed describes might be sites of explicit contestation, and thus constitute a rich source of insight into divergent attitudes towards gender justice, perhaps reflecting differing personal biographies, geographic and regional provenance, generational change, and so on. It would also be interesting to know whether gains made by women in these arenas have prompted reflection, or action, by those resistant to changes that might erode their own position or influence, in the spirit of the Tanzanian Maasai elders whom Dorothy Hodgson (1996) has described as closing ranks in response to a high profile case in which a daughter sought the backing of the national courts so as to oppose her father's 'right' to select her spouse.

Such research makes clear the close proximity of legal and political anthropology. In the Malawian case, a focus on the ways in which villagers

navigate the varied resources and legal arenas available to them as they seek gender justice, from local chiefs, to NGO workers, police officers and magistrates, makes plain the ambiguous plurality of postcolonial governance. In the cases described by Speed, we see the political potential that might be unleashed by institutions that enable the contestation of gender norms within indigenous communities at the same time that collective struggles are waged for community sovereignty/autonomy. No longer do women have to choose between aspirations for individual rights as women and for progress in the realm of collective rights as members of indigenous communities.

This opens up the prospect that women might seek justice on terms that do not entirely coincide with a universal blueprint that can be crassly glossed as 'equality as sameness', or 'feminine futures on male terrain' to borrow a phrase from Signe Arnfred (2011: 119). Indeed, some of the most interesting recent work by feminist scholars has focused precisely on the need to 'pay attention to the concrete specificities of difference', acknowledging that '[c]onceiving equality through difference requires considering the material conditions of women's lives in various cultures and classes' (Hirschmann 2003: 224). In this vein, it is instructive to ask what difference it makes when the conceptual vocabulary shifts from rights to justice. As Goodale and Clarke highlight, justice is qualitatively different from rights because it is 'contextual in a way that human rights is not' (2010: 10): justice is 'an ever receding and ever shrouded social ideal' (ibid.), as opposed to 'an alternative normative orientation characterized by a set of concrete expectations and practices' (ibid.). Thus, following Wendy Brown's assessment that it is 'when rights are approached as 'empty signifiers without corresponding entitlements' that 'they function to encourage possibility' (1995: 134), we might suggest not only that a focus upon justice promises greater ethnographic purchase, but also that the political potential of a concept of gender justice may exceed that of women's rights as human rights.

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Comment on Shannon Speed's 'Women's Rights and Sovereignty/ Autonomy: negotiating Gender in Indigenous Justice Spaces'

HEIKE SCHAUMBERG

Speed´s thoughtful and clearly composed paper on women negotiating gendered indigenous justice addresses a gap in the contemporary literature on the indigenous movements' struggles for autonomy. The readers are presented with three main arguments. Firstly, neoliberalism creates opportunities for indigenous sovereignty/ autonomy. Secondly, these opportunities are framed by the dominant neoliberal agenda, and the process of appropriating them compels indigenous communities to re-define themselves, their 'traditions' and 'culture'. And finally, women actively, and occasionally successfully, negotiate the false dichotomy between individual rights (for example, women's personal grievances) and collective rights, so sanctioned respectively by neoliberal ideology and indigenous notions of 'tradition'/ 'culture'.

The author thus perceptively challenges conventional one-sided arguments about neoliberalism. Paradoxically, she argues, neoliberal policies in some contexts threatened indigenous economic sustainability, while state reduction promoted by neoliberalism has also created more spaces for indigenous people to exercise self-determination and autonomy. A case in point are the indigenous courts created during the neoliberal era to address problems within the community, which often end up hearing cases brought

forward by women about the violation of their rights. Speed's ethnographic examples of Zapatista Chiapas in Mexico and the Chickasaw Nation in Oklahoma reveal how the ambiguous nature of neoliberal ideology has mobilized indigenous communities to subvert the neoliberal rights based doctrine to re-assert their collective sovereignty. That goes some way to explaining the recent global tendency towards radicalizing and organisationally solidifying indigenous struggles for rights and sovereignty, and, thus, the article pays an overdue scholarly debt. It is a stimulating and much welcomed contribution, and I can only add with some considerations to broaden this debate.

My first observation is that Speed's discussion of the multiple facets of oppression that indigenous women face, would benefit from engaging the rich scholarly literature on this topic regarding women from other marginalised backgrounds, notably black communities and migrant workers across the ages of capitalism. Situating the oppression of indigenous women within that context would reveal not only peculiarities and similarities between these different groups and their ability to challenge their gendered, social and cultural oppression, but also the extent to which that ability is circumscribed specifically by neoliberalism versus earlier socio-economic models of capitalism. After all, Speed does not discuss, whether the multiple oppression that indigenous women identify with 'tradition' in their own communities might reflect more the communities' subsumption by capital, than an a priori indigenous way of doing things.

While I appreciate the limited space available in an academic article, identity politics and politically loaded concepts such as 'culture', 'tradition', 'identity', 'history', and 'neoliberal multiculturalism' would ideally need to be critically problematised. Refining the critique in this way might help to capture the deeply penetrating and subtly subversive impacts of forms of domination such as governance and ideology on indigenous efforts at their appropriation. The fact that, as Speed observes, in practice the onus is on women to challenge the 'false binary of commitment to community autonomy/sovereignty and their individual rights', forces them to also shoulder unequally the burden of responsibility about potentially diffusing the collective struggle for autonomy in order to secure their personal (gendered) rights. Arguably, Speed falls short of resolving this political dilemma because she prioritises in her analysis women's negotiating skills (of those women who do speak up) over the larger collective struggle for sovereignty; but whatever happened to class in all of this? The wider literature on women's oppression in other disadvantaged groups does shed light on these conundrums where class, nationalism of the oppressed, gender and other such multifaceted tenets fuse in complex ways. These tenets only gain sociological and political significance, when the individually lived experience turns into an expression of collective struggle to change the status quo. This differing capacity to challenge the dominant order of a racially and socially atomized class system is what is interesting for a politically engaged anthropology.

Secondly, the argument regarding the extent to which indigenous courts really represent 'contestory spaces' that can 'reshape the relationship' between gendered norms and power and 'cultural tradition' and 'customary practice', is less convincing. Speed, in fact, reveals the limitations of this construction in the case of a woman in Chiapas, who, despite gaining the favour of the court, failed to convince her community (and even her parents), which she then felt pressured to leave (although one is left wondering, whether there were other contributing factors concealed to - or by - the author). Besides the constrained ideological clout of these courts, it surely has to be admitted that the autonomy of such community bodies is only tolerated by the dominant national state for as long as it does not transgress the primary mantras of capitalist rule (such as the supremacy of the law of private property). Transferring state responsibility onto society has been typical of neoliberal reform in areas such as health, education, basic social provision, housing, and justice regarding everyday crime within targeted social strata and groups. Neoliberal policy-makers have tended to sell this to the public as enhancing participatory democracy and lay participation in shaping public policies and services. In the UK for example, there is no evidence that any of these participatory government initiatives have had any success at halting the state driven privatisation of public services. If these community courts were able to employ any real judicial powers to challenge land tenure against state or private enterprise, then that would be a case of subversive appropriation to serve collective needs.

Lastly, the soundness of the Chickasaw community's gain of financial autonomy to ''out-neoliberal' the neoliberals' through appropriating the gaming industry – running Casinos – should be questioned. Scholars have fittingly dubbed neoliberalism as a Casino economy, so this would suggest that rather than subvert it, the Chickasaw community leaders have bought into it. Most regular players know that you cannot win against the Casino and yet the Casino profits by selling precisely that fanciful illusion. It begs the question, who are the losers in the Chickasaws' Casinos? It could be argued that instead of serving an example of successfully appropriating and subverting the neoliberal tune, the Chickasaw example illustrates a successful incorporation of indigenous community leaders into the neoliberal logic, where the latter is being exploited instead of challenged. Here I feel we the readers are not told the whole story: how – if at all - does the community protect its collective interests against the threat of corruption and exploitation implicit in a Casino economy, and against the efforts at assimilating the potential adversary to the status quo? How is power – and for that matter other subtler aspects of neoliberal ideology – reproduced during such processes of appropriation? These kinds of questions need anthropologists' urgent attention at a time, when criminalisation of those strata which refuse to subordinate to the chain of free-market command becomes increasingly a favourite tool with neoliberal

crisis managers. In Latin America and recently in Europe, this turn has increasingly been labelled the 'criminalization of protest'.

To Speed's credit, her research confirms the universalising tendencies of neoliberalism, not least in areas of government policy and law. She does so without disregarding or downplaying local differences and peculiarities, but exposes points of fusion and disjunction. Thus, she implicitly corrects – rightly so in my view - contemporary scholarship that over-emphasises the anthropological acumen of 'local difference' and ignores these homogenizing pressures of the neoliberal enterprise upon local realities. Despite my critiques, the accessible style, clarity of argument and information makes reading this article an enjoyable experience.

REPLY

SHANNON SPEED

I am profoundly grateful to, María Teresa Sierra, Lynn Stephen Jessica Johnson and Heike Schaumberg, for engaging with this text and providing their comments, which have deepened my thinking on a variety of issues represented in this article. Indeed, I find myself tempted to rush back to the article and revise in light of their insightful interventions, though I suppose at this point that would hardly be fair. While it will not be as satisfying as a well-revised argument, I shall endeavor here to respond to some of their astute observations.

I found the comparative material highly enriching. The information that Johnson shares from Malawi reveals fascinating parallels in how women can work to improve their situations in the spaces of ambiguity generated by plurilegality. Stephen's discussion of community radio in Latin America extends the comparative discussion to non-legal realms, highlighting how another space opened by the neoliberal moment allows indigenous women, through their participation in indigenous media and the larger autonomy movement of which it is a part, to negotiate and challenge gender norms. Johnson's and Stephen's examples show that women are actively using all spaces open to them to increase political participation and challenge hierarchical relationships that they find unjust, within their own cultural context, rather than seeking outside interventions against their communities in defense of their individual rights.

This is important, for precisely the reason that Schaumberg raises regarding 'resolving th[e] political dilemma' of the false binary between struggles for individual rights and collective autonomy. As Schaumberg rightly notes, I do not resolve it, though not, in my view, because I have prioritized women's negotiating skills over the larger collective struggle. This is one of those places where I feel an urgent temptation to revise my text and clarify my argument – I do not resolve the dilemma because I do not believe it can be resolved. What I wanted to argue was that for a long time and in a variety of different contexts, women's demands have had to take a back seat to the larger collective struggle (including in contexts where that was framed as a class-based struggle, for example, in Sandinista Nicaragua). What is interesting about the current dynamics in the two cases I examine in this article (and it is much clearer in the Chiapas case) is that women are demanding both: they are working toward gender justice in the context of the larger collective struggle for sovereignty/autonomy. From my perspective, the problem with positing, as Schaumberg does, that these dynamics only gain political and sociological significance when 'the individually lived experience turns into an expression of collective struggle to change the status quo,' is that it has so often been the case that the 'collective struggle to change the status quo' is precisely what subsumes individual experience. What I find so interesting about these women's struggle is that I think they are challenging that dynamic by insisting both on being part of the collective struggle to change the status quo and to assert the significance of their individual experience of difference within that struggle.

I think the difference in our perspective centers around the issue of class, which Schaumberg rightly notes I do not address in any depth in the article. That is, if I am reading her correctly, Schaumberg understands 'collective struggle to change the status quo' to be class struggle. This is thorny terrain, both for indigenous people, and for this article, and for that reason I am very glad it has been raised. For the article it is complicated because, while I have tried to draw out similarities in the two cases, on the issue of class the cases are quite distinct. This is what Sierra made reference to when she signaled the, 'significant structural and political differences regarding the relationship each ethnic collectivity has with its respective State.' While both justice spaces are, I believe, partly products of neoliberal processes, the location of the social actors in their respective social hierarchies and structures of power are quite distinct. The Zapatista movement is an anti-capitalist movement, while the Chickasaw Nation embraces capitalism. Here is another point I wish I could revise to clarify – when I wrote that the Chickasaw Nation out-neoliberaled the neoliberals, I meant that there is a strong embrace of capitalism (this is conservative, right- wing Oklahoma, after all), however, rather than the neoliberal logic of unrestrained economies, the Nation has made redistribution through social services its top priority, and by far the majority

of its expenditures go to this. Such practice cannot be qualified as neoliberal; it is precisely for that reason that I find it so interesting.

But there is a larger point regarding indigenous peoples engagement with class that I think is worth making. As I noted, the Zapatista movement is an anti-capitalist movement. However, it does not consider itself a class-based uprising. Instead, the Zapatistas have called on everyone affected by neoliberalism to rise up in struggle from their respective places of difference. The movement has consistently constructed itself rhetorically as a movement of 'difference,' struggling to create a 'world where many worlds fit.' This emphasis on difference is not an accident: it is a direct response to and a discursive referent to past movements in which collective struggle to change the status quo prioritized class over all other forms of oppression and in the process did violence to many, including indigenous people, by failing to recognize the significance of the particular oppressions that they suffered (again, Sandinista Nicaragua is a good example). Indigenous people in Latin America are thus wary about such collectivity. In the United States, Native Americans are equally wary of class. This is because Native American oppression is considerably more complex and profound that just class, and it is highly doubtful that successful class struggle would resolve Native American oppression. While Native peoples undoubtedly feel the more pernicious effects of neoliberal capitalism (resource extractivism, labor market dynamics, etc.) in the context of settler colonialism in which our land is occupied by a settler state, any system imposed on us, capitalist or other, is still an imposition. Our sovereignty as nations is still subject to others' power. For that reason, the struggle in Native North America has been and is likely to remain, a struggle for sovereignty. In that context, the Chickasaw Nation's harnessing of neoliberal dynamics to retake significant aspects of its sovereignty – even as it reinforces capitalist logics – is clearly a form of resistance.

In my work elsewhere, I have tried to highlight the ways in which indigenous peoples' struggles, in all their complexity and contradictions, can simultaneously reinforce aspects of neoliberal state power and challenge others. I think it is important, even urgent, to understand the ways that such struggles are subversive, not just the ways that they are not. Regarding indigenous women's struggles to participate in community autonomy while simultaneously working to change gender norms they find unjust, I think Sierra captured my overarching point, that 'recognizing that indigenous women's demands remain intrinsically connected to the defense of indigenous collective rights, and thus it is a fallacy to frame them as being in opposition to each other… does not mean to put aside cultural forms of gender violence and its impact on indigenous women, but to question hegemonic liberal discourses that tend to delegitimize indigenous autonomy in the name of the defense of women rights.' Perhaps less directly than some would find satisfying, but indigenous women, in insisting on waging their struggle in both realms, present a challenge to (neo) liberal constructions of them as political subjects.

Though I am now pushing the boundaries of my allotted response space, I want to also respond to Johnson's important point regarding the distinction between women's rights and gender justice. I agree with Johnson that 'the political potential of a concept of gender justice may exceed that of women's rights as human rights,' for the reasons she elaborates. However, ethnographic honesty compels me to clarify that the women in the cases I explored would be very unlikely to characterize their actions as struggles for gender justice. That term is my interpretation of what they are doing. And Johnson's astute point makes me realize that I have perhaps been a bit too loose in my application of it to what the women themselves would more likely characterize as seeking their rights, because, in fact, while there is overlap, they are not the same. I understand women's rights as a part of the larger goal of gender justice – the part waged, most often, in the legal realm. In this article, I wanted to highlight the ways women's rights struggles in these particular legal spaces could be understood as struggles for gender justice, though gender justice, of course, entails significantly more than women's legal rights. I greatly appreciate the opportunity offered by the Journal of Legal Anthropology to engage with the important ideas of these distinguished colleagues, and I thank the commenters for their time and intellectual contributions.

Biographical Notes

María Teresa Sierra is senior research professor at the Centro de Investigaciones y Estudios Superiores en Antropología Social (CIESAS) in Mexico City. Her research interests include political and legal anthropology in Mexico and Latin America, particularly legal pluralism, indigenous rights and access to justice, gender and multiculturalism.

Lynn Stephen is Distinguished Professor of Arts and Sciences, Professor of Anthropology, and Director of the Center for Latino/a and Latin American Studies (CLLAS), University of Oregon. Her research focuses on ethnicity, gender, class, indigenous peoples and movements, nationalism, immigration, racialization and structural violence linked to globalization. She has conducted research in Mexico, El Salvador, Guatemala, Brazil, Chile, Argentina, and the U.S. Her current research projects include: political asylum and gendered violence among Mexican immigrants; indigenous autonomy; everyday forms of racism, stress, and health; and a book project on Mexican writer Elena Poniatowska. Her more recent books include Otros Saberes: Collaborative Research on Indigenous and Afro-Descendent Cultural Politics, (School for Advanced Research Press, 2013), We are the Face of Oaxaca: Testimony and Social Movements (Duke University Press, 2013) Transborder Lives:

Indigenous Oaxacans in Mexico, California, and Oregon (Duke University Press, 2007), Dissident Women: Gender and Cultural Politics in Chiapas (University of Texas Press, 2006), and Zapotec Women: Gender, Class, and Ethnicity in Globalized Oaxaca (Duke University Press, 2005).

Jessica Johnson received her PhD in social anthropology from the University of Cambridge in 2013. Her work focuses on gender relations and legal disputes in Malawi. From October, she will be a Research Fellow at Peterhouse College, Cambridge.

Heike Schaumberg is an Honorary Research Fellow at the University of Manchester, where she obtained her PhD in Social Anthropology in 2012. Her multi-sited fieldwork in Argentina focused on neoliberalism, crisis dynamics, and emerging alternatives 'from below' and 'from above'. She has worked with a variety of communities and social movements in Argentina and the political/state configurations they navigated. She has published papers and book chapters on various aspects of neoliberalism and alternatives, including critical engagements with other theoretical interpretations of the Argentine 2001 uprising. Other publications draw on earlier research into higher education and a deep concern with academic practices and politically engaged scholarship. The latest publication due to appear by July this year is 'Disorganisation' as Social-Movement Tactic: Reappropriating Politics During the Crisis of Neoliberal Capitalism', in an edited volume on 'Marxism and Social Movements'.

Shannon Speed (Chickasaw) is an Associate Professor of Anthropology and the Director of Native American and Indigenous Studies (NAIS) at the University of Texas at Austin. She has worked for the last two decades in Mexico, and her research and teaching interests include indigenous politics, human rights, neoliberalism, gender, indigenous migration, and activist research. She has published five books and edited volumes, including Rights in Rebellion: Human Rights and Indigenous Struggle in Chiapas, Human Rights in the Maya Region: Global Politics, Moral Engagements, and Cultural Contentions, and Dissident Women: Gender and Cultural Politics in Chiapas. Her current research is on indigenous Latin American women migrants in Central Texas.

María Teresa Sierra
CIESAS-México, Juárez 87, Tlalpan 14000, México DF
Email: mtsierrac@hotmail.com

Lynn Stephen
Department of Anthropology
Condon 273
University of Oregon
1321 Kincaid Street Eugene, OR 97403
Email: stephenl@uoregon.edu.

Jessica Johnson
Division of Social Anthropology,
University of Cambridge,
Free School Lane,
Cambridge,
CB2 3RF, UK
Email: jaj38@cam.ac.uk

Heike Schaumberg
Social Anthropology,
School of Social Sciences Arthur Lewis Building, University of Manchester, M13 9PL
Email: heike.schaumberg@manchester.ac.uk

Shannon Speed
1 University Station C3200
Department of Anthropology
University of Texas at Austin
Austin, TX 78712-3200
Email: sspeed@austin.utexas.edu