

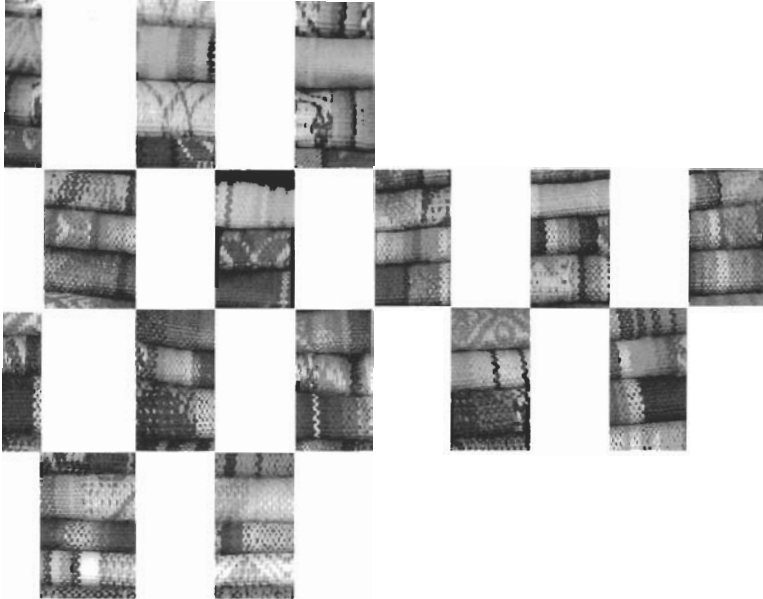


GENDER PARITY & MULTICULTURAL FEMINISM

towards a new synthesis

Ruth RUBIO-MARÍN | Will KYMLICKA

OXFORD



Around the world, we see a 'participatory turn' in the pursuit of gender equality, exemplified by the adoption of gender quotas in national legislatures to promote women's role as decision-makers.

We also see a 'pluralism turn', with increasing legal recognition given to the customary law or religious law of minority groups and indigenous peoples. To date, the former trend has primarily benefitted majority women, and the latter has primarily benefitted minority men. Neither has effectively ensured the participation of minority women. In response, multicultural feminists have proposed institutional innovations to strengthen the voice of minority women, both at the state level and in decisions about the interpretation and evolution of cultural and religious practices.

This volume explores the connection between gender parity and multicultural feminism, both at the level of theory and in practice. The authors explore a range of cases from Europe, Latin America, the Middle East, and Africa, in relation to state law, customary law, religious law, and indigenous law. While many obstacles remain, and many women continue to suffer from the paradox of multicultural vulnerability, these innovations in theory and practice offer new prospects for reconciling gender equality and pluralism.

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Gender Parity and Multicultural Feminism

Towards a New Synthesis

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Challenging Male Dominance in Norm-Making in Contexts of Legal Pluralism: Insights from the Andes

Rachel Sieder and Anna Barrera Vivero

Liberal democracies place individual citizens and their rights at the heart of the polity and are generally characterized by some variant of majority rule. Indigenous governance systems in Latin America place more emphasis on the collective well-being, service, and obligations to the collective, and the need to arrive at consensus by intensive deliberation.¹ Just like formal democracies, they can be more or less participatory or egalitarian in practice. In liberal democracies formal equality requirements mean that, in theory, women are as able to become political representatives as men; in many indigenous systems of governance patriarchal cultural norms tend to exclude women from participating and exercising leadership roles. But against misleading binaries of liberal dominant societies and illiberal minority autonomies, theorists of multiculturalism have repeatedly signalled the dangers of essentializing and reifying culture, and exaggerating cultural differences (Phillips 2007, 2010; Modood 2013).² In addition, caution is in order when applying theories of minority rights to the situation of indigenous peoples. Multicultural models of governance in postcolonial societies structured by racial-ethnic exclusion and dispossession are very different to contexts of religious diversity in the US or post-migration polyethnicity in Europe, yet the normative literature often tends to collapse these distinctions when it comes to debates on women's rights.

¹ We would like to thank Ruth Rubio Marín and Will Kymlicka and all participants of the workshop 'Women and Legal Pluralism: Extending Parity Governance?' at the EUI in Florence (13–14 February 2015) for their important comments on a preliminary draft of this chapter. This chapter draws on material in Sieder and Barrera 2017.

² Anne Phillips (2007) famously argued for the need to discuss 'multiculturalism without culture' or without static, bounded notions of specific differences attributable to 'cultures'.

An initial liberal multicultural proposition was to view internal restrictions deriving from autonomy rights as acceptable providing that individual members of those groups disposed of the option of exit (Kymlicka 1995). Indigenous communities across Latin America approximate to what Ayelet Shachar terms 'nomoi groups': those which share—at least to a significant degree—a unique history and collective memory, a distinct culture, a set of social norms, customs and traditions, or perhaps an experience of mistreatment by mainstream society or oppression by the state' and which have a distinct worldview that extends to legal norms governing community members (Shachar 2001: 41). As Shachar, Anne Phillips, and others have cogently argued, exit from such cultural groups is particularly problematic for women (Shachar 2001; Phillips 2007; Okin 2002). These difficulties are compounded in the case of indigenous women, who suffer gender discrimination and gender violence within their 'nomoi group' and are discriminated against by dominant sectors as women and as indigenous peoples. Given that their cultural identities and economic livelihoods are often—though not always—linked to territory, exit means not only facing rejection by their cultural group but also the loss of access to material and spiritual resources which sustain their rooted sense of identity and belonging. In addition, exit may expose women to aggravated discrimination on the grounds of ethnicity/race and gender in the wider society. Notwithstanding such obstacles, in practice indigenous women in Latin America have opted for all three options discussed by theorists of multiculturalism: 'exit', 'voice', and 'loyalty' or acquiescence/silence (Borchers and Vitikainen 2012). However, as we discuss in this chapter, in recent years they have increasingly demanded greater voice or political and civic citizenship and, simultaneously, gender justice *within* their communities, including rights to participate in decision-making and to redefine communal norms, while at the same time defending indigenous peoples' collective group rights to autonomy (FIMI 2006; IIWF 2014; Sieder 2017).³

With respect to enhancing women's political voice, feminists have argued for decades in favour of electoral quotas as a means to guarantee women's political participation. In most Latin American countries, electoral gender quotas were adopted from the 1990s onwards;⁴ indeed, after Europe, Latin America is the world region with the highest percentage of women in political

³ In this sense indigenous women's organizing in Latin America illustrates one of Shachar's (2001) key arguments: women have more options than simply 'putting up or shutting up'. Rather they contest hegemonic gender ideologies that perpetuate women's subordination *within* their respective cultural communities, thus implicitly or explicitly contesting unitary representations of indigenous culture.

⁴ Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Paraguay, Peru, and Uruguay have all passed gender quota laws; although there is no quota law in place Venezuela, electoral lists must contain 50 per cent women candidates (Piscopo 2014: 2).

office. Sacchet has argued that quotas and the debates around their adoption 'provided an incentive for women's collective action and fostered the politicization of gender issues' (2008: 369). While quotas are a formal measure,

it is one that sends a clear message to both institutional and social agents about gender inequalities, setting in motion changes at the social and cultural levels. The existence of quotas itself is a recognition that women and men are not playing on a level field, and that in order for gender equality to be achieved, existing constraints must be recognized and the necessary measures implemented to overcome them. (Sacchet 2008: 381)

Still, due to the insufficiencies of quota laws,⁵ more recently parity has been advanced as a means not just to improve women's political representation but rather to challenge the public/private sexual division of labour which structures the public sphere, to transform the patriarchal nature of societies, and to achieve the equality of outcomes as fundamental prerequisites of democratic political systems (Rodríguez-Ruiz and Rubio-Marín 2008, 2009).⁶ In other words, parity aims to promote the disestablishment of gender, involving the 'deinstitutionalization of gender beliefs including correlations between bodily sex and gender stereotypes or expectations', with an emphasis on ensuring that governments stop naturalizing and reinforcing 'gender ideologies and social divisions based on sex and gender' (Cruz 2002: 1004, 1000). Seven Latin American countries—Ecuador, Bolivia, Costa Rica, Honduras, Mexico, Nicaragua, and Panama—have recently shifted from quota laws to parity regimes for their national legislatures, with thus far relatively modest results (Piscopo 2014).

Indigenous women's access to political voice and norm-making powers are shaped by the intersection of race, class, and gender discrimination.⁷ As we outline in greater length in what follows, community-based governance systems discriminate against women in different ways, reflecting both broader gender inequalities present in society and context-specific gender ideologies, yet in the Andes they are invariably more accessible to indigenous women than formal democratic institutions of the state. With respect to women's

⁵ Quota laws came to be seen as mere tokenism and as transitory, compensatory, and technical measures open to electoral manipulation by political parties; see: Archenti 2011; Franceschet and Piscopo 2013; Piscopo 2014.

⁶ '[T]he parity democracy model is a response to the fact that the democratic state thus far is a patriarchal state in which the political domain is symbolically and functionally defined as male, according to a paradigm of autonomy as independence. Its aim is to introduce individuals' dependency to the public/political domain, so that it can be represented on an equal footing with the ideal and the manifestations of independence. Indeed, it aims to redefine the subject of political representation by redefining autonomy as interdependence' (Rodríguez-Ruiz and Rubio-Marín 2009: 1181).

⁷ On intersectionality see: Collins 1990, 1998; Crenshaw 1991; Davis 2004; hooks 2004; Lugones 2008.

representation in formal politics, quotas and parity laws have benefited non-indigenous elite women more than indigenous women and others from subaltern and marginalized sectors. In a limited number of cases indigenous women have made incursions into formal politics at national level—for example, Isabel Ortega Ventura, who was Vice-Minister for Indigenous and Campesino Justice in Bolivia (2010–15) or Nina Pacari, the first indigenous congresswoman and later judge of Ecuador's Constitutional Court. These women have risen through the ranks of their (mixed) indigenous peoples' organizations and/or come from families with strong leadership traditions, they are more educated than most indigenous women, and count on the support of their families in order to assume political office. While the personal sacrifices they make are considerable, their presence in office constitutes an important symbolic shift and serves as a valuable source of inspiration for countless other women. However, looking at indigenous women in the region as a whole, their access to formal political office—as compared to privileged, non-indigenous, urban, mestizo women—has remained extremely limited (CEPAL 2013; Cunningham and Sena 2013; Radcliffe 2014).

For the vast majority of indigenous women political participation is expressed in multiple ways in settings beyond formal electoral politics (IIWF 2014). Although the twin processes of multicultural reform and decentralization have opened municipal government in the Andes to indigenous representatives—mostly men—in recent years (Lucero 2008; Van Cott 2008; CEPAL 2013), community-level informal systems of governance (Van Cott 2006a) continue to constitute the main arena of political action for indigenous peoples. Women tend to have their first experiences of participation in school councils, health clinics, women's associations, local water committees, productive cooperatives, radio stations, spiritual ceremonies and celebrations, communal authorities, or decentralized instances of municipal government and participatory budgeting. It is within these spaces that they struggle for their voices to be heard, to develop and demonstrate their leadership capacities, and to ensure their demands are accepted as legitimate by their communities. But while indigenous women have struggled to gradually gain representation in spheres of local self-rule, naturalized patriarchal norms, rules, and practices, paired with symbolic, physical, and psychological violence against those women daring to transcend these, have posed enormous obstacles to the achievement of greater gender justice in local communities.⁸

Following Deveaux (2003), we argue for a more pragmatic, politically focused, and context-sensitive approach to advancing women's political voice and norm-making powers. As Deveaux states, 'rather than locating the source of democratic legitimacy strictly in formal political deliberation, [...]

⁸ See Franco and González 2009; Lang and Kucia 2009; Nostas and Sanabria 2009; Hernández and Canessa 2012; Radcliffe 2014.

the *scope* of democratic activity is much wider than this; non-formal democratic expression, such as forms of cultural resistance and reinvention [of traditions or customs] in the private realm, also speak to the issue of a social custom's legitimacy or illegitimacy' (2003: 781). Thus, in this chapter, we first outline the current constitutional and legal dispensations on recognition of indigenous autonomies, indigenous special jurisdictions, and specific rights and protections for indigenous women in Bolivia, Ecuador, and Peru.⁹ Subsequently, we explore the key characteristics of community-based governance systems and obstacles to women's equal participation in these; and finally, we analyse the arguments and strategies pursued by indigenous women's organizations in the region, within which the reinterpretation of cultural norms has acquired a prominent role. We emphasize the need to place the perceptions and initiatives of indigenous women—and their male allies—directed at transforming existing gender exclusions at the centre of our analysis.

9.1 MULTICULTURALISM, LEGAL PLURALISM AND INDIGENOUS WOMEN'S RIGHTS IN NORM-MAKING IN THE ANDES

Bolivia, Ecuador, and Peru are all signatory parties to the main international and regional human rights conventions, such as the International Covenant on Civil and Political Rights and the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW). As a consequence, in their most recent constitutions these countries have guaranteed all their citizens key rights such as non-discrimination based on sex, race, language, or other grounds as well as the right to political participation in public affairs, including the right to vote and to be elected to office in periodic elections based on universal and equal suffrage. In addition to participation through political parties, all three countries reformed their electoral rules in order to allow social movements and citizens' organizations to participate. As a means of affirmative action, all three states incorporated a women's quota of at least 30 per cent for national and subnational political elections from the end of the 1990s onwards. Subsequently, in order to tackle abuses of the quota requirements by some political parties, Ecuador and Bolivia went a step further by incorporating the principles of gender parity and alternancy (between principle and substitute candidates) on candidates' lists in their most recent

⁹ Colombia was the first country to recognize special indigenous jurisdiction through its 1991 constitution. In this chapter we focus on the more recent 'third wave' of multicultural/plurinational reforms (Yrigoyen Fajardo 2011), examining the cases of Ecuador, Bolivia, and Peru.

constitutions of 2008 and 2009 and their reformed electoral laws. At first the seven seats of the Bolivian parliament specifically reserved for (lowland) indigenous groups, who were given the right to determine candidates according to their own norms and procedures, were exempted from this requirement. But a negative first experience with this formula during the national elections in December 2009, in which only one out of eighteen candidates for these specially reserved seats was female, prompted the national congress to introduce the same principles of parity and alternancy for the indigenous candidates' lists in the new electoral law of 2010. Moreover, the Bolivian Congress also ruled that the election of judges to the Constitutional Court and the Electoral Tribunal should be based on the principle of parity (Archenti and Albaine 2013; Htun and Osso 2013; Piscopo 2014).

The constitutional recognition of indigenous jurisdictions adopted throughout the 1990s in Peru (1993; art. 149), Bolivia (1994; art. 171), and Ecuador (1998; art. 191) were all inspired by the Colombian forerunner of 1991 (art. 246) in as much as all of them confirmed the legality of (1) indigenous legal institutions; (2) authorities commissioned by their respective communities with the competence to adjudicate conflicts and administer justice within communal territories; and (3) the application of local customs, norms, and procedures. Potential violations of individual rights of vulnerable or disadvantaged in-group members (such as women) by indigenous legal practices were anticipated by the incorporation of respective limiting clauses stipulating that local customs could not violate individual rights, and in some cases also the constitution or the national legislation (Cóndor 2009: 13–14; UN Women 2011: 64; Yrigoyen Fajardo 2004).

Peru's constitution of 1993, still in force today, recognized legal pluralism in the following manner:

The authorities of the campesino and native communities, with the support of the rondas campesinas, can exercise their jurisdictional functions within their territories in accordance with their consuetudinary law, so long as these do not violate the fundamental rights of the person. A law shall establish the forms of coordination between this special jurisdiction with the Justices of the Peace and all other instances of the judicial branch.

(Peruvian Constitution 1993, art. 149, authors' translation)

The 2008 Ecuadorian Constitution endorsed a stronger version of autonomy rights than its 1998 predecessor (García Serrano 2011; Grijalva 2011; Schilling-Vacaflor and Kuppe 2012). Moreover, the Constitutional Assembly proved open to specific demands presented by a variety of citizens' groups, among them Kichwa women from the Andean highlands, spearheaded by the NGO *Red de Mujeres Kichwas de Chimborazo* (Kichwa Women's Network of Chimborazo), who successfully lobbied for the inclusion of their right to participate in indigenous legal decision-making (Cucuri 2009; Picq 2013):

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Indigenous comunas, communities, peoples, and nationalities have the right [...] to create, develop, apply, and practice their own or consuetudinary law, which cannot violate constitutional rights, in particular those of women, boys, girls, and adolescents. (Ecuadorian Constitution Art. 57 no 10, authors' translation)

The authorities of indigenous communities, peoples, and nationalities exert jurisdictional functions on the basis of their ancestral traditions and their own law within their territories, guaranteeing women's participation and decision-making. The authorities apply their own norms and procedures in order to resolve their internal conflicts; these should not be contrary to the Constitution and human rights recognized in international instruments. The State guarantees that the decisions emanating from the indigenous jurisdiction be respected by public institutions and authorities. These decisions shall be subject to control of constitutionality. A law will establish mechanisms of coordination and cooperation between the indigenous jurisdiction and ordinary jurisdiction.

(Ecuadorian Constitution Art. 171, authors' translation)

The constitutional reform was followed by efforts to further enshrine these stipulations in law. The reformed Organic Law on the Judicial Branch (2009) outlined a set of principles for intercultural justice for state judicial operators attending to members of ethnic groups or ruling on cases in which these persons were involved (e.g. *non bis in idem*, *pro jurisdicción indígena*, *inter-cultural interpretation*). Indigenous authorities were given the option to contest state court jurisdiction by providing evidence that they had already acted on a given case. And the topics of gender, diversity, and interculturality and indigenous legal practices (particularly in regions with a substantial indigenous population) were to be included in law school curricula and the training of law enforcement personnel.¹⁰ The Organic Law on Jurisdictional Guarantees and Constitutional Control (2009), in turn, introduced the 'extraordinary action of protection' by which individuals or groups could appeal before the Constitutional Court in Quito against rulings emanating from indigenous legal authorities if they believed that their constitutional rights had been violated; explicitly, this option was also given to women who felt discriminated against by their legal authorities on the basis of their gender. Judges were expected to avoid '(e)thnocentric and monocultural' (art. 66.1) interpretations of the case at hand, and to strike a balance between constitutional and indigenous norms in their rulings. And while stating that the autonomy of indigenous legal authorities in the exercise of their functions should be upheld to the highest possible degree, the law also emphasized that no violation of human rights and rights to participation by women could be justified by reference to local customs. Despite some procedural obstacles to appealing against indigenous authorities' resolutions (such as the short time frame established for lodging an appeal), this instrument has opened a venue

¹⁰ Art. 69, 344–6 Ley Orgánica de la Función Judicial; see also Barrera 2012.

for indigenous people, including women, to claim their constitutionally guaranteed rights.¹¹ At the time of writing no case involving indigenous women protesting lack of equal access to positions of authority in indigenous jurisdictions had been presented to the Constitutional Court, but the law potentially opens the possibilities for such an appeal on the grounds of constitutional principles of equality, dignity, and non-discrimination.

The Bolivian Constitution of 2009 went even further in terms of differentiated citizenship rights of indigenous groups by entitling all Bolivia's ethnic groups to an extensive package of collective rights, including self-determination and self-government. Indigenous legal systems, conceived merely as an alternative dispute mechanism in the previous 1994 constitutional reform, were now understood as constituting an integral part of the state's judicial branch, and indigenous jurisdictions were placed at the same hierarchy as others, such as ordinary justice and agro-environmental justice.¹²

While the relevant constitutional norms did not specifically refer to women and their role in indigenous governance systems, the subsequent Law on Jurisdictional Demarcation (2010) stipulated that indigenous and ordinary jurisdictions must respect gender equality and women's rights. Specifically both jurisdictions must 'respect, promote, protect and guarantee equality between men and women, in access to justice, access to [public] office and functions, in decision-making, [and] in the development of procedures for judging and the application of sanctions',¹³ and also 'respect and guarantee the exercise of women's rights, their participation, decisions, presence and permanence, both in [terms of] their equal and fair access to [public] office and to control, decision and participation in the administration of justice'.¹⁴ With the exception of the crime of rape, which should be exclusively dealt with by ordinary penal law, both indigenous and state legal systems are obliged to prohibit and sanction violence against children, adolescents, and women. In addition, all jurisdictions were instructed to refrain from the method of conciliation while resolving cases of gender violence, a measure long advocated by feminists who criticized conciliation for failing to challenge structural and interpersonal gender inequalities, particularly between victims and their aggressors.¹⁵

With respect to constitutional control of indigenous jurisprudence, the Law on the Plurinational Constitutional Tribunal (2010) provided for a special chamber whose core functions include a case-by-case evaluation of the

¹¹ Art. 65, 66 Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional; see also Barrera 2012.

¹² Art. 30 II 14; 179; 190, 191, 192, Bolivian Constitution 2009.

¹³ Art. 4 H Ley 073 Ley de Deslinde Jurisdiccional (Law on Jurisdictional Demarcation, 2010).

¹⁴ Art. 5. Inciso II. Ley 073 Ley de Deslinde Jurisdiccional (Law on Jurisdictional Demarcation, 2010).

¹⁵ Art. 5,10 Ley de Deslinde Jurisdiccional.

compatibility of indigenous legal practices, norms, and rulings with constitutional law. Should the tribunal arrive at the conclusion that a norm applied by indigenous authorities was unconstitutional, it must propose an alternative, culturally appropriate solution for the conflict at hand. In addition, all Bolivian citizens, including indigenous women, were entitled to lodge writs of protection to demand the fulfilment of their constitutionally guaranteed rights.¹⁶

In Bolivia, the 2009 constitution and the General Law 31 on Autonomy and Decentralization (2009) also paved the way for the conversion of pre-existing territorial spaces such as municipalities into indigenous autonomous territories (*Autonomías Indígena Originario Campesinas*). Once established, such autonomies will provide increased possibilities for indigenous peoples' self-governance and the assumption of a considerable amount of decentralized competences, including the administration of justice according to their own norms and procedures. Regarding indigenous women's rights to participation, Law 31 established that the governmental bodies of the autonomous territories would have to respond to the principle of gender equality. In the same tenor, gender equality is one of the minimum standards required of the autonomy statutes that must be drawn up as part of the process of conversion to an autonomous territory.¹⁷

9.2 COMMUNITY-BASED GOVERNANCE AND LAW IN THE ANDES

Despite many differences, at least three features of community-based governance and legal institutions of indigenous peoples in the Andes stand out: continuity, dynamism, and diversity. All of these are central to understanding indigenous women's efforts to secure greater voice and participation within their own systems of governance—efforts we will detail in Section 9.3.

9.2.1 Continuity

Indigenous forms of self-regulation in the Americas existed prior to the arrival of colonial forces in the fifteenth century, and today in the twenty-first century many groups residing in rural and semi-rural areas continue to organize community life through their own institutions, authorities, and norms. Beginning with the imposition of colonial rule, indigenous institutions co-evolved in

¹⁶ Art. 12, 32, 56–64, 137–40 Ley del Tribunal Constitucional Plurinacional; see also Barrera 2012.

¹⁷ Art. 5.11; 12 Ley Marco de Autonomías y Descentralización 'Andrés Baez'.

an uneasy and asymmetric relationship with the dominant colonial and later republican political regimes (Stavenhagen and Iturralde 1990). The concrete nature of the relationship hinged, among other things, on the geographic proximity of a power centre to an autochthonous group, the rulers' interests with regard to a specific region, resources, and population, as well as their effectiveness in penetrating the vast territories of the region. In the lowlands of Andean countries such as Bolivia, the first to arrive were often missionaries charged with the task of 'civilizing "savages"' and converting them to Catholicism. The Andean highland population, by contrast, was subjected to a two-tier regime comprised of the Republic of the Spanish and the Republic of the Indians, the latter designed to restructure and fragment pre-existing forms of indigenous organization into new administrative entities with specific regulations and new political and judicial authorities. While there were prescriptions to align indigenous law with 'official' law (such as the prohibition of polygamy; see Fernández 2000; Amry 2007), in general, indigenous peoples maintained the right to adjudicate minor internal conflicts according to their own norms as long as these did not contradict norms of the Catholic Church nor laws introduced by the Spanish colonial administration (Yrigoyen Fajardo 2006).

Indigenous peoples were also able to maintain pockets of autonomy after the transition to independent Latin American republics in the early nineteenth century, notwithstanding that the multiethnic composition of the population was ignored in national constitutions which established the ideal of a homogeneous nation of allegedly 'free and equal citizens' united by a single normative order (state law), one religion, and a sole cultural and linguistic identity, and the fact that an increasing autochthonous population was dispossessed of their lands and subjected to distinct schemes of semi-feudal labour relations and mistreatment.¹⁸ Neither initiatives to assimilate or to 'protect' the indigenous population in the first half of the twentieth century (Hurtado and du Puit 2006), nor attempts to incorporate indigenous people as rural workers or peasants (campesinos) in the context of agrarian reforms in the 1950s until the early 1970s,¹⁹ prevented communities from passing their memory, knowledge, and traditions on to the next generations. These processes were a means to safeguard their survival and internal coherence (Stavenhagen 1990) amid discriminating political regimes, societies characterized by pervasive racialized segmentation (Rivera 2010; Chuquimia 2012), and an ever-growing tendency of foreign companies and settlers to exploit natural resources in the lowlands (Yashar 2005; Clark and Becker 2007). Given the limited and uneven presence of public institutions and services in the Andean countries (O'Donnell 1999),

¹⁸ See Rivera 2010; Barragán 2000; Sattar 2007; Waters 2007; Decoster and Rivera 2009; Chuquimia 2012; Llasag 2012.

¹⁹ The agrarian reforms implied a mayor restructuration of community-based governance systems, authorities, and rules; see Van Cott 2005; Yashar 2005; Chuquimia 2012; Llasag 2012.

and high degrees of mistrust of the state judiciary,²⁰ one of the main reasons why many indigenous peoples today ascribe *legitimacy* to their institutions of political-legal self-governance resides in their perception that these are constitutive elements of these groups' collective histories and identities. Importantly, this also holds true for indigenous women, who have simultaneously expressed serious concerns about the gender-discriminating features of these community-based institutions.

9.2.2 Dynamism

Indigenous law—like all legal orders—is neither static nor impermeable. Law—understood as an authoritatively enforced cognitive and normative framework for conduct and interaction among members of a given social group (Benda-Beckmann 2002: 38)—is created, reproduced, interpreted, scrutinized and reformed in peoples' minds and through social practices (Cowan et al. 2001: 12). Given that law serves as a means for the (often unequal) distribution of social positions, relationships, and resources among groups and individuals, it is not a 'neutral' form of social regulation; instead, it often tends to reflect prevailing power constellations and conflicts of interest within and among groups at a given moment in time (Starr and Collier 1987: 368). Furthermore, as emphasized by legal sociologist Boaventura de Sousa Santos, in contexts marked by the operation of more than one legal order in a given socio-political space, these are no longer conceived of as closed or separate entities, but rather come to form 'different legal spaces superimposed, interpenetrated, and mixed in our minds as much as in our actions' (Santos 1987: 297–8), resulting in complex and potentially conflictive configurations of 'interlegality'. Accordingly, while any legal order continues to constitute a 'semi-autonomous social field' (Moore 1973) with the capacity to provide rules and means to assert compliance for a certain group, it is simultaneously influenced by developments, rules, and decisions emanating from other regulatory fields with which it interacts.

What Santos described on an abstract level has been mirrored in Latin America's history of legal pluralism: indigenous groups were able to partly uphold their norms and institutions across time, however, changes in the historical context and the centuries-long interplay between state and indigenous normative orders resulted in modifications, imbrications, and syncretisms of indigenous law (Sierra 1997, 2004; Orellana 2003, 2005; Brandt and Franco 2007; Kuppe 2009). Indigenous authorities not only reacted to community-based demands and internal developments; they also confronted exigencies

²⁰ Due to corruption, ineffective enforcement, impunity, and poorly trained and equipped personnel; see Faundez 2010; World Justice Project 2014.

posed by colonial and republican law, the rules imposed by priests, state intermediaries (such as the *justices of the peace* in Peru, the *teniente político* in Ecuador, or the *corregidor* in Bolivia), local strongmen (*patrones* or hacienda-owners), and, more recently, international human rights norms; 'project law' diffused by development cooperation agencies, or the law of transnational enterprises (Weilenmann 2005; Kuppe 2009; Picq 2013). Such external influences were hardly ever directly imposed on indigenous jurisdictions; rather, local responses have ranged from the partial adaptation of external elements of law, to the revitalizing of pre-existing norms, through to the outright resistance against external influences (Stavenhagen 1990; Sierra 1997; Brandt and Franco 2007; Sieder 2011). Thus the restructuring of communities' governance systems into new organizational schemes such as '*campesino* communities' has often not led to a complete abandonment of former institutions, authorities, and customs, but rather to the partial accommodation of previous features within new official schemes, or else the continued assignment of specific functions to traditional authorities (Gonzales de Olarte 1994; Albó 2009; Decoster and Rivera 2009).

Another aspect which adds to the flexibility and 'informality' of indigenous governance in the Andes is its fundamentally oral and dialogue-based nature. With the exception of formal statutes—a legal requirement introduced for *campesino* communities (in Bolivia and Peru) or *comunas* (in Ecuador)²¹—norms are typically not codified. However, the absence of written norms does not mean that no rules exist. Communities usually share a common understanding of the competent authorities, relevant norms, necessary procedural steps, and potential measures to be taken. Argumentation may encompass traditional or innovative interpretations of local norms or the adaptation of concepts and ideas stemming from other legal spheres. Many people can participate at some stage of a deliberative process and ultimately have a say in determining the outcome of a legal process.²² As René Orellana observes with reference to Quechua groups in the Bolivian highlands:

The richness of indigenous-campesino community law and their forms of administering justice resides in its great dynamism, in its capacity to change, to be reinvented and become flexible according to the rhetorical dynamics developed by distinct agents in community-based juridical events; these dynamics convert events of dispute resolution into arenas of intense argumentative deliberation with circulating discourses that reconfigure law, thereby making use of materials

²¹ These legal stipulations contain a basic description of the community governance structure, rules for membership, and major offences to be dealt with by the community council or assembly; their update or alteration implies long and bureaucratic procedures before the respective (and often remote) state entity.

²² See Fernández 2000; Brandt and Franco 2007; Córdor 2009; Kuppe 2009; Inksater 2010; Santos and Exeni 2012; Santos and Grijalva 2012.

that are ascribed a certain value, formal arguments, and normative principles of the state or what the people perceive as the state. (Orellana 2003: 12)

Therefore, quite to the contrary of what may be associated with concepts such as 'traditional' or 'customary' law, indigenous law is defined by its transformative and adaptive nature. This constitutes a key point of departure for current debates about how to achieve greater participation of indigenous women in shaping the norms and practices of their community-based political and legal institutions.

A third aspect which has to be taken into account when discussing options for tackling gendered hierarchies within community-based indigenous governance institutions is the considerable diversity of these institutions, norms, and practices. Undoubtedly a number of common features exist: indigenous law does not constitute a differentiated and autonomous sphere of the community structure, but forms an integral part of a community's social and cultural life. Instead of trained legal professionals, elected or appointed community members hold distinct positions within community authority structures for shorter or longer time periods. Depending on the type, severity, and recurrence of a particular issue, distinct instances may be deemed competent to adjudicate conflicts and take decisions, starting from the family, to individual members of entire councils of authorities, to the community assembly, through to higher-level organizations. Procedures tend to place much emphasis on extensive dialogue and a thorough analysis of the background and underlying causes of a specific conflict. Sometimes such procedures are accompanied by spiritual rites. The rulings or sanctions may be at the same time moral, exemplary, compensatory, reconciliatory, rehabilitative, or punitive in nature and typically aim at the prevention of further harm, as well as the restoration of social relations and communal peace.²³

A contrast between the Bolivian lowlands and the highland communities of Ecuador provides an example of the diversity and dynamism of indigenous forms of local governance: At the heart of the Chimane people residing in the Indigenous Territory of Chimane, which cuts across the boundaries of three municipalities in the Department of Beni in the Bolivian Amazon, is the Gran Consejo Chimane—a relatively new organization encompassing representatives from all communities located within its officially registered territory. The organization holds regular meetings to deliberate political strategies and internal affairs first, by means of a general congress taking place every five years and in which its directive board is elected for the next period of office, and, second, by means of the assembly of the Chimane people, which meets on

²³ See Fernández 2000; Brandt and Franco 2007; Córdor 2009; Kuppe 2009; Inksater 2010; Santos and Exeni 2012; Santos and Grijalva 2012.

an annual basis and also adjudicates important legal matters. Influenced by evangelical missionaries, the Chimane introduced the central authority of the *corregidor* in each community at the beginning of the 1990s. The *corregidor* is publicly elected by the community members for an indeterminate period of time, attends to all community affairs (including interpersonal violence), and reports regularly to the Gran Consejo Chimane. As a consequence of the promulgation of the national Law of Popular Participation (1994), communities also adopted the additional office of a community president who has the mandate to decide on political, legal, and social affairs and to represent the community externally. By introducing these two new community-based positions, previous authorities—councils of elders who represented extended family networks—were partly deprived of their former roles. Even so, in legal matters such as a spouse's infidelity, family members act as a first instance of conflict mediation. With the exception of this first legal instance, all community-based and supra-community leadership roles require the mastering of the Spanish language, are time-consuming, and imply frequent journeys to external locations in representation of the community or the Chimane. Therefore, few Chimane women have thus far participated in these spheres of political-legal decision-making (Melgar 2009).

Among the Saraguro people who reside in the Ecuadorian highland provinces of Zamora-Chinchipe and Loja, the first instance of conflict mediation is the family; problems among spouses or domestic violence, for instance, are usually first discussed with the parents or the witnesses to the marriage. If family intervention proves unsuccessful, people can turn to one of the members of the community council (a five-person *cabildo*, elected by the community assembly on an annual or bi-annual basis), who—depending on the severity of the issue—may either invite the parties and their families to a conversation or convene a session of the entire *cabildo*, in order to analyse the matter and reach an adequate resolution or sanction. The next-higher instance of decision-making and jurisprudence is the community assembly, which rules on matters affecting the well-being of the entire community and monitors compliance with rulings of the *cabildo*. In some cases, women call into question the neutrality of community-based authorities and directly turn to the Inter-provincial Federation of Saraguro Indians (FIIS) which acts as a representational vehicle for the entire Saraguro people. Similar to their Chimane counterparts, the representation and voice of Saraguro women in the community councils and assemblies is still low, not only due to the alleged irreconcilability of community office with other multiple and time-consuming roles with which women are tasked, but also because with the assumption of leadership roles women risk becoming the target of gossip (Vásquez 2012).

Thus, both examples immediately refer us to another aspect of indigenous systems of political-legal self-governance, namely their tendency to reproduce asymmetrical gender hierarchies.

9.2.3 Women in Communal Spaces of Deliberation and Decision-making

Whether family or clan-based, patrilineal or not, ethnic groups in the Andes are characterized by unequal gender relations. Just like their political and legal institutions, social relations within indigenous groups have been historically shaped both by internal developments and exigencies and by influences from outside. Colonization; the conversion of traditional indigenous structures of self-regulation into state-sanctioned ones; the monetization of peasant economies; the increased need to complement subsistence agriculture with waged labour and temporary work migration in order to safeguard survival; demographic changes and urbanization; and the implementation of national social policies emphasizing women's reproductive roles, are all thought to have implied a shift in the valuation of gender roles and to have deepened gender asymmetries among indigenous groups in the Andes.²⁴

Communal life, social practices, and local institutions are permeated by gender hierarchies. Beginning with childhood, passing to the stages of adolescence, adulthood, and seniority, women and men are expected to perform different but complementary tasks. Next to productive activities such as agricultural work in the fields, livestock breeding, or gathering of food in the forest, women are commonly assigned many reproductive tasks in the domestic sphere (cleaning, cooking, washing, and cleaning), childcare, healthcare of all family members, and care of the elderly. More generally, membership in a community implies becoming part of interdependent and reciprocal ties within the core and extended family, neighbourhood, and the entire collective. The well-being of the collective, rather than that of the individual, stands at the centre of indigenous community life, and the coherence of families and the community depends on the willingness of each member's assumption of (gendered) responsibilities, for example, in joint communal works, spiritual rites, festivities, or the exercise of authority functions. In exchange, each family and community member can also count on the support of the collective in certain situations, such as tilling of lands, construction of a house, restoration of damages, and taking care of his or her belongings, fields, or children during periods of absence.²⁵ Indigenous men and women do not perceive of themselves first and foremost as individualized subjects, but rather as communitarian subjects, their lives part of the interrelated and integrated whole symbolized by the community.

Gendered hierarchies are also reflected in mechanisms of conflict resolution and decision-making in all community-level instances—core and extended

²⁴ See Arnold and Yapita 1996; Rivera 2010; Alderete 1998; Franco and González 2009; Nostas and Sanabria 2009; Boesten 2010; Choque and Mendizabal 2010.

²⁵ See Alderete 1998; Estremadoyro 2001; Canessa 1997, 2005; Nostas and Sanabria 2009.

families, community councils, assemblies, state intermediaries, or larger organizations. Not only are women under-represented as authorities and elected representatives in most of these spaces for participation (among other things because the involvement in community affairs is time-consuming and difficult to combine with the heavy burden of domestic tasks, or because their partners prohibit them from becoming involved in community affairs); even if women decide to take part in these spaces of deliberation or are encouraged by their partners and families to do so, the obstacles standing in their way to make their voices heard are tremendous. Women suffer from low self-esteem because of their lower education level and their insufficient mastering of the official (Spanish) language; because they are expected to deal with issues in which they typically have gained little or no experience; and because they often confront symbolic, physical, and psychological violence. Traditions of patriarchal male leadership mean women tend to be listened to less, receive less space for talking, and see their arguments receiving less recognition; norms of 'decent' behaviour often enforce women's silence or secondary, symbolic roles, and women are often ridiculed when they do find the courage to speak up in public assemblies. Those who do speak in public or leave their homes to attend meetings (where men who are not their kin are present) report being subjected to malicious gossip, social censure, and even violence from their male and female relatives. Younger women, though generally more formally educated than their elders, are discriminated against by men not just for their gender but also their age. Lastly, because indigenous legal institutions have failed to deal with gender violence, sexual abuse, and rape—rights violations affecting many indigenous girls and women—either by entirely declaring themselves incompetent, by failing to take on an impartial stance towards the involved parties to the conflict, or by prioritizing collective over individual well-being, these systems have come under scrutiny in recent years both by indigenous women themselves and by non-indigenous sectors of Andean societies.²⁶

9.3 INDIGENOUS WOMEN'S STRATEGIES TO ENHANCE THEIR PARTICIPATION IN NORM CREATION

Despite all the aforementioned barriers, indigenous women are not merely victims of rights violations, but also active political subjects with agency and voice. In the past decades, a growing number of them have met in newly

²⁶ See Franco and González 2009; Lang and Kucia 2009; Nostas and Sanabria 2009; Vega 2009; Salgado 2012; GIZ 2014; Radcliffe 2014.

created spaces of deliberation, including workshops and summits at local, national, continental, and international level,²⁷ to discuss culture and rights from their own standpoints. The enunciations emerging from such forums bear testimony to indigenous women's understandings of themselves as bearers of both collective *and* individual rights.²⁸ Against a homogenizing interpretation of universal human rights which remains detached from their lived realities, many indigenous women have opted for the appropriation and resignification of these rights discourses so as to bring them more in line with their own cultural frames of reference. On the one hand, they have positioned themselves alongside their male counterparts in order to defend their rights as peoples and to struggle against the racism and discrimination they encounter within their countries. On the other hand, women have denounced the unequal treatment they experience within their families, communities, and organizations. In so doing, they do not seek to reject their cultural identities, but to the contrary strive to strengthen them by confronting internal oppressions and insisting on more balanced relationships within the culturally specific spaces which they strongly endorse.²⁹

The concrete strategies women (and their male allies) have developed to alter harmful practices and injustices are varied and context-dependant. On a general level, the use of discourses of *rights* to defend women's interests has resonated within indigenous communities and movements more than initiatives focusing on *gender* issues, particularly as the latter have often been viewed as extraneous and divisive (Richards 2005; Pequeño 2009). And while in the initial stages women's claims for gender justice were rejected as inimical to the collective struggle for recognition and rights by male leaders (FIMI 2006), today the prevalence of 'machismo' and violence against women are generally recognized as internal problems by male leaders in most communities and organizations—even though these are far from being systematically confronted by social movements (Radcliffe 2014). Women and men have sought to advance claims for greater gender justice from options such as:

Consciousness raising. Low literacy and mobility, combined with limited access to information and state agencies in rural parts of Andean countries means that sensitization about rights and the ensuing discussions about prevailing gender asymmetries and the lack of women's participation continue to be a key entry strategy in order to raise the consciousness about

²⁷ The International Indigenous Women's Forum (*Foro Internacional de Mujeres Indígenas*, FIMI) and the Continental Network of Indigenous Women of the Americas (*Enlace Continental de Mujeres Indígenas de las Américas*, ECMIA) have evolved into highly relevant spaces of supra-national activism and representation for Latin American indigenous women.

²⁸ See, for instance, Beijing Declaration of Indigenous Women 1995; Sánchez 2005; FIMI 2006; Lang and Kucia 2009; ECMIA and Chirapaq 2013.

²⁹ See FIMI 2006; Figueroa Romero 2011; Lang and Kucia 2009; Santos 2010: 100, 106; Sieder and Sierra 2010; ECMIA and Chirapaq 2013; Sieder 2017.

gender injustices even among the (geographically) most remote peoples in the Andean highlands and lowlands. Such activities may be realized by means of workshops in native languages (Vega 2009), radio programmes which enjoy ample coverage in many Andean rural zones (GIZ 2014), or through innovative activities which touch upon local taboos, such as the organization of female soccer competitions (Barrera 2016). The involvement of both women and men in such events is extremely important; if men are not present it is unlikely that they will reflect upon and take a stance in the debates.

Leadership training. Initiatives to provide leadership training for women have likewise been an important factor in increasing women's political participation. Since 1997, female members of the indigenous highland organization ECUARUNARI³⁰ promoted the leadership school *Escuela de Formación Política Dolores Cacuango* which has strengthened indigenous women's electoral presence at parish, cantonal, and provincial level (Figueroa Romero 2011).³¹ Radcliffe points to the importance of backing from male leaders in such efforts in Ecuador: for example, the mayor of Guamate supported a local political training school which prepared women to present themselves as candidates for local councils (the majority of councillors in 2005 were women). And in the province of Chimborazo, the male prefect pushed for an increase in the number of indigenous women in development related posts in the provincial council (Radcliffe 2014: 20).³² These are important initiatives aimed at increasing the leadership skills and presence of indigenous women in both informal community and formal electoral politics, as well as at breaking down the distance between community and electoral politics.

Strengthening of women's organizing and networking. Indigenous women have increasingly established female organizations at local and supra-local levels in order to share their grievances and experiences, and to focus on their common problems. Such organizations often evolve into platforms for consensus building around concrete strategies to make their claims heard by targeted audiences. Moreover, the presence of an organized female group in a given locality also makes it more difficult to not take their representatives into account when community affairs are being discussed (Stephen 2001; Radcliffe et al. 2004; Hernández 2005; Méndez 2009; Cunningham and Sena 2013; Radcliffe 2014). An important process of 'scaling up' has occurred in

³⁰ *Ecuador Runacunapac Riccharimuy*/Awakening of the Ecuadorian Indian.

³¹ Women's presence is not yet similarly reflected in the leadership of the indigenous movement.

³² Other examples of supra-communal and regional organization to provide training for female political leaders has been initiated in many other parts of Latin America, for example in Guatemala, Moloj, the Organization of Indigenous Women in Politics, provides training and technical support for women who have been elected to municipal office; see IIWF 2014; Cunningham and Sena 2013: 8.

women's organizational building and networking, which in turn has strengthened local efforts to challenge gendered exclusion within indigenous communities and movements. In the Fourth World Conference on Women at Beijing (1995), indigenous women demanded equal participation in the political systems of their countries and within the governance structures of their respective peoples (Beijing Declaration of Indigenous Women, 7 September 1995). National forums such as *Chirapaq* (founded in 1994 in Peru) and transnational networks such as *Enlace Continental de Mujeres Indígenas*, which has organized conferences for indigenous women from the Americas since the mid-1990s, have played crucial roles in getting women's demands and priorities, including violence against indigenous women, sexual and reproductive rights, and strengthening of women's leadership capacities, on to political agendas at the international stage (Rivera 2005; Hernández 2008). Pushed by such effective organizing, the UN Permanent Forum on Indigenous Issues dedicated an entire session to indigenous women and has coordinated expert seminars on violence against indigenous women (CEPAL 2013: 110).

Resignification of ancestral institutions and norms. Women have reflected on their own value systems and cultural traditions and used them as sources of intra-cultural critique and progressive change.³³ In the Bolivian highlands, for instance, women became aware that the dual and complementary exercise of authority by a married couple (*chacha-warmil/qhari-warmi*) in the community has long been deprived of its substance: productive and reproductive tasks and roles which have been typically performed by women have long suffered from undervaluation when compared against roles and tasks typically performed by men; at the community level women's political role has been often reduced to a 'companion' of their spouses in their exercise of 'dual' community offices, or else, their participation in community events as part of a couple was mainly symbolic, rather than anything that carried real political weight. Encouraged by (not always easy) dialogues and exchanges between non-indigenous and indigenous women held in the context of the Constituent Assembly and during women's congresses organized by the *Coordinadora de la Mujer*, and the work of feminist NGOs such as *Mujeres Creando* and others, today, indigenous women's organizations such as the National Confederation of Campesino Indigenous Originary Women of Bolivia—Bartolina Sisa and local female leaders are critically engaged with prevailing gender asymmetries and strive to re-evaluate their roles as *Mama T'allas* not only in community-based systems of self-rule, but also within mixed indigenous organizations and as in the political institutions of the state (Arteaga Böhrt 2017; Choque 2012; Nuñez 2009; Paredes 2010; Ybarnegaray 2011; Coordinadora de la Mujer 2012; Cunningham and Sena 2013; Ströbele-Gregor 2013).

³³ This strategy has been adopted by many women in non-Western settings, both in Latin America (Macleod 2011; Speed et al. 2006), and elsewhere; see for example Tønnessen 2013.

Appropriation of external legal repertoires. By ensuring that the articles in the 2008 Ecuadorean Constitution referring to indigenous collective rights also included important statements on gender equality and women's participation in local governance systems, the women of the *Red de Mujeres Kichwas de Chimborazo* and their allies aimed to make local authorities more responsive to international women's rights. In fact these women mirrored what their broader indigenous movements do on a daily basis, making selective use of nationally and internationally circulating legal repertoires so as to struggle for cultural recognition and distributive justice (Picq 2013; Cervone and Cucuri 2017). Since 2008 these constitutional entitlements have helped women in Chimborazo and other Ecuadorian regions to re-inforce their demands for more gender-balanced forms of local jurisdiction (Barrera 2016).

Closing gaps between community-based and state law. In several rounds of dialogue moderated by the women's organization FREMANK (*Federación Regional de Mujeres Asháninkas, Nomatsiguengas y Kakintes de la Selva Central*) and a Peruvian NGO, Asháninka, Nomatsiguenga, and Kakinte women and men from the central region of the Peruvian Amazon (in the department of Junín), have deliberated on the virtual absence of protective mechanisms addressing violence against women and sexual abuse of school-age girls in their local systems of self-governance. As well as agreeing upon possible procedures and sanctions to be taken by the community chief and the assembly, which would involve changes in community statutes, they also met in a second round of sessions with representatives of the nearest state justice institutions in order to elaborate a ten-year plan to improve accessibility and appropriate services for indigenous victims of violence whose problems could not be satisfactorily resolved by communal authorities (Vega 2009; Centro de la Mujer Peruana Flora Tristán 2011).

Adjusting state institutions to women's needs. Because organized Kichwa women from the Ecuadorian municipality of Cotacachi deemed the central state instrument to attend to cases of violence, the *Comisarias de la Mujer y la Familia*, inappropriate for their own indigenous context, in alliance with the National Women's Council (CONAMU), UN Women, a local mestiza women's group, and the indigenous mayor they established the Centre for Integral Attention for Women and the Family (*Centro de Atención Integral de la Mujer y la Familia*) in Cotacachi. Here, an intercultural methodology was developed to provide advice to indigenous victims of violence in their mother tongue and to handle such cases in close cooperation with community-based legal authorities. The methodology thus strengthened the role of local indigenous authorities in the resolution of conflicts; should their intervention prove unsuccessful, representatives of the Centre would assist local authorities

and victims to present their case before state legal institutions (Sieder and Sierra 2010; UN Women 2011: 64; Barrera 2016).³⁴

Seizing local, subnational and national spaces for female participation in norm-making. Women have increasingly sought to negotiate spaces for female participation in their local systems of self-rule, mixed organizations, municipal, regional, and national political offices, and political parties. At community level, women often demonstrate their leadership abilities by serving as secretaries or treasurers of community councils or as leaders of some local female group before becoming considered eligible for offices involving more responsibility, including the administration of justice. Many mixed organizations have introduced a special department for women's issues (such as the Secretary for Women and the Family of CONAIE, Ecuador); in other cases, women found they would gain more visibility by establishing exclusively female organizational vehicles (such as the National Organisation of Andean and Amazonian Indigenous Women of Peru—ONAMIAP, or the aforementioned Bartolina Sisa Federation in Bolivia).

Indigenous women in Peru have forcefully positioned their demands for participation and recognition within the negotiations around the Law on the Right to Prior Consultation of Indigenous and Native Peoples, adopted in 2011. ONAMIAP,³⁵ as well as the Federation of Campesino, Artisan, Indigenous, Native and Employed Women of Peru (FEMUCARINAP) struggled to become members of the 'Unity Pact' established in 2011 jointly with other mayor indigenous and campesino organizations of Peru³⁶ as a space for deliberation, strategic consensus building, and advocacy for collective rights. Female representatives of these as well as smaller, regional women's organizations were present during consultation sessions held in various departments of the country to discuss the planned legislation on consultation. After the promulgation of a law which failed to meet these organizations' minimal expectations,³⁷ women stepped up their efforts to make their voices

³⁴ In the Ecuadorian lowland province of Sucumbios, by contrast, indigenous authorities have started to coordinate their efforts to combat violence with the state *Comisaria de la Mujer y la Familia*, which provides training on issues of gender, violence, and human rights. As noted critically by Salgado, representatives of the *Comisaria* still see their role as 'educating' or 'civilizing' community-based systems of governance and law; see Salgado 2010.

³⁵ ONAMIAP was set up in 2009 following a process of encounters and training sessions within the 'Permanent Workshop of Andean and Amazon Indigenous Women' convened by the Peruvian NGO Chirapaq.

³⁶ Including AIDSEP (Interethnic Association for the Development of the Peruvian Rainforest); CCP (Campesino Confederation of Peru); CAN (National Agrarian Confederation); CONACAMI (Confederation of Peruvian Communities Affected by Mining); CUNARC (National Unitary Central of Rondas Campesinas of Peru); and UNCA (National Union of Aymara Communities).

³⁷ The law approved gave state authorities the final word on the realization of projects affecting indigenous peoples' habitat; see Art. 15 *Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios*.

heard in subsequent debates about a regulatory law determining the details of future consultation processes.³⁸ This time, the impact of their lobbying materialized in several favourable passages in the Regulation of Law on the Right to Prior Consultation of Indigenous and Native Peoples (2012), among them the provisions that consultations should take into account the situation of women, children, handicapped persons, and the elderly; that women must be represented in consultation processes and that respective procedures be designed so as to encourage women's participation; and that female staff be among facilitators, consultants, and translators.³⁹ However, the regulatory law did not stipulate participatory parity, emphasizing that women's representation and participation in consultations should ultimately respect the 'uses and traditions' of indigenous peoples, as well as constitutional and national laws.⁴⁰

In Bolivia, the assumption of office in 2006 by Evo Morales, the first president self-identifying as indigenous, provided an unprecedented window of opportunity for women to become active in the design of the new plurinational state. They did so not only by participating in 2006 in the Unity Pact forged among all Bolivian mixed indigenous organizations and the Bartolina Sisa Federation to elaborate an initial proposal for the Constituent Assembly, but also as elected members of the Assembly itself. Thanks to the advocacy of women's NGOs in favour of equal representation of women and men in election to the Assembly, this institution and several of its commissions were presided by indigenous women; overall a total of eighty-eight seats (33 per cent) of the Assembly were seized by women, many of whom (sixty-four) were elected on the ticket of Morales' political movement MAS (Movement toward Socialism). Although it was an initiative not necessarily supported by the MAS, female constituents from all political sectors created a coordinating platform among themselves (*Coordinadora de Unidad de Mujeres Constituyentes de Bolivia*), which sought to find consensus on a women's rights agenda to be adopted by the Assembly. The informal and formal conversations held in such spaces allowed indigenous and non-indigenous women to overcome, at least temporarily, many prevailing suspicions and divisions and to jointly lobby for the inclusion of gender parity as a crucial women's right to be included in the new Magna Carta. Importantly, this demand emerged out of a nationwide process of consensus building among more than 20,000 women who met in hundreds of workshops organized by the initiative Women Present in History (*Mujeres Presentes en la Historia*), originally convened

³⁸ Andina (16 January 2012): ONU destaca participación de mujeres indígenas en debate sobre consulta previa. <<http://www.andina.com.pe/agencia/noticia-onu-destaca-participacion-mujeres-indigenas-debate-sobre-consulta-previa-395389.aspx>> (accessed 23 January 2015).

³⁹ Reglamento de la Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios, Art. 5 (g), 5 (h), 10.2, 11.4, 16 (d).

⁴⁰ Reglamento de la Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios, Art. 5 (h).

by five feminist and women's organizations, and which installed its representatives in the Assembly to support female Assembly constituents in their work and to advocate for the inclusion of their demands. This strategy met with success: the Unity Pact incorporated gender parity into its revised constitutional proposal in 2007, and the majority of the Assembly constituents voted in favour of this right (see art. 26 and 147 Bolivian Constitution; Rousseau 2011; Htun and Ossa 2013).

Without doubt, indigenous women have taken advantage of the new quota and parity rules recently enacted in Ecuador and Bolivia to run for municipal or national office. However, recent studies have noted that many female councillors and parliamentarians have been marginalized from decision-making and subjected to systematic harassment and political violence (*acoso político*), for instance by arbitrarily freezing their salaries, threatening or physically attacking them, or forcing women to cede their seats to men. Some women even lost their lives in this struggle.⁴¹ Unsurprisingly—even when indigenous women achieve formal participation in municipal government, this is not reflected in policies that benefit women as a whole (Radcliffe 2014: 22). The main point to underline here, however, is that of *who* claims gender parity or advances other measures to combat gender discrimination, and in what circumstances. Ana Cecilia Arteaga Böhrts work in Totora Marka, in Oruro, Bolivia, points to the ways in which political competition can lead to tensions between gender parity and gender complementarity approaches (Arteaga Böhrts, 2015). The municipality of Totora Marka began its process of conversion to an indigenous autonomous territory following the approval of the 2009 constitution. Aymara women in Totora mobilized for their inclusion in the elaboration of the autonomy statute, and despite male opposition achieved significant success by invoking the principles such as *chacha-warmi*, calling upon male leaders to ensure that these cultural principles of complementarity were upheld in practice and that women's participation be guaranteed (Arteaga Böhrts 2017). However, the slow pace of the highly bureaucratic national process established for approval of the autonomy statute contributed to divisions between those favouring conversion and those committed to keeping Totora (until March 2015 governed by the MAS) as part of the municipal electoral regime. In municipal elections held in early 2015 the MAS for the first time fielded Aymara women candidates for the municipal council, all of them opposed to the approval of the autonomy statute. In a vote held in 2015, 70.04 per cent of Totora Marka's population voted against the autonomy statute, in contrast to the 75 per cent who had voted in favour

⁴¹ See Zegada 2012:53-68; Archenti and Albaine 2013; United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia 2013: para. 38; Página Siete 2013; Deutsche Welle 2014; GIZ 2014: 32-5.

of autonomy just five years before. However, rather than indicating any fundamental opposition between gender complementarity and gender disestablishment approaches to achieving greater women's voice and norm-making powers, the case of Totora Marka points rather to the ways in which struggles for greater women's participation can become hostages to political interests (in this case the opposition in practice of Morales' MAS to indigenous autonomies, despite their inclusion in the 2009 constitution).

9.4 CONCLUSIONS

What are the implications of recent experiences of women's struggles for gender justice in the Andes for multicultural feminist debates about advancing women's political representation and voice?

First, as we have argued in this chapter, the intersectionality of oppressions and exclusions means that the struggle of indigenous women for greater gender justice is inseparable from efforts to ensure the materialization of the rights of indigenous peoples as collective entities. Within a relatively short period of two decades remarkable progress has been made in regard to the formal legal recognition of indigenous peoples' distinctive identities and their own institutions, among them indigenous law as an essential element of indigenous self-governance (Stavenhagen 1990). However, multicultural and even plurinational reforms have not meant a 'win-win' situation for indigenous women: governments continue simultaneously to adopt policies and laws promoting extractive industries which are profoundly detrimental to indigenous peoples' autonomy, self-rule, and habitat.

While there is disenchantment on the part of many indigenous peoples with the limited results of multicultural state reforms, their promises proved vital to new waves of indigenous mobilization, contestation, and political change. As Donna Lee Van Cott (2006b: 285) observed, rather than foreclosing more radical alternatives, liberal multiculturalism—and its successor, so-called 'post-neoliberal' plurinationalism in Ecuador and Bolivia (Goodale and Postero 2013)—opened footholds within formal political systems for the development of more transformative projects.

Second, the adoption of multicultural constitutional norms and improved avenues for women's political participation (such as quota and parity rules) in Andean countries have constituted a facilitative environment for indigenous women's activism and opened new possibilities for women within those countries' ethnic communities to articulate their demands for gender justice, framing these within legal-constitutional discourses at international, national,

and community levels.⁴² Indigenous women have gradually gained voice in the often male-dominated arenas of indigenous leadership; while the constitutional reforms of the 1990s were not yet explicit in terms of indigenous women's specific interests, this situation changed throughout the decade of the 2000s when organized women, despite many obstacles, succeeded in articulating their perspectives to such an extent that today it seems difficult to imagine how future constitutional reforms or legislative measures affecting indigenous peoples in the Andes could be conducted *without* the provision of spaces for women's deliberation and participation.

Third, as we have argued here, issues of voice, representation, and authority are central to struggles for greater gender justice in subaltern communities. Strategies and medium-term objectives will depend on context and the possibilities of promoting progressive change from within, and the consolidation of social and political languages and strategies that have sufficient local legitimacy and traction. Even though initiatives to promote change almost always involve alliances beyond the local community, if these are perceived as being external impositions using dominant concepts and analytical frameworks then they are usually doomed to failure (Barrera 2016). In some instances multicultural reforms have encouraged—and built on—alliances between indigenous women community activists and women's rights activists within and outside the state, but in others they have increased paternalistic, ill-conceived, and racist interventions in indigenous communities under the guise of protecting women's rights. Methodologically and politically it is vital to listen to the voices of indigenous women themselves, how they analyse their situated position as members of minority communities, and what measures they are taking to confront gender discrimination within their communities. As Deveaux notes, '[p]olicies for the reform of cultural practices that are derived from the mere application of liberal principles or constitutional norms risk misconstruing the actual or lived form of these practices' (2003: 782). Only by listening carefully to the voices of indigenous women can we understand how these practices are experienced within the intersectional positions of subordination and agency they occupy. And only by understanding the specific dynamics of local contexts will it be possible to design practical measures with sufficient legitimacy to effect change through supporting women's strategies, instead of unilaterally imposing 'well-intentioned' policies on them.

⁴² In both countries, the recognition of plurinationality has been accompanied by measures to 'transversalize' ethnicity and gender in all government policies. For example, in Bolivia, the Vice-Ministry for Gender was abolished and its mandate absorbed into the new Vice-Ministry of Equal Opportunities (part of the Ministry of Justice). At the same time, a new Vice-Ministry of De-Patriarchalization and Decolonization was set up to reform what are considered patriarchal and colonial structures; see CEPAL 2013: 117. The post-CEDAW adoption of national laws against violence against women and of new state institutions to tackle intra-familial violence has also been of central importance in indigenous women's processes of organization across the Andes.

Fourth, neither indigenous cultures nor indigenous law and governance institutions are static. Rather, as we have illustrated, they are dynamic and diverse, characterized by their relative flexibility and their ability to absorb and 'vernacularize' external influences and inputs. This supports broader arguments made by many in the feminist multiculturalist debates (Shachar 2001; Deveaux 2003; Phillips 2007, 2010). Through creative innovation, resignification, and adjustment, indigenous women and their male allies in the Andes are transforming different aspects of their own cultures, rather than dismissing or abandoning them in their pursuit of greater gender justice. Cosmivision (indigenous worldviews, or ontologies), complementarity, and gender equity are not mutually exclusive discourses; they have all been successfully invoked to promote positive change within a range of different settings across the region. Far from quotas or parity rule being the only path to emancipation and gender justice, 'authoritative norm creation' in the context of Andean women means becoming the agent of change by a variety of means, in cooperation or alliance with various other players, and at multiple sites. Indigenous women often first have to become aware of their situation and rights, learn to 'speak' in ways that mean they are heard, increase their leadership capacities, and start to organize and exchange views and experiences with others before staging demands for reforms of their semi-autonomous systems of governance and law. Their creative and varied strategies in pursuit of internal changes, inseparable from their struggles as peoples for changes in society as a whole, have increasingly occurred beyond the local at national and transnational levels, in turn often having a boomerang effect within their communities.

Indigenous women's struggles in the Andes direct our attention to historical exclusions and to the substantive, material dimensions of democracy, beyond formal measures such as universal suffrage, gender quotas, or parity requirements.⁴³ By calling for different forms of 'good living together', indigenous women and men are questioning hegemonic constructs of liberal modernity and contemporary patterns of development. Through their combined actions they immeasurably enrich our understandings of democracy.

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⁴³ As Mala Htun underlines in her book on gender and indigenous quotas, '[b]y applying gender quotas, otherwise discriminatory regimes can make progress on political inclusion quickly and independently of other constraints on women's lives'; see Htun 2016: 307.

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