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Intercultural translation and the ecology of legal knowledges in the experience of Cherán, Mexico: elements for a new critical and militant legal practice

Orlando Aragón Andrade

National School of Superior Studies (ENES), National Autonomous University of Mexico (UNAM), Morelia, México

ABSTRACT

This article discusses the possibility of rethinking militant legal practices from the perspective of an ecology of legal knowledges. Based on experience of more than six years of militant work with the Purepecha community of Cherán, Mexico, I show how a legal practice was constructed to defend subaltern and social movement sectors from hegemonic groups. In doing so, I argue it also shifted critical potential to the very core of the production of legal practices itself. Drawing from empirical data from several interventions in two distinct fields, the judicial and the legislative, I discuss the site of a militant legal practice established from the logics of a horizontal epistemology, different from what I call the practices of the ‘Lawyer King,’ and reflect on its potentials and limitations.

KEYWORDS

Militant legal practices; intercultural translation; ecology of legal knowledges; southern epistemologies; Cherán; counter-hegemonic use of law

Introduction

San Francisco de Cherán is a Purépecha indigenous community located in the municipality of Cherán in the province of Michoacán, Mexico. Similar to many regions throughout the country inhabited by both indigenous and mestizo populations, in Cherán organized crime ruled alongside the neglect and corruption of state authorities, fueling violence and dispossession. In this context, on 15 April 2011, a violent clash took place between community members from Cherán and members of an organized crime ring that had been plundering their local forest. Witnesses say that women were the first to confront the looters; men from the community joined later. This gave rise to Cherán’s movement for ‘security, peace, justice, and the reconstitution of the territory.’

Once the conflict subsided, community members’ main concern was that organized crime groups might seek vengeance. For this reason, and given the inaction of municipal authorities, they decided to take defensive measures into their own hands, barricading all points of access to the community and building *fogatas* (bonfires) in each corner of the urban area of Cherán. These measures served as the basis for the reactivation of neighborhood assemblies and of the general assembly as spaces for deliberation and political decision making. These assemblies appointed several commissions that would gradually

CONTACT Orlando Aragón Andrade ✉ orlando_aragon@enesmorelia.unam.mx 📠 National School of Superior Studies (ENES), National Autonomous University of Mexico (UNAM), Morelia, Antigua Carretera a Pátzcuaro No. 8701, Col. Ex Hacienda de San José de la Huerta C.P., 58190, Morelia, Michoacán

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constitute a popular indigenous government, which gained legal recognition in the months following the conflict.

Since then, Cherán has provided some of the most luminous examples of indigenous autonomy in Mexico in recent decades. Political and legal struggle has been central to the strategy deployed by community during this process. After several legal victories with the Tribunal Electoral del Poder Judicial de la Federación (TEPJF) and the Suprema Corte de Justicia de la Nación (SCJN), Cherán succeeded in establishing two major judicial precedents for indigenous rights in Mexico. First, the case won legal protection for the right to self-determination, according to their *usos y costumbres* (customary practices) and along with traditional forms of government that are not necessarily paired with the municipal structure as it is defined in the federal constitution.¹ Second, it obtained from the highest court in the country, the SCJN, recognition for Cherán as both an indigenous municipality and an indigenous community with the capacity to demand the right to prior, free, and informed consultation on all legislative matters.²

The window that Cherán opened in the state judicial system has led other indigenous communities and municipalities in Mexico to follow in their footsteps to confront situations similar to that which Purépecha faced in 2011.³ In other publications, I have analyzed in detail the organizing principles of the political and judicial struggle that led Cherán to claim two major legal victories considered paradigmatic for indigenous peoples of Mexico from my perspective as a member of the Colectivo Emancipaciones, a lawyers' collective that accompanied Cherán (Aragón Andrade 2013, 2015).⁴ In these works, I highlight what I consider to be the fundamental elements explaining the relative success of this six-year experience, particularly a dialogue of knowledges with community representatives for the design and implementation of political and legal strategies.

In this article, I take up Boaventura de Sousa Santos' (2009) analytical proposal to think about such dialogues as an 'ecology of knowledges.' For Santos, an ecology of knowledges is based on

the pragmatic idea that it is necessary to reevaluate the concrete interventions that different forms of knowledge in society and nature can offer. Its centered on the relationship between knowledge and the hierarchies generated between them, from the point of view in which concrete practices would not be possible without such hierarchies. However, instead of ascribing to a single, universal, and abstract hierarchy between forms of knowledge, an ecology of knowledges favors hierarchies dependent on context, in light of the intended or achieved concrete results of different knowledge practices. (Santos 2009, 189)

Despite the importance that an ecology of knowledges has had for the entire struggle in Cherán, I have yet to sufficiently analyze it in previous works. Nor have I underscored its centrality for the discussion on the counterhegemonic use of state law, which could add to ongoing debates in critical and militant traditions of legal theory. This last point is precisely the aim of this article: to outline the construction of a legal practice that goes beyond the hegemonic coordinates and governing logics of state law, on the one hand, and to establish a sound connection between a critical perspective and a militant legal practice, on the other.

In the following paragraphs, I elaborate what has until now only been sketched out in my previous analyses of judicial processes in Cherán. To develop and explain legal militant practices in the case I draw from lesser known moments of the legal struggle. I use the

same anthropological lens that has allowed me to craft a fine-grained fieldwork approach to analyze the social movement's usage of state law and its interdependency with larger contexts and phenomena (Krotz 1991). First, I present the scholarly debate about the counterhegemonic use of state law and how this is pertinent for the experience in Cherán. I also point out some of the most significant shortcomings that some academic perspectives have taken regarding militant legal practices. Second, I develop the main argument, from which I sketch out a new militant legal practice that is coherent with a critical perspective of law. Third, I present and explain the notions of intercultural translation and ecology of knowledges as fundamental tools to build a new militant legal practice derived from the Cherán experience. In the fourth and fifth sections, I provide an account of such militant legal practices stemming from two very different and unequal fields in which we put them in practice: the judicial and the legislative. I then close with a series of final reflections.

The counter-hegemonic use of law without the subversion of legal practice?

To analyze the militant legal practices, it is necessary to begin with the larger discussion from which it is derived, namely the ample and largely unfinished debate about the emancipatory potential of state law. Similar to critical sociology and globalization and law studies,⁵ views on the emancipatory potential of state law can be delineated to two main positions, acknowledging the nuances and heterogeneity within them. The first position largely views the use of state law as tending to reinforce and perpetuate its function in a domination system (Brown 2004; Dezalay and Garth 1998; Marx 1992; Williams 2003; among others). The second position, despite internal differences, mainly argues that, while it is true that social movements' engagement with the state law creates ambiguities and contradictions, it also produces elements and conditions favorable to political struggles that thus justify its usage (García Villegas 2006; Rajagopal 2005; Santos and Garavito 2007; Santos 2003).

In my own view, and speaking from the particular context in which the Cherán experience was constructed, I consider that the use of state law tends to reinforce the overallly hegemonic system, regardless of the ways in which it is mobilized. Nonetheless, given the urgent needs the Cherán community faced during the mobilizations of 2011, the risk of reinforcing state hegemony was not really under consideration. Rather, the community's necessities prompted it to use every resource at hand, including state law. In this way, Cherán's political movement crafted a judicial approach among its strategies of resistance. Regarding the militant legal practices carried out by lawyers, discussions on the hegemonic effects of using state law says very little, because emphasis tends to revolve around discourse analysis and legal institutions and not in the actual practices that lawyers carry out. Given their position in relation to law, there is no interest in advancing the study of militant practices among lawyers.⁶ Yet, even when focusing on legal practice, few arguments include this specific dimension of militant practices.

For this reason, to develop a concrete discussion about militant practices among lawyers it is necessary to focus on literature that proposes the utility of mobilizing state law in favor of social struggle. Such a position is most evident in American legal sociology that focuses on the alternative use of the law (Alfonsin 2013; Bergalli 1991; Carlet 2015; Jacques 1988; Palacio 1989; Rojas 1988; Vértiz 2013). Yet, given the enormous differences

in legal practices between the U.S. and Latin America, the importance given to militant legal practices carried out by lawyers is notable. Thus, in literature focusing on debates in Latin America, there is not a homogenous category to refer to the multiple practices and sectors that lawyer engage with as alternative uses of the law. As a result, scholars have used a variety of labels for lawyers, ranging from ‘committed’ (Bergalli 1991), to ‘alternative advocacy’ (Palacio 1989), ‘innovative,’ ‘participative’ or ‘strategic’ (Rojas 1988), ‘popular’ (Alfonsin 2013; Vértiz 2013), and ‘critical’ or ‘progressive’ (Carlet 2015). Yet, it is common for them to differentiate between attorneys engaging in alternative uses of the law and those who rely on traditional legal practices along the lines of ideological positioning and politicized legal practices. For instance, scholars note how, in contrast to traditional attorneys, lawyers engaged in alternative uses of the law take collective cases, defend the rights of popular sectors, and seek to improve the living conditions of the population they work with; thus, their practices surpass a strictly legal dimension. Also, it is noted how they tend to generate new and creative legal arguments, work to promote the rights of marginalized sectors, are more open to interdisciplinary knowledge and other forms of legality that are different from the state, and do not charge any fees for their work, among other examples.

While these distinctions are relevant, it is worth noting that in many instances these types of attorneys are regarded as the only ones that mobilize technologies and meta-legal resources to support the struggles of oppressed groups. To be regarded as otherwise is to assume that those in power are positivists or formalists. Yet, the reality is far from this stereotype. Most of the attorneys working for the powerful resort to the same meta-legal resources used by popular lawyers, with even more determination given the privileged position in which they are located. They are capable of using interdisciplinary knowledge in their professional practice and in innovating their legal arguments. Their lobbying with judges is perhaps the clearest example that mobilizing meta-legal resources is not necessarily a progressive practice. The same could be said about the use of plural notions of the law and the strategic use of different scales of legality.

These practices have a central point in common: they are based on the professional legal knowledge. Thus, the main difference between these types of lawyers rests on the political orientations of the groups they are working with (Bárcena Arévalo and Aragón Andrade 2017) and not in the concrete practices they carry out. This latter point allows me to argue that, despite its merits, investing in state law to favor the struggle of the oppressed nonetheless continues to rest largely upon sufficient technical knowledge of state law, even more so in a context such as contemporary Mexico (Guerrero Andrade 2017). In this way, alternative uses of the law do not avoid the reproduction of legal practices that ultimately exclude the oppressed, relying instead on a tool that perpetuate privileges.⁷

Against the ‘Lawyer King’ and toward a postcolonial and democratic practice of state law

Several authors in favor of the alternative use of state law have pointed out its shortcomings in terms of favoring the oppressed and working against the oppressors. In contrast to many legal experts from Italy and Spain as well as those from the American camp that call for engaged legal practices, these attorneys have proposed the alternative

use of state law carry with it other forms of legality reproduced by indigenous, the poor, and the excluded (Correas 1993; De la Torre Rangel 2006; Wolkmer 2007). For many of them, the principle aim is to build an emancipatory law that is fundamentally sustained by this dimension of legal pluralism.

However, scholars' discussions of state law and indigenous and popular justice tend to analyze them as two separate fields, as two clearly distinguishable strategies for the alternative use of the law: while one modality deals exclusively with the rules, logic, and norms of the law of those in power; the other appears as a privileged space for counter-hegemonic practices, where it's possible to consider the coexistence of more desirable aspects of state law with the rights of insurgent groups, the poor, etc. While I agree with the emancipatory potential of the alternative use of the law, I suggest that there is much more to say in this regard, especially when considering its relationship with other non-state forms of legality and the possibility of crafting a militant legal practice that intensifies its counterhegemonic potential.

Our experience in Cherán serves as a case in point. Given the situation the community found itself in, its organizational model based on the assembly, the deployment of deliberative decision-making mechanisms since 2011, and the very nature of legal hearings, we were presented with an interlegal scenario that prompted the counterhegemonic use of state law since the very beginning of our collaboration with the community.⁸ Such conditions took us down a path that pushed the limits of the knowledge of strategic use of state law to be more favorable to oppressed and subaltern sectors. For this reason, our own practice had to go beyond the strategic use of the law to displace the very figure of the lawyer and of technical legal knowledge. At the same time that these efforts materialized in legal practice, they were also the result of an epistemological reflection and a certain political positioning.

In this sense, a critical first step is to account for why it is so pertinent to decenter the figure of the lawyer in defense of progressive sectors with the confines of traditional legal practices. Indeed, it is not uncommon for social processes to end up judicializing the place of the protagonist; social struggle fades into the background, replaced with actors that dominate the legal field. Moreover, in extreme cases this situation can provoke a mutation in which political struggles become mere legal demands that demobilize the any underlying transformative force. In such scenarios, lawyers, given their technical knowledge, emerge as the only actors that are able to navigate the challenges of legal disputes, despite the fact that they are often mixed with political struggles. The danger in these situations lies in the ways in which legal decisions shape the social movement. Whenever we witness such situations, we are looking at what I refer to as the crowning of the 'Lawyer King.'

In *The Philosopher and the Poor*, Jacques Rancière (2013) presents a compelling argument against elitist and progressive philosophies that place scholars such as sociologists as the only emancipators capable of navigating the interstices of power, who are thus entitled to guide oppressed groups seen as incapable of fighting against their oppression. Even though there is legal literature specifically discussing the notion of the 'Lawyer King,' I present it here as an analogy of Rancière's writings on the philosopher in the chapter 'The Sociologist King' to note similar political consequences regarding lawyers' hierarchical relationships to the struggles of subaltern subjects. In a similar way that sociologists are rank as experts over the non-educated masses that they theorize about, it is the lawyer

who displaces the actors from their central place in sustaining political struggles, relegating them to an inferior position. This problem could take several forms such as supplanting the direction of the social movement, arguing for technical solutions, or by merely denying the consideration of actors' voices in the legal strategy.

Our experience showed us an alternative approach to combat the Lawyer King phenomenon: to strengthen politics in the very arena of legal practice. The way we did this in Cherán and in the Colectivo Emancipaciones was to oppose in our everyday practice two pillars sustaining this idea: First, we were cautious about not displacing the actors that sustain the struggle and the process in Cherán; second, we incorporated community members' knowledge into the design and implementation of the legal strategy. Moreover, this legal practice stemmed from two intertwined considerations: On the one hand, a notion of power; on the other hand, a concrete form of power with a clear epistemological dimension.

The notion of power draws from the work of Boaventura de Sousa Santos (2002), who suggests that power structures are sedimented through the everyday repetition of practices, and that the best way to contest these structures is with other practices intended to subvert them in as many dimensions as possible. This position offers a way to politicize legal practice as counterhegemonic to state law. However, politicization implies a different move than merely putting expert legal knowledge at the service of the oppressed. Politicization also implies expanding the 'regime of the visible' (Rancière 2009) in the legal practice that sustains the Lawyer King. This means that legal practices and the counterhegemonic use of the state law must incorporate other knowledges and practices beyond the hegemonic use of state law. In our particular case, such an incorporation consisted of the challenge of dialogue and of integrating knowledges, conceptions, and practices that were often at odds with dominant notions of law in the field of state law. Thus, to construct of a set of practices that seek to extend the reversal of the use of state law in favor the oppressed it is necessary to consider the colonial dimension of the law built into even those practices that claim to be progressive.

As a result, our practice aims to surpass the difficulty that Santos singles out as the foundation of modern thought. Namely,

a system of visible and invisible distinctions, [whereby] the invisible constitutes the foundation of the visible. Invisible distinctions are established through radical lines dividing social reality into two universes, the universe 'on this side of the line' and the universe 'on the other side of the line.' This division is such that the 'other side of the line' disappears as a reality, becoming and/or being produced as non-existent. Non-existent means that it does not exist in any relevant or comprehensible way of being. (Santos 2009, 160)

Ultimately, we aim to build an array of postcolonial law with postcolonial tendencies (Santos 2002) that, while taking up indigenous justice and the knowledge it is based on, does so in a progressive way.⁹

However, the displacement that guides our practice creates a tension in the effectiveness of a field governed by rules defined by state law as a hegemonic tool. This places clear limits on the practice we have crafted; despite this, it seems to provide an opening for two opportunities that otherwise would be very difficult to achieve. On the one hand, it raises the transformative potential of counter-hegemonic interventions of state law. On the other hand, it constructs everyday practices that have more possibility to surpass the logic of the Layer King, and, by extension, reduces the danger of reproducing state law as a dominant tool.

Intercultural translation and the ecology of legal knowledges in the counter-hegemonic use of the law in Cherán

In our experience, achieving the subversion of legal practice was not easy. The first difficulty was to carry out, in a rather intuitive way, our own practice alongside that of the community of Cherán. From the very beginning, when it was decided that the April 2011 movement would try to gain footing in the legal arena, our work as lawyers was under the community's scrutiny and thus in constant dialogue with their representatives. For six years, we held various meetings with their representatives to discuss the legal strategy and its impact on their political struggle. In this way, the direct intervention of community members, in particular regarding their knowledge about justice and other community-based forms of organization, determined the design, logic, and legal strategy to be implemented from the first to the very last legal move.

Due to this type of leadership and the inherent autonomy of the struggle in Cherán, a central concern that we had for some time was how we as lawyers could 'train' or 'teach' law to Cherán's representatives so that they could carry out their own legal procedures themselves. This changed during one meeting, when a community member eloquently pointed out the error of such a concern. After voicing my apprehension, one of them stated 'We do not need courses on law, what we need is to keep talking, explaining, thinking about how we are going to do it and how we can help each other.' In that moment, I realized how, during the dozens of our meetings together, we had been crafting our own methodology: reflecting on the extent to which the law would be helpful or not. To do so, we had to weigh the political risks and potentialities, decide how we would build the legal strategy, what the main technical arguments would be, what elements from indigenous justice could be useful to litigate the case, what should be said or not said in court, etc. In a concrete way, such spaces served to facilitate a dialogue in which lawyers, community leaders, and members expressed and shared different ways of understanding and of grasping politics and the law, in ways that could be used to struggle against the exclusions of the Mexican state.

It is important to emphasize that such dialogue occurs with community authorities and representatives named in assemblies, both women and men with different positions within the movement. However, this does not ensure that this form of representation is not without its limits.¹⁰ For instance, the unequal participation of women remains a problem. Even though Cherán's movement for 'security, peace, justice, and rebuilding the territory' strengthened the presence of women in the public sphere and various committees that make up the structure of municipal government in Cherán,¹¹ this did not match the level of protagonism of men in leadership positions. However, despite obstacles, the process of female participation continues to advance.

At the same time, these dialogues did not occur within the traditional logic of social sciences but rather in the spaces and according to the timing, logic, and needs of the actors with whom we were working. Of course, we could force some social science methodologies and techniques on the framing of these dynamics, such as those of participatory research, which share significant similarities with our work in Cherán. However, I am convinced that, as lawyers, it was us who learned techniques for intercultural dialogue from the community and not the other way around. Or, perhaps, it could be considered a hybrid methodology that we developed together. At any rate, we overcame the traditional methods and techniques of

social sciences.¹² The only unwritten rule that guided and structured all these meetings was listening and responding to each other, and finding the point where community members felt satisfied with how their voices were expressed and we considered that we had an opportunity to be efficient in the legal or legislative field

Is important to note that intercultural translation and the ecology of legal knowledges that we have constructed from this experience and that guides our legal practice are far from being homogenous and mechanical procedures. As I already noted, they are established in a rather ambiguous terrain, similar to any counterhegemonic use of state law. In our case, the tension between including the community's voice and knowledge vis-à-vis the efficacy of our legal interventions was always delicate and unstable. In fact, our meetings were usually difficult, and reaching consensus with local leaders was not simple nor immediate.

This was evident in November 2011, when the TEPJF sentence that recognized Cherán's right to free determination also stated that a prior, free, and informed consultation should be carried out to ratify if the men and women of Cherán wanted to remain in the political party system or to be governed by their community-sanctioned system. The community had so much conviction to govern themselves according to their own customary practices that they had already elected their traditional authorities and scheduled an event to formally present them, without waiting for the TEPJF to organize a consultation. This situation provoked a long meeting with the Coordinación General and with the already appointed members of the Concejo Mayor de Gobierno Comunal. We explained the situation to them and why we thought that presenting the *keris* (council members) might look as contempt of the court, a situation that political parties, the Instituto Electoral Mexicano (IEM), and the opposition to the movement could use to block the recently one legal decision. The argument of some comrades, especially from Coordinación General, was that the agreement to present the new authorities had already been reached, and it was not possible to cancel a scheduled activity.

Around 11 at night, we adjourned the meeting with an agreement, thanks to the support of the nominated leaders: The three lawyers present at the meeting would visit the four checkpoints installed in Cherán's neighborhoods to explain why the *keris* would not be presented the next day. Instead, it had been decided, a rally would take place to demand the IEM to expedite the local electoral process, as established in the TEPJF ruling. We finished our rounds to the check points at around 2 or 3 in the morning, with everyone understanding our position. The next day, it was election day for the rest of Michoacán. Yet in Cherán a massive march took place, perhaps the largest of the movement involving the four neighborhoods of Cherán, demanding that the IEM expedite the consultation sanctioned by the TEPJF.

In sum, it is important to highlight that this tension was sustained not only between different judicial fields but in shifting moments of each of the processes that they confronted with diversified challenges. In this way, the space for greater or lesser inclusion of the community's voice and knowledge varied, depending on particular moments and processes.

An ecology of legal knowledges in the judicial field from the experience of Cherán

In addition to the two demands won in the TEPJF and the SCJN by the Cherán community, we have worked on a series of demands that, although lesser known, were fundamental

for the continuity of their political project. In 2014, after Cherán's legal victory over the State Congress of Michoacán and the Governor, everything seemed well aligned towards a peaceful transition for a new Concejo Mayor de Gobierno Comunal (CMGC) in 2015. However, this seemingly calm scenario was thwarted shortly thereafter by an attempt of the political parties to regain control of Cherán and put an end to a municipal government based on *usos y costumbres*. By the end of 2014, former municipal leaders belonging to Cherán's political parties armed a legal offensive against the CMGC and the project to govern according to *usos y costumbres*, which received the support of state political apparatuses, including the state government of Michoacán, and it lasted for over a year. Through a series of demands to protect citizen's political rights, the same procedure the community of Cherán used to claim their rights to govern according to their *usos y costumbres*, they solicited a new referendum to return to the previous political party system. Alongside these legal actions, they bribed local community members for support by distributing basic goods and services.

Confronted with this situation, we had to intervene with a series of legal claims as an interested third party to block the attempt to carry out the consultation over political party rule that opened the possibility that they could return to Cherán. This form of intervention owed itself to an initial moment that the CMGC was asked to carry out said consultation, a petition that they responded negatively to and which the IEM was made aware of by the court authority who handled the claim. For its part, the IEM rejected the requests of the political parties, who responded with a lawsuit. Because of the logic of the legal procedure, the responsible authority who ought to file the complaint was precisely the IEM, which was why the CMGC was only able to intervene in these processes via the figure of an interested third party.

From the very beginning of this struggle, the work and the knowledge of Cherán's representatives (named by neighborhood assemblies) was crucial to protect the renewal of the CMGC in 2015. The first intervention was made by providing the IEM, in a first instance, reasons for why the petition of the political parties should be rejected. The CMGC, the Comisión de Enlace, and their lawyers later decided to present a series of assembly resolutions, which had the highest authority in Cherán, where it was clear that the will of the community was to continue with the political project opened in 2011.

With the legal process already on course, we took additional actions to prevent a negative resolution from TEPJF against the community.¹³ Indeed, after a series of strangely favorable decisions for the plaintiffs (political party representatives), it was necessary to act in our condition as an interested third party to prevent a ruling in their favor and a decision for another referendum. Working with representatives of the community it was decided to carry out a consultation, again before it was ordered by the court. But this consultation would be organizational figure that had emerged in 2011 in Cherán, the '*asamblea de coordinadores de fogata*' ('assembly of bonfire coordinators'). Since 2011, Cherán was organized around cells *fogatas* (bonfire checkpoints), which brings together various neighboring families. A representative is named for each *fogata* who attends meetings where relevant issues are decided upon and socializes them to the community. *Asamblea de coordinadores de fogata* are thus different from neighborhood assemblies, which are open to the entire community and any member can attend. Through these forms of organization, already considered as traditional in Cherán, we were able to present a compelling argument to the TEPJF to prevent a new referendum.¹⁴

In fact, after this action, the TEPJ not only decided not to hold a consultation at that moment but also that another one would not be allowed until 2018.

What was produced in both cases was precisely an ecology of political and legal knowledges that was synthesized in the strategy and arguments presented during the trials. As lawyers, we contributed to the process with our technical knowledge to follow the legal procedures and to calculate the rationality of the TEPJF and which elements court authorities might consider as legitimate arguments. The community representatives contributed with the knowledge of their political organization to counter the claims of the political parties.

Another moment of this process in which the ecology of knowledges was decisive occurred with the designation of the new members of CMGC in 2015. The defeat of the informal coalitions of political parties did not discourage some of their leaders from trying to maintain influence in Cherán. In 2015, political party representatives attempted to participate in the designation of municipal authorities using political party tactics such as transporting people and tempering with the call for attendance. In this way, they appeared in neighborhood assemblies where new municipal authorities would be designated.

These incidents happened in each of the four neighborhood assemblies of Cherán with different results. In some cases, political party representatives were so weak that their nomination was never taken seriously by the assembly. But in two neighborhoods they caused a controversy because electoral authorities pushed for their participation, despite not meeting the requirements to collaborate in the traditional form of organization. The most difficult case happened in the first neighborhood where a leader of the political party coalition ran for a seat in CMGC and was not permitted to participate. This situation generated significant tension in the assembly, which decided to not let him participate, despite concerns of a legal challenge also anticipated by representatives of the IEM. Indeed, that was precisely what happened, the coalition leader presented a legal claim attempting to disqualify the whole process to name municipal authorities according to *usos y costumbres* on the basis of his exclusion the assembly. Once again, the demand was presented against the ruling of IEM and, once again, we presented a legal action as an interested third party. Community representatives' knowledge was crucial to explain to the TEPJF in legal terms the traditional forms of organization in Cherán and to demonstrate that the appointment of new authorities followed traditional forms of organization and for that reason the plaintiff's claim was without basis.

It is worth mentioning that these two moments occurred in a very unique context. Indigenous knowledge about their justice and their form of social organization are significant because the legal argument revolved around respecting the community's *usos y costumbres*: First, if there was any indication that the community, via traditional forms of organization, manifested its consent to maintain the political regime sanctioned in 2011; second, if the process of naming a municipal leader had indeed been carried out according to *usos y costumbres* in Cherán. Without a doubt, this articulation of elements would have been unthinkable in other scenarios or a lot less favorable for such a tense ecology of knowledges.

Ecology of legal knowledges in the legislative field from the experience of Cherán

The political orientation guiding the counterhegemonic use of the law in Cherán helped us to understand that legal interventions and court victories were not enough.

Rather, we had to work in other fields of legal production to strengthen our position in relation to political parties and against the government's hostile to the community's political project in general (Aragón Andrade 2013). In this sense, the modification of exclusionary and racist laws has been one of the privileged sites of intervention in Cherán. We have sought, therefore, to generate reforms and legal frameworks that are favorable to Cherán's project. This work has been done, above all, using the legal victories and political momentum as they presented themselves. The promulgation of the Law of Mechanisms for Citizen Participation (Ley de Mecanismos de Participación Ciudadana, LMPC) and an initiative in the National Senate to amend Art. 115 of the Constitution are important examples of this work in the legislative sphere. The LMPC was legislation approved by the Senate of the Republic of Michoacán precisely in the moment of transition between the first and the second community-based municipal government (between August and September 2015). This legislation was the result of the electoral reform initiated in congress almost a year prior.

Indeed, Congress decided during their last days in office to vote several bills, among them the LMPC. Within that law, a section was incorporated regarding the 'Consultation of Indigenous Community Members' as an attempt by Congress to respond to the SCJN ruling on the violation of Cherán communities' right to previous, free, and informed consultation. Yet, including this chapter on the right to consultation in the law was so contradictory that, despite claiming to guarantee collective rights for indigenous communities as a norm in Michoacán, it was done so in a poor, limited, and uninformed fashion. This triggered a reaction in Cherán, which immediately threatened to sue congress for violating, once again and despite the ruling of the SCJN, the rights of indigenous communities.

In this context and facing the impossibility of carrying out a consultation before the end of the legislative term, an informal agreement between the community and the legislator who promoted the LMPC was reached: the community, via its representatives, would amend the chapter's articles, and the State Congress would approve them without modifications. Through a coordinated effort between Comisión de Enlace, Consejo de Barrios, CMGC, and the lawyers we rewrote the articles of the chapter. Within a few days, we presented our version to the congressional advisers who presided over the law, and in little time the legislation was published with our amendments.

This intervention required a form of intercultural translation in which we, as lawyers, explained to Cherán's representatives the right to previous consultation and its scope in international law, human rights, and Mexican legislation. However, drafting these articles was not only based on technical knowledge of the law, which was at all times subject to representatives' approval. Rather, it was also based on the experience of carrying out the 2011 consultation, on the recent process of change that installed the CMGC, and on the political language used in Cherán since 2011.

Among the most important results of this intervention was the amendment that consultations with indigenous communities would be carried out from the beginning in accordance to their *usos y costumbres*, and the results of consultation would be legally binding. These legal victories were accompanied by other significant achievements for the community in terms of changing the political language. The clearest example was achieving the incorporation of the term 'autonomous authority' to refer the authority in

charge of carrying out the consultation instead of a representative of the IEM. This change, which makes a clear reference to a pro-Zapatista lexicon, was not only made to the corresponding chapter on the right to prior, free, and informed consent but rather the entire law.

The initiative to reform Art. 115 of the Constitution presented to the Senate in April 2016 was the product of different circumstances. As I have stated in previous works where I analyze other moments of political and legal struggle in Cherán (Aragón XXXX), the victories gained in the two highest courts of the nation have been insufficient to pave the way of institutional consolidation of the political project driven by the community since 2011. This is a consequence of the state of schizophrenia that prevails in the different fields of judicial production of state law in Mexico, which unfortunately blocks the progress of the political project of Cherán. This explains why there have been setbacks or a simple lack of initiative in the legislative arena after legal victories, allowing for the coexistence of progressive legal politics with backward norms against court rulings. These contradictions and omissions have translated into numerous difficulties and obstacles to fully realize the everyday practice of a municipal government run by *usos y costumbres*.

Aware of this reality, we have tried to harness the national and international prestige gained in the Cherán case to modify old state and federal laws that continue to govern the daily operations of state institutions. The best, yet most ambitious way we have found to do this was to reform the text of the Constitution, since all secondary legislation that still blocks the municipal government based on *usos y costumbres* stems from it and since hostility of the Michoacán government towards the Cherán project was less intense at the federal level.

Within these guidelines, we began working parallelly in two directions: A political approach that sought out institutional space to best position our initiative; and another legal-political approach within the community to define the content of the articles that should be included in the reform proposal. The first approach took us to the Senate of the Republic, where we found some legislators willing to present the full version of the community-drafted proposal without modifications. The second approach involved, after several meetings between CMGC and the lawyers, having a text that would have the best chances for getting the reform approved. In this way, it was decided that the discourse would focus on consolidating the legal gains already made by Cherán in the courts and that the reform proposal would focus only on one article, Art. 115, which regulates all things related to municipality within the Mexican state. In the following days, lawyers, CMGC, and Consejo de Barrios worked in several sessions polishing the content of the initiative and the presentation of the motives that would accompany it.

The initiative for reform proposal focused on three points: 1) the establishment of an indigenous municipality with its own institutional structure and equal in rights and obligations with the constitutional municipality; 2) the right of indigenous communities to have sub-municipal status and the ability (without intermediation of the municipal title) to manage the budget that proportionally corresponds to them; and 3) autonomy for municipalities and indigenous communities to regulate their own police and guards.

The first point of this initiative was the way we found to synthesize all the demands and issues that emerged in the relationship between the municipality of Cherán, which is

based on a communitarian logic, and other government institutions that insist in not recognizing these differences in their everyday operation. The idea to adapt this alignment in the constitutional text to later seek reforms in secondary laws that depended on this provision. In this way, we sought to generate a new legal framework for both the municipality of Cherán and newer municipalities governed by *usos y costumbres* in Mexico that were expanding throughout the country. The second point of the initiative revolved around Cherán's empathy and solidarity with the recent struggle with other non-municipal Purepecha indigenous communities that are not municipal seats but rather *tenencias* (smaller holdings) and have sought to initiate the process of autonomy from the administration of municipal governments. Financially speaking, the ability to directly manage their budgets is important, especially considering the historic discrimination against these communities through a blatantly unequal distribution of public resources to municipal governments.¹⁵ Finally, the third point intended to give legal certainty to Cherán's communitarian watch, the institution in Cherán that perhaps has the most support and was main the demand in 2011: public security. This point also sought to connect more generally with similar experiences of indigenous security like those in Guerrero.

Once concluded, the proposal was submitted to the consideration of the community assemblies to be ratified. After the internal work was completed, the task was then to present it in the name of the entire community, not on behalf of any political party nor its representatives. Allies in the Senate of the Republic were important in this respect, which included practically all of the senators from Michoacán, with the exception of one. In addition, there were six senators from Oaxaca, Guerrero, and Chiapas who pledged their support. On April 19 of 2016, Senator Raúl Morón read before the Senate of the Republic the initiative to reform Art. 115 sent by the community of Cherán. However, unfortunately, over a year later, Cherán's initiative was still pending analysis and discussion on the Senate floor.

Conclusions

In the analysis of the counterhegemonic use of state law in this article, I have explored the logic of a new militant legal practice that displaces counterhegemony from within the reproduction of state law as a tool for hegemony and, thus, as a mean to expand its emancipatory potential. This enriches the Latin American tradition of analyzing the alternative use of state law as counterhegemonic. It shows a much more integral, inter-legal dynamic than that previously argued for within the Latin American school of thought, highlighting a new militant legal practice that is possible through both intercultural translation and the ecology of legal knowledges. In this way, this work sheds light on discussions about state law activism and human rights by showing a coherent connection between a critical perspective of law capable of taking on the problem of the reproduction of the state law with a militant legal practice that seeks to be 'post abysmal' (Santos 2009) and thus devoid of fetishism.

Overall, the legal and political struggle in Cherán reveals a triple limitation of militant legal practice; it will always be paradoxical, limited, and contingent. First, is paradoxical because it is inscribed on a foundational contradiction that consciously assumes any attempt to use an instrument created and governed by the powerful against them will be

irresolvable. Second, militant legal practice is limited in two senses: first, because it is inscribed in an always unresolved tension that attempts to include, through various types of interventions, other knowledges and voices outside the partitioning of the visible (Rancière 2009). In other words, it is limited by use of the discourse of the state law that at the same time tries to be effective in a field governed by exclusionary rules and formalist logics and techniques. Second, because dialogue has its bias, it is constructed with one sector of the community that does not fully represent all groups. It involves authorities and representatives named in assemblies that makes them valid interlocutors vis-à-vis the state. Third, militant legal practice is contingent because the emphasis and timing of the ecology of legal knowledges depends on the source of legal production of state law that is being intervened upon. Indeed, analysis of this experience clearly shows the fragile basis of even one of the most luminous processes of the counterhegemonic use of state law in Mexico, in the context of a heterogeneous state and legal schizophrenia.

Despite this initial skepticism, analyzing the counterhegemonic use of the state law in Cherán and the militant legal practice around it also evinces the conditions in which a political project underpinned by state law has been able to advance and be constructed in the process of struggle. This experience also shows the story of an indigenous community that in 2011 began a process of organization with the sole objective to survive, which somehow became the political force it is today, capable of propelling a new paradigm of indigenous autonomy and disputing the production of the law in the highest courts of Mexico.

Ultimately, I argue that this result, in its irreducible ambiguity, has been possible largely because of a militant legal practice and political orientation that constantly defies the limits of the discourse of state law and human rights by aiming to overcome them in as many dimensions as possible.

Notes

1. See court ruling TEPJF, 2 November 2011, SUP-JDC-9167/2011; available online at: <http://portal.te.gob.mx/colecciones/sentencias/html/SUP/2011/JDC/SUP-JDC-09167-2011.html> (accessed 9 May 2018).
2. See court ruling SCJN 29 May 2014, 32/2012; available online at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=138752> (accessed 9 May 2018).
3. The cases of the municipalities de San Luis Acatlan and Ayutla de los Libres en Guerrero, for instance, used the same legal path to obtain the right to have a municipal government ruled by *usos y costumbres*. In 2016, the legislative branch of the State of Morelos created four indigenous municipalities (Xoxocotla, Hueyapan, Coatetelco, and Tetelcingo) inspired by the municipality of Cherán. The effects of the Cherán experience have even reach the Distrito Federal, where indigenous peoples have achieved important advances in their rights to free determination to choose their representatives vis-a-vis local state authorities through a system of *usos y costumbres*, as were the most recent cases of Tlahuac and Xochimilco.
4. The Colectivo Emancipaciones (www.colectivoemancipaciones.org) is a group of young professionals and researchers who since 2011 have accompanied and legally advised the Purépecha community's movement in Cherán. In particular, I was the first to have contact with the community after my Master's student invited me to give a talk on indigenous rights just weeks after the movement began. Afterwards, I got involved in the political-legal strategies followed by the community, given that when they decided to legalize the process there was a lack of lawyers that were willing to accompany them. If in the beginning my participation was fortuitous (Aragón Andrade, 2013), I believe that the political commitment

I have shown for the cause and the legal militant practice that I analyze here was what gained my colleges and I from the Colectivo Emancipaciones the community's confidence that has been maintained over these seven years and that continues today.

5. Luc Boltanski (2014) shows that critical sociology has two main programs: critical sociology, which has as its strength denouncing mechanisms of oppression and domination to make them visible as well as showing how oppressed groups endure them; and the pragmatic sociology of critique that emphasizes actors' agency in relation to said forms and mechanisms of oppression. Along the same lines, Boaventura de Sousa Santos and César Rodríguez Garavito (2007) locate two general positions in literature on rights and globalization: A first position that pendulates between governance and global hegemony and masks the counter-hegemony and resistance of social actors; and a second position that focuses on making resistance and the appropriation of instruments of law visible at a global scale.
6. An exception is the work of Dezalay and Garth (2002). While they do not focus on the legal practices of militant lawyers, they do analyze the role of some lawyers in the reproduction of a global hegemonic legality.
7. The fact that the majority of work on the alternative use of the law is based on the analysis of practices restricted to knowledge of the technical profession law does not imply that no one has outlined this critique. Jacques (1988) is a voice that in this line. In the ideal type of alternative legal services, a highlighted element is the definition of the legal strategy between lawyers and social movements in a relation that ideally is more horizontal and that does not award quasi centrality to the lawyer and technical knowledge in the field of the counterhegemonic use of state law.
8. The idea of interlegality consists in understanding law as a product of the constant intersection of different legal orders to the extent that: 'We live in a time of porous legality or of legal porosity, of multiple networks of legal orders forcing us to constant transitions and trespassings' (Santos 1987, 298).
9. The reality of the hegemony of law today is far from the naïve concept of legal pluralism that has in effect a plural and non-monistic character. The prevailing global legality is plural (Rodríguez 1991), evident in the influence that has in international commercial arbitration and the arbitration boards in free trade agreements. Not only this, the global hegemony of law has expanded into a dominant regulatory system through the instrumentalization of local popular and indigenous justices such as what occurred in the process of the informalization of justice, which was driven by global legal reform in the final decade of the 20th century and the first decade of the 21st century (Nader 1993).
10. While this situation shows the limits of militant practice that we seek to construct, it also is true that it would be materially impossible that legal-political strategies are discussed with all groups in the community to include every perspective and position. Nonetheless, on several occasions we also presented, explained, and debated these strategies as much in neighborhood as general assemblies, where all community members could participate.
11. For instance, of the 36 appointed representatives of the council structure in 2012, in the assemblies four women were designated, which for the appointment of 2015 of 48 possible positions, 18 ended up being women; adding to that, the first CMGC (2012) had the presence of one woman, while the second (2015) and third (2018) CMGCs had three women.
12. In this sense it is important to highlight that in the Colectivo Emancipaciones we have also been involved in national and region discussions with respect to our practice. An important source of reflection has been the dialogue that we have sustained with colloques in the field of legal anthropology that propose collaborative and activist forms of research from within the discipline as well as spaces of discussion between anthropologists and lawyers that accompany social movements in the field of law, such as the seminar *Las posibilidades y los límites del uso del derecho desde abajo en el contexto actual mexicano*, organized by CIESAS, UMSNH and Fundar, A.C. between 2013 and 2014. However, the singularity of militant work that is presented here is focused on what we do in the legal field as both lawyers and anthropologists carrying out legal processes.
13. Perhaps the most significant of the lawsuit promoted by the political party members was the claim as citizens to establish an explicit form of rejecting the communal and indigenous

nature of the claim. With this positioning and negative self-ascription, the TEPJF decided that legal benefits would only apply to those who recognized themselves as indigenous and members of the community; see TEPJF from 4 March 2015, SUP-JDC-364/2015 and SUP-JDC-533/2015; available online at: http://www.te.gob.mx/Informacion_juridiccional/sesion_publica/ejecutoria/sentencias/SUP-JDC-0364-2015.pdf (accessed 9 May 2018).

14. As mentioned, the bonfires emerged following the initial struggle in 2011, but became central for the organization of the movement given that, while they had the initial objective to secure the community from possible incursion from the criminals that protected the clandestine loggers in their forests who they had confronted in April the same year, they were also spaces of reflection and discussion among the neighbors. It was such that the organizational potential of the bonfires (Aragón Andrade 2013) associated as well with the link of the Purépecha people with fire, that was presented before state institutions (together with other associated figures such as coordinators and the *asambleas de coordinadores de fogata*) as part of the community's *usos y costumbres*.
15. As a result of the final two years Cherán's legal victories, the new demand that gained force in the Purépechas communities of Michoacán was the demand that the communities directly manage the budget in a proportional way according to the total population of the municipality; see the TEPJF ruling from 18 Mayo 2016, SUP-JDC-1865/2015; available online at: http://www.te.gob.mx/Informacion_juridiccional/sesion_publica/ejecutoria/sentencias/SUP-JDC-1865-2015.pdf (accessed 9 May 2018); and the TEEM (Tribunal Electoral del Estado de Michoacán) ruling from 27 April 2017, TEEM-JDC-005/2017; available online at: http://www.teemich.org.mx/adjuntos/documentos/resolucion_5980d7c070f26.pdf (accessed 9 May 2018); TEEM-ruling from 26 June 2017, TEEM-JDC-011/2017; available online at: http://www.teemich.org.mx/adjuntos/documentos/resolucion_5980d9db869cb.pdf (accessed 9 May 2018); TEEM ruling from 9 March 2018, TEEM-JDC-006/2018; available online at: http://www.teemich.org.mx/adjuntos/documentos/documento_5aa7f5a6db499.pdf (accessed 9 May 2018).

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Notes on contributor

Orlando Aragón Andrade holds a BA in law, a MA in history, and a PhD in Anthropology. He is currently a professor at the National Autonomous University of Mexico and a member and researcher of the Latin American Network of Legal Anthropology and the National Council of Science and Technology of Mexico. Alongside his academic work, he offers legal consultation services to social movements as part of the Colectivo Emancipaciones (www.colectivoemancipaciones.org), an organization of which he is one of the founding members.

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