



La justicia como expresión intercultural transnormativa de la diversidad

Justice as an Intercultural Expression Transnormative of Diversity

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Resumen. El conjunto sociocultural diverso que conforma la realidad de un Ecuador plurinacional e intercultural se define en el artículo 1 de la Constitución de 2007 como un atributo específico, una variedad compartida de significados simbólicos sobre la vida y una multiplicidad de experiencias en torno a los conocimientos acumulados a partir de sus prácticas, todo lo cual ha servido para organizar de manera que las diferentes comunidades, grupos, pueblos y nacionalidades que lo conforman puedan convivir. Una justicia plural se ha configurado bajo sistemas lógicos y construcciones normativas o tradicionalistas para desarrollar sus propias formas de vida. A la justicia convencional de los derechos humanos se añaden sistemas paralelos e interconectados. ¿Cuáles son las relaciones de interdependencia e influencia jurisprudencial que los vinculan y qué eficacia tienen? Este estudio aborda estos problemas de forma sistémica e integradora para promover una visión intercultural de los derechos en juego. En este sentido, el estudio propone abordar aspectos relacionados con los modelos mentales a través de modelos causales. Las cuestiones relacionadas con la necesidad de incluir la indeterminación en las relaciones causales se abordan a través de los mapas cognitivos neutrofísicos; en concreto, se introduce el mapa cognitivo neutrofísico bidireccional.

Palabras clave: Estado plurinacional, interculturalidad, justicia, reciprocidad, dignidad, autonomía, neutrosofía.

Abstract. The diverse socio-cultural group that makes up the reality of a plurinational and intercultural Ecuador is defined in Article 1 of the Constitution of 2007 as a specific attribute, a shared variety of symbolic meanings about life and a multiplicity of experiences around knowledge accumulated from their practices, all of which have served to organize in a way that the different communities, groups, peoples and nationalities that comprise it can coexist. A plural justice has been configured under logical systems and normative or traditionalist constructions to develop their own ways of life. Parallel and interconnected systems are added to conventional human rights justice. What are the relations of interdependence and jurisprudential influence that bind them, and what effectiveness do they have? This study approaches these problems in a systemic and integrative way to promote an intercultural vision of the rights at stake. In this sense, the study proposes to address aspects related to mental models through causal models. Issues related to the need to include indetermination in causal relationships are dealt with through neutrosophical cognitive maps; specifically, the bidirectional neutrophysical cognitive map was introduced.

Keywords: Plurinational state, interculturality, justice, reciprocity, dignity, autonomy, neutrosophy.

1 Justice as an intercultural expression of transnormative diversity

The legitimacy of a juridical constitutional order (understood as a margin of acceptance that ranges from active consent and conscious participation in the sphere of social practice to tolerance and respect for a positive normativity) cannot be conceived as an attribute that holds power in itself. In reality, we should consider it as a fluctuating set of varied, diverse and heterogeneous legitimacies in a plural society, both by its origin (ethnic and plurinational) and by its formation (self-determination) and functioning (autonomous).

Said legitimacies, thus constituted, form a systemic constellation of values and multiple visions, concurrent within a field of power in which all kinds of expressive processes of social forces and agents that seek to impose their own hegemony on others intersect and confront each other.

A prominent place within the varied normative set that makes up the legal field that is undoubtedly intertwined with other fields of power belongs to indigenous law. This is because of the role of integral questioning, which

plays against the prevailing ideological conception of liberalism about normativity and against the legal positivism by which the State is guided in its actions. The community content with which it is bestowed makes it resistant to traditional collective structures at the same time that it allows it to negotiate its conditions of integration into the colonial power pact by placing on the agenda problems such as ethnic identities and differences, collective rights and their relationship with the environment, autonomy and control over territories.

The principle of interculturality that guides the constitutional order of Ecuador has been defined as a dialogue between kinds of knowledge built on different bases, which pursue different objectives and appeal to material instruments and opposing explanations to carry out their practice. The Ecuadorian Constitutional Court says on this subject that “intercultural dialogue, as pointed out by Oscar Guardiola Rivera, is nothing else than the dialogue between epistemic differences that, when existing in hegemonic positions, are cognitive struggles that have to do with how different people make use of different ways of producing and applying knowledge: to relate to each other, to others, to nature, to territory, to wealth, to diverse society” (Judgment No. 0008-09-SAN- CC, case No. 0027-09-AN).

In line with the above and in reference to intercultural interpretation, the previously mentioned constitutional control body established that “it is nothing other than the obligation to start a new reading, a new way of interpreting national situations and realities, with a focus based on cultural diversity, even more so when dealing with indigenous peoples” (ibid.). In order to give more precision and accuracy to the terms on which its decision is based, the Constitutional Court does not hesitate to enunciate certain rules for interpretation in an intercultural code, referring in its formulation to the one established by the Colombian Constitutional Court. These rules are: “a) A greater conservation of uses and customs, greater autonomy; b) Imperative legal norms should not be invoked by the mere fact of existing as a norm; c) The uses and customs of a community take precedence over the dispositive legal norms.”

Under these circumstances, substantial justice in the Constitutional State of Good Living would, therefore, consist of a systemic and iterative pairing based on a ductile and fluctuating proportionality relationship, established to give impetus to conflicting and diverse (unequal), self-regulated in their effectiveness through legitimate and participatory means, such as normative production, ethnic customs, legal and administrative decisions, and to give impetus to the public policies of inclusion and equity.[1] A set of dialogues is developed in varied fields of our society. In the first place, the one that is deployed between different judicial levels to make compatible different readings about the implied right appealing for it to the interpretation of the same one in accordance with the conventional one.

2 The conciliatory and reparative character of indigenous justice

Ancestral communities are based on relations of collectivist content from which they establish those regulations by which they are guided in social life due to the constant and permanent reiteration of uses converted into traditions, which are expressed through binding practices, whose consecration takes place in initiatory rituals and is reinforced through ceremonial cults. The production obtained from nature, in addition to satisfying the material and spiritual needs of the community and their family groups, generates surpluses that circulate in the community as gifts once the common taxes have been collected, in which process we can identify the principle of reciprocity (principle of *ayni* in Quichua). Such a system first includes the family group and the natural environment that surrounds it and then extends to the family group’s consanguineous community and to the tribal community, until it even links to exogenous collectivities, distant in their location. A communal system of power and prestige is formed in this way around this primary relationship, whose consecration is ritually consolidated through sacramental celebrations.

Even when the giver of a good or service obtains social value (prestige) that consolidates their social position, and the receiver is still subordinate to them despite keeping what they received (turning it into a gift, as it is called by Marcel Mauss). The donor must, however, return the gift with a counter-gift from themselves or someone in their nuclear family, or they must deliver an object that resembles it in usefulness which symbolizes the one they were given. The donor must also, in turn, deliver a gift to another or others, thus building a vast fabric that reinforces the common social structure through this mechanism of reciprocity.

But the gift is only one of the facets in the dual conception of reciprocity. Along with this positive expression – which includes, in fact, the offerings ritually given to the Pacha Mama for the gifts she generously gives – we find ourselves with a negative reciprocity that consists in the restoration of the harmony of collective life through communal punishment in cases of the breach of the traditional codes by which this is governed. The imposition of punishment enables the community to recover the affected value: the harmonic cohesion of the shared social-natural being. We can therefore recognize the healing quality of the measure that leads to a harmonious restoration of harmony. This healing character becomes evident in the cold water used to bathe the offenders and the nettle used to whip them. The first of these elements symbolizes the cleanliness essential to restoring balance and purity. The nettle, for its part, has healing power in its medicinal applications and in its nutritional richness, in spite of the

known urticating effect caused by the action of the formic acid that it gives off when it makes contact with the skin.

Therefore, the goal of indigenous justice is to reinforce and promote the communal structure of the relationships on which nations and people rely, referring to their ancestral customs and attendant knowledge. In this regard, the Constitutional Court considers that trial and punishment, in cases where they apply, respond to such a need “while (they) generate multiple conflicts between families and the community, which must be resolved with the purpose of restoring harmony in the community” (sentence No. 113-14-SEP-CC case No. 0731-10-EP).

This principle guides indigenous justice, a guaranteed right to communes, communities, nationalities and indigenous peoples through article 57 of the Constitution numerals 1 and 9. Furthermore, this principle restores the integrity of community life through measures adopted by the community which are precisely what characterizes the justice they practice. Given this background, the Constitutional Court accepted the anthropological expert report issued by the bishop Pedro Torres, and reproduced it in its ruling:

[A]lthough it is the ‘personal or private’ property that is often at stake: robberies, boundaries, inheritance, daughters, children, etc ... what is sought to be protected is that they are ‘communal goods’: not common property, but of the community or someone in the community. The same goes for the value of life; it is not given a value in itself as a personal being or an individual entity, but as a participant in the family (ayllu) or community. As long as they lead a life of ayllu, or family and community, and what is sought to be protected is precisely this: life as a value of coexistence in common, of social understanding and harmony with those around them. When someone kills or murders someone, first of all, the ‘social problem’ or the ‘family problematic’ of the deceased, as well as of the perpetrator, is two families that are left ‘orphaned’, dismembered, ‘the one in the cemetery and the other in the jail’; and although in the majority of cases I have seen, the community of families delivers the case to the ordinary justice system, they try first to find a ‘social’ solution to the ‘family’ and then it is taken to ordinary justice or, in some cases, as they say: ‘let it to God, he will see what He’ll do about it’ (ibid.).

Thus, it is about a finding a reparative solution that restores order to the community: “Indigenous justice is essentially conciliatory and reparatory, taking into account the notion of prestige, the principle of order in behavior and community coexistence.” (ibid).

3 Jurisdiction and ordinary criminal jurisdiction in attacks against life

Life logically should be considered an indispensable budget for rights, since its tutelage is an essential element for the guarantee of these. The Ecuadorian Constitution enshrines this precept as a prelude to the rights of freedom in paragraph 1 of article 66: “It is recognized that people are guaranteed: 1. The right to the inviolability of life. There will be no death penalty.”

Taking this into account, the Constitutional Court has made the following consideration: “...by virtue of Article 66, numeral 1 of the Constitution of the Republic, the knowledge of all cases of death will always be the responsibility of the State, and as a consequence, it falls to the ordinary criminal justice system to enquire into and carry out the corresponding investigations, either ex officio or at the request of a party, and to judge and punish the punishable act in accordance with the Constitution, international instruments and applicable laws, taking care to apply pertinent ones in a timely manner, using and appropriate coordination mechanisms with the indigenous authorities concerned in the respective case, in order to determine the one or ones responsible for the life-taking acts...”. The ordinary criminal justice, when it is known that cases involve indigenous citizens, and in compliance with the Constitution and the International Law of Human Rights, particularly the ILO Convention 169, must, in all procedural phases, take into account its [the indigenous group’s] particular economic, social and cultural characteristics and conditions, and especially, when sanctioning the conduct, the judge or judges must persevere in giving preference to types of sanctions other than imprisonment, coordinating with the principal indigenous authorities concerned in the case”, judgment No. 113-14-SEP-CC.

Note the special mention made regarding the preference judges must give to any sanction other than imprisonment, in coordination with the respective indigenous authorities. This opens a way to a certain possibility of internormativity and cooperation between both jurisdictional systems in safeguarding the plurinational nature of the State and its interculturality, discarding solutions that start from the solipsistic isolation of each system in its own principles, which would give rise to recourses in order to contrast their meanings and thus create an artificial translation destined to completely ratify dissimilar terms in the sense that they are given within divergent contexts.

4 The Intersystemic Weighting Between Unmeasurable Epistemic Principles

Let us emphasize that from the analysis of these judgments, a formula for a solution emerges which, starting from the difference between legal principles that are inherently untestable by their unmeasurable character, nevertheless finds a way to carry out its ratification. The first usable mechanism for this is that which refers to the exclusive jurisdiction of the State, designed to guarantee the protection of the life and integrity of persons. The other objective would be the protection of the fundamental principles of the State, guaranteed as such in an

unavoidable manner.

Among these we find the multiculturalism of rights that helps to make those that accompany the plurinationality effective, this being expressed both in the different understanding that is given to acts within the community space to establish an extensive, shared responsibility by the community. For example, in the case we are examining, such a sanction requires ancestral traditions that give retribution to the victim based on the severity of the crime and also include rituals that help the victim heal on a personal, natural, and community level.

We would therefore be facing a new type of weighting that seeks to adjust for the incommensurable proportionalities between them due to the different temporalities and spatialities that characterize them, whose scale remains unequal despite being confluent in the same plane, distorting as a consequence the different symbolic representations that they contain. Although the terms would not be interchangeable or translatable with each other (any attempt in that vein would involve the reduction of one of them by subordinating it to the other, an inveterate colonial practice), it is feasible to establish a homeostatic equivalence between them based on the regulatory functions they each fulfill in the ordering of the corresponding system to which each one belongs; this would make them susceptible to comparison, as we have indicated previously.

Such weighting would have a “symptomatic” character because of the diverse semiotic content of the articulating principles with which it is handled – indicative of the relevant difference, proper to national diversity and enhancing the effectiveness of collective rights sheltered under the principle of autonomy – so it would not be reducible or similar to the semantic technique that is used for the attribution of meanings to the opposite principles that are shared within a common system of shared rationality under the same paradigm.

The “symptomatic” weighting to which we refer seeks to obtain a constellation-normative conjunction as a harmonious juxtaposition within a harmonious coexistence in the diversity of the systems, in order to build the decolonizing, comparative unity of a plurinational heterogeneity. To achieve this purpose, the judge, based on the principle of unity and a comprehensive interpretation of the constitution, must proceed to configure a hermeneutic diatopic, generative, intersystemic connectivity mechanism based on dignity and human autonomy. In turn, this mechanism allows variation in the approach, which it illuminates its contents, and takes into consideration the intercultural scope used in the application of the rights contemplated in customs consecrated by tradition or in constitutional provisions.

When we examine this mechanism, it aims to return something to its natural order by looking at it from within the social context in which it took place. This is in accordance with the provisions of the Preamble and Articles 57, numerals 8, 9 and 12, and 66 numeral 2 of the constitution, which takes on a transcendental meaning within the margins of dignity, requiring specific safeguards and protections.

5 Integration of knowledge through mental models

Mental models are internal representations of an external reality of each individual [1, 2] or of each community. This means that from the same external reality, each collective individual can have different internal representations. These representations are modeled frequently by means of causal representations in the presence of uncertainty [3].

Neutrosophic logic is a generalization of the diffuse logic based on the concept of neutrosophy [4, 5]. A neutrosophic matrix, on the other hand, is a matrix where the elements $a = (a_{ij})$ have been replaced by elements in $\langle R \cup I \rangle$, where $\langle R \cup I \rangle$ is a whole neutrosophic ring [6]. A neutrosophical graph is a graph in which at least one arc is a neutrosophical arc [7].

An important way in which mediators can encourage litigants to resolve their conflicts is through the use of compromises and compensations [9]. Once the compensations have been identified, other decision-making mechanisms must be used to resolve the dispute. The compensation points are analyzed to form degrees and sub-topics, as specified in the decomposition hierarchy, and degrees of compensation are used to form cognitive maps, specifically, cognitive mapping known as bidirectional. The bidirectional diffuse cognitive map (BFCM) [10] is used to provide guidance in choosing the order of problems and sub-topics. The BFCMs reflect the relationships that the disputants have isolated before a negotiation begins. A BFCM can capture these relationships and modify the map once a problem has been assigned. The changes made to the maps are reflections of the effect that the assignments have on the subjects that still need to be assigned.

If indetermination is introduced in a bidirectional cognitive map, it is called a bidirectional neutrosophical cognitive map (BNCM), which is especially useful in the representation of causal knowledge because it enables the representation and analysis of indeterminacy [4, 11].

In the present work, the inclusion of indetermination in causal relationships is proposed by bidirectional

neutrosophic cognitive maps. A proposal for static analysis in neutrosophical cognitive maps is presented. The following activities were included: Calculate measures of centrality, Deneutrosiphication and Sort by importance of the nodes.

Static analysis in BMCN focuses on the selection of the concepts that play the more important roles in the modeled system [12,5] It is carried out from the adjacency matrix, taking into consideration the absolute value of the weights [13].

The following measures are used in the proposed model based on the absolute values of the adjacency matrix [14]:

Outdegree $od(v_i)$ is the sum of the the rows in the neutrosophical adjacency matrix. It reflects the strength of relationships (c_{ij}) extending out from the variable.

$$od(v_i) = \sum_{j=1}^N c_{ij} \tag{1}$$

Table 1 BNCM Nodes

Nodes Description

Nodes	Description
c_1	Importance of the social structure for the links
c_2	Right to safeguard social integrity
c_3	Sanctioning procedures to be observed

The BNCM is developed through the capture of knowledge. The generated neutrosophic adjacency matrix is shown in Table 2.

Table 2: Adjacency matrix.

0	-	0.4
	0.7	
-	0	1
0.7		
0.4	1	0

The calculated centrality measures are shown below.

Table 3: Outdegree

c_1	1.1
c_2	0.7+1
c_3	0.4+1

A static analysis in NCM [15] initially results in neutrosophical numbers of the form $(a + bI)$, where $I =$ indetermination [16]. This is why a de-neutering process is required, as proposed by Salmerón and Smarandache [17]. $I \in [0,1]$ is replaced by its maximum and minimum values.

c_1	1.1
c_2	[0.7, 1]
c_3	[0.4, 1.4]

Table 4: Deneutrosiphication

Finally, we work with the mean of the extreme values to obtain a single value [18].

$$\lambda([a_1, a_2]) = (a_1 + a_2) / 2 \tag{2}$$

therefore

$$A > B \Leftrightarrow \frac{a_1 + a_2}{2} > \frac{b_1 + b_2}{2} \tag{3}$$

c_1	1.1
c_2	1.2
c_3	0.9

Table 5. Median of extreme values

From these numerical values the following order is obtained:

$$c_2 > c_3 > c_1$$

Under this approach we can analyze which are the most important elements in the case that can serve as a basis for intersystemic weighting, making the incorporation of mental models and experiences that exist in each of the coexisting forms of social organization possible.

Conclusion

1. In the systems of plurinational states such as Ecuador and Bolivia, the different foundations on which rights are built and the practice of self-determination among indigenous peoples and nationalities constitute a right to autonomy to form their own social organizations and for their specific identity practices, since they cannot be evaluated with the categories and dispositions that characterize the normative rights of the State.

2. The constitutive principle of interculturality in these States allows them to establish eminent homeostatic criteria in each of the coexisting systems, among which life stands out as an extended natural attribute and human dignity in its individual and collective dimensions.

3. Based on these considerations, it is possible to establish a comparative methodology that allows for the

combination of procedural institutions and sanctioning actions of a transnormative nature that strengthens the autonomy of each of the justice systems, while at the same time allowing an authentic intercultural justice to be built.

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