
Personal Encounters with the Work of Laura Nader

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I first encountered the work of Laura Nader in the mid-1980s when I was practicing law and decided to teach my own invented version of Anthropology of Law at the local university. In my personal attempt to combine my two primary interests, law and anthropology, I assigned the collection, *The Disputing Process—Law in Ten Societies* (Nader & Todd 1978). The broadening of perspectives and the possibilities for comparative thinking that it provided led me to assign it again more than 10 years later for a legal anthropology class at Duke University. In that version of the course, I also showed the PBS Odyssey Series documentary, *Little Injustices: Laura Nader Looks at the Law* (Rockefeller 1981). This was shortly after my first engagement with Nader's ethnography, *Harmony Ideology: Justice and Control in a Zapotec Mountain Village* (1990), in a graduate course on the history of legal anthropology.

Since then, I completed my dissertation, which deals with the relationship between law and identity in Brazil's semi-arid northeast in two neighboring rural villages, one recognized in 1979 as an indigenous tribe and the other recognized in 1997 as a *quilombo* (community of descendants of fugitive slaves), both as the result of new laws reflecting changes in government policy (French 2003). When I reread *Harmony Ideology* in early 2004 in preparation for the Law & Society Association panel honoring Nader, I was struck by the extent to which her approach in that ethnography resonates with contemporary research and debates situated at the intersection of law, politics, and history, including my own work. Although I do not focus on dispute resolution per se, my work is fundamentally concerned with how local political, social, and economic interests of rural communities engage with, are changed by, manipulate, and alter national law and institutions. Such matrixes of power are Nader's primary concern in both *Little Injustices* and *Harmony Ideology*.

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Little Injustices, which first aired in 1981 and was still a favorite of students when I used it almost 20 years later, is part of a project Nader had begun in the 1960s, enunciated in her influential essay, "Up the Anthropologist" (1969). In *Little Injustices*, Nader focused on how citizens understand those who shape attitudes and control the institutions that reach into every aspect of their lives. Juxtaposing the Mexican Zapotec community of Talea and its use of the local legal system with the difficulties in lodging consumer complaints in the United States and then-innovative efforts to improve such complaint mechanisms, Nader made clear the indispensable connection between citizenship and access to justice (see also Nader 1980). Democracy, at the everyday level, requires that citizens have access to institutions and decision makers. As she compared the use and expansion of complaint-handling mechanisms in the United States to the face-to-face justice and balance pursued by the Zapotecs, Nader advocated that the audience consider exercising rights of redress outside as well as within the formal legal system. Taleans worked hard to find the middle ground so as to minimize injustice to all the actors involved in a dispute. Because it is unusual for the United States to take lessons in democratic methods from rural Third World villages, *Little Injustices* caught the students' attention. Through an unexpected comparison, Nader clarified a key component of democracy often overlooked in both the standard discourse about elections and the grandiose representations of democracy as a system to be exported to other nations.

Almost a decade later, *Harmony Ideology* was published. Through an ethnographically rich presentation of Talean court cases, Nader engaged with, and her work was essential to, a crucial moment in the trajectory of legal anthropological thinking in which law was actively being theorized in terms of process, power, and history (Moore 1978; Starr & Collier 1989). To that end, Nader was dedicated to understanding the relationship between legal systems and their socioeconomic settings through a consideration of disputes as social processes embedded in social relations. The Talean data provided her with evidence, in combination with her earlier study of Lebanese village dispute handlers (Nader 1965), that there was a relationship between "social organization and the development of dispute resolution mechanisms" (Nader 1990:60). She looked at "law within the matrix of the social system" and showed it to be "both an agent of control and subject to control" (1990:180).

Nader posited that "harmony ideology" in Talea, over the 30 years she conducted research there (1950s–1980s), was "both a product of nearly five hundred years of colonial encounter and a strategy for resisting the state's political and cultural hegemony"

(1990:2). She believed that the “discourse of harmony among the Talean Zapotec [was] undoubtedly connected to the spread of Christianity and colonial policy” (1990:320). Some critics have been dissatisfied with this formulation on the ground that it seems “problematic to deny any autochthonous origins for harmony ideology in the absence of any account of what Zapotec dispute settlement was like before the Spanish conquest” (Just 1992:392). However, it is important to remember that Nader’s goal was to describe and theorize the manipulation of an ideology imposed, or at least brought out, by colonial forces.¹ Greenhouse (1992:951) has pointed to the expansiveness of Nader’s interpretation of what she found in Southern Mexico. Nader ascribed the pattern represented there to the ways “historical and cultural forces have shaped local practices of social control in postcolonial societies” (Greenhouse 1992:951). She attributed it “in large measure to the global impact of Western colonialism and its legacy in countless grassroots jurisdictions” (Greenhouse 1992:951).

When Nader later reflected on harmony ideology in *The Life of the Law: Anthropological Projects* (2002), she characterized it as a tool used by the Spanish Crown through missionaries, who placed indigenous people in “autonomous” village units. This, she suggested, was what eventually enabled the Zapotec people to use harmony as a counterhegemonic tool against power holders. Her perspective lends further support to the proposition that the concept of hegemony should be used not only “to understand consent but to understand struggle” (Roseberry 1994:360). It can serve as “common material and a meaningful framework for living through, talking about, and acting upon social orders characterized by domination” (1994:361). In the case of the Taleans, although they were highly litigious, Nader found that they valued compromise in the local courtroom. She “came to see their support of harmony as part of a strategy to preserve their autonomy” from the Mexican state (Nader 2001:13), providing an excellent example of the appropriation of components of hegemonic ideologies by people with very little power for the purpose of remaining relatively independent. Even the unappealability of local decision makers’ edicts to a regional or national court was necessary to “ensure the survival of village autonomy and of the local culture associated with it” as an integral part of the “politics of survival” (Levine 1991:1766–7).

¹ As Just (2001:393) points out, it would have enriched her analysis to reveal more about how the Catholic Church was involved in resolving disputes in the Talean local context, as well as the Church’s relationship to the decision makers in Talea. This is a particularly salient critique in light of Nader’s emphasis on the role played by Christianity and missionizing in colonial policy.

However, as members of the U.S. legal community found dispute resolution outside the court system potentially useful for helping poor and disempowered people to achieve peace (and some degree of justice) in problematic relationships, Nader could see the hydra-like character of “harmony ideology” playing itself out on her home ground. As alternative dispute resolution (ADR) was put into practice, Nader saw clearly that what had begun as a well-intentioned means to provide a forum for those who could not afford to go to court becoming a place for judges to send “garbage cases,” including disputes about civil rights and environmental and consumer rights (Nader 2001). Turning her Talean findings on their head, when Nader looked at legal reform through the use of ADR, she found that harmony was being used to control, but “this time by the powerful” (2001:13). Ten years after her explication of “harmony ideology,” Nader was just as passionate about the “silenc[ing] for the sake of civility” being pursued by the U.S. education system in teaching children to “trad[e] justice for harmony” (2001:13). She coined the phrase *coercive harmony* and found that it permeates our society, stifling dissent by repressing activism “under the banner of consensus,” leaving behind an “ideology of consensus” (2001:13).

These recent ruminations by Nader on the development of her thinking about the mechanics and contexts of dispute resolution might provoke a reconsideration of her original theorization of harmony ideology. Through the mirror concept of “coercive harmony,” we are led to consider whether the appropriation by the powerless of “pacifying ideologies . . . has the effect of transforming or reinforcing their disciplinary logic” (Mark Goodale, personal communication, 9 June 2004). In fact, Nader’s critique anticipates the ubiquitous presence of ADR, as can be seen in the burgeoning industry of mediation services. For example, commercial mediator Tom Oswald, on Mediate.com, has proposed that ADR be introduced to the “cultures” of Iraq and Afghanistan. Moreover, forms of ADR are now being found in “Muslim Thought,” as discussed by mediator Karim Mohamed on the Web site Consensus.Mediation.com.uk with the slogan “Enterprising Dispute Resolution.” Coalition Provisional Authority Order 39, which opened Iraq to foreign investors six months after the invasion, has been criticized for its dispute settlement provision, which has been compared to provisions in other multilateral trade agreements, such as the North American Free Trade Agreement (NAFTA), viewed by critics as unappealable, circumventing local court structures, and dangerously undemocratic (Malig 2004). These uses of ADR are reminiscent of Nader’s concluding remarks in *Harmony Ideology*, in which she pointed out that “harmony comes at a price—defense may turn into oppression” (1990:309). In fact,

in the constant invocation of ADR in settings where its use is designed to protect foreign investment in nations placed within the orbit of the United States through coercive means, military or otherwise, it is possible to see a parallel to Nader's explanation of the Spanish Crown's use of harmony ideology to pacify its conquered peoples.²

Finally, I would like to return to the resonance of my work with *Harmony Ideology*, this time in an area in which Nader foreshadowed a current subject of much interest throughout Latin America: land reform and the relationship between law and the land. In her discussion of Talean property disputes, she saw property as "an idiom of social relationships, and disagreements over property illuminat[ing] certain fundamental values" (Nader 1990:246). In a farming community, "land and water are not only central to survival, but they also embody individual commitments that provide the framework for social continuity" (Greenberg 1994:1078) and, I would add, rupture. Conflicts over property often reflect fundamental breakdowns in social relations. In the history of the rural communities in northeast Brazil, as Nader observed in Talea about conflicts between individual rights and community interests, land can have multiple meanings.

In *Harmony Ideology*, Nader pointed out that land ownership is the basis of power and privilege (1990:253). In the backlands of the Brazilian northeast where I conducted my research in 2000, I learned about the complications inherent in that statement. The meanings of land are tied to the circumstances of acquisition, the nature of the title, the land's arability, agricultural practices, and the class and power position of the owners. As the government grants land to rural workers whose ethnic self-identification (whether as indigenous or black) is tied to such land grants, the possible meanings of land change as the context of struggle changes. Such meanings also change for individuals as the context of their lives change. For example, some of the older residents had been given individual title to small parcels of land in the 1940s, had sold it in subsequent years, and then reacquired that same land as part of a collective title granted to them as a newly recognized quilombo. Therefore, unlike the individual, alienable land grants of the 1940s, the collective, inalienable title of the year 2000 carried with it meanings grounded in cultural and ethnic identification that had developed as the result of collective struggle, as well as from the contested nature of the recognition process.

² I would like to thank Mark Goodale for suggesting this analogy. As Goodale mentions in his article in this volume, in *The Life of the Law*, Nader discussed the "the distribution of international power" through the exportation of ADR to "less civilized nations" (2002:150–1).

Stratification, complexity, factionalism, intergenerational differences, and changes that come from economic integration are issues that Nader incorporated into her rich discussion of “harmony” in a southern Mexican village. Far from a romantic vision of peasant life, Nader’s sophisticated view of process, control, and power in the life of the law in Talea, as well as her sensitive treatment of the individuals who set the law in motion, keep this classic text alive for those who are just starting out more than a decade after its publication.

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