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## “To Speak the Law”: Contested Jurisdictions, Legal Legibility, and Sovereignty in Guatemala

*Indigenous claims “to speak the law” in Guatemala extend far beyond late twentieth-century statist proposals for multicultural legal orders based on recognition of legal pluralism. Drawing on collaborative research with the Indigenous Mayorality of Santa Cruz del Quiché and examination of public debates in the media, this article analyzes attempts to ensure the legibility of Indigenous law, including disputes over constitutional reforms in 2016 and 2017. It suggests how different conceptual framings shape methodological approaches and representations of law. While opponents of Indigenous jurisdiction frame Mayan law as violent and illegal, and thus radically incommensurable with the national legal order, for Indigenous authorities “speaking the law” is not about seeking recognition from the nation-state. Rather, “speaking the law” is about communitarian forms of sovereignty and legality rooted in Mayan languages and cosmologies. Countering racialized tropes, Mayan authorities’ representations allude to understandings of justice and forms of legitimacy that existed prior to the sovereign state and national and international laws. In this way they highlight not only the historical violence of the Guatemalan state but also the foundational violence of law itself, pointing to temporalities and ontologies of justice beyond modernist legal frames. [legal pluralism, sovereignty, jurisdiction, Indigenous law, Guatemala]*

On March 23, 2017, the Ancestral Indigenous Authorities of Ixim Ulew, comprising twelve associations of Mayan authorities, met in the offices of the Indigenous Mayorality of the municipality of Sololá, a town located in the central Guatemalan highlands. They drafted a declaration that was published the same day as a *campo pagado* (paid insert) in the main national daily newspaper, *Prensa Libre* (2017b).<sup>1</sup> The declaration confirmed the Mayan authorities’ decision to withdraw their proposal for reforming article 203 of the national constitution granting sole jurisdiction to the national judiciary. The reform would have formally recognized a plurality of legal orders within the nation-state and Indigenous peoples’ rights to exercise their own forms of law as part of Guatemala’s constitutional norms, affirming that “ancestral indigenous authorities exercise jurisdictional functions in conformity with their own institutions, norms, procedures and customs, as long as these are not contrary to the rights consecrated in the Constitution and internationally recognized human rights. The decisions of the ancestral authorities are subject to constitutional control.” Their decision to drop this proposal related to a package of reforms of the state justice system that had been negotiated over the preceding months, promoted by the International Commission against Impunity in Guatemala (CICIG); the UN High Commission of Human Rights in Guatemala; the Human Rights Ombudsman; and Thelma Aldana, the then-attorney-general and head of the Public Prosecutor’s Office (2017a).<sup>2</sup> The proposal had been drawn up in response to the systemic crisis of corruption revealed by criminal investigations conducted by CICIG and the public prosecutor’s office. The

investigation resulted in the removal and imprisonment of President Otto Pérez Molina in 2015, and the detention of more than three hundred government officials and private sector representatives. The proposal was fiercely resisted by deputies in the Congress of the Republic of Guatemala (hereafter national congress) (Solano 2019; Vassaux and Rivera 2016). Indigenous communal authorities across the country had mobilized in support of the proposed constitutional amendment, taking part in a series of national forums to discuss the reforms, appearing in the media, and going en masse to public hearings at the Supreme Court and national congress.<sup>3</sup> Images of Mayan authorities on the steps of the congressional building on 8th Avenue in downtown Guatemala City appeared regularly in the national press, their silver-topped *varas de autoridad* (staffs of authority) held aloft, together with banners signaling their support for the struggle against impunity that had so galvanized the country's citizens in previous months. As one banner proclaimed, *Porque nuestro horizonte es el mismo: LA JUSTICIA. Sí a la Reforma* (Because our horizon is the same: JUSTICE. Yes to the Reform). Yet, as I will show here, powerful national elites responded to the proposal to constitutionally recognize Indigenous law by questioning the validity of Indigenous forms of justice and rejecting Mayan claims to exercise sovereignty. The ancestral authorities were ultimately forced to drop their insistence on the clause in order to save the reform package.

Colonial relations between non-Indigenous elites and the Indigenous Mayan majority based on the latter's economic exploitation and political and social exclusion have been central to Guatemala's historical processes of nation-state construction (Grandin 2011; McCreery 1996). Structural discrimination and segregation, combined with the legacy of indirect rule under the Spanish crown, contributed to the continuity of Indigenous forms of local organization and authority, although in the latter half of the twentieth century these were severely affected by the internal armed conflict throughout much of the country. During this period, many Indigenous people joined peasant and guerrilla movements to seek greater social justice. In 1996 a UN-brokered peace settlement ended more than three decades of armed conflict that had left over two hundred thousand dead and some fifty thousand disappeared, the vast majority of these being rural Mayan villagers (Commission of Historical Clarification 1999). The peace accords proposed reform of the constitutional norms, laws, and institutions of the nation-state to strengthen human rights guarantees, tackle the poverty that disproportionately affects Indigenous people, and—crucially—accommodate legal pluralism. The Agreement on the Rights and Identity of Indigenous Peoples, signed in 1995 by the government of Álvaro Arzú and the insurgent forces of the Guatemalan National Revolutionary Unity, promised to improve conditions for Guatemala's historically marginalized Mayan, Xinca, and Garifuna populations and to legally recognize Indigenous people's collective rights. This included the right to exercise their own forms of law—in effect, to exercise their own jurisdiction and sovereign law-making powers within the existing structures of the Guatemalan state and international human rights standards.

In December 1996, a year after the signing of the final peace settlement, the International Labor Organization's (ILO) Convention 169 (Indigenous and Tribal Peoples Convention)—which in its articles 8, 9, and 10 commits signatory states to recognize Indigenous peoples' exercise of customary law—went into effect following its ratification. ILO Convention 169 stipulates that Indigenous peoples may exercise their “customary law” within the limits set down by “international human rights”:

In applying national laws and regulations to the people concerned, due regard shall be paid to their customs or customary laws. These people shall have

the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle. (Art. 8)

To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected. (Art. 9, clause 1)<sup>4</sup>

Yet, in March 1999, a package of fifty reforms agreed by congressional deputies to constitutionalize the different commitments set out in the peace accords, which included changes to article 203, was put to a national referendum. It was defeated following a virulent campaign that stoked fears that the sovereign power of the nation-state and the “rule of law” would be fatally weakened if the measures were approved (Warren 2003).

In the ensuing years, efforts to strengthen interlegal and intercultural coordination were supported by proreform sectors within the state, academia, local civic associations, non-governmental organizations, and a plethora of international development cooperation agencies. A handful of cases involving disputed jurisdiction went before the Supreme Court and the Constitutional Court, and key judgments by both tribunals ratified Indigenous authorities’ rights to exercise their own forms of law. Judgments referenced ILO Convention 169 and constitutional articles 58 and 66, which commit the state to recognize the cultural identities of the different ethnic groups and to respect and promote their forms of life, customs, traditions, forms of social organization, dress, and languages (Organismo Judicial, Unidad de Asuntos Indígenas 2017). By 2017, however, many of those accused of systemic corruption controlled the national congress and key nominations within the national justice system. Thus, prospects for transforming the state through multicultural reforms to formally recognize legal pluralism or more progressive jurisprudence from the high courts was more remote than ever. Demands for justice expressed in the register of “ancestral authorities” revealed the radically distinct and often conflicting conceptions of sovereignty at play, reflecting in turn the complex dynamics among different legalities and the practices and concepts of justice they encompass. While the peace process focused on the colonial construct of the nation-state, and essentially envisaged top-down transformations through legal reforms, many Indigenous authorities increasingly demanded greater self-determination in local communities. Mayan understandings of the polity are intensely local. Stener Ekern (2010, 2018) has shown how, although local governing practices in Mayan communities now incorporate certain “statist” logics—such as written constitution-like statutes and an emergent focus on rights—they continue to articulate local, nonstate forms of sovereignty grounded in alternative legalities and ontologies of justice that are constantly evolving. In the years since the peace accords, the supracommunal and interregional articulation of different local Mayan polities has challenged political, economic, and sociocultural domination by non-Indigenous elites, making the accommodation of conflicting and intertwined sovereignties an ever more fraught prospect. By 2017, attitudes toward Indigenous autonomy claims among the political parties dominating the national congress had hardened, in part because of governing elites’ support for large-scale infrastructure projects to extract natural resources, most of which are located in Indigenous territories, and the increasing mobilization of many ancestral authorities both in support of greater political and legal autonomy and in opposition to such developmental initiatives. The limited

recognition of Indigenous law that had occurred in the preceding years clearly did not imply recognition of local sovereignty over territory and natural resources. The proliferation of extractive projects had resulted in increased confrontations and the murder, harassment, and criminalization of Indigenous community leaders, a pattern repeated across the region (Copeland 2019; Dary et al. 2018).<sup>5</sup> In the context of the proposed justice sector reforms, disputes over political and legal legitimacy were played out in the media, as claims for Indigenous sovereignty and legalities were counterposed to the alleged illegitimacy of the political class asserting sovereign state power. As the *campo pagado* of the ancestral authorities stated:

We do not recognize [the authority of] the national congress: We have always pointed to its lack of legitimacy and today we are witness to its subjugation to the powers-that-be of this country. We therefore call on all social and democratic forces of Guatemala to demand a process of purging the organs of state coopted by corrupt business and military mafias.<sup>6</sup>

In this article, I argue that Indigenous claims for local sovereignty and jurisdiction in contemporary Guatemala extend far beyond late twentieth-century statist proposals for multicultural legal orders based on the recognition of legal pluralism. Some degree of coordination between state and Indigenous authorities has undoubtedly been achieved. However, the battles played out in 2017 over constitutional recognition and jurisdiction that I describe in subsequent sections signal profound differences over conceptions of sovereignty, politics, and law, and highlight the ways in which justice claims and practices operate within, against, and beyond multiple and overlapping constructions of legality. Shaunnagh Dorsett and Shaun McVeigh observed that “as a field of legal knowledge and legal practice, jurisdiction is concerned with the modes of authority and the manner of the authorisation of law” (2012, i). They note that jurisdiction first connotes authority and then is an act of speaking or enunciation of the law, deriving from the Latin *ius decire* (literally to speak the law): “[Jurisdiction] declares the existence of the law and the authority to speak in the name of the law” (4). According to dominant nation-state narratives, including the multiculturalism advanced by the peace accords, the law is spoken from the highest national authorities: the presidency, national congress, and high courts. By contrast, for Mayan communities, speaking the law is an intensely contextual and local process grounded in perceptions of authority expressed in Mayan languages. For example, the K’iche’ term for political authority is *q’atb’al tz’ij* (literally, “where the word is cut”). The law takes shape when elders meet and take decisions to address specific issues and disputes.<sup>7</sup> What is now referred to as “ancestral justice” thus entails highly localized interactions grounded in specific philosophical and moral codes expressing ideal forms of sociality. It involves communal authorities and community members in extended processes to address specific problems that aim to establish the truth, construct consensus, and restore communal balance and harmony.

Respect for the spoken word—and specifically the commitments assumed by the collective—is a central pillar of Mayan law. This stands in sharp contrast to national law, which derives from the written word; that is, codes and legislation shaped by the different legal transplants from Europe and North America that have marked the colonial history of the modern nation-state, a form of law decreed by the executive and national congress, and interpreted and applied by the judiciary. State law is seen by many citizens as ineffective and corrupt; those with money or power secure impunity by buying off prosecutors and judges, while the procedural logics of criminal law mean that those accused of wrongdoing do not tell the truth. The battle over the constitutional recognition of Indigenous

jurisdictions in Guatemala was inextricably bound up with disputes over legitimate political authority and the legal legibility of Indigenous law: that is, over who could “speak the law” and thus determine what actually constituted law. It also implied profound differences over how justice was imagined. As I discuss in the following sections, these disputes were fought within and beyond the strict confines of the state legal apparatus, involving both anthropological practice and representations in the media.

### **Legal Legibility and the Criminalization of Indigenous Law**

On a bright, clear day in November 2017, I returned to Santa Cruz del Quiché, the administrative capital of the highland department of Quiché, to present my credentials at the regional offices of the Ministerio Público (public prosecutor). In the preceding months I had drafted a special expert report analyzing the nature of Indigenous law as exercised by the *Alcaldía Indígena* (Indigenous mayoralty) of Santa Cruz del Quiché at the request of the legal defense of Juan Zapeta, who was the first Indigenous mayor, and a man I had known for more than a decade and a half. A sworn deposition and the presentation of my legal credentials were required for my report to be formally presented to the prosecutor in charge of the case. I had attended a workshop the previous day in the city of Quetzaltenango and was running late as I skated my car perilously over the potholes in the last leg of the journey to Santa Cruz.

During the period of Spanish rule, Indigenous mayoralties were an important institution of the indirect system of colonial government. Indigenous populations were organized in *Pueblos de Indios* and subjected to tribute and forced labor. Over time, the Indigenous mayoralties became relatively efficient at protecting Indigenous communities’ interests. However, they were severely and negatively affected by the dictatorship of Jorge Ubico in the 1930s, and again in the 1970s and 1980s by the insurgent movements and the military’s counterinsurgency violence. Lina Barrios (2001) says that the Indigenous Mayoralty of Santa Cruz del Quiché had disappeared by 1945, but Carlos Fredy Ochoa (2003) documents the existence of an Indigenous mayoralty in Santa Cruz in 1978, which coordinated community and municipal authorities (see also Rojas Lima 1995).

The *Alcaldía Indígena* of Santa Cruz del Quiché, the subject of my special expert report, is a supracommunal coordination of village-level Maya K’iche’ authorities, which was reconstituted in 2003. It has since gained considerable legitimacy among the local population and state justice representatives for addressing a wide range of conflicts, particularly those related to the crime and insecurity affecting the inhabitants of this highland region. It had been reestablished in part to stop the practice of lynching of suspected criminals, which became widespread in response to rising crime in the immediate postwar years, a phenomenon often linked to Indigenous community members who had collaborated with the military and its paramilitary structures during the brutal years of the counterinsurgency (Burrell 2013; Snodgrass Godoy 2002).

The Indigenous Mayoralty of Santa Cruz del Quiché resolves hundreds of disputes without the intervention of state authorities, and regularly undertakes coordinated actions with the national police, public prosecutor’s office, human rights ombudsman, and other state officials to resolve complex cases. The measures commonly deployed by the Indigenous mayors, which I and others have documented (Asociación Maya Uk’ux B’e 2019; Padilla 2008; Sieder and Flores 2011, 2012), include *Pix’ab* (inculcation of advice either by Mayan authorities or the family members of those accused, aimed at the prevention of conflicts); *Xukulem* (penitents walking on their knees anticlockwise in a circle three times to ask forgiveness from the earth); and *X’ik’ay* (getting lashed with switches made from branches of a quince tree, or in their absence rope whips, intended to reinstill a sense of shame and

correct energy flows) (Asociación Maya Uk' u' x B' e n.d., 2019). The case that had brought me to the public prosecutor's office that day in November concerned a robbery committed a few months earlier by two adolescents that had been resolved by the Indigenous Mayorality of Santa Cruz del Quiché according to its interpretation of Maya K'iche' law. This resulted in Zapeta's indictment by the state procurator of children and adolescents, a department within the procurator general of the nation (PGN), whose functions include the representation of children and adolescents before the courts in the absence of legal counsel.<sup>8</sup> As was common practice for serious cases, members of the Indigenous mayorality had carried out the final stage of the process before assembled villagers and communal and state authorities in the main square of the departmental capital of Santa Cruz. This was done so that the two adolescents would "recover their shame." The PGN, however, alleged this practice was contrary to the best interests of the child as protected under the UN Convention of the Child and Guatemala's domestic legislation. The measures employed by Zapeta, who had personally administered the x'ik'ay, were thus deemed illegal and acts of torture.

Yet in a case decided on March 6, 2016, the Constitutional Court validated similar measures applied by Indigenous authorities in 2012. A minor had been found guilty of the rape of a girl, also a minor, by the Council of Community Mayors of Comitancillo in the department of San Marcos. The resolution ratified by the communal authorities included an instruction that the boy publicly ask for the victim's pardon and receive twenty-five lashes to be applied by his parents before a communal assembly. The case had been resolved in coordination with different state authorities to ensure the victim's well-being, which included counseling and monitoring of her progress at school. The court's sentence determined that the lashes were not a violation of human rights but should rather be understood within the context of Mayan cosmologies and normative systems. The Constitutional Court, citing ILO Convention 169, thus overruled the Supreme Court, which had supported the ruling of a lower tribunal that the Indigenous authorities could not act as judges in the case.<sup>9</sup>

In Zapeta's case, the Indigenous mayors also maintained their right to exercise their own forms of law according to what they understood as their ancestral norms and values. This was necessary to ensure justice and reestablish social harmony in the community and in line with their collective right as Indigenous peoples to jurisdictional autonomy, as established in international law and emergent national jurisprudence. In the preceding weeks, Zapeta told me he was more than ready to go to court to defend the work of the Indigenous mayorality and the rights of Maya K'iche' people to exercise their own forms of law.

The aim of my expert report was to convince the prosecuting authorities of the legality and legitimacy of the measures applied by the Indigenous mayorality and the historical continuity of the institution. It was also to explain intercultural and interlegal approaches adopted by other courts in Latin America to defend the "best interests of the child." I sat nervously in front of the prosecutor's desk, next to Juan Zapeta and his lawyer, Jorge Morales Toj. My deposition had largely been dictated by Morales Toj and typed out by the public prosecutor on two pages of official paper, with the words "Science, Truth, Justice" boldly embossed below the insignia of the public prosecutor's office. The deposition stated that I was a researcher at the *Centro de Investigación y Estudios Superiores en Antropología Social* (Center for Research and Higher Studies in Social Anthropology) in Mexico City, and that I was presenting as supporting evidence two previous studies I had published with anthropologist Carlos Y. Flores, in collaboration with the Indigenous Mayorality of Santa Cruz del Quiché (Sieder and Flores 2011, 2012). The document affirmed that these works gave an account of the following:



1. The norms, authorities, and practices carried out in Santa Cruz del Quiché related to Indigenous law.
2. The existence and legitimacy of the Indigenous mayorality and of due process in Indigenous law.
3. The existence of successful coordination between said Indigenous mayorality and state authorities since the former was reconstituted in 2003.
4. Successful cases involving minors that were carried out in coordination with state authorities according to due process.<sup>10</sup>

The subtleties and complexities of Maya K'iche' law—the highly contextualized processes of *q'atb'altzij* (literally, cutting the word, meaning making law)—were herein reduced to general statements emphasizing legality and due process. My expert report, grounded in specific knowledge practices and hierarchies of power, was thirty-six pages long, printed on the letterhead of my research institution, and included my doctoral title and an introductory affirmation that I was “internationally recognized as an expert on indigenous issues and legal pluralism.”<sup>11</sup> The goal of the report was to make Maya K'iche' law in Santa Cruz legible and legitimate for a number of different audiences, but primarily for the public prosecutor's office in the hope that it would not press charges. It was also, however, for the judge who would preside over the case, if charges were pressed; for the human rights activists and organizations who condemned the use of x'ik'ay as an abuse of human rights; and for the Mayan intellectuals and Indigenous authorities who had previously criticized x'ik'ay as not “authentically Mayan” (Sieder, forthcoming).

Positions supporting and opposing use of x'ik'ay have also figured in disputes among the leadership of the Indigenous mayorality. Osvaldo Osorio, a former member of the Indigenous Mayorality of Santa Cruz del Quiché, and a leader of the Civil Defense Patrols during the armed conflict, publicly attacked Zapeta for his use of x'ik'ay. Party political conflicts are also a factor. In the June 2019 elections, Osorio ran for mayor of Santa Cruz on the ticket of the Unión de Cambio Nacional, a party that fell from grace when its leader, Mario Estrada, was arrested in the United States for drug trafficking. Simultaneously, Zapeta had run for congress on the ticket of Movimiento Político Winaq.

Mediating between Mayan people's multiple theorizations of their own laws and dominant juridical frames is far from simple, as their epistemological and ontological bases often differ radically. Stuart Kirsch talks about the “overlapping but sometimes incommensurate frames of reference” he has deployed in elaborating anthropological witness reports in defense of Indigenous peoples' rights (2018, 17). To describe the principles of Maya K'iche' law in terms intelligible to the civil law system of the state—which values abstract norms above case law—I turned to the written systematizations of Mayan norms that different Mayan organizations and analysts had elaborated over the previous two decades (see, for example, Defensoría Indígena Waxaqib' Noj' 2006; Defensoría Maya 2000, 2003; Maya'Ch'ojib'al 2008; Oxlajuj Ajpop 2003; Tzul Tzul 2016; Uxe'al al Pixab' re K'iche' Amaq' 2001). The books and documents I drew on for my expert report were important legal artifacts, circulating in a complex field of contestation and constitution of legal knowledge and authority. As Leticia Barrera and Sergio Latorre have noted, legal artifacts are part of bureaucratic knowledge-making and a means through which “expertise, governance and knowledge relations” are established (Barrera and Latorre 2019, 95). Over the years I had come to understand these publications as epistemological truth claims. Rather than strategic essentializations of Mayan law (Sieder and Witchell 2001), they constituted a written distillation of the ontological bases of a dynamic alternative legal system based on conceptions of justice and authority quite different from those defining the national legal system.

Certainly these written exercises in theorization occurred within the contemporary context of political claim making, and were part of more diffuse processes of reconstitution of Mayan identities and communities in the wake of the genocidal violence of the armed conflict (McAllister and Nelson 2013). This signaled the continuity and vitality of Indigenous life-worlds. Specifically, the ongoing revitalization of ancestral authorities in communities throughout the country responds to philosophical conceptions of authority and justice that emphasize participation and service to the collective, respect, sacred balance, deliberation, and legitimacy based on the building of consensus. Through the involvement of *Ajq'ijab'* (Mayan spiritual guides), the *Cholq'ij* (Mayan calendar) plays a fundamental role in determining underlying disequilibrium in the energies of individuals involved in a given conflict or problem and in identifying the most propitious day for collectively addressing them.<sup>12</sup> In this sense, Mayan governance and law are grounded in conceptions of time-space that extend far beyond the temporal frames of “postconflict reconstruction” or multicultural reforms of the nation-state, although it is inevitably enmeshed with those national processes. While my interventions to defend the Indigenous mayoralty were aimed primarily at state institutions, they were less a claim for state-centered multicultural recognition of legal pluralism and more an enunciation of alternative forms of politics and law involving radically different conceptions of sovereignty and justice.

### **Sovereignities, Law, and Justice Claims**

The codification of justice claims in law invariably involves assertions and exercises of sovereign power. Debates in political, social, and critical theories about sovereignty generally focus on the nation-state and consider the relationship between sovereignty and violence.<sup>13</sup> For example, Thomas Blom Hansen and Finn Stepputat conceptualize sovereignty as “a tentative and always emergent form of authority grounded in violence” (2006, 16.1), noting that historically it has been more tenuous in colonized societies, where attempts to build a statist sovereign project of law compete with alternative and often overlapping forms of power and legality. Yet those alternative forms of power and legality can encompass radically different conceptions of sovereignty. In the case of Maya K'iche' law, it is a sovereignty that derives from community self-rule, representing, as Ekern notes for the neighboring case of Totonicapán, “an affirmation of the community as a sovereign domain” (2018, 169). The mobilization of differing claims of sovereignty, legality, and justice in the public debates around the constitutional recognition of legal pluralism in Guatemala signaled conflicting understandings of the country's past and imaginaries of its political future. It also alluded to the multiple histories of violence that counterposed many of the principal actors in the debate. Those arguing in favor of the reform understood it as a kind of restitution for historical injustices against Indigenous people and a means to build a more diverse and inclusive polity in the present and future. This included key actors within the state apparatus, such as Thelma Aldana; and institutions such as the Unidad de Pueblos Indígenas (Unit of Indigenous Peoples) of the judiciary, and the office of the human rights ombudsman, which worked for the recognition of collective rights of Indigenous peoples and supported the human rights agenda set out in the peace accords (Asociación de Abogados Mayas (Nim Ajpu)/Braconnier de León 2015). Those opposing the reform included parts of the military and the private sector, which constituted most of the governing political class. Many in the opposition camp were directly implicated in land grabs, labor exploitation, and counterinsurgency violence perpetrated against Indigenous populations during the years of the armed conflict (Commission of Historical Clarification 1999; González-Isáz 2013; Solano 2013). Disputes played out in the Guatemalan media over the legitimacy of Indigenous forms of legality involved constant reaffirmation of the racial



categories and hierarchies that underpin processes of colonial dispossession and accumulation in Guatemala. Disputes over the appropriate hierarchies of law and the well-worn tropes of civilized subject and barbaric Other were also much in evidence.

The powerful private sector association Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras (CACIF; Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations), was the most energetic opponent of efforts to recognize Indigenous jurisdiction, as observed in the letter sent to the congressional committee charged with reviewing the proposed reforms:

[The proposal] expressly recognizes a legal system of indigenous law. This system is recognized at the same level of the system we know, which is now called ordinary, because this indigenous legal system would be subject only to constitutional control... . The proposed wording does not have the effect of recognizing existing uses and customs ... [but rather] a broader scope. In this sense, it creates a parallel legal system. And when reference is made to a legal system as such, it encompasses the creative [*jusgenerative*]<sup>14</sup> function of the law ... which limits the jurisdiction and competence of all the judiciaries and institutions of the ordinary legal system, which could be questioned at all times by conflicts of jurisdiction that arise. The recognition is so broad that it could be dangerously interpreted as limiting the power of Congress to issue laws or create law since such laws may not necessarily enter into force within the indigenous legal system.<sup>15</sup>

In direct opposition to the commitments made in the peace accords, CACIF argued in favor of a unitary legal order, invoked as vital for defending human rights and what they repeatedly referred to as *certeza jurídica* (legal certainty) for citizens, although this referred more specifically to legal guarantees for private sector investment in rural areas. Indigenous law was also condemned as “parallel justice,” with any possibility of law-making powers extending beyond the national congress roundly rejected. Private sector opposition to Indigenous law can be partly understood when considering rural communities’ historical struggles for land, sustained resistance to extractive industries, and demands that their international rights to consultation to secure their free, prior, and informed consent be respected. Guatemala ratified ILO Convention 169 two decades ago, yet has done little to implement its commitments to uphold the collective rights the convention sets out, much less take account of the more advanced standards of the 2007 UN Declaration on the Rights of Indigenous and Tribal Peoples. For years, Indigenous communities across the country have demanded their rights to free, prior, and informed consultation, but no legislation exists to define which state agencies should guarantee and protect rights to consultation in cases of development projects affecting Indigenous peoples, how these consultations should be carried out, or who should be consulted. The initial response of rural communities was to organize *auto-consultas* (local plebiscites), which overwhelmingly rejected proposed megaprojects. Although these plebiscites mobilized more than a million people at their peak, their decisions were not recognized as legally binding by the national courts (Bastos and Sieder 2015; Sieder 2010). The number of socio-environmental conflicts invoking lack of free, prior, and informed consent continued to grow (Viaene 2015). International and national organizations have expressed their concern at the disproportionate use of criminal law against community protests in Guatemala. Indigenous authorities and community members are indicted on charges of terrorism and illicit association to commit a crime, evidencing a policy of persecution against those who defend their

territories and natural resources. In addition to the violent suppression of demonstrations, criminalization involves defamation campaigns against community leaders, localized suspensions of constitutional guarantees, arrests of leaders, police searches of their homes, evictions, and sexual violence against women.<sup>16</sup> In a historic ruling on the lack of consultation of Maya-Q'eqchi' communities in Alta Verapaz concerning the Oxec hydroelectric project, in May 2017 the Constitutional Court ordered the government to pass a law stipulating mechanisms for consultation within one year (Muñoz Elías and Del Águilar 2018). A legislative initiative presented the same year by President Jimmy Morales failed, so the issue of consultation remains as vexed as ever. In January 2020, the newly inaugurated government of Alejandro Giammattei announced its commitment to passing legislation regulating prior consultation, widely interpreted as a move to restrict the power of the Constitutional Court to suspend megaprojects on the grounds of lack of adequate consultation.

Opposition to constitutional recognition of Indigenous law was expressed in a barrage of negative press coverage as well as behind-the-scenes pressure on members of the executive branch and national congress. José González, CACIF's president, reaffirmed that a major concern of the proposed reforms to the justice system was "legal pluralism." This contrasted with Attorney General Aldana, who emphasized the importance of including "ancestral justice" as part of national laws within a logic of alternative mechanisms of dispute resolution and multicultural state reform. During her term, she signed several agreements with Indigenous authorities to recognize their legal systems (TeleSur 2015). Big business's campaign against the recognition of legal pluralism was supported by a steady stream of opinion columns. For example, columnist Juan Carlos Zapata, writing in the national daily newspaper *El Periódico*, stated:

A lack of legal certainty ... would result from the broad terms of the proposed reform of article 203. This introduces the concept of indigenous ancestral authorities [who can] exercise jurisdictional functions, without specifying the type of law they can apply and precisely how those "ancestral" authorities would operate. It opens the doors to greater conflict, as we have seen in rural areas, especially due to the lack of a state presence and of secondary legislation regarding ILO Convention 169. It also represents a threat to investment and to *ladino* [non-Indigenous] people who live today in urban areas with indigenous majorities and who have no idea how each system works. The important thing will be to delimit [the article] sufficiently so that the application of this measure is governed by the voluntary submission of the parties and decisions are subject to the control of constitutionality and conventionality. (Zapata 2020)

Edgar Ortiz, an economist from the conservative Francisco Marroquín University and a political analyst for the right-wing television channel *Canal Antigua*, was more direct about the reasons underlying his opposition to recognition of legal pluralism. When interviewed about whether reform of article 203 would have economic repercussions in Guatemala, he responded:

Yes, lots ... mainly for agricultural, mining, and hydroelectric activities or those involving any other natural resource. It's not that Guatemala is currently an investor's paradise and that thanks to this reform it will become hell... There are already problems for the investor in rural areas: hydroelectric or mining companies are paralyzed due to their failure to meet the standards of local

customs. Absolute autonomy for the local community would generate controversy because the investor would have to meet the requirements of the State and the requirements of the indigenous authorities. They would have to attend to two completely different and often contradictory actors. There would be no unitary requirements and that would generate powerful uncertainty for investment. (Peralta 2017)

Extensive national television coverage included opinions for and against the reform of article 203, but even when those interviewed were in favor of recognizing Indigenous jurisdiction, the images projected of “Mayan law” or *Castigo Maya* (Mayan punishment, as it was sometimes called), concentrated almost exclusively on decontextualized spectacular physical sanctions, such as lashes or the shaving of hair, reinforcing the association of Indigenous law to violence and barbarism.<sup>17</sup>

Mayan authorities and organizations worked hard to counter the barrage of negative media coverage and depictions of Indigenous law, strategically framing their presentations as part of a conversation with dominant juridical norms and practices in a clear bid for equal jurisdiction, foregrounding alternative conceptions of authority and justice. For example, the Guatemalan Mayan Lawyers’ Association produced sophisticated video spots, and circulated them on social media. These explained the principles underpinning Indigenous law, pointing to its collective nature and moral imperatives, and presenting it not only in terms of its difference but also its equality with state law, in sharp contrast to the racialized legal hierarchies promoted by the reform’s opponents. In one video, a voiceover intoned over iconic images of Lake Atitlán, Tikal, and assemblies in different Mayan communities: “The indigenous legal system in Guatemala is alive. It is practiced in many communities. It works with the principles and values of Indigenous peoples and its purpose is to resolve conflicts and ensure social coexistence.” An image then informed the viewer: “The Maya Justice System operates quickly, [and is] free, preventive and restorative.” To confirm this, Ana González, an ancestral authority from the village of Choacamán II in Santa Cruz del Quiché, appeared on-screen holding her staff of office. Speaking in K’iche’—with subtitles in Spanish—she spoke straight to the camera, saying: “When the authority resolves conflicts it does not receive payment, it is fast and expeditious, and the guilty person pays his fault with work.” Juan Zapeta, as discussed earlier, at the time was subject to criminalization for the exercise of Maya K’iche’ law. He appeared after Ana González, speaking to the audience in Spanish. He told them that Mayan law ensures that both the affected person and the community are listened to, and that measures for sanctions and reparations are reached through dialogue and consultation. Following Zapeta, Maya K’iche’ sociologist Gladys Tzul informed viewers that communal authorities assumed the mandate of the assembly and were charged with restoring balance in community life. In a second video, Sonia Gutiérrez Raguay, a Kaqchikel lawyer and the association’s then president, and Juan Castro, a Mam lawyer, explained state jurisdiction, listing the institutions charged with its application. An image then read, “Indigenous Jurisdiction,” and different leaders offered their definitions of its four principles:

- Awas*: Mistranslated in Spanish as sin ... it is a sin to steal, to be haughty, to compare oneself to another, to kill or to lie.
- K’ixib’al*: Fear and obedience.
- K’axkol*: The service that should be given to communities and peoples.
- Pixab’*: The sacred guidelines, which include injunctions to the parties [to submit to the jurisdiction of indigenous authorities].<sup>18</sup>

At the same time as citing international legal instruments supporting Indigenous jurisdictional autonomy, these media presentations articulated core elements of Maya K'iche' legal philosophy as the basis for legal authority and effecting justice. (While many Indigenous communities exercise their own forms of law, K'iche' concepts have dominated postwar systematizations of Mayan law). In contrast to the images and narratives of arbitrariness, spectacular violence, and barbarism projected through the mass media, they sought a different kind of legal legibility—*speaking law* grounded in the moral precepts of community coexistence and collective obligation. These claims for recognition insist on understanding and respect for Indigenous peoples' ways of being in the world while at the same time subtly pointing to the illegitimacy of the prevailing political and economic orders. Drawing on the work of Audra Simpson, Circe Sturm refers to the insistence on such forms of alterity as “refusal,” whereby “the logic of elimination is met with the logic of indigenous continuity” (2017, 345). Simpson contrasts the concept of *resistance* (wherein dominated peoples tend to reproduce hegemonic conceptual frames of domination in their counterhegemonic efforts) to the concept of *refusal* (wherein those peoples insist on their own ontological parameters) (cited in Sturm 2017, 345). And as Mark Rifkin has argued, “the idea of refusing recognition is less about being unimplicated in the choices, affects, policies, imaginaries, and brutalities of non-natives than about insisting that Indigenous peoples have an existence not a priori tethered to settler norms and frames” (2017, 14). The concept of refusal is located within a critique of multicultural modes of recognition involving forms of incorporation that are already configured in the languages, temporalities, and politico-cognitive frames of non-Indigenous society (Rifkin 2017). Multicultural recognition of legal pluralism in Guatemala remains tied to nation-state-centered understandings of sovereignty, in contrast to the communitarian forms of sovereignty and legality that comprise Indigenous law. In the visions of an alternative legal order projected in the public debates around constitutional recognition of Indigenous jurisdiction, these forms of resistance and refusal pointed to futures of justice that ultimately transcended colonial frames of governance and law.

## Conclusions

The criminal charges against Juan Zapeta were eventually dropped by the public prosecutor's office. Despite ongoing opposition to Indigenous law, the Alcaldía Indígena de Santa Cruz del Quiché continues to resolve hundreds of cases, frequently coordinating its efforts with local state authorities. While justice claims and practices are elaborated in the interstices “between the global and the local” (Goodale and Merry 2007), multiple and overlapping constructions of legality are grounded in specific processes of nation-state construction. In this article I have signaled how both local and national disputes over jurisdiction among Mayan authorities, representatives of the state, and the private sector in Guatemala raise fundamental issues regarding concepts and practices of sovereignty, legality, and justice. In contrast to framings of legal pluralism that emphasize the coexistence and possible accommodation of different legal orders within the apparatus of the nation-state (the premise that underpinned the multicultural project of the peace accords), an analytical focus on sovereignty, legal legibility, and legitimacy foregrounds contestations over justice and authority between radically different polities and legalities. For indigenous authorities in Guatemala, “speaking the law” is not only about seeking recognition from the nation-state but also alternative forms of politics, law, and development. Understandings of justice are rooted in Mayan languages and cosmologies that continue to shape the forms and practices of Indigenous legal orders. In ethnographically describing my own interventions in this contested terrain, I suggest how different conceptual framings of legality

(legal pluralism, multiculturalism, sovereignty) shape both methodological approaches and representations of law.

The contentious engagements over jurisdiction in Guatemala that I have described here are clearly fought over the “production, circulation and legitimizing force of authoritative legal knowledge,” one of the two fields Sandra Brunnegger and Karen Ann Faulk identify as central to pluralities of justice construction in Latin America (2016, 7). Arguments about the legality and legitimacy of Mayan forms of law were played out in legal and extra-legal arenas involving lawyers, judges, prosecutors, politicians, local Mayan authorities, civil society organizations, academics, and journalists. They underline—as the editors of this special issue point out—that the constitution of legal legitimacy takes place within and beyond the confines of the formal legal sphere.

As the experience analyzed here suggests, the ever more fragmented nature of contemporary sovereignty-in-practice accentuates elites’ discursive resort to projections of unitary sovereign state power. The assertion of sovereign power expressed through legality—rule of law or rule *by* law—is part of an enduring historical trope in Latin America: dominant elites tend to conceive of law as something with the power to quell “violence” and produce order, something it does by civilizing the barbaric space of the racialized Other (Lemaitre 2019). By failing to explicitly recognize the jurisdictional functions of Indigenous authorities, the unreformed article 203 leaves them in a position of legal indeterminacy and thus heightened vulnerability to criminalization by elements of the state, as the case of Juan Zapeta described here illustrates. Resistance to extractive projects that threaten Indigenous territories is also reconfiguring Indigenous sovereignties and legalities, emphasizing the importance of jurisdiction over territory and local development pathways. Indigenous peoples’ justice claims challenge hegemonic forms of politics and economics and express aspirations for a different relationship between law and justice, relationships which are informed by socialities and temporalities extending far beyond the confines of the existing Guatemalan nation-state.

### Notes

1. Original copy on file with author. All translations in this article are the author’s.
2. Aldana is a former Supreme Court president and a significant ally in the struggle for recognition of legal pluralism and Indigenous rights. Following her removal from the post of attorney general by President Jimmy Morales, she was subsequently barred from running for the presidency in the June 2019 elections.
3. See, for example “Audiencia de Vista Pública en Corte Suprema de Justicia, Cámara de Amparo y Antejuicio. Lunes 25 de noviembre del 2013. Debate por el reconocimiento del Pluralismo Jurídico” [Public hearing at the Supreme Court of Justice, Amparo and Antejuicio Chamber, November 25, 2013, debate on the recognition of legal pluralism]. YouTube video, 16:54, posted by Nim Ajpu Asociación de Abogados y Notarios Mayas (Association of Mayan Lawyers and Notaries), <https://www.youtube.com/watch?v=wTFkMhi6F8Y>.
4. ILO Convention 169 Indigenous and Tribal Peoples Convention, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).
5. See, for example, A/HRC/39/17 Report of the Special Rapporteur on the Rights of Indigenous Peoples, presented to the 39th Session of the Human Rights Council, September 2018, <https://www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.39.17.pdf>.
6. Campo pagado, Sololá, March 2017, document on file with the author.

7. I am grateful to an anonymous *PoLAR* reviewer for drawing this to my attention.
8. See the home page of Procuraduría General de la Nación, <https://www.pgn.gob.gt/>.
9. Corte Constitucional, case file 1467-2014.
10. “Acta de discernimiento de cargo como perito,” Fiscalía de Sección de Derechos Humanos, Unidad Fiscal de Delitos contra los Derechos Humanos, MP001-2014-83275 [Act of discernment for the role of special expert, human rights section of the public prosecutor’s office, unit of crimes against human rights]. Document on file with the author.
11. “Peritaje cultural. Coordinación interlegal y intercultural, el interés superior del niño y el sistema jurídico maya k’iche’ en Santa Cruz del Quiché, Guatemala” [Cultural expert report. Interlegal and intercultural coordination, the best interests of the child and the Maya K’iche’ legal system in Santa Cruz del Quiché, Guatemala], December 6, 2017. Document on file with the author.
12. On the uses of the Mayan calendar see, for example, Asociación Médicos Descalzos 2012.
13. The extensive literature on Indigenous sovereignties is an important exception to this state-centered approach; see, for example, Rifkin 2017.
14. The term *jusgenerative* is originally from US legal scholar Robert Cover. Seyla Benhabib uses the term *jurisgenerativity* to signal “the law’s capacity to create a normative universe of meaning which can often escape the “provenance of formal law-making” (2010, 4).
15. CACIF, “Carta de Análisis sobre la Propuesta de Reforma Constitucional de Reforma al Sector Justicia, enviada a la Comisión de Legislación y Puntos Constitucionales” [Letter analyzing the constitutional reform proposal for the justice sector, sent to the commission of legislation and constitutional issues], November 7, 2016. Document on file with the author.
16. See *Report of the UN Special Rapporteur on the rights of indigenous people on her mission to Guatemala*, A/HRC/39/17/Add.3, September 10–28, 2018. <https://undocs.org/en/A/HRC/39/17/Add.3>.
17. Televesiete, *Expedientes*, “Justicia indígena, tan ancestral como polémica” [“Indigenous justice, as ancestral as it is polemical”], January 20, 2017, [https://www.youtube.com/watch?v=zu4QLB\\_Gc14](https://www.youtube.com/watch?v=zu4QLB_Gc14).
18. Asociación de Abogados y Notarios Mayas (Nim Ajpu), “Vivencia del Pluralismo Jurídico en Guatemala” [Association of Mayan Lawyers and Notaries Nim Ajpu, “The Experience of Legal Pluralism in Guatemala”] November 21, 2016, YouTube video, 1:31, posted by Nim Ajpu; <https://www.youtube.com/watch?v=UHJwCQPx4jU>; and “Pluralismo Jurídico: Sistema Ordinario y Jurisdicción Indígena” [“Legal Pluralism: Ordinary and Indigenous Jurisdiction”], YouTube video, 2:12, posted by Nim Ajpu, February 7, 2017, <https://www.youtube.com/watch?v=d6lqox6YtR0>.

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