Contested sovereignties: Indigenous law, violence and state effects in postwar Guatemala

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Abstract

This article analyzes the efforts of organized indigenous peoples to exercise their own forms of law and justice within the context of social violence and impunity that characterizes postwar Guatemala. Through an ethnographic exploration of alternative justice practices in the region of Santa Cruz del Quiché, it aims to contribute to discussions around the 'anthropology of the state'. Specifically, the article describes some of the different phenomena or social forces that compete to exercise sovereignty in the region and reflects on what these reveal about the nature of the contemporary state in Guatemala.

In the years following the conclusion of the negotiated peace agreements in December 1996, a series of reforms to the Guatemalan justice system were proposed in order to recognize the right of indigenous peoples to exercise their own forms of law, and improve their access to justice and fundamental human rights guarantees. These reforms involved measures to decentralize the judicial apparatus and address the specific needs of the indigenous population, and were intended to improve the quality and outreach of the state justice system in predominantly indigenous regions of the country.[1] The number of lower courts in rural areas increased and court interpreters were trained to work in indigenous languages, although there were never enough employed to meet the demand for their services. Compared to the mid 1990s, by the late 2000s state justice officials were coordinating their efforts more with indigenous community justice systems in many areas

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of the highlands, tacitly recognizing the legitimacy – or at least the efficacy and de facto presence – of the latter. However, despite these changes, Guatemalans continue to suffer an acute absence of justice in the postwar period. There is a generalized perception that citizen insecurity and common crime have increased, and indeed homicide rates are as high today as they were during the worst years of the armed conflict in the early 1980s. Since the end of the war, new forms of violence and social control have emerged, including extortion rackets, gang violence and the collective lynching of suspected criminals by ordinary citizens.

This article seeks to reflect on the relationship between three specific phenomena. First, the demands of indigenous communal authorities aimed at defining, exercising and strengthening their own specifically 'Mayan' forms of justice, demands which have increasingly gained ground since the end of the war; second, the social violence that seems almost endemic in Guatemalan society, particularly acts of spectacular collective violence, such as lynchings; and, third, the nature of the Guatemalan state in the postwar period. Both the strengthening of indigenous justice systems and the rise of violent acts of self-help justice such as lynchings have been the focus of recent anthropological enquiry in many parts of Latin America and (in the case of lynchings) beyond.[2] However, the two phenomena have rarely been analyzed in relation to each other. Anthropologists and others working to strengthen indigenous peoples' rights to exercise their own forms of justice have emphasized the ontological differences between indigenous and dominant or official forms of law. While some analysts have pointed to the 'rough justice' that indigenous community procedures can involve (Faundez, 2005; Starn, 1999), many have emphasized the non-coercive nature of indigenous justice and, indeed, question the political motives of those who condemn indigenous justice systems as violating human rights (Sánchez Botero, 2010; Sieder, 2011; Sierra, 2009). Those working on lynchings have tended to interpret these as responses to insecurity and the effects of neoliberal policies, or as a legacy of previous histories of violence (Buur, 2006, 2009; Goldstein, 2004; Godoy, 2002, 2004; Handy, 2004; Serra, 2008), although some accounts have displayed a worrying tendency to collapse lynchings and indigenous law into one category of 'sanctions' (Goldstein, 2010), an approach which fails to appreciate the nature and complexity of indigenous justice systems.[3] In contrast to recent literature, which emphasizes the violent nature of legal pluralism in Latin America (Arias and Goldstein, 2010), in this article I analyze these different self-help justice phenomena as sovereignty projects. Anthropological conceptualizations understand sovereignty as the monopoly to decide not only who is included and excluded from the political community, but also what order, security and normal life consists of, and what measures should be take to restore them when these principles are threatened including, in the last resort, the power to decide matters of life or death (Agamben, 1998; Buur, 2006; Humphrey, 2007).[4] The processes I analyze here are radically different in their origins and nature. The efforts of indigenous Maya-K'iche' communal authorities to strengthen and 'recover' their own forms of law are primarily a response to insecurity, violence and the structural exclusion and racism that impedes

indigenous peoples' access to justice. They also constitute part of wider political processes of ethnic revitalization which have occurred in Guatemala since the end of the war. These processes have generated new forms of communal governance and justice, combining Mayan epistemologies with discourses and practices grounded in human rights (Sieder, 2011). On the other hand, collective lynchings of suspected delinquents can be understood as an extremely violent popular response to insecurity that reflects both practices deployed during the armed conflict, and past and present anxieties and fears on the part of the marginalized rural and urban population. Yet, despite these fundamental differences, I argue that it is useful to analyze these different responses to impunity as exercises of sovereignty. Drawing on research that seeks to understand sovereignty from an anthropological perspective, together with recent theoretical contributions to the 'anthropology of the state', I describe the responses to insecurity and lack of access to justice of marginalized inhabitants of the municipality of Santa Cruz del Quiché in the department of Quiché and reflect on their implications for the nature of the postwar Guatemalan state. A constructivist perspective points to the ways in which states are historically constituted by a combination of ideas, material practices and outcomes: by considering the interplay between past and present ideas and practices of justice and governance in postwar Guatemala, this article hopes to contribute to wider debates about violence, governance and the contemporary state in Latin America.

Camanchaj – story of a lynching

On a day early in January 2009, an ambulance and policemen stood waiting on the outskirts of Camanchaj in the south of the department of Quiché, unable to enter the canton. Inside the village hall three men accused of kidnapping a woman and her 4-year-old daughter and – it was rumored – of raping the mother, were being subjected to a summary trial by hundreds of villagers from Camanchaj and surrounding cantons. The three men had previously been dragged from their houses and taken to the hall, where they were interrogated and attacked with sticks and stones. At one point a young man doused them with gasoline and they were set on fire. Only one of the three men accused of the abduction and rape survived the attack. He was later taken in the ambulance to a hospital in the neighboring department of Sololá, and from there to the Hospital Roosevelt in Guatemala City, where he died of his injuries some three months later. Tomas Saquic, one of the village elders questioned by a reporter after the attack, stated:

> This matter is now closed, there's nothing more to say. Justice was done and it's our business. The only thing I can tell you is that here we take a tough line [*tenemos mano dura*] and we know that the police, human rights and the judges are all corrupt.

The nature of community justice is a matter of huge controversy in post-war Quiché. The Maya-K'iche' inhabitants of the department have suffered multiple

forms of violence at the hands of regional and national elites. The region was one of the worst affected by the armed conflict; according to the United Nations' (UN) Historical Clarification Commission (Guatemala's truth commission) specific acts of genocide were perpetrated in Quiché by the armed forces during the 1980s. Military and paramilitary forces used extreme physical violence against civilians, including abduction, displacement, torture, dismemberment, murder and systematic rape. These acts, together with obligatory participation in paramilitary civilian defense patrols, many of which carried out atrocities against civilians, have left a powerful legacy in many of the local practices and imaginaries of justice and politics. Tensions exist between those who advocate more pacific and conciliatory approaches to conflicts involving challenges to collective security, and those who argue for more hard-line approaches. The spectacular use of physical violence has continued after the armed conflict in different forms, its most notorious manifestation being the lynching of suspected criminals. Whenever someone is accused of a serious offense such as robbery, murder or sexual assault, and particularly if they are apprehended *in flagrante*, the latent threat of collective physical violence is always present.

According to standard anthropological definitions, we can understand events at Camanchaj in January 2009 as an exercise of sovereignty by the collectivity that carried out the 'trial' and subsequent executions. At the same time, the image of state security and medical personnel waiting outside the village while collective murder is committed is a powerful signal to all present of the apparent limits of state power in this region. The discursive and ideological projection or *idea* of the state which is constructed through these different dynamics, which Mitchell calls the 'state effect' (1999), is something which at the same time reflects and is recreated by the discourses of the different state agents involved. As one of the paramedics present stated:

> When there's a conflict they never let us in. The only thing we can do is be ready for when they let them go, or when they tire of it, and see if they're alive when they hand them over.

The police admit they have great difficulty intervening directly in attempted lynchings. According to the police inspector involved in the case at Camanchaj:

> With a thousand angry people we can't go in; we'd end up burnt to a crisp ourselves, nobody would come to rescue us. We ask for reinforcements from the capital to see if they can control the situation, but they send them by land and they take too long to get here.

This view was also confirmed by a public prosecutor based in Santa Cruz;

> We can't go in, the community is closed off...investigating a lynching requires dedication and something of a suicidal disposition. Everyone in the village is an

accomplice and they act together, nobody will talk. They don't trust the police; they don't report crimes, and they don't let the police do their job. (Sandoval, 2009)

For some observers, lynchings and the almost total impunity which character-izes postwar Guatemala signals the acute shortcomings of the Guatemalan state, leading to the use of terms such as 'weak' or 'failed state'. Such modernizing paradigms tend to predominate in public policy debates and are based on the implicit or explicit assumption that weak or failing states require strengthening. This is to be achieved through institutional reforms that aim to reinforce 'the rule of law' and democracy by extending the reach of the state to certain geographical regions or sectors of the population, or by means of hard-line policies which adopt more militarized approaches to public security or – increas-ingly – by some combination of these two approaches. However, rather than sig-naling the 'failure' of the state,[5] I argue that discourses about violence and the apparent inability – or unwillingness – of government to control it are in fact a mechanism through which 'the state' itself is discursively constructed in places like Quiché.[6] These discourses, in turn, occlude relations of power, domination and exclusion, and the specific practices which determine the lack of access to justice of most citizens.

Three murders: Coordination between indigenous and state law

In November 2004, a group of people from the village of Las Casas, in the neigh-boring municipality of San Andrés Sajcabajá in El Quiché, arrived at the office of the Defensoría K'iche' in the municipal capital of Santa Cruz. The Defensoría K'iche' is a non-governmental grassroots association of Maya-K'iche' community activists created after the signing of the peace settlement. It provides legal aid and conciliation services for the local population, and also works to strengthen indig-enous authorities in the rural and peri-urban cantons, promote the recognition of indigenous peoples' collective rights, and improve coordination between state law and indigenous community justice.

Among the group were three *ladino* (non-indigenous) women, two of whom arrived carrying their small children. It was unusual to see non-indigenous people in the patio, which was usually full of men and women speaking K'iche'. They had come to try to seek redress for the murder of their husbands, all three of whom had been killed in the canton Las Casas during the course of the previous year. At 24 years old, Petrona Urizar was the youngest of the three widows. Her husband, Manuel Salvador Urizar, had been murdered just weeks previously. The husband of Doña Romelia, the eldest of the three women, had been killed a year before, and her son, the husband of Juliana, the third woman present, was mur-dered shortly afterwards. The women alleged that they and their children had received death threats from those responsible for the killings. Yet despite the initial

involvement of the police and public prosecutor's office, and even the alleged payment of a bribe to a local judge, there had been no arrests. Desperate at the failure of the official justice system to advance the investigation, they turned to the Defensoría K'iche', which offers free para-legal aid. The Defensoría, and the Alcaldía Indígena of Santa Cruz del Quiché – a supra-communal coordination of community leaders in Santa Cruz, which works closely together with the Defensoría – had gained a significant reputation for resolving difficult cases and for ensuring a swift dispensation of justice. It was this that brought the three women to take the unusual step of appealing to 'indigenous justice' or 'Mayan law' to intervene on their behalf.

Members of the Alcaldía Indígena immediately began to investigate what had happened in Las Casas. After a little less than a week they identified three people accused of murdering Petrona's husband: her sister-in-law, María Yat; Victorino Urizar, a young relative of María's, and Juan Ajeataz, a K'iche'-speaking man from a village on the outskirts of Santa Cruz who had been accused of involvement in a previous, unconnected murder. In one-on-one meetings with the *alcaldes indígenas*, Victorino and Juan confessed to the murder of Salvador Manuel, confessions which were filmed by the *alcaldes* using a video camera. The three accused were then brought to the office of the Defensoría K'iche' in order to protect them from possible retaliation by the local population. María Yat came accompanied by her four young children.

In the following days a number of hearings took place in the offices, involving lengthy sessions conducted according to the principles of indigenous or 'Mayan law'. Although the nature of 'Mayan law' is highly contested in Santa Cruz, as it is in other parts of Guatemala, in general emphasis is placed on clarifying in detail what happened, establishing a dialogue between the affected parties, securing confessions and a degree of contrition from the guilty parties, and mandating reparations that are acceptable to the victims (usually involving financial compensation or communal work). The emphasis is on achieving a settlement to re-establish a balance in social relations between the parties and the communities involved, rather than on retribution. Before an assembled audience of some 50 or 60 people, mainly indigenous communal authorities from the municipality of Santa Cruz and San Andrés, Victorino and Juan initially denied their involvement. Eventually Victorino admitted that he had contracted two men to kill Petrona's husband after María had approached him requesting his help. Juan Ajeataz confirmed that he had received 2000 *quetzales* in exchange for carrying out the murder. María confirmed she had paid 6000 quetzales to the killers and had also purchased the gun which was used in the attack on Manuel Salvador. The underlying motive related to a long-running family dispute over land and rights of passage. The three widows accused María's husband of having killed Romelia's husband and then absconding to the USA to avoid capture by the Guatemalan authorities. It was alleged he had then sent money to his wife to have his brother killed.

Monetary compensation is a common feature of negotiated settlements in indigenous law. However Petrona absolutely refused the possibility of financial compensation, saying:

> I can't buy him with that money. I can't say he'll come and see me, give me the housekeeping money. Just think if they'd killed your husband! With such little money you can't buy him. That's how I feel, whatever I may have I'll never see him again.

In the end, Petrona, Juliana and Romelia demanded the death penalty for those accused. This elicited considerable consternation from the members of the Alcaldía Indígena and the communal authorities, who explained that there was no death penalty in Mayan law:

> We still think about dignity, and that the death penalty generates more death.

In the end it was agreed that the Defensoría K'iche' and the Alcaldía Indígena would coordinate their efforts with the public prosecutor's office in Santa Cruz, presenting them with all the evidence and demanding a speedy resolution of the case before the courts. The indigenous authorities were at pains to ensure that the state justice officials should recognize the value of their work and ensure justice. As one indigenous mayor present stated:

> I don't want them to be killed or lynched, I want them to go to jail. Judges should sign so that criminals don't leave jail. . . . I want them to be punished, because they always say 'sorry, sorry' but they carrying on committing the same crimes.

For the Maya-K'iche' authorities it was of vital importance that the validity of Mayan law be recognized by the officials of the state justice system. Indeed, their negotiations with the three widows and with the judicial authorities can be read as part of a broader political struggle to secure respect for indigenous authorities and their specific forms of law, and to re-imagine and reconfigure the Guatemalan state. Many of the Maya-K'iche' communal authorities present at the hearings referred to the racism and discrimination they were subjected to by justice officials, and to the corruption endemic in the system.

> They should respect the law, the law of us indigenous people. They should respect the indigenous authorities because before they walked all over us. Now it's time that we stand up.

However, they also confirmed their desire to work together with the state justice system in order to seek more effective and expeditious forms of justice.

> We're all prepared to collaborate with the state justice system, we want coordination – we don't just want to criticize. The population will have confidence [in the justice

system] when justice is fast and honest. We want justice on the basis of truth, not lies or money or influence.

Another indigenous mayor acknowledged that people often took extreme measures when faced with the lack of state justice, and that it was impossible for them, as community leaders, to control such situations:

Let it be clear that community leaders never promote lynchings or worse things. We're aware [*orientados*], we've had our workshops when we say that human life should be valued. But if someone commits an error, they are also corrected.

In Quiché, as in other majority indigenous regions of the country, the 'recuperation' and exercise of indigenous law has been revitalized since the end of the armed conflict. This movement to strengthen autocthonous forms of law (*derecho propio*) is part of a broader political movement of Mayan communal authorities and social movements to reconstruct their communities according to certain ethical and moral guidelines derived, at least in part, from specifically Mayan epistemologies. It also implies a struggle to secure greater autonomy from the state at the same time as seeking greater recognition by the state of indigenous rights. These efforts to strengthen indigenous autonomy and respect for indigenous authorities occur within a context where the security and justice functions of the state are increasingly being fragmented and privatized, and where organized crime has effectively colonized many parts of the state apparatus. In effect, what exists is a kaleidoscope of legal, semi-legal and illegal orders –or *sovereignties in contention*. Such phenomena generate a series of questions about the nature of power, domination and the Guatemalan state, and about the possibilities of guaranteeing individual and collective rights, and life itself, within this new postwar context.

Recent theoretical debates and anthropological explorations of the state and sovereignty, particularly those which examine the relationship between state power, violence, neoliberal deregulation (or re-regulation) in different postcolonial contexts, can help shed light on current dynamics involving indigenous people and justice in places such as Santa Cruz del Quiché. This literature offers a range of concepts and analytical tools for understanding the state, and points to the value of ethnographic research for revealing its changing dynamics and the relationship between distinct state formations and different subjectivities. In line with such approaches, I argue here that people's beliefs about the state, together with different material practices and the concrete effects of these, are key elements in its ongoing constitution and construction.

Towards an anthropology of the state

In recent years anthropologists have increasingly turned their attention to the state, generating a rich body of theory and comparative analysis. In common with historians, and in contrast to many political scientists, anthropologists view the

state not a fixed or definite object, set of functions or analytical given. Rather states are conceived as dynamic, fluid, contingent and shaped by specific historical contexts and human interactions. The state is never 'finished' as such; it can best be understood as a project in a constant process of construction. Most importantly, anthropological perspectives emphasize the ways in which the state is constructed inter-subjectively across a number of different dimensions or registers.

In examining the material and symbolic construction of the state, two distinct and interrelated aspects have been emphasized, drawing particularly on Philip Abrams' seminal understanding of the state as both 'state system' and ideological effect (Abrams, 1988; see also Mitchell, 1999; Trouillot, 2001). The state *system* consists of a set of institutions and practices, such as governmental offices, ministries, parliaments, the armed forces, the police, immigration procedures, the working of public health care, state-run education and so forth. In other words, the state system refers to the material manifestations of the military and bureaucratic power of the state and to its everyday routine practices. By contrast, the ideological projection of the state – what Timothy Mitchell (1999) refers to as the 'state *effect*', refers to imaginaries and representations or to an *idea* of the state, to the way in which the state is 'discursively produced as an entity that is distinct from and sits above the non-state realm' (Sharma and Gupta, 2006: 16).

This ideological projection simultaneously obscures and creates reality. Dominant representations of the state project cohesion, rationality and unity in order to legitimate the actions of government, whereas in their everyday encounters individuals may experience the state as much more fragmented, incoherent, irrational and arbitrary. Yet these ideological projections of the state help to shape the material manifestations of the state (the 'state system'). *Ideas about the state* then, whether they are held by state officials, ordinary citizens, international development officers, social movements or other actors, have powerful constitutive effects. These two dimensions – state as material and concrete practices and state as ideological project or idea – are inextricably linked. As Trouillot (2001) has argued, it is this intersection of 'practices, processes and effects' that we should seek to understand.

An anthropological perspective therefore demands that we study both the idea the state projects of itself and the material and discursive day-to-day practices, processes and encounters that constitute people's everyday experience of it. Such analysis can reveal the distinct spatially and historically situated *imaginaries* of the state held by different individuals and communities, and the ways these relate to different material practices and processes. Such imaginaries, in turn, reveal much about how the 'state effect' or the idea of the state (what it is and should be) is formed, and, critically, how this changes over time. They are a contentious field, involving constant signification and re-signification.

> A modern state must be understood as produced by a broad and continuously shifting
> field of power relationships, everyday practices and formations of meaning. . . . A state

formation is the result of myriads of situations where social actors negotiate power and meaning. (Krohn-Hansen and Nustad, 2005: 12)

This ethnographic focus on the 'micro-politics of everyday state-making' illuminates competing myths of state power and often reveals the inconsistencies in its exercise. Importantly, it also points to the ways in which ideas about the state and sovereignty are constantly negotiated, contested and challenged across multiple scales and dimensions.[7]

Crucially, in anthropological readings of the ways in which states are constituted there is little that is really 'outside'. State techniques, practices and discourses can be generated by different individuals, organizations and communities, as well as more directly by the institutions of what would normally be identified as 'the state' or government. Rather than endorse a division between 'state' and 'civil society' typical of political science (a division itself associated with the neoliberal reification of a particular notion of 'civil society', which many would argue is itself part of an ideological 'state effect'), ethnographic perspectives emphasize the imbrication of state and society and the social construction of the state. Rather than something separate from society, the state is in fact constituted *through* society. Indeed Aradhana Sharma and Akhil Gupta draw on Foucault's concept of the '*étatisation*' or governmentalization of society to emphasize 'the dispersed institutional and social networks through which rule is coordinated and consolidated, and the roles that 'non-state' institutions, communities, and individuals play in mundane processes of governance' (2006: 9). In other words, the limits of governance – where the state ends and begins – are far from clear. At the same time, however, this analytical emphasis on the 'grey zones' also requires attention to be paid to structural relations of power and domination, and to their contemporary manifestations in the micro-politics of state-making.

In Guatemala, the policies implemented in the years following the end of the armed conflict promoted a certain decentralization of the official justice system, combined with the tacit but incomplete recognition by governments of legal pluralism and indigenous systems of authority and law within the paradigm of official multiculturalism. In the postwar period, the tasks of government, such as the provision of security or legal intermediation, are exercised in an increasingly indirect manner, involving actors of the so-called 'civil society' (this last being a leitmotif of dominant public policy paradigms). Such trends project a certain porosity or blurring of the boundaries between 'state' and 'community' or 'society' in the exercise and provision of justice and security. This, in turn, creates 'zones of ambiguity', or, in Veena Das and Deborah Poole's (2004) oft-cited formulation, 'margins of the state' where the line between what is official and unofficial, legal and illegal, legitimate and illegitimate, is not at all clear.

Since the 1990s Mayan social movements throughout Guatemala have directly challenged state sovereignty in a newly politicized manner. They demand that their community-based forms of justice and authority be recognized as 'state-like', as

autonomous sovereign powers. This is a challenge to the exclusion, marginalization and structural racism that indigenous peoples have suffered as a consequence of colonial and postcolonial state formations.[8] If the boundary between state and non-state spheres is drawn through everyday encounters, practices, negotiations, discourses and representations, then the changing nature, status and representations of indigenous law, and current interactions between 'indigenous law' and 'state law', have the potential to tell us something important about the nature of the postwar state and broader configurations of power, domination and resistance.[9]

A number of questions interest me in this respect: What are the justice and security practices through which the state makes its presence (or absence) felt? How do ideas about the ideal state (rights-enforcing, security providing) and the actual existing 'state of the state' (ineffective, illegal and arbitrary) combine to create different state effects?[10] In line with the approach set out by Thomas Blom Hansen and Finn Stepputat, we need to foreground 'the local, the emic, and the vernacular notions of governance, state authority and resistance to state power . . . [exploring] the local and historically embedded ideas of normality, order, intelligible authority, and other languages of stateness' (2001: 9).[11]

States of violence

Studying justice practices and processes of state formation in Latin America necessarily involves engaging with issues of violence and illegality. John Comaroff and Jean Comaroff have theorized a dialectical relationship between neoliberal deregulation – 'ever more outsourced, dispersed, deinstitutionalized, constitutionally ordained governance'[12] – and what they refer to as 'a dialectic of law and dis/ order' in the postcolonial world (2006: 3). In terms of state formations, they argue that 'private indirect government', whereby state functions such as policing and warfare are increasingly 'outsourced' to different agencies, typically coexists with criminality accompanied by violence.

The uneven territorial reach of central government and the reliance on non-state actors to consolidate its rule has long been signaled as an enduring feature of Latin America postcolonial history (Salvatore et al., 2001). However, in many countries in the region, as in other parts of the postcolonial world, the contemporary neoliberal state is increasingly characterized by contestation for sovereign power and challenges to state sovereignty at the international and the sub-national levels. As the Comaroffs observe in their reflections on contemporary Africa, 'the landscape is a palimpsest of contested sovereignties, codes and jurisdictions – a complex choreography of police and paramilitaries, private and community enforcement, gangs and vigilantes, highwaymen and outlaw armies' (Comaroff and Comaroff, 2006: 9). Although the state has never in practice been a unified whole, it appears that, in some respects at least, the neoliberal state is defined precisely by fragmentation. This is partly linked to the tendency to assign responsibility for the

provision of social goods – such as security – to different private actors, blurring the lines between 'state' and 'civil society'. At the same time, transnational organized crime has increased its political influence and 'embededdness' within different states, making the line between the legal and illegal ever more difficult to discern.

This notion of overlapping and discontinuous sovereignties is particularly useful for considering the justice and security practices in Santa Cruz del Quiché referred to at the start of this article, and the relationship between the legal and the illegal, or the 'co-presence of law and disorder' (Comaroff and Comaroff, 2006: 34; see also Hansen and Stepputat, 2005). As previously noted, state sovereignty is an ongoing and often contested project and challenges to the authority of the nation-state exist at many levels. Indigenous justice practices are just one such claim to exercise sovereignty, but they coexist with many others, for example networks controlled by organized crime or the sovereign power of the mob in extreme situations, such as lynchings (Buur, 2006, 2009). As Hansen notes, the state is 'an unfinished and continuous project of control and subordination' and in many postcolonial contexts state power is increasingly dispersed (Hansen, 2005: 172). At the same time as state authorities attempt to assert control and sovereignty, a wide range of individuals, groups, corporations and communities engage in the construction of political subjectivities which often challenge the claims of government to exercise political and legal authority.

Maya-K'iche' communal authorities and social movements in Santa Cruz de Quiché are increasingly challenging the legitimacy and sovereignty of the Guatemalan state by asserting their rights to exercise their own forms of law, which they refer to as Mayan law (*derecho Maya*). A separation between state law and indigenous law exists at both a material and a discursive level; the norms, institutions and practices of both systems are clearly distinct and the ways in which the imaginaries of both systems of law are constructed emphasize their differences. However, at another level, as the case of the three widows described above indicates, the two forms of law have become increasingly imbricated in the postwar period as a consequence of multicultural reforms to the justice system, giving rise to new hybrid legalities (Santos, 2006). What are the implications of changing relationships and dynamics between state and non-state forms of sovereignty? Or of shifts in the balance between actors and agencies deploying different forms of violence and regulation? How do these dynamics relate to and reflect changing 'state effects'?

In the following section I analyze the neoliberal multicultural reforms to the justice and security system implemented since the signing of the peace accords, considering the ways in which these are reshaping the judicial field in Santa Cruz. The subsequent section outlines the problematic of violence and new forms of insecurity in the postwar period. In the conclusion I reflect on what these shifting practices and discourses suggest about the nature of the postwar state in Guatemala and the possibilities for consolidating less violent practices for securing justice and security.

The multiculturalization of justice in Santa Cruz del Quiché

The peace accords, concluded in December 1996, reflected the post-Washington consensus that reform and strengthening of the state was central to securing a lasting peace. The answer to Guatemala's human rights and developmental problems – according to this logic – was to strengthen the state and ensure it functioned according to democratic principles. Justice system reforms aimed to promote accountability, respect for human rights and due process guarantees. The accords, particularly the 1995 Agreement on the Identity and Rights of Indigenous Peoples, set out commitments to respect the individual and collective rights of indigenous people. They also underlined the importance of transforming the justice system to the meet the needs of Guatemala's pluri-ethnic and multilingual population through multicultural access to justice reforms. Although the 1995 agreement recognized indigenous peoples' rights to exercise their own forms of 'customary law', this commitment was never included as a constitutional right.[13] Nonetheless, the peace accords themselves, together with the ratification of International Labour Organization's (ILO) Convention 169 on the rights of indigenous and tribal peoples by the Guatemalan Congress in 1997, provided a degree of official endorsement of indigenous people's rights to exercise their own forms of law.[14] This was strongly supported by many of the major development agencies working in the country.

The relative multiculturalization of the official justice system that took place throughout the late 1990s and 2000s reflected the general tendency within government to adopt a discourse of multiculturalism, even though in practice this did not translate into respect for substantive rights. It also reflected the broader international trend of de-judicializing certain kinds of conflicts by encouraging the use of mediation, conciliation and other lay forms of dispute resolution.[15] This process was primarily driven and funded by international development cooperation agencies, and particularly by the UN peace mission in Guatemala (La Misión de Verificación de las Naciones Unidas en Guatemala, MINUGUA) and subsequently by the United Nations Development Programme (UNDP), which focused on the justice system as one of their priority areas.

A number of new institutions and services were established to attend to the needs of the indigenous population. In Santa Cruz, these included an office within the state criminal defender's office (El Instituto de Defensa Penal Pública), charged with providing more effective legal defense for indigenous people facing criminal charges. The team comprised a lawyer and a translator, charged with providing bilingual criminal defense services for those indicted on criminal charges who could not afford a lawyer. Financed by an agreement with the UNDP, these offices also had a mandate to improve coordination between indigenous community authorities and state justice officials. They worked with local judges and public prosecutors in order to raise awareness about international instruments such as ILO Convention 169, and to try to persuade them to respect the procedures and resolutions of indigenous communal authorities in

criminal cases. This work had a slow but cumulative effect; during the 2000s a number of lower-level judges effectively ceded jurisdictional authority to communal authorities by tacitly or explicitly recognizing their resolutions of a range of cases, for example in instances of robbery.[16] In addition to working with local justice officials, the Instituto de Defensa Penal Público also brokered agreements with local Mayan non-governmental organizations or civic associations, such as the Defensoría K'iche'. These agreements supported workshops and other activities with indigenous communal authorities and leaders which aimed to strengthen the exercise of indigenous law and ensure respect for fundamental human rights within community justice procedures. Local judges and police chiefs in Santa Cruz del Quiché became more receptive to recognizing greater pluralism in the exercise of justice and security functions, even though the public prosecutor's office (*fiscalía*) remained reluctant to cede jurisdiction to communal authorities, especially in cases of serious crimes. However, whatever agreements tacitly exist to recognize indigenous jurisdiction, these are not formally recognized in Guatemalan law. Indigenous authorities are therefore subject to the shifting preferences of individual state officials, who can opt to prosecute them for pursuing their own forms of dispute resolution if they so choose, effectively keeping them in a state of permanent legal in-definition.[17]

The creation of these new justice institutions in Santa Cruz signaled a discursive and material commitment on the part of the Guatemalan state to multiculturalizing the justice system, strengthening guarantees of indigenous people's rights, and improving coordination between indigenous law and the official legal system. In practice, however, all of these new justice institutions are reliant on international development funding in order to survive and operate under highly constrained budgetary conditions. (For example, in 2004 the *defensor indígena* in Santa Cruz told me his office had spent their entire gasoline budget for the month to make an on-site visit to a neighboring municipality to counsel defendants in a murder case.) Such measures promoting a de-centering of the state and its 'multiculturalization' are typical of neoliberal development paradigms. In Santa Cruz they have meant an expansion of the physical presence of the state justice system; beforehand there was a justice of the peace in the town, but now there is a whole range of new offices for plaintiffs to seek redress. These are often aimed at particular population groups, identifying them according to racial, ethnic or gender traits. They all blur the boundaries between the public and the private, through explicit and tacit recognition of a greater role for local communities and private actors in the provision of justice and citizen security.

Violence and new forms of insecurity

At the same time as these justice sector reforms were implemented, Santa Cruz and surrounding areas experienced new forms of violence and insecurity. These included robberies and hold-ups on the roads, and new and violent responses to this insecurity, such as lynchings. Some of these practices had their roots in the

armed conflict. Gross human rights violations by security forces, both army and police, were a regular feature of the counterinsurgency war during the 1980s. The army maintained a near monopoly over the political use of violence, the insurgent Ejército Guerrillero de los Pobres (EGP) having been all but extinguished as a military force early on in the conflict. The army's counterinsurgency tactics meant that the line between 'state' and 'society' became increasingly opaque. Obligatory paramilitary civilian defense patrols (*patrullas de autodefensa* civil, PACs) were organized throughout the rural highlands during the early 1980s and continued to operate until they were formally demobilized in 1996. The nature of the patrols and their effects were complex. The army's strategy of militarization aimed to control life in indigenous villages and to separate civilians from the guer-rillas. The patrollers were both victims of the army and, at the same time, in many areas of Quiché also perpetrators of atrocities against their own neighbors, as numerous ethnographic studies of the counterinsurgency violence in the region have shown (González, 2002; Le Bot, 1997; Remijnse, 2002; Zur, 1998). Patrollers often used the charge of collaboration with the guerrillas in order to settle older scores against local rivals. Indeed the UN's Historical Clarification Commission estimated that civil patrols committed some 18 percent of all human rights violations carried out during the war (CEH, 2000).

   The patrol system relied on a combination of coercion, violence – both real and latent – and consent. Male villagers worked shifts to patrol the borders of their villages to guard against guerrilla incursions, and monitored daily life within their own communities, reporting back to the army on a regular basis through army-appointed, village-based military commissioners. The army's control was never total; as Paul Kobrak and others have shown, in some communities the act of patrolling effectively served as a means for indigenous villagers to keep both the army and the guerrillas at arm's length (Kobrak, 1997; Stoll, 1993). Yet over the years the civil patrols effectively became an integral part of communal authority structures and norms. They were, in this sense, a form of communal collective defense. The act of patrolling was one of the principal routine, everyday practices of government experienced by millions of rural Guatemalans.[18] Evidently the patrols were both part of the 'state system' – a daily material practice – and at the same time a 'state effect' or idea, embodying as they did the projection and power of the counterinsurgency state.

   From the late 1980s onwards this imaginary of the all-powerful counterinsur-gency state was increasingly challenged by emergent indigenous human rights movements in the highlands including the resurgent Comité de Unidad Campesino (CUC),[19] the Consejo Étnico Runujel Junam (CERJ), the Grupo de Apoyo Mutuo (GAM) and the Coordinadora Nacional de Viudas de Guatemala (CONAVIGUA), who protested against forced participation in the civil patrols.[20] As a result of the peace process the PACs were formally disbanded in 1996, although ex-patrollers continued to mobilize in subsequent years in order to demand financial compensation from the government for their enforced service. Former patrol leaders and military commissioners continue to exercise power and

control over many communities in Santa Cruz. Despite demobilization of the patrol system, the fact remains that the paramilitarization of the indigenous rural population over nearly a decade and a half has left a powerful legacy of practices and expectations about security and justice in highland Guatemala. As Pratten and Sen remind us, 'historic registers of justice and violence are inflected in contemporary practice' (2008: 6). The memory of the patrols both as institutions and imaginaries is evident today. Practices such as constant surveillance within communities, rapid and collective response to detain interlopers, and the occasional summary and spectacular use of physical violence are just some of the legacies of this paramilitarization.[21]

In many ways the genocidal counterinsurgent violence of the early 1980s represented the highpoint of the imposition of national sovereign power by the centralized state, secured through the agency of the army. The army's physical presence throughout the country was scaled back after the peace settlement and its institutional influence declined. Different factions within the armed forces have allied with sectors of the private sector and organized criminal groups in order to advance their personal and corporate interests, exacerbating the fragmentation of the state's coercive forces. Organized crime has become normalized in the postwar, effectively operating as a parallel or para-statal form of organization, referred to locally as *los poderes paralelos* (Beltrán and Peacock, 2003).[22] Explicitly para-statal forms of security provision, such as *comités ciudadanos de seguridad*, are actively encouraged by government officials. But these para-statal forms often use highly punitive methods that violate human rights – in one case that occurred when I was in Santa Cruz in April 2009, two men and a woman accused of kidnapping were beaten to death by members of the local *comité de seguridad*. In another I was told about the previous year, the *comité de seguridad ciudadana* in the neighboring municipality of Zacualpa allegedly kidnapped the son of a suspected extortionist and tortured him in an attempt to get his father to appear before them.

If we agree with Hansen and Stepputat that 'the sovereignty of the state is an aspiration that seeks to create itself in the face of internally fragmented, unevenly distributed and unpredictable configurations of political authority that exercise more or less legitimate violence in a territory' (2005: 3), today those forms of political authority are increasingly fragmented, dispersed and challenged. Certainly state sovereignty has always been precarious in this region; colonial and postcolonial systems relied on a system of indirect rule which afforded considerable internal autonomy to indigenous communities, at least at sub-municipal level, at the same time as they employed sustained violence and economic super-exploitation against those communities as mechanisms of control, for example through anti-vagrancy laws (McCreery, 1994). However, while the reach of the nation-state and its legitimacy among the rural population has always been limited, the multiple and often violent challenges to the exercise, however nominal, of state authority during the postwar period seem to signal something qualitatively new. In short, state sovereignty, always fragile, is eroding and is being contested in new and different ways as the boundary between state/non-state in the exercise of

clandestine and illegal forms of violence becomes ever more blurred. Such tenden-
cies signal new configurations of power and domination, with transnational forms
of capital accumulation increasingly operating through organized crime. Within
such a context, responses of ordinary citizens to insecurity and impunity are often
brutal. The department of Quiché registered the highest number of lynchings in the
country at the end of the 1990s (Mendoza and Torres Rivas, 2003; MINUGUA,
1999).[23] Although the number of deaths caused by such attacks decreased in the
2000s, lynchings continue to occur, as in the case of Camanchaj. Criminal prose-
cutions of those responsible are very rare: indeed the overall prosecution rate for
murder in Guatemala is less than 5 percent. Such impunity sends a clear message
about the power and nature of the state, creating a particular 'state effect': the
Guatemalan state cannot or will not control acts of spectacular collective violence,
nor will it prosecute other acts of violence. These experiences of violence and
impunity create different imaginaries of the state with lasting effects. It is within
this context that indigenous communal authorities and Mayan rights activists are
attempting to assert greater autonomy and respect for their own forms of authority
and law. This is understood by many to be a fairer and less violent means of
regulating communal life and resolving conflicts and problems when they arise.
Indeed, on many occasions the timely intervention of communal authorities and of
the Alcaldía Indígena has protected the lives of those accused of crimes or trans-
gressions of the communal order, deploying a discourse and practice which empha-
sizes the value of human dignity and human rights.

Conclusions

In this article I have tried to reflect on impunity, violence, competing justice prac-
tices and the nature of the Guatemalan state in the postwar period. I have argued
that, instead of just seeing the state as a series of institutions or policies, we need to
examine the multiple ways in which it is experienced, imagined, talked and even
dreamed about. While paying attention to the material practices underpinning
impunity, I have insisted on the role that discourses and imaginaries play in the
constitution of the state, and the role that historical registers of justice, violence
and exclusion play in these discourses and imaginaries. As Timothy Mitchell has
insisted, we need to analyze the state 'not as an actual structure, but as the pow-
erful, metaphysical effect of practices that make such structures appear to exist'
(1991: 94).

A central argument advanced here is that the state – both as 'system' and as
'idea' – is becoming ever more fragmented and decentralized as a consequence of
certain policies and global phenomena which are reconfiguring centralized powers
of coercion, allowing and encouraging their sub-contracting and outsourcing. Not
only are multiple challenges to state sovereignty emerging, but also demands that
sovereignty itself be exercised by the civilian population. These social formations
are extremely diverse and extend from indigenous communal justice systems right

through to acts of extreme collective violence, such as lynchings. While they are radically different, in terms of the theoretical argument I have sketched out here, the exercise of 'Mayan law' in the case of the three widows and the events in Camanchaj are both forms of exercising sovereignty and thus of constituting the state. They both imply a constant negotiation of what the state is or isn't, what it should or should not be, and what is a legitimate and ethical exercise of authority. All employ different practices and 'languages of stateness', and distinct technologies and imaginaries associated with the state (Hansen and Stepputat, 2001). The existing degree of coordination between Mayan law and official justice agencies in Santa Cruz indicates the increasing permeability of the Guatemalan state to cultural pluralism. However, the failure of the authorities to act to prevent acts of vigilantism or to control crime shows the inability and unwillingness of the government to protect the lives of ordinary citizens. In this sense, the state is now more open to the recognition of cultural differences, but at the same time it is more fragmented, less coherent and apparently unable to provide guarantees of justice or security for the population. A similar paradox is evident in a number of 'multicultural' or 'post-multicultural' states across Latin America.[24]

Despite autonomy discourses that emphasize ethnic difference and indigenous sovereignty, in practice indigenous community activists in Santa Cruz work to improve coordination between community authorities and state justice officials at the same time as they work to strengthen *lo propio*. This is part of a wider struggle to secure recognition of indigenous autonomy, to guarantee indigenous peoples' collective and individual human rights, and to limit violent community responses to crime. Similar demands are central to indigenous peoples' social movements throughout the region. As I have shown here, lack of protection of ordinary citizens in contemporary Latin American democracies is not only leading to violent forms of self-help, such as lynchings or vigilantism, but is also generating new forms of governance and justice grounded in local practice which combine the ontological difference of indigenous forms of law with human rights concepts. Maya-K'iche' activists in Santa Cruz want to construct indigenous authority and Mayan law as something autonomous from the state. At the same time they want to transform the Guatemalan state, and to be a part of it. All these dynamics generate new practices and powerful 'state effects'. As occurred in the past, the diffuse symbiosis that exists between dominant state law and subordinate indigenous law structures patterns of rule (Chenaut and Sierra, 1995; Starr and Collier, 1989). However, in contrast to the past, today the politicization of ethnic identity means that indigenous actors across Latin America are producing new legal categories, understandings and practices as part of broader political movements for autonomy and rights. As Timothy Mitchell has observed: 'political subjects and their modes of resistance are formed as much within the organizational terrain we call the state...[as] in some wholly exterior social space' (1991: 93). Such perspectives pose new challenges, forcing us to rethink how to protect individual and collective human rights within these new, uncertain state configurations.

Notes

1. Over 50 percent of the population of Guatemala is indigenous, comprising 21 different Mayan ethno-linguistic groups, Xincas and Garífunas. The rest of the population is *mestizo*, of Spanish descent. In highland departments such as Quiché, over 90 percent of the population is indigenous.
2. On indigenous justice systems in Mexico, see Sierra (2004, 2007, 2009), Terven (2009), Martínez (2004), Valdívia (2007); in Ecuador, see Chávez and García (2004) and García (2002); in Peru see Peña Jumpa (2004); in Bolivia, Fernández O. (2000) and Orellana Halkyer (2004); in Colombia, Sánchez Botero (2010).
3. Referring to Guatemala, Goldstein states that 'community policing, local forms of punishment (*castigo maya*) and vigilantism are on the rise' (2010: 495).
4. Giorgio Agamben's work has been particularly influential in anthropological debates on sovereignty. Agamben identified sovereignty as the power to declare a 'state of exception' and to reduce those excluded to the category of *homer sacer*, a being reduced to 'bare life' outside of any of the legal protections of citizenship (Agamben, 1998). In a timely critique, Caroline Humphrey (2007) has suggested an approach to sovereignty which analyzes the ways of life which *sustain* it, rather than just seeing sovereignty as the power of exclusion and violence.
5. Paradigms of 'weak' or 'failed' states are deeply orientalist, as they assume a standard of a 'successful' (Western) state to which failed states do not measure up but which, given the right developmental technologies, they might attain. They are also suspiciously ahistorical, failing to explore the specificities of state construction in different parts of the world and the colonial histories underpinning these processes.
6. Gupta (1995) makes this point with reference to the role of corruption in the discursive construction of the state in India.
7. As Hansen and Stepputat (2001: 3) have observed, most recent anthropological and historical studies of state formation draw heavily on Gramscian concepts of hegemony and counterhegemonic constructions, and Foucauldian readings of governance as constituted through different knowledge practices and governamentalities (see also Nuijten, 2003).

8. As Philip Abrams (2002: 7) has stated, the word 'postcolonial' refers not to the period after the end of colonialism, as the end of colonialism is, in any case, difficult if not impossible to locate in time, but rather to a critical practice aimed at exploring the effects of colonialism in the practice and formation of social theory.

9. As Philip Abrams emphasizes: 'The relationship of the state-system and the state-idea to other forms of power should and can be central concerns of political analysis' (1988: 88).

10. Thomas Blom Hansen (2001) has drawn this contrast between what he terms the 'sublime' and the 'banal' state.

11. In a similar vein to the volumes edited by Hansen and Stepputat (2001, 2005) and Krohn-Hansen and Nustad (2005), Sharma and Gupta appeal for an analytical focus on the cultural constitution of the state: 'how people perceive the state, how their understandings are shaped by their particular locations and intimate and embodied encounters with state processes and officials, and how the state manifests itself in their lives' (2006: 11).

12. This much observed feature of neoliberalism draws on Nikolas Rose's (1999) analysis of neoliberal patterns of governance and subjectivities.

13. A package of amendments including this specific commitment was rejected in a popular referendum in May 1999.

14. Articles 8, 9 and 10 of this treaty explicitly guarantee indigenous peoples' rights to exercise their own forms of law.

15. Reforms to the penal procedures code in 1998 extended the possibilities for non-court settlements; offences with sentences of less than five years could be resolved through mediation and conciliation through the figure of '*criterio de oportunidad*' (although this does not extend to serious crimes, such as murder) (Figueroa Sarti, 2009).

16. The reformed penal procedures code of 1998 also facilitated such recognition (Figueroa Sarti, 2009).

17. In her work on Ayacucho, Peru, Deborah Poole (2004) refers to this situation of legal indefinition as being 'between guarantee and threat'; a liminal zone where communal authorities are never entirely sure whether their actions will be recognized as legitimate or whether they will be subjected to criminal proceedings for exercising communal forms of law.

18. At their height in 1983 over 1 million Mayan men in the western highlands participated in the patrols. The number of people affected by the system was of course far greater.

19. The CUC was the largest grassroots indigenous organization in the country. Military repression forced many of its members into clandestinity or exile in the early 1980s.

20. CERJ campaigned on the basis of the 1985 Constitution, arguing that the patrols were a form of forced labour and thus unconstitutional. CONAVIGUA opposed all forms of militarization and army abuses, including the PACs.

21. The divisions between former heads of civil patrols and former guerrilla leaders are evident in Santa Cruz and are reflected in tensions around how communal indigenous authority and the exercise of 'Mayan law' should be configured. Tensions surfaced within the leadership of the Defensoría K'iche' during 2007 and 2008, between a former PAC leader and former members of the EGP.

22. Obviously the counterinsurgent state operated in a highly illegal manner. In this sense it could be argued that the relationship between the legal and the illegal has merely entered a new phase.

23. Official figures on lynchings are unreliable and not systematically collated. According to one source, between 1996 and 2002 there were 77 lynchings recorded in Quiché, which led to 52 deaths and 26 seriously injured (Mendoza, 2002); another source indicates 27 deaths and 16 seriously injured due to lynchings in Quiché between 2000 and 2009 (Iván García, UNDP in Guatemala, personal communication based on figures from the Policía Nacional Civil). The relative decline in the number of deaths due to lynchings is partly due to the success of efforts at coordination between state and community authorities, aimed precisely at preventing such occurrences. However, it seems there has also been an increase in the number of extrajudicial executions of suspected criminals in the department.

24. Throughout the 1990s and 2000s the majority of Latin American countries reformed their constitutions to recognize cultural pluralism and the rights of their indigenous populations (Sieder, 2002; Van Cott, 2000; Yrigoyen, 2010).

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