

## The Juridification of Politics

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### Abstract and Keywords

This chapter reviews the principle debates on the juridification of politics, discussing anthropological analysis of the juridification of Indigenous politics. While much of the broader debate refers principally to the diffusion and vernacularization of state and international law, and the subjectivities generated by engagements with dominant norms and institutions, here I turn the lens on the complex dialectics involved in Indigenous Peoples' juridification of their own forms of law or what in Spanish is referred to as *derecho propio*. Drawing on my ethnographic work in Guatemala, I trace the different ways in which Mayan rights activists and their allies have analysed, systematized, and defended their own forms of law in the context of battles for state recognition of legal pluralism in the post-war period. I point to the potentialities inherent in the juridification and auto-juridification of Mayan law, arguing that different legal engagements can be read as exchanges that also contain and transmit a politics of what Audra Simpson (2015) has termed 'indigenous refusal'. By articulating claims and narratives that assert the sovereignty of their specific time-space over territories, peoples, and practices in the past, present, and future, Indigenous Peoples reject the sovereign jurisdictional claims and specific temporalities and ontologies of state legality and international human rights law, envisioning alternative futures. I also reflect on the challenges for anthropologists involved in the juridification and auto-juridification of Indigenous law, advocating critical engagement that furthers an intercultural epistemological dialogue aimed at radically transforming racialized structures of dispossession.

Keywords: juridification, Indigenous rights, Indigenous law, vernacularization, Mayan law, sovereignty, engaged ethnography

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## Introduction

The juridification of politics is now widely recognized as a global phenomenon that is here to stay. Since the 1970s, Jürgen Habermas and others have seen in the creeping forms of regulatory bureaucratization that are typical of advanced capitalist democracies the juridification of 'social life-worlds' (Habermas 1981; Teubner 1987); yet by the twenty-first

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century the turn to law appeared to be a central feature of politics the world over. Rich and poor alike, from economic and political elites to sectors historically marginalized and abused by those in power, all increasingly look to legal norms, mechanisms, and arguments to defend their interests and stake their claims. Juridification is discernible in the politics of states ranging from established liberal democracies to those where authoritarian rule by law prevails. Presidents and former rulers of countries from Asia to the Americas have been impeached and imprisoned on charges of corruption as the judicialization of elite competition has become increasingly central to political calculus. Simultaneously, slum-dwellers, peasants, Indigenous Peoples, and women resisting patriarchal violence figure amongst the numerous collectives demanding respect for their rights and framing their claims with reference to legal discourses.<sup>1</sup> While processes of judicialization for the most part occur in national courts, the overlapping and multiscale nature of global legal pluralism is a defining feature of contemporary forms of juridification: the contractual rights and obligations of states and global financial capital are routinely fought out in the courts and arbitration tribunals of London, Geneva, and New York, rather than in state courts, whilst those seeking redress for gross violations of human rights often simultaneously pursue their claims in national, regional, and international forums.

Juridification, then, can involve judicialization—the displacement of political battles to the courts—but in fact signals a much broader phenomenon. The concept of juridification has been understood as a form of legal framing, whereby people come to see themselves as legal subjects through the process of claiming rights (Blichner and Molander 2008). It also refers to processes of legal or law-like ordering, wherein courts or other agents, such as non-governmental organizations (NGOs) or international organizations, demand certain standards of legal and organizational ‘legibility’ from subjects.<sup>2</sup> The turn to the jural is assumed to transform identities and subjectivities. Broadly, we can identify two main perspectives on the phenomenon, perhaps most usefully envisaged as extremes on a spectrum. At one end of the scale, juridification is seen as a new and insidious form of domination via the jural. Jean and John Comaroff (2006), for example, have analysed the current global turn to law as a hegemonic form of standardization, arguing that law (like money) converts the incommensurable into the commensurable, thereby facilitating capitalist expansion and dispossession. The complex global legal pluralism that characterizes late capitalism is integral to this domination through law. For example, Shalini Randeria (2007: 40–1) has shown how the expansion and superposition of legal and quasi-legal forums such as arbitration, mediation, and inspection at different scales (local, national, and international), which now characterizes ‘development’, is ultimately disempowering for the subjects of development initiatives. According to this line of interpretation, the turn to law privileges technocratic, elite forms of knowledge, depoliticizing and fragmenting political battles and ultimately narrowing the space for collective action.<sup>3</sup> At the other end of the scale, different authors have explored the counterhegemonic possibilities of what Boaventura de Sousa Santos and César Rodríguez-Garavito (2005b) call legal ‘globalization from below’, maintaining, simultaneously, a critical perspective on the jural and recognizing the contestations that occur through law and the growing importance of legal struggles and rights frames for political activism. These two readings are not mutually ex-

clusive as the impacts of juridification on politics and collective action ultimately depend on context. As Julia Eckert and her colleagues argue in their important volume, juridification is best understood as a wide range of social processes through which law itself is socially constituted, characterized by dialectics of norm diffusion and adaptation with uncertain and contingent outcomes (Eckert et al. 2012a: 15–16).

### Juridified subjectivities

Anthropologists have long explored how engagement with different facets of law shapes individual and collective subjectivities, documenting how juridified battles transform perceptions of self, often forging new group identities where previously these did not exist. Political identities, for example, as survivors of gender violence or as individuals who define themselves as LGBTI, have often coalesced through different processes of norm diffusion and sociolegal mobilization. More pessimistic readings have pointed to the technologies involved in different legal initiatives that initially held out the promise of ‘justice’—technologies which can end up marginalizing or ignoring the very voices and opinions of those the measures were supposed to benefit. In this sense, the extensive critical anthropological literature on transitional justice has made important contributions to debates on juridification, showing how the promises and mechanisms of this powerful transnational legal paradigm are often at odds with the ways in which people on the ground who suffered gross violations of human rights conceive of harm and redress (Anders 2012; Crosby and Lykes 2019; Niezen 2013a; Rojas-Pérez 2017; Ross 2002; Shaw and Waldorf 2010; Wilson 2001).

Legal encodification invariably involves the categorization and formalization of certain subjects and the exclusion or invisibilization of others. Yet identities are dynamic rather than fixed, with new demands and articulations constantly emerging in response to ongoing engagements with the jural. Recent contributions to the ‘anthropology of justice’ remind us that formal law is just one sphere of action in political struggles and that the imaginaries of justice of different individuals and groups rarely coincide entirely with the way justice is framed in legal terms, even when it is framed by the NGOs and activist networks that litigate cases on behalf of the marginalized and dispossessed (Brunnegger and Faulk 2016; Goodale 2017: esp. Chapter 3). Other authors have observed that engagement with formal legality rarely leads to the kind of depoliticization posited by the more pessimistic readings of juridification (Eckert et al. 2012b; Sapignoli 2018). Certainly, legal battles can exhaust and divide social movements, prioritize forms of personhood or redress that are at odds with popular subjectivities or aspirations, subject people and their histories to the violence of bureaucratic techniques, or force plaintiffs back to court again and again, leading them to ‘litigate as a way of life’ (Sapignoli 2018: 13). However, juridification does not signal the end of politics. Indeed, today politics and law appear to be more intertwined than ever, involving complex transnational circuits and multiple and overlapping instances and temporalities of political and legal action.<sup>4</sup> The idea of a public sphere or political field that is somehow ‘outside of law’ is illusory. The key empirical questions are, rather, how the intercalation of legal and political terrains and idioms may

be used to further emancipatory futures, and precisely what effects processes of juridification have on different subject populations. These questions can only ever be answered in specific contexts, through careful, culturally grounded ethnographies of struggles for justice.

Much of the debate in recent years has focused on the processes and possibilities of ‘vernacularization’, whereby individuals and groups appropriate, deploy, redefine, and transform dominant legal norms, framings, and instruments within specific settings, thereby ‘localizing’ them (Merry 2006). Sally Merry’s influential work in particular focused on the role played by actors ‘in the middle’, such as the NGOs that litigate public action cases, in translating the law between formal norms, institutions, and claimants. These processes of translation are anything but straightforward, as different actors on the ground disagree and contest legal definitions and concepts, transforming them in the process. For example, a growing body of work in Latin America has explored how Indigenous women have organized to contest hegemonic definitions of women’s human rights that emphasize individual over and above collective rights, but also to challenge discriminatory gendered ideologies underpinning Indigenous community law (Arteaga Böhrst 2018; Barrera Vivero 2016; Hernández 2016; Sieder 2017; Sierra 2004). Instead of ‘vernacularization’, Eckert and her colleagues prefer the Derridean concept of ‘iteration’, arguing that the former suggests pre-ordained normative orders that somehow converge, whereas the latter alludes to the ways in which all situated forms of engagement with legal norms and institutions are necessarily interpretative acts that constitute both self and law (Eckert et al. 2012a: 11–13). Participating in related debates, others have considered the extent to which juridification of specific local struggles can in fact transform international or domestic law by shaping the implementation of court judgments, contributing to the development of new legal principles (Kirsch 2018; Rajagopal 2009), and generating ‘subaltern cosmopolitan legalities’ through specific struggles (Santos and Rodríguez-Garavito 2005a: 5).

## Juridification and Indigenous Peoples

In what follows I consider recent contributions that anthropologists have made to understanding the phenomenon of the juridification of politics, centring my discussion specifically on the juridification of Indigenous politics, an area that has elicited a wealth of analysis in recent years (Goodale 2017: Chapter 6; Hernández 2016; Kirsch 2012; Povinelli 2007; Sapignoli 2018; Sieder 2010; Sierra 2004). The late twentieth-century creation of the transnational legal category of indigeneity has afforded new possibilities for political claims for autonomy, sovereignty, difference, and recognition to be played out within and beyond courts. Indigenous Peoples are now defined as collective subjects of rights in both international law and numerous state constitutions; and they have resorted to national and international judicial arenas to fight legal and illegal encroachments on their lands and ways of life and to oppose the multiple forms of racialized violence and criminalization they increasingly face. While Indigenous mobilization is invariably deeply rooted in specific places and ontologies—what Arturo Escobar (2008) has termed ‘place-based

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struggles’—entanglements with law have generated a broader epistemic community which has cemented a transnational identity of ‘Indigenous Peoples’. Engagement in legal battles and strategic litigation is today a central part of Indigenous Peoples’ politics the world over, and disputing issues on the legal terrain within and also outside the courts is a key element of shared struggles. As Maria Sapignoli (2018: 247) observes in her work on the San people in Botswana, ‘litigation has become one of the strategic anchorages of the global indigenous movement’. While the encoding of vastly different subjects as ‘Indigenous Peoples’ may have encouraged certain kinds of ‘strategic essentializing’ or demanded the performance of established scripts of indigeneity (Povinelli 2007; Sieder and Witchell 2001),<sup>5</sup> prevailing international norms of self-determination emphasize self-identification and the right to self-definition, elements that Indigenous People have mobilized against the arguments of states and other actors who seek to dismiss them on the grounds of ‘inauthenticity’. Towards the end of the twentieth century, Indigenous People, who, historically, had suffered racial discrimination and been excluded from dominant politics, found in juridification a means to amplify their voices and demands and project them onto a broader political stage.

As stated above, much of the broader debate about the juridification of politics tends to refer to the diffusion and vernacularization of state and international law and to the identities, discourses, and forms of collective action generated by engagements with dominant norms and institutions. I argue here that processes of juridification involving indigeneity and Indigenous Peoples are empirically and conceptually different from the juridification of political or moral claims per se. Although the vernacularization of hegemonic law and the associated transformation of identities and subjectivities, which are key elements of all processes of juridification, are certainly in evidence in the very construction of a transnational category of indigeneity (Niezen 2013b), what is at stake ultimately is *a battle for the existence and legibility of different legal orders*, rather than simply greater recognition within state law or international law. In the initial stages of colonial expansion in certain regions of the world Indigenous Peoples were legally recognized as sovereign, with their own forms of organization, law, and jurisdiction. In founding treaties, governments in Canada, Chile, and New Zealand recognized the inherent sovereignty of Native peoples, although their recognition was always partial and they sometimes reneged on the treaties entirely. Importantly, juridification involving Indigenous Peoples is in one sense about disputes between different forms of legal rationality—native peoples’ law existed *as law* before it came into contact with colonial legal epistemologies grounded in the racialization and inferiorization of subject peoples. These foundational inequalities of power and ongoing histories of colonization distinguish the juridification of Indigenous politics from juridified battles where plaintiffs implicitly submit to the law’s authority to adjudicate, recognizing state sovereignty. For example, contestations over sexual and reproductive rights have become increasingly juridified in recent decades, with both those in favour of expanding or defending women’s rights to autonomy over their bodies and those opposing such policies resorting to legal framings and litigation (Bergallo et al. 2018; Cook et al. 2014). A marked feature in the juridification of sexual and reproductive rights has been the gradual replacement of moral and religious discourses and framings

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with legal ones, with both sides of the political divide resorting to the language of rights (the rights of women, the rights of the unborn child, etc.). By contrast, while contemporary juridification involving Indigenous People certainly hinges on the vernacularization of rights frames (the category of indigeneity itself being rooted in a conception of a collective subject of rights), these human rights frames do not replace the different ontologies underpinning the alternative legal orders that are defended by Indigenous People, nor do they overcome the challenge they pose to hegemonic frames of legality.

Juridification at the interface between hegemonic and subordinated forms of legality was always a feature of colonial contexts, in turn transforming these different bodies of law through multiple processes of contestation, codification, and engagement. Stuart Kirsch (2012) has pointed to the 'looping effect' produced by the juridification of Indigenous political struggles: Indigenous practices and concepts are altered through their engagements with courts, and at the same time legal concepts are reshaped as lawyers, judges, and courts respond to these encounters, sometimes leading to the emergence of hybrid legal precedents.<sup>6</sup> According to Kirsch, even claims made in court that are not taken up and translated into jurisprudential precedents or new legal concepts can still circulate as *political discourse* and concepts, as more horizontal exchanges between Indigenous Peoples are produced as a consequence of juridification. He concludes that 'the juridification of indigenous politics cannot escape the universalizing power of legal language, but can create new political opportunities' (Kirsch 2012: 40). Independently of whether they hold a more or less pessimistic view on the prospects and effects of juridification, most authors point to Indigenous subjects becoming ever more enmeshed in inescapable webs of law, increasingly internalizing dominant legal cultures. For example, Ronald Niezen (2013b: 186) argues that international human rights law has generated 'a body of rights-oriented knowledge, that includes an understanding of the essence of humanity and the legitimate forms and categories of human belonging', something he understands as 'a strategic epistemology that is reinterpreting common understandings of human life and ... redefining human identity'.

Arguably, these readings place too much emphasis on top-down processes of norm diffusion and the vernacularization of hegemonic forms of law. In particular, such perspectives pay insufficient attention to the law of Indigenous Peoples themselves and to the ways ideas about autochthonous norms and practices of governance circulate through more horizontal forms of knowledge transfer and exchange between Indigenous Peoples and their allies, involving complex processes of interpretation that in turn shape collective identities and political futures. Juridification involving Indigenous Peoples is much more than the use of state law or international human rights law against the state in pursuit of greater recognition and distributive justice; it also includes the mobilization and reframing of alternative legal and political orders aimed at ensuring their continuity. The recognition of legal pluralism in Latin America's new constitutional regimes, however limited or ambiguous in normative and practical terms, has meant that lawyers, who defend Indigenous Peoples' collective rights to autonomy, land, and territory, and judges, who ad-

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judicate these cases, have had to engage with alternative cultural conceptions and representations of what 'law' itself is.

The explicit or implicit challenge to hegemonic forms of law contained in Indigenous juridification of politics signals what Audra Simpson (2015) has termed 'indigenous refusal' (see also Richland 2018). Through juridified political engagements, Native people lay bare the racialized juridical frames and categories that have systematically stripped them of their territories in legally sanctioned forms of genocide. The political insistence on Indigenous law, jurisdiction, and sovereignty opposes, then, the colonial erasure that challenges the jurisdictional claims, temporalities, and ontologies of state law and international human rights law.<sup>7</sup> Such instances of juridification represent a political claim for epistemologies and ontologies of law grounded in conceptions of time, space, and personhood that may be incommensurable with dominant legal rationalities. As Mark Rifkin (2017: 14) observes, '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 people have an existence not a priori tethered to settler norms and frames' (2017: 14).

## The juridification of 'Mayan law'

When much of the dominant legal order is seen as alien and illegitimate, and when Indigenous subjects may posit radically different understandings of governance, law, and morality, what processes of subjectivization and politics are generated by juridification? In what follows I explore these issues by analysing different dynamics involved in the juridification of Mayan law in post-war Guatemala. Drawing on my own ethnographic work, I trace the different ways in which Mayan rights activists and their allies have revitalized, analysed, and defended their own forms of law in the context of battles for state recognition of legal pluralism in the post-war period. In the light of my own experience over the years, I also reflect on the responsibilities and challenges for academics engaged in such processes of juridification.

While the social organization and laws of the Mayan peoples date back thousands of years, the self-conscious, political use of the concept of 'Mayan law' emerged in Guatemala in the immediate post-war period, following the final signing of the peace agreements in 1996 that brought an end to thirty-six years of armed conflict. The 1995 Accord on the Rights and Identity of Indigenous Peoples, signed by both the government and the insurgent forces, committed the state to recognize legal pluralism and approve legislative reforms guaranteeing the rights of Indigenous communities to administer their affairs according to their 'customary norms'. A pan-Mayan social movement had emerged in the final years of the armed conflict and participated, albeit indirectly, in the negotiation of the peace accords, subsequently working to secure their implementation (Warren 1999). Different Mayan rights organizations and NGOs across the country allied with academics, NGOs, and international development cooperation agencies in an effort to 'systematize' what came to be termed 'Mayan law'. At the same time, these activists rejected

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any attempts to have Mayan law codified as part of state law, conscious of the inherently colonial premises of such an undertaking. Instead they lobbied for the constitutional recognition of Indigenous jurisdiction and insisted on their rights to define their own forms of law. Thus, in the 1990s, pan-Mayan Indigenous rights activism found expression in a multifaceted undertaking to enunciate Mayan law and in a conscious positioning of Indigenous law vis-à-vis state legality in a bid to institute a pluricultural legal system. More importantly, it was part of a grassroots movement across the country to reaffirm and revitalize forms of community governance and identity in the wake of the armed conflict which had taken such a tremendous toll on Indigenous lives and culture (Sieder 2011).<sup>8</sup>

'Mayan law' was a form of praxis whereby Indigenous and non-Indigenous intellectuals and communal authorities reflected on and systematized their own governance practices and their underlying moral, philosophical, and historical roots. Guatemala's Mayan peoples comprise twenty-one different ethno-linguistic groups, and Indigenous law itself is highly internally diverse, often from one canton to the next. Some groups and regions of the country predominated over others in national efforts to identify or define 'Mayan law', in turn influencing different local processes of revitalization. Intellectuals from the largest ethno-linguistic groups, K'iche' and Kaqchikel, drew on existing studies by non-Indigenous anthropologists and archaeologists at the same time as they critically interrogated them and deployed specific forms of intertextuality that supported the legitimacy of Mayan law, drawing on alternative sources and statements of law, such as the Popol Vuh (the most important Mayan sacred text). For example, the National Conference of Mayan Spiritual Leaders Oxlajuj Ajpop, published a series of books detailing the norms and philosophy of Maya K'iche' legality, emphasizing the links between Mayan spirituality, morality, and law. In describing the principles of Maya K'iche' law, Indigenous intellectuals made a series of epistemological and ontological truth claims. Certainly, their systematizations occurred within the context of claim-making before the state, but they also formed part of a broader process whereby collective identities were reconstituted and the continuity of Indigenous life-worlds was reaffirmed in the wake of the genocidal violence that characterized the armed conflict. The various books, documents, and videos that were produced from the mid-1990s onwards were just one element of a process occurring within a complex field of contestation involving legal and political state authorities and a wide range of international actors engaged in post-war reconstruction. Yet the reorganization of Mayan law in different communities across the country was primarily an inward-looking process responding to conceptions of self and justice stretching far beyond the temporal frames of 'post-conflict reconstruction' or multicultural state reform.

Emblematic contemporary examples of Maya K'iche' law became the subject of study at the same time as communal leaders championed their own forms of law beyond their immediate localities, underlining the political nature of the process. For example, in Santa Cruz del Quiché, the municipal capital of the department of Quiché, a supra-communal Indigenous Mayoralty was reconstituted by local Mayan leaders in 2003 and subsequently gained national prominence—and aroused controversy—for its defence of the application of what it defined as Maya K'iche' law. This included the use of *x'ik'ay*, ritual beat-



ings with the branches of a quince tree, which, as local K'iche' authorities explain, are intended to redirect the energies of those accused of the transgression of community norms. Other practices used to 'recover shame' included *xuklem*, which requires the penitents to go counter-clockwise around a circle on their knees three times in order to ask pardon from the earth. Indigenous authorities in Santa Cruz del Quiché have strongly defended *x'ik'ay* and *xuklem*, refusing to domesticate their local legal practices to cater to the sensibilities of prevailing human rights orthodoxies and thereby inherently challenging the ontological premises of hegemonic law, refusing to re-inscribe its power.<sup>9</sup> What state actors and some elements of the international human rights community perceive as corporal punishment or, in the worst case, as torture, is defended as an alternative frame for justice, redress, and reparations. The continuity and defence of Mayan law thus critically interrogates colonial histories by challenging the very legitimacy of dominant forms of law and instantiating alternative conceptions of sovereignty in a way that is reminiscent of Justin Richland's concept of 'sovereign time'. Richland (2008: 10) developed this concept in his analysis of Hopi narrations of Indigenous norms of law and governance grounded in tradition, which establish juridical authority and function 'as part of the legitimizing backdrop of contemporary [Indigenous] juridical and political action' (Richland 2008: 10).<sup>10</sup>

## Engaged ethnography and juridification

The juridification of politics involves multiple processes within and beyond the courts. Diverse research collaborations constituted a central facet of the juridification of Mayan law and were often riven with tensions related to differing understandings of law itself and contrasting perspectives on how its study should be approached, by whom, and to what ends. For example, one collaborative research initiative, eventually published in 2005, documented the application of Maya K'iche' law in the department of Totonicapán in a case of aggravated robbery in the canton of Chiyax. The original plan called for the production of a book and an accompanying video describing the measures adopted by the communal authorities and the specific efforts at interlegal intercultural coordination that ensued following their resolution of the case. Research for the publication and the video was funded by the Danish international development cooperation, IBIS, and undertaken by a Mayan-rights NGO based in the nearby city of Quetzaltenango. However, when the village authorities in Chiyax discovered how much the book and video would cost to produce, they demanded that the NGO and IBIS pay a greater share directly to them to be used in local development projects. Other tensions revolved around how to conceptualize and depict Indigenous law itself: at one forum on intercultural interlegal coordination, hosted by the Soros Foundation in Guatemala in 2011, I was stung by criticism from a Mayan intellectual who was unhappy with the depiction of Maya K'iche' law in our documentary, *K'ixb'al* ('Shame'). Produced in collaboration with the Indigenous Mayorality of Santa Cruz del Quiché, the film, which analyses the resolution by Indigenous authorities of a case of the theft of a vehicle by three youngsters, includes footage shot by villagers themselves and interviews with key protagonists, who explain the nature and logic of their processes of dispute resolution (Sieder and Flores 2011).<sup>11</sup> Controversially, it in-

cludes footage of the application of *x'ik'ay*. The Mayan intellectual at the Soros Foundation meeting argued that the documentary showed Mayan law 'as it is' and not 'as it should be', thus challenging the representational practices that tend to characterize ethnographic approaches and the authoritative accounts that these generate. He argued that state law is normally judged by its declared ideals while Indigenous law is dismissed as a violation of human rights or due process on the basis of its perceived practice. He insisted on the need to counterpose the philosophical and ontological bases of Indigenous legal norms to state law, emphasizing the insufficiency of ethnographic observation as a means of understanding alternative forms of legality. At the time, I read his critique as an appeal to a form of strategic essentializing and atemporal representation that I found to be problematic. Over subsequent years, I have returned to that encounter in order to reflect on the enormous complexities of representing ontologies of Indigenous law and on the role that we as engaged non-Indigenous intellectuals play in its juridification, with all the responsibilities and risks this entails. In my work as an author of special witness reports for key legal cases defending Indigenous Peoples' rights to jurisdictional autonomy in Guatemala, I have engaged in attempts to make Indigenous law legible and credible to judges, prosecutors, and public defenders. Aside from revealing the race and class privilege that structures the terrain of juridification involving Indigenous Peoples, such attempts by anthropologists to mediate between Mayan peoples' theorizations of their own forms of law and dominant legal frames are, however, far from simple. This is because the epistemological bases of both forms of law often differ radically,<sup>12</sup> and the ability of the ethnographer to apprehend and communicate the ontologies of Indigenous law inevitably remains constrained both by hegemonic legal frames and by our own subjectivities.

## Conclusions

In this chapter I have argued that the juridification of politics is an inescapable fact of political engagement within the complex global legal pluralism that is characteristic of late capitalism. Law in most places *is* politics, and it is for this reason that minority groups in organized social movements everywhere increasingly take their battles to court. My analysis echoes other authors' findings about the inextricability of law and politics, challenging many of the assumed dichotomies of the critical legal scholarship on juridification (Zenker 2012). Recent anthropologies of justice also complicate these dichotomies and divisions, underlining the fact that ideas of what is just and right are profoundly political and also shaped by different legal imaginaries. I have suggested here that while the inexorable logics of hegemonic forms of law are certainly inescapable, this does not necessarily entail either the weakening of collective action and depoliticization or the colonization of other life-worlds by globally dominant legalities.

In particular I have argued that the juridification of politics engaged in by Indigenous People is different from the juridification of politics *per se*. This is because, rather than claims for recognition or inclusion that broadly accept the epistemological bases of state law, juridification involving Indigenous Peoples occurs at the intersection between forms of law with often radically different epistemological and ontological bases: on one hand,

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hegemonic national and international legality and, on the other, the autochthonous forms of law of colonized peoples. Drawing on the experience of the juridification of Mayan law in post-war Guatemala, I have shown how Indigenous Peoples' juridification occurring at the interstices of these different forms of law constitutes a platform on which broader claims for Indigenous autonomy, sovereignty, and jurisdiction are played out. The constant re-elaboration, exercise, and circulation of 'Mayan law' in contemporary Guatemala is simultaneously a form of politics, an enunciation of authoritative norms or legal philosophies, and a guide to ways of being and conducting oneself in the universe. Whilst Mayan peoples use the language of human rights to claim and defend their core interests, their identities are not determined by the epistemologies of human rights law. Mark Goodale (2017: 162) is right to caution that 'the relationship between indigeneity, international law, and political mobilization is riddled with contradictions, overshadowed by the potential for economic exploitation', and clearly law continues to be one of the principal tools of neocolonial dispossession. However, I have pointed here to the potentialities inherent in the juridification of Mayan law, arguing that these different legal engagements can be read as exchanges that also contain and transmit a politics of 'indigenous refusal' (Simpson 2015). It is utopian to expect that these dynamics alone will halt or even slow the onslaught of global capital in the current historical moment, but this does not detract from their importance, which goes beyond the merely symbolic.

Lastly, I have attempted to reflect on the challenges for anthropologists involved in the juridification of Indigenous law, advocating forms of anthropological knowledge production grounded in critical engagement that furthers an intercultural epistemological dialogue aimed at radically transforming racialized structures of dispossession. This demands a high degree of reflexivity about our methods, sources, and forms of representation, along with awareness about the ways in which our representations circulate and are implicated in the juridification of Indigenous politics. As Justin Richland (2008: 24) argues, in contrast to the authority of the standard ethnographic account:

[S]omething different emerges when anthropologists recognize that the interdiscursivities embedded in notions like tradition and law have been actively taken up by those Others who critics argue were originally marginalized by those notions. There is a difference in the chronotopes generated through ethnography when, like the Hopi legal actors engaging each other in tribal court proceedings, they remain open to the multiplex ways in which the temporalities of tradition, law, norm, and fact, are always being actively remade in the emergent discourses central to everyday indigenous governance practices today. In ethnographic assays of the latter type, the normative discourses of indigenous peoples are treated not as the historical relics of some long-lost past, but as guiding norms that continue to operate in the present.

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### Notes:

(1.) The judicialization of politics, involving the displacement of executive and congressional decision-making power and public contestation to the courts, is the subject of a significant literature: see Hirschl (2008); Randeria (2007); Sieder et al. (2005), and Tate and Vallinder (1995).

(2.) NGOs may institute certain kinds of 'audit cultures' or bureaucratic forms and processes among organizations, e.g. the use of statistics in reporting or the privileging of particular kinds of testimony over others (Strathern 2000). The extension of certain cultural patterns through NGOs is part of the broader phenomenon of juridification.

(3.) Jean and John Comaroff (2006: 30) call this phenomenon 'lawfare', which they define as 'violence rendered legible, legal, and legitimate by its own sovereign word'.

(4.) Sapignoli (2018: 12) observes how going through a legal process 'involves an almost *hyperpoliticization* of (or through) law, whereby recourse to legal remedies in some ways intensifies political struggles and becomes inseparable from them'.

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(5.) Povinelli (2007) emphasizes the role of anthropological imaginations and tropes in fashioning impossible standards of authenticity for Indigenous peoples in legal battles over land claims in Australia, standards of authenticity which in turn led either to strategic essentializing or misrecognition.

(6.) e.g. Aida Hernández's (2016) analysis of her own role as special expert witness before the Interamerican Court of Human Rights in the case of Inés Fernández Ortega vs. Mexico, concerning a Me'phaa woman raped by members of the Mexican army, shows how anthropological analysis of community impacts contributed to the court recognizing the rape as a violation of both individual and collective rights, setting an important legal precedent.

(7.) On the relationship of jurisdiction to sovereignty, see Richland (2011).

(8.) In thirty-six years of armed conflict, some 200,000 people were killed, the vast majority by members of the armed forces, and a further 50,000 disappeared. Over 90 per cent of victims were Indigenous civilians (Comisión para el Esclarecimiento Histórico en Guatemala 1999).

(9.) Both International Labor Organization 169 on the Rights of Indigenous and Tribal Peoples (ratified by the Guatemalan state in 1996) and the 1995 Agreement on the Rights and Identity of Indigenous Peoples recognize Indigenous law only if it is in line with international human rights standards.

(10.) See also the important work of Mark Rifkin (2017) on Indigenous time and settler time.

(11.) The documentary can be seen at <<https://vimeo.com/51473676>> (accessed 30 April 2020).

(12.) Similarly, Stuart Kirsch (2018: 17) writes about the 'overlapping but sometimes incommensurate frames of reference' he has deployed in elaborating anthropological witness reports in defence of Indigenous peoples' rights.

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and Justicias Indígenas y Estado: Violencias Contemporáneas (with María Teresa Sierra and Rosalva Aída Hernández, FLACSO/CIESAS, 2013).