The Journal of Legal Pluralism and Unofficial Law

ISSN: 0732-9113 (Print) 2305-9931 (Online) Journal homepage: https://www.tandfonline.com/loi/rjlp20

'There is no law that justifies the existence of the board of elders'. Community service and legal pluralism in Santa María, Guatemala

Elisabet Dueholm Rasch

To cite this article: Elisabet Dueholm Rasch (2016) 'There is no law that justifies the existence of the board of elders'. Community service and legal pluralism in Santa María, Guatemala, The Journal of Legal Pluralism and Unofficial Law, 48:1, 41-57, DOI: 10.1080/07329113.2015.1137727

To link to this article: https://doi.org/10.1080/07329113.2015.1137727

The Journal of Legal Pluralism and Unofficial Law, 2016
Vol. 48, No. 1, 41–57, http://dx.doi.org/10.1080/07329113.2015.1137727

'There is no law that justifies the existence of the board of elders'. Community service and legal pluralism in Santa María, Guatemala

Elisabet Dueholm Rasch*

Sociology of Development and Change, Wageningen University, Wageningen, The Netherlands

(*Received 25 August 2015; accepted 30 December 2015*)

This article analyzes how indigenous peoples actively engage in the negotiation of international, national and local legal frameworks in Guatemala. The aim of the article is to explain paradoxical outcomes of global legal pluralism through an actor-oriented approach to the construction of legal frameworks and the meaning of rights. It does so by means of a case study of the dissolution of an indigenous social institution: the cargo system. The case study involves a multiplicity of power relations. It is argued that these power relations enable an understanding of the different ways in which local actors engage in processes of constructing legal frameworks 'on the ground'. This article will provide insight into how new legal frameworks constitute social realities. In addition, it will show how personal identifications and experiences are translated into legal practices. Finally, the case study reveals how the struggle for rights both reflects and produces tensions among ethnic, national, social economic and religious identities.

Keywords: indigenous authorities; Guatemala; community service; legal pluralism; indigenous rights; globalization of rights

Introduction

This article analyzes practices of both indigenous rights and human rights among the indigenous population of Guatemala. Since the 1980s, globalization has created a context within which different legal systems have become available for people that had previously been excluded from such frameworks (Sieder 2011; Berman 2009). Globalization of legal orders has created space to claim rights to 'authentic' forms of governance, and has also provided frameworks that constitute a basis for rejecting – on the grounds of human rights – ancient uses and customs as seen from a human rights perspective (Tamanaha 2008, 387). However, the meanings that local actors give to 'universal' meanings of indigenous rights, gender rights or human rights, are not static, but rather contested sites of meaning (Sieder 2011, 242). At the local level, law is constantly negotiated in a dialectic between hegemonic projections and counter-hegemonic actions (de Sousa Santos and Rodríguez-Garavito 2005; Sieder 2011, 242).

In this article, I argue that recognition of indigenous rights at national and international levels does not necessarily result in a local appropriation of such rights; at the local level they gain significance in practice. Local meanings attached to indigeneity appear to be less well-defined and static than laid down in agreements and legislations and shaped by local differences in religion and urban–rural identifications, among others. How people identify as 'indigenous', I argue, shapes the ways they relate to indigenous rights as

*Email: elisabet.rasch@wur.nl

well as human rights. As such, the outcomes of global legal pluralism are ambiguous; we can only understand the workings of rights regimes by taking local practices and meanings of, in this case indigeneity, into account. This argument is presented by way of an actor-oriented case study analysis of the dissolution of a community service that had for centuries been part of the local system of community services, called the cargo system. The cargo system involves a community obligation to perform assigned community services (*cargos*) without remuneration.

For a long time, indigenous municipalities in Guatemala were exclusively administrated and governed through such systems of community services (see Barrios 2001; Chance 1996; DeWalt 1975; Falla 2001). In tune with a perspective on legal pluralism that characterized state law and informal law as isolated domains (Wilson 2003, 76), ethnographers in Guatemala in the first half of the twentieth century tended to see the cargo system as 'the core of the Maya social structure' (see Tax 1937; Adams 1956). In contemporary Guatemala, the cargo system is dynamic rather than static, and it has undergone many changes in definition and practice.

The office under scope, the 'Mayores and Alguaciles of the Corridor' (Mayores and Alguaciles from now on), functioned as part of the local system of community services of Santa María, Guatemala. Santa María is a small municipality (30,000 inhabitants) in the Western Highlands of Guatemala. Ninety percent of the population identifies as indigenous and speaks the Maya language Maya K'iche. The officials under scope were caretakers of the town hall who also acted as municipal and national police. The Mayores and Alguaciles originally arose in the absence of state authorities in the nineteenth century, but stayed in place even after municipal and national police were charged with these same functions in 1998. What makes the dissolution of the Mayores and Alguaciles of the Corridor interesting in terms of gaining insight into the ways human and indigenous rights are 'reworked in the vernacular' (Merry 2006, 39) lies not in the functioning of that specific office, but in the role of the indigenous population in abolishing it during an era characterized by the recognition of such indigenous institutions.

This case study of the Mayores and Alguaciles contributes to a growing literature on the negotiation and articulation of legal frameworks 'from below' (Sieder 2011). Many recent studies in the field of legal pluralism have focused on global legal transformations as top-down processes from the northern to the southern hemisphere and have tended to concentrate on the most visible hegemonic actors of global processes, such as an increasing respect for and enforcement of human rights (de Sousa Santos and Rodríguez-Garavito 2005, 2−3; see Brysk 2000; Likosky 2002). Traditionally, legal and sociological studies have failed to take into account both growing grassroots resistance to the spread of legal frameworks and how global human (and indigenous) rights discourses affect political struggles in local communities (de Sousa Santos and Rodríguez-Garavito 2005, 2−3; Merry 1997, 249). However, legal anthropology scholars have increasingly focused on local articulations of rights (Goodale and Merry 2007; Merry 2006; Sieder 2011). One of the primary purposes of this article is to explain how local actors deploy various rights as cultural resources in specific social contexts; and at the same time to describe how these rights are articulated locally.

Law is constantly negotiated and reshaped in a dialectic between hegemonic projections and counter-hegemonic actions (Sieder 2011; Cowan, Dembour, and Wilson 2000). Analytically and methodologically, such an approach entails the empirical study of how resistance is organized 'on the ground' and how local interpretations of globalization are embedded in the greater landscape of civil society, politics and the judiciary (de Sousa Santos and Rodríguez-Garavito 2005). For this reason, I locate my case study within the

context of a variety of power relations. Such an approach will provide insight into how local actors engage in processes of constructing legal frameworks 'from below' (Wilson 1997; Sieder 2011) in different ways. First, it will help understand how new legal frameworks constitute (instrumental) social categories in Guatemala. In Santa María, local actors have come to identify as 'Guatemalans' in order to claim individual human and political rights, rather than collective indigenous rights. There are other cases in which indigenous people have revived their indigenous customs in order to be able to claim their indigenous rights. As such, changes in legislation can shape (local) societal categorizations and practices. Second, a focus on multiple power relations shows how meanings and experiences of indigeneity are translated into legal actions. Individuals from different religions attach different meanings to both customary law specifically and 'indigeneity' in general. Perceived meanings of customary law as 'uncivilized' are translated into valuing state legal practices over customary law practices. Finally, the case study shows us how struggles for rights both reflect and engender tensions among ethnic, national, social economic and religious identities. Individuals who identify themselves with Maya spirituality and Catholicism identify more with customary law than the Protestant part of the population. This has meant that indigenous people who practice Maya spirituality have ceded power to Protestants, as reflected in the actual abolition of the Mayores and Alguaciles.

The case study was conducted in the municipality of Santa María, and is based on two distinct periods collectively comprising eight months of fieldwork there between 2003 and 2005. I briefly returned to Santa María in 2007 to obtain further information. In order to obtain the most comprehensive and accurate information possible, I utilized several research techniques: I interviewed former Alguaciles and Mayores, local authorities, community judges and, finally, representatives of national organizations. In addition, I studied minutes of meetings of the municipal council and conducted archival research in Guatemalan newspapers. During the course of my fieldwork, I participated in numerous meetings and activities in which the functioning of the community service system was discussed.

This article is organized as follows. First, I discuss how I approach the idea of community service within the context of the broader debate on legal pluralism. The second section examines which legal frameworks or 'hegemonic projections' are used to turn the contemporary indigenous population into governable subjects. I then go on to analyze how social cleavages and personal identifications inform ideas and practices of 'rights' and 'law'. Finally, I show how this dialectic process of hegemonic projections and counter-hegemonic actions is mediated by local meanings of indigeneity and social cleavages, before being translated into new, hybrid forms of law and perceptions of rights.

Legal pluralism and community service in Guatemala

> It all started on Maundy Thursday, 2003. As was the custom, the inhabitants of Santa María visited the graves of their departed loved ones at the cemetery, where they ate the lunches they had packed, listened to music on old radios, and drank alcohol on and around the decorated tombstones. The religious brotherhoods conducted processions with the images of their saints. The Mayores and Alguaciles supervised all of the activities, together with the municipal police officer. On this Thursday preceding Easter Sunday, a couple of Mayores and Alguaciles observed a drunk man urinating in the street and threatening his wife while wielding a gun. In accordance with local custom, they

> locked the drunk up in the local prison in the atrium of the Catholic Church for one day and fined him ten quetzals.
>
> Within a few days, however, the Community Court (also an indigenous body) concluded that this had been an illegal detention, and proceeded to sentence the drunk to ten days of community service and to report to the town hall on a weekly basis for six months. In addition, he paid a fine of 300 quetzals. According to the Community Court, the customary law that the Mayores and Alguaciles practiced, 'was not right', and had to be discontinued. A few weeks later, the majority of the representatives of the rural communities that constitute the municipality of Santa María cast their votes at a general meeting organized by the municipal mayor in favour of 'discontinuing the custom', which meant an immediate disappearance of the Mayores and Alguaciles from the town hall of Santa María.

The above vignette describes how the service called the Mayores and Alguaciles came to an end in June 2003. This institution had been part of a much broader system of community services. Its dissolution was, of course, not only the result of a conflict over one illegal detention. Instead, it was the outcome of the contestation of community service as the only hegemonic system of municipal administration. The account introduces the actors that played an important role in the social processes that preceded the decision to discontinue the existence of the Mayores and Alguaciles: the municipal council, the Community Court and the community representatives ('auxiliary mayors'). These actors are all in some way involved in the cargo system in Santa María.

The cargo system in Santa María is neither isolated nor static. It was, and is, an expression of the municipality's customary law and was redefined throughout the course of its existence in relation to wider power structures of post-colonialism, state law and legal globalization. In that sense, the cargo system is best understood as a 'semi-autonomous field': a socio-legal space which 'can generate rules, customs and symbols internally, but [which] is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded' (Moore 1973, 55).

Such a perspective takes into account the fact that community services have been appropriated by the indigenous population as 'truly indigenous', even though they often have their origins in colonialism (Tamanaha 2008, 384). In addition, viewing the cargo system as a semi-autonomous field allows for an examination of the social processes that surround the implementation of international agreements on human and indigenous rights, and an appreciation of both how cultural life is changing in response to globalization (Merry 2006) and how the system of community service is dynamic in nature. During the past 30 years, different services have been added to and removed from the cargo system as part of these processes. Taking these considerations into account, I will now provide a more extended introduction to the main actors involved in the events that led to the demise of the Mayores and Alguaciles.

In the political organization of Guatemala, a municipality is an administrative unit administered by a municipal council. Although the members of the municipal council are elected in popular elections, they are considered to be part of the civic branch of the cargo system. As was the case with several other indigenous municipalities in Guatemala, Santa María appropriated the political party system as a way of securing indigenous representation in municipal offices. The civil services of the cargo system were organized around, and integrated with, the functioning of the municipal council and to a certain extent reproduced the logic of the cargo system. Political parties generally assure that their affiliated politicians have careers of community service involving progressively greater responsibility (Rasch 2008). Don Pablo, for example, who is now part of the board of elders, would enter the municipal council in the 1980s after having fulfilled several functions

within the community. At the time of the abolition of the cargo under scope, the Santa María community council consisted of the municipal mayor, two aldermen (*síndicos*) and five council members (*concejales*). The municipal mayor, Catholic and Maya K'iche, owned a shop where he would sell clothes and woven cloths that can be used to make indigenous blouses and skirts.

The municipal mayor is represented in the rural communities by auxiliary mayors. The auxiliary mayors are an important element in the civic branch of the cargo system. Formally, auxiliary mayors execute municipal policies and represent the inhabitants of the communities at the municipal level. Although their position is defined in the Municipal Code (where it is specified that they are responsible to the municipal mayor) the activities of auxiliary mayors are also to some extent coordinated by an Indigenous Mayoralty (Yrigoyen 1999; Barrios 2001). Originally, the colonial Spanish rulers created the Indigenous Mayoralty to collect taxes and facilitate communication between the municipal council and the representatives of rural, indigenous communities. Today it is a site of cultural reproduction and considered a feature of indigenous administration. In Santa María the Indigenous Mayoralty has not been actively revived, as it has in for example Panajachel, where the Indigenous Mayoralty had been non-existent for many, many years (see among others Albedrio 2009). In Santa María, the office had always stayed in function and coordinated the community representatives seated in one of the municipalities biggest communities and functioning parallel to the municipal council.

The Mayores and Alguaciles constituted another important civic service within the system of community services. They were the caretakers of the town hall, while also acting as national police. In coordination with the municipal police officer, they would attempt to capture criminals and intervene in violent situations. When the National Police was instituted in 1999 as part of the peace process, these duties were taken away from them. After that, their most important task was keeping the town hall clean and maintaining the local jail. In doing this, they would work closely together with the municipal police officer.

The introduction of the National Police occurred at around the same time that the Community Court was being instituted. The Community Court was part of a larger project of making the judicial apparatus more accessible for the indigenous population, not only in terms of judicial presence in indigenous regions, but also in terms of cultural accessibility, allowing indigenous citizens to practice 'the uses and customs of the locality'. The Community Courts' capacity to employ customs is limited to penal law, thus ignoring the fact that the distinctions between different fields of law are not present within indigenous law (Ochoa García 2002, 165). Santa María was one of the five municipalities where a Community Court was introduced that took over some of the juridical functions of the Alguaciles and Mayores, and also of the municipal council.

One of the judges who was part of the Community Court at the time of the abolition of the Alguaciles and Mayores, was Juliana, a Maya K'iche woman from the municipality. As the only daughter of her family, with six brothers and parents who practiced Maya ceremonies and participated actively in the Catholic brotherhood, Juliana had always been an ambitious girl. One of the most important ways for her to express her Maya K'iche identity is through the use of the indigenous dress: 'I feel very indigenous, I am from Santa María, I feel happy with my indigenous dress, and I feel like a pure woman [because] I know who I am'. She is highly concerned about the 'real' and 'authentic' culture of the municipality, something that especially came to the fore when she told me about the time she was elected 'Flower of Santa María'. That very year the name of the contest had been changed into K'iche. Beyond that critical issue, the most important thing was that the

dress should be of the authentic, the real one from Santa María. Juliana told me passionately about those changes, underlining constantly that celebrations surrounding the election of the Flower of Santa María are indispensable for the continuation of the uses and customs (Rasch 2008).

The final actor that played a role in the debate that led to the demise of the Mayores and Alguaciles, is the board of elders. Maya intellectuals and NGOs often point to this authoritative body as something distinctively Maya. The board of elders consists of a group of men who have all served in many community services over the course of many years. Don Pablo, maybe the most known elder of this board, for example served several civil and religious cargos, but also fulfilled military services to the village. Besides that, he participated in numerous development-oriented committees.

To summarize, contemporary municipal administration in Guatemala has been shaped by colonial structures, national legislation and human rights agreements that emphasize individual rights, as well as by indigenous (collective) rights discourses. Below I explore how contemporary legal frameworks have entered the municipality and how they have functioned as a way of controlling the population, accommodating the customs that are part of the cargo system.

Making subjects governable: legal frameworks

The different meanings of community service as part of the administration of Santa María are shaped by different legal frameworks related to indigenous rights and authority: local customary law of Santa María, the Municipal Code, the Penal Adjudication Code and the Constitution (national level); and the ILO Convention 169 (ILO 169 from now on), the UN Declaration on Indigenous Peoples and the UN Human Rights Convention (international level). These are all legal frameworks that regulate the ways the indigenous population can claim their indigenous, as well as human rights. On the one hand, these frameworks both legalize and create social categories. On the other, Santa María's population has actually used these frameworks to contest the legitimacy of what is 'indigenous' and 'ours' and have these frameworks gained meaning in practice. In this section, I discuss how those legal frameworks operate and how they afford the population both collective and individual rights.

Local framework: customary law of Santa María

On the local level, the existence of the cargo system is legitimized by customary law, of which the cargo system itself is part. In Santa María (and also in many other places in Guatemala) there are two central guiding principles of local customary law, and thus the cargo system: 'serving the community' and 'respect for the ancestors'. These two principles regulate people's behavior and shape how they position themselves towards community service. I call these principles 'customary' instead of 'indigenous', as such principles might change in other indigenous municipalities in and outside Guatemala. I will now briefly elaborate on these two interwoven elements of Santa María customary law.

The idea of 'serving the community' obviously reflects an identification with that community and implicitly prioritizes the 'community' over the 'individual' (Ekern 2006). Respect for one's ancestors is another important element of the cargo system, and is symbolized by the *vara*, a wooden staff that represents authority, which has been passed from one generation to another. Some of these staffs are more than 100 years old. Ancestral spirits are thought to be present in the vara, and it is widely believed that these

spirits continue to exercise influence over present events. When a community member does not live up to the service obligations he has undertaken, this is regarded as disrespect for the vara and, by extension, for one's ancestors. Disrespect for the vara is believed to inevitably bring punishment in its wake. The following anecdote is an instance of this common perception:

> I heard a story about the first councilman of the administration from 1996–2000. The municipal council was at the end of its term, and the governing political party had lost the elections. The sitting councilors therefore decided that they wouldn't leave their offices 'in good order' or complete their outstanding work. On January 8 [of the year 2000] the first council member entered the room, sat down in his chair and then he saw how the vara rose from the table and dropped back down again. This was a sign that they should have completed their work, because this member only lived one more day. On the 9th, he went to hospital and he died later that night. On the 12th, we buried him. It is thus a fact that the vara is not to be trifled with. (Interview with Mike, 2004)

The vara is a widely respected symbol of authority among the people who adhere to the system of community service. Authorities always bring the vara to important community events: for the launching of community projects, ceremonial changings of the religious brotherhoods at the Catholic Church, processions of the patron saints and the Independence Day parade.

For community members, fulfilling a service for the community means respecting their ancestors and part of that 'what is ours' as I was often told in interviews. The local framework of 'community service' and 'respect for the ancestors' shapes the ways people in Santa María perceive of the cargo system in Santa María – and for a long time was the main legal framework people would refer to, as there was little state presence in the municipality.

National legal frameworks

The most important reference point for Guatemalan indigenous organizations in the struggle for indigenous rights is the Accord on Identity and Rights of the Indigenous population (AIDPI), which was signed in December 1995. This document explicitly recognizes the multiethnic, multicultural and multilingual nature of Guatemalan society, and recognizes the collective rights of some six million indigenous persons (Sieder 2002). The collective rights enshrined in the Accord include the following: Maya organizational forms, political practices and customary law, the right of indigenous persons to a greater degree of participation in state institutions and policy-making; and cultural and economic rights (see AIDPI 1995, Chapter IV). Under the terms of the Accord, indigenous communities were granted the right to enforce customary law as long as it is compatible with national law and international human rights (Warren 1999, 213). However, in order to be able to consistently implement the agreements, changes had to be made in several codes of law. The most relevant legal codes that required modification, in terms of understanding how legislation structures the meaning of local forms of social organization, were the Constitution, the Municipal Code and the Penal Adjudication Code.

The Guatemalan Constitution of 1985 was the first to recognize that the nation comprises 'different ethnic groups, including indigenous groups of Maya origin' (Guatemalan Constitution 1985, articles 66–70, translated by Sieder [2002, 193]). Customary law is only implicitly recognized in article 66 of that document, in which the State commits itself to 'recognize, respect and promote the ways of life and the social organization of

the different ethnic groups that comprise the population of Guatemala' (Guatemalan Constitution 1985, article 66). It has, however, successfully been argued by indigenous lawyers that indigenous law is part of 'the way of life and social organization', and is thus indeed implicitly recognized in the Constitution. In 1999, there was an attempt to reform the Constitution in order to ensure a more explicit recognition of indigenous law. The voting down of the referendum that would have enacted this change was a severe setback for the Maya Movement (Warren 1999).

The new Municipal Code (issued in 2002) recognized the previously mentioned Indigenous Mayoralty as a potential actor in the municipal administration (Municipal Code 2002, article 55) and accepted both the characterization of local representatives as 'communal' (rather than 'auxiliary') and the customs of the communal mayoralties (Municipal Code 2002, article 56; Ochoa García 2002). The Penal Adjudication Code was also reformed in 2000. It established five Community Courts that were meant to make the judicial apparatus more accessible for the indigenous population, not only in terms of judicial presence in indigenous regions, but also in terms of cultural accessibility (i.e., allowing indigenous persons to practice 'the uses and customs of the locality'). Santa María was one of the five municipalities where a Community Court was introduced.

The legal frameworks discussed above reflect the political will to acknowledge alternative law systems to a certain extent, but can also be understood as a process of governmentality (Foucault 1991) through which the indigenous populations become governable subjects. Hale (2004) has developed the idea of the *indio permitido* ('acceptable Indian') to indicate the limits of the transformative aspirations of indigenous movements in Guatemala. Being indigenous is acceptable, but only to the extent to which it does not endanger the power of the State (Hale 2004; McNeish 2008). As I will demonstrate in the following section, however, local agents are not totally domesticated, but, as McNeish also shows in his study on Bolivia and Guatemala, these agents negotiate 'the limits of the permissible' (McNeish 2008, 34) and in doing so redefine society and meanings of 'indigenous' and 'that what is ours'.

International legal frameworks

On the international level, as part of the process of legal globalization, international agreements on universal human (individual) rights and indigenous ethnic (group) rights structure negotiations about community service. Since the Peace Accords, social actors in Guatemala have begun to actively use international conventions and agreements to claim their rights as (indigenous) citizens. The most important reference points in this struggle are the ILO 169 Convention and the UN Declaration on Indigenous Rights. In those international documents, the rights to which indigenous populations are entitled are dictated to individual states, thus securing the rights to indigenous community organization.

In the two declarations, the right of indigenous populations to their own authorities is clearly defined. The ILO Convention 169 establishes that the customary law of indigenous peoples should always be considered when applying national laws and regulations to indigenous peoples. The Convention holds that it is the responsibility of governments to ensure that indigenous peoples and authorities have at their disposal the means for the proper fulfillment of their assigned functions. The ILO notion of the right to customary law refers to both social regulations within communities and the sanctioning of offenses committed by the members of communities (ILO Convention 169, article 2b). The UN Declaration, on the other hand, refers to a right to self-government in matters relating to a

community's internal and local affairs. Both agreements establish that customary law can only be applied in cases where it does not violate national legislation or international human rights declarations (Pitarch, Speed, and Solano 2006; Speed 2002).

There is a fundamental tension between indigenous group rights and individual, universal rights (see Ekern 2006). In human rights discourses, individual rights will always prevail over community interests (Messer 1993), whereas collective rights are central to indigenous demands. Whereas local customary law and community organization exists and depends on a notion of community, in human rights discourse the individual is prioritized over the community. The tension between what is perceived as indigenous and human rights becomes visible in Santa María as well, where people often considered human rights to be incompatible with indigenous rights and customary practices. In the next two sections, we will see how such meanings of rights and legal frameworks are rooted in the way individuals identify as indigenous and give meaning to indigeneity, and then translated into local legal discourses and practices.

Contested meanings of socio-legal categories

Legal frameworks accommodate indigenous populations through restrictive formulations of what constitutes 'indigenous governance', thus setting limits for the *indio permitido* (Hale 2004). However, as I stated in the introduction, we should not consider rights and legal frameworks as sites of control only, but also as sites of contested meanings. Local and sometimes even personal meanings of indigeneity (Holland and Lave 2001) inform counter-hegemonic actions and are translated into rights struggles within a dialectic process. Such struggles often reflect tensions between different religious identities and urban–rural divisions (Wilson 1997). For this reason, it is important here to examine the most important meanings of indigeneity that inform different local legal practices before I go on to analyze how these different meanings are translated into legal practices in the next section. Meanings of indigeneity are shaped by religious changes, producing tensions between Protestants and *costumbristas*, (people who practice Maya spirituality); professionalization of the judicial domain (causing tensions between community judges and the board of elders); and, changes in the relations between rural communities and the main village (played out most explicitly among elders, costumbristas and other rural indigenous leaders).

Tensions between costumbristas and Protestants are religious in nature. Since the 1960s, the number of Protestants has increased considerably in Santa María (and in Guatemala in general, as well as in the rest of Latin America) (Garrard-Burnett 1998; Grossmann 2002; Falla 2001; Stoll 1990). Protestant Guatemalans naturally distance themselves from the religious elements of the cargo system and often from community services in general. This frequently results in abandoning the community as the primary level of identification. Protestants evaluate the community services and costumbristas as 'uncivilized' and 'backwards', while considering themselves 'civilized' and 'progressive'. They still do consider themselves as indigenous. Being 'progressive', in their eyes, means discarding community-bound identifications and their associated customs. Costumbristas for their part, consider Protestants as 'rejecting what is ours'. Whereas the identification as costumbrista results in a positive evaluation of the cargo system, identification as Protestant is generally accompanied by a negative stand towards customary law and community services. Many Protestants identify as 'Guatemalan' rather than 'indigenous' and as a result regard individual rights, as laid down in national (Guatemalan) legislation, as being of paramount importance.

One of those evangelicals in Santa María is Pedro Lux. As teacher at the urban primary school, organizer of numerous sports events and evangelical pastor, he is an important member of the community. Pedro Lux was first exposed to evangelical Christianity in Baja Verapaz, where he lived and worked until 1986. His attitude towards Maya culture is ambivalent. During our interview Pedro Lux underlined that 'his' church is not 'against culture'. He does not want to 'get rid of culture'. In contrast, he explained that he regrets the decline of culture – the fact that girls 'do not use their indigenous dress' for example – and stressed the importance of using the K'iche language, even during evangelical religious ceremonies. Pedro Lux does identify as indigenous, ascribing a meaning to this term that is entirely different than that accorded to it by costumbristas. He is very aware of discrimination, having experienced it in Baja Verapaz, where his ladino classmates always complained about 'indios' and did not want to share their homework with him. When he studied in Quetzaltenango, teachers looked the other way while ladino boys beat up indigenous children. Pedro Lux seeks change and development 'for the people' on the basis of education and has participated in activities that aim at achieving this goal: he took part in the 'Proimprovement Committee' and organized football clubs in the village. He despises every form of 'traditional' expression related to the costumbristas, who, in his view, exploit the indigenous population. Because of his religion, he can of course not support participation in the cofradías. In addition, he argues, the cofradía is a colonialist institution that was introduced by the Spaniards and that hides the real course of history from the habitants of the village. He also contends that other services only serve to 'take advantage of the people' (see also Rasch 2008).

The second social cleavage that shapes legal discourses is that inhabitants of the rural areas often perceive costumbristas in the main village who are in favor of the cargo system as conceited and arrogant. Costumbristas of larger villages and communities have often thought of the inhabitants of smaller rural communities as 'uncivilized', 'drunk' and 'lazy'. This tension between urban and rural areas is played out at different levels. First, there is a tension between the municipal council and the costumbristas (including the board of elders) that belong to the main village. Although the town hall is located in the Centro Población, most council members are from the rural communities. The costumbristas in the main village, on the other hand, consider the Centro Población as representative of the whole municipality. Due to the centrality of the town hall, they consider it as theirs. Second, auxiliary mayors who represent the rural communities, as well as the majority of the municipal council members, strongly identify with their communities. This identification often translates into a willingness to serve the community, but not into an interest in serving at the municipality level as alguacil/mayor. This has contributed to a negative attitude of rural communities towards the cargo system.

The earlier introduced Don Pablo from the urban center of the municipality is one of the persons who has been accused of being very focused on the center of Santa María, of thinking that 'everything is about the main village'. He is one of the richest men in the village. His wealth is evident in his enormous houses, one of which is covered completely with green tiles. Nowadays the only time he leaves his shop is to attend to community affairs, but this has not always been the case. His grandparents began their business in Joyabaj municipio, and sometimes he went with them. The rest of the time he spent trading and selling with his father: Sundays in Momostenango, and Wednesdays in Santa Lucia La Reforma. He says that they sold chiles, coffee and dried fishes. He was 12 when he started trading and only 15 when he began his own business in Sacapulas. Later he traveled to Quetzaltenango and the capital to buy his merchandise, and always went to

Sacapulas on Sundays, to the different feasts in Candelaria. In every conversation we had, the subject of ancestors came up. Don Pablo considers ancestors to be incredibly important actors in present-day life. Everything he does and finds himself in the middle of is related to the people who came before him. He considers his forefathers as having 'wise judgment' and he has 'a great deal of respect' for them. Don Pablo fulfilled his traditional services to the community and is himself a Maya priest. He prefers to speak K'iche, and considers this language a valuable legacy of the ancestors. He fulfilled many traditional services himself, as did his father, most of his brothers and his sons. However, his focus on the center combined with a focus on uses and customs as well as community services on all levels has brought him into conflict with rural representatives who do not want to serve services such as alguacil and mayor, or in the municipal cofradía.

The third social cleavage, and one that becomes evident from examining minutes of official meetings and individual interviews, is between judicial professionals and costumbristas, both of whom are actors who play important roles in the field of law. Previously, the cargo system dominated the judicial domain of the municipality in terms of presence and power. The emergence of new actors in the domain of law and public administration has dramatically changed the position of the costumbristas. The municipal mayor, as part of the cargo system, used to 'administer justice' (Yrigoyen 1999). Between 1986 and 2002 people from Santa María had to go to other municipalities, such as Totonicapán or Momostenango, to have their disputes settled. The Community Court took over this function when it was instituted in 2002. The community judges identify as Maya and, while they consider the authorities of the municipality to be important, they view themselves and their way of practicing indigenous law not only as 'more indigenous' than the customs that the costumbristas practice, but also as more valid because of its justification in the Penal Code. Whereas costumbristas define the cargo system as a crucial part of 'being indigenous', the community judges do not consider 'being Maya' the same as adhering to the customs of the municipality. As a result, they could agree with the abolition of the Mayores and Alguaciles, justified by a discourse of 'being Maya'. Costumbristas consider the Community Court a threat to their position and tend to think of it as 'not really indigenous'. According to many costumbristas, because the community judges did not climb the hierarchical ladder of the cargo system, they do not merit their powerful positions.

Religious transformations, professionalization of the judicial field and identifications along urban and rural, as well as religious divisions have created different groups within the municipality. These groups, on the basis of their partially overlapping identifications, contest both the position of the cargo system as the hegemonic social organization in the municipality and the globalization of legal frameworks. These identifications produce new, hybrid, local legal discourses and practices 'on the ground'.

The production of legal discourses and practices 'on the ground'

Identifications as indigenous, Maya, costumbrista or Protestant, as well as national and international legal frameworks, all inform the construction of customary law, individual rights and indigenous rights discourses. These three local rights discourses reflect different meanings of the legal frameworks people have access to, while at the same time revealing how local actors combine different legal repertoires to construct their own rights discourse and practice.

The customary law discourse

The customary law discourse is based on uses and customs perceived as authentically indigenous (despite the fact that many of them are the product of the encounter between colonialism and indigenous forms of administration [Merry 1988, 2006]). The customary law discourse is used to justify the existence of the cargo system and is mainly represented by costumbristas and Catholics.

People who adhere to the cargo system tend to see it, along with related uses and customs, as the only hegemonic culture and identity of the municipality. According to them, the cargo system belongs to the 'real culture' of the municipality (interview Don Lucas, 2004). The idea of 'respect for ancestors' as a guiding principle is important in the construction of the idea of community service, as is the notion of 'service'. Costumbristas consider the offices to be services to the community, to constitute a show of respect to ancestors, and to be the only valid normative system that can direct the administration of the municipality. To be alguacil or mayor 'is more than just a cargo, it is a very important cargo' (interview with Mike, 2004).

Costumbristas thus evaluate customary law as the hegemonic and the most important legal framework of the municipality. 'Service' and respect towards ancestors as central values of this system was also echoed in the arguments brought forward in the debate on the Alguaciles and Mayores in May 2003. Talking with costumbristas, I would hear comments such as: 'I don't agree with their being taken away; it is a service that has been around for a long time; it is a service that that has been passed down by my forefathers' (interview Antonio, 2003). Marcos and Rolando underlined the legacy of the ancestors as well: 'We don't intend to discontinue our custom' (interviews 2003 and 2004).

The valuing of community and customs is also evident in the minutes of communities reviewed by the General Assembly that eventually abolished the cargo. One of the communities for example argued that the service could not be abolished: 'It is a custom and part of our ancestors' culture that we cannot take away' (Acta 10-2003). The inhabitants of another community declared: 'We are not in agreement with the removal of our customs because it is part of our traditional rights' (Acta 41-2003). The minutes show a deep concern about both the ancestors and customs of Santa María.

The 'individual rights' discourse

Advocacy of individual rights has been gaining prominence and has become an important element in the discussion on community services in the municipality. Many people use individual rights (whether based on human rights documents or the Constitution) as a way of justifying the rejection of specific community services or the cargo system as a whole.

Opponents of the cargo system have since 1994 often referred to 'human rights' as a way of resisting the system of community services. That was the year a community brought charges to the PDH (*Procuradería de los Derechos Humanos*, Ombudsman for Human Rights) because it claimed it had been severely pressured to fulfill the service of Alguacil. Although it was concluded by the PDH that the compulsory character of the service was indeed a violation of the Constitution, the power of the elders proved to be stronger; community service was continued, and justified as a means of enabling indigenous autonomy. However, the idea that people can only be assigned to administrative services

that are set forth in national legislation became commonly accepted in the municipality afterward. Don Luis, for example, assured me that he would never accept a position in the board of elders, because 'there is no law that justifies the existence of the elders' (interview with Luis, 2004). This position implies seeing national legislation as more 'true' and 'valuable' than customary community service.

This focus on individual rights also became visible in the debate on Mayores and Alguaciles. The community system in general was rejected because it would limit the free choice of individuals. Many people I interviewed argued that each individual has the right to express himself or herself and to choose whether or not to fulfill a cargo. This was evident in the minutes reviewed during the General Assembly meeting that ultimately led to the abolishing of the cargo. In these minutes, the communities make numerous references to individual human rights as opposed to the cargo system. In the minutes of one community, for example, there appears the following phrase: 'In accordance with the freedom to express one's thoughts enshrined in the Articles 18 and 19 of the Universal Declaration of Human Rights, we have the right to demand and express our opinions' (Acta 10-003, community P). The communities specifically referred to the right to choice, the right to express one's opinion, and even of the right to act against the obligatory character of the cargo system.

Next to references to the declaration on human rights, communities arguing for abolition of the cargo system most frequently used the Municipal Code and the Constitution to construct an individual rights discourse. Referring to the Constitution, communities claimed the right to petition (Guatemalan Constitution, Art. 28) the right to free movement (Guatemalan Constitution, Art. 26) and the right to freedom of speech and conscience (Guatemalan Constitution, Art. 35). Other communities base their positions on the Municipal Code: 'These services are nowhere to be found in the Municipal Code. According the Municipal Code, the services that are to be provided are as follows: auxiliary mayor, alguacil' (Acta 35-2003, community C). In sum, it was held that there was no need to appoint persons to offices such as the Alguaciles and Mayores of the Corridor because these were not specified in the Municipal Code.

The 'indigenous rights' discourse

Whereas the individual rights discourse is constructed mainly by local actors using legal repertoires, the 'indigenous rights' discourse is constructed by actors that are considered 'outsiders' of the municipality, and who base their stance on the ILO 169 Convention: the Community Court, installed in 2002, and several national-level Maya organizations. Originally, the Community Court was installed to increase accessibility to justice on the part of the indigenous population. Part of the Community Courts' existence is justified by ILO 169, since this convention lays down indigenous peoples' rights to practice customary law. In the case of the drunk man, the community judges argued that their interpretation of customary law, as set forth in the AIDPI and ILO 169, is more 'indigenous' than the traditions and customs that constitute the cargo system. The three community judges insisted in interviews that they had acted according to indigenous law. To make their argument stronger, they accused one of the Alguaciles of illegal detention. The community judges concluded that the Alguaciles and Mayores, as well as the municipal police, had violated the Constitution by detaining and fining the drunk. In their ruling, they referred to the fact that the Constitution establishes that only state tribunals can 'dispense justice' (Guatemalan Constitution, Art. 203).

The Defensoría Maya, on the other hand, accused the Community Court of not being 'truly indigenous'. The Defensoría Maya is an organization that defends the recognition of indigenous authorities, as well as indigenous forms of administration and 'doing justice'. The organization became involved in the conflict as observers of several meetings. It subsequently supported the municipal council, and opposed the Community Court. The Defensoría Maya found that the Community Court had violated the ILO 169 Convention because it was not (in their view) a 'real' indigenous authority (interview with representative Defensoría Maya, 2005). According to several persons involved, they had urged the judges to 'protect the customs of the people' and accused the court of 'letting the customs disappear'. In taking this position, the Defensoría Maya did not acknowledge the fact that, in the end, the communities themselves had voted against the 'continuation of custom'.

The actors that used the ILO 169 Convention and the AIDPI to make their point were the Defensoría Maya and the Community Court, reflecting an identification with a broad, indigenous community. Thus, human rights organizations in this case became involved in the debate in order to protect the rights of the community judges, whereas the Defensoría Maya became involved to protect the rights of the costumbristas in the name of ILO 169. At the local level, however, the Community Court itself was referring to ILO 169, and the costumbristas to their customary law.

Conclusions

In this article, I have explored how indigenous people engage in processes of reconstructing legal frameworks 'on the ground' (Wilson 1997; Sieder 2011). Through a case study analysis of the dissolution of a community service called 'The Mayores and Alguaciles of the Corridor' I have shown how an appreciation of local dynamics and meanings of indigeneity is crucial for understanding how global legal pluralism, including the recognition of indigenous rights, can have an outcome as paradoxical as the dissolution of practices that are considered as 'indigenous' within these frameworks. These considerations have led to insights into how social categories that are constituted by legal frameworks are negotiated on the basis of local meanings of indigeneity that, on the one hand, are informed and mediated by tensions between different local groups and, on the other, produce and reproduce tensions between social categories at the local level.

Legal frameworks accommodate indigenous populations through restrictive formulations that describe what indigenous rights and identity is. Several legal frameworks, such as the Accord on Identity, the ILO 169 Convention on indigenous rights, the UN Declaration on Human Rights and the Guatemalan Constitution, have constituted social realities. Customary law used to be the only level of identification and as such allowed the indigenous population to be viewed as a single homogenous entity. This has now changed, as new legal systems and frameworks have emerged in Guatemalan municipalities. The arrival of the cargo system and political parties shaped processes of new social and political categorizations. More recently, indigenous rights frameworks have constituted new indigenous categories at local, regional, national and international levels. At the same time, in Santa María, the emergence of a human rights discourse has shaped identifications, as individual 'Guatemalans' claim individual human and political rights rather than collective indigenous rights.

Law is not only a site of control that constitutes controllable social subjects. Rights and legal frameworks are also sites of contested meanings. Local and even personal meanings of indigeneity (Holland and Lave 2001; Rasch 2008) inform counter-

hegemonic actions that, in the arena of legal pluralism and multiculturalism, are translated into rights struggles. Such struggles often reflect tensions among different religious identities, as well as urban–rural divisions (Wilson 1997). The struggle for rights both reflects and produces tensions among ethnic, national, social, economic and religious identities. Individuals who identify themselves with Maya spirituality and Catholicism in general adhere more to local customs and the system of community services than the Protestant part of the population. Costumbristas have lost ground in the domains of power to a dialectic process of hegemonic projections and counter-hegemonic actions, mediated by personal identifications and social cleavages, which are translated into new, hybrid forms of law and perceptions of rights. The cargo system is part of Santa María's customary law, and has been re-created in relation to wider power structures of post-colonialism, state law and legal globalization. Contemporary municipal administration has been shaped by colonial structures, national legislation and human rights agreements with an emphasis on individual rights, and by indigenous (collective) rights discourses.

Globalization of legal orders has created space to claim rights to 'authentic' forms of governance, but also has provided frameworks that constitute a basis for rejecting ancient traditions and customs from a human rights perspective. Law is constantly reshaped in a dialectic between hegemonic projections and counter-hegemonic actions within a multiplicity of power relations (Sieder 2011; de Sousa Santos and Rodríguez-Garavito 2005; Cowan, Dembour, and Wilson 2000). Religious transformations, professionalization of the judicial field and identifications along urban and rural lines have created different groups within the municipality that, on the basis of partially overlapping identifications, contest the position of the cargo system as the hegemonic social organization in the municipality, on the one hand, and the globalization of legal frameworks on the other. These identifications produce new, hybrid, local legal discourses and practices 'on the ground'. The construction of identities and legal discourses is, of course, not a simple single process, but rather two interacting processes.

Acknowledgements

I would like to thank the people of Santa María who collaborated with me during my fieldwork and always found time to answer my naive and at times impossible questions. I also would like to thank the external reviewers for their valuable and constructive comments.

Disclosure statement

No potential conflict of interest was reported by the author.

References

Adams, Richard N. 1956. "Cultural Components of Central America." *American Anthropologist* 58 (5): 881–907.

AIDPI (Accord on the Identity and Rights of the Indigenous Peoples). 1995. *Acuerdos de Paz* [Peace Accords]. http://sepaz.gob.gt/observatorioacuerdos/index.php/ejes-tematicos/acuerdo-de-identidad-y-derechos-de-los-pueblos-indigenas/86-acuerdos-de-paz

Albedrio. 2009. *Alcaldías indígenas recuperan espacios en comunidades* [Indigenous Mayoralties Reclaim their Space in Communities]. Accessed December 27 2015. http://www.albedrio.org/htm/articulos/c/cbonilla-001.htm

Barrios, Lina. 2001. *Tras las huellas del poder local: La Alcaldía Indígena en Guatemala, del siglo XVI als siglo XX* [In the Footsteps of Local Power: The Indigenous Mayoralty in Guatemala, from the Sixteenth Century to the Twentieth Century]. Guatemala: URL.

Berman, P.S. 2009. "The New Legal Pluralism." *Annual Review of Law and Social Science* 5: 25–242.

Brysk, Alison. 2000. *From Tribal Village to Global Village: Indian Rights and International Relations in Latin America*. Stanford, CA: Stanford University Press.

Chance, J.K. 1996. "Mesoamerica's Ethnographic Past." *Ethnohistory* 43 (3): 379–403.

Cowan, J.K., M.B. Dembour, and Richard A. Wilson, eds. 2000. *Culture and Rights. Anthropological Perspectives*. Cambridge: Cambridge University Press.

de Sousa Santos, B., and C.A. Rodríguez-Garavito. 2005. "Law, Politics, and the Subaltern in Counter-Hegemonic Globalization." In *Law and Globalization from Below. Towards a Cosmopolitan Legality*, edited by B. de Sousa Santos and C.A. Rodríguez-Garavito, 1–26. Cambridge: Cambridge University Press.

DeWalt, B.R. 1975. "Changes in the Cargo Systems of Mesoamerica." *Anthropological Quarterly* 48 (2): 87–105.

Ekern, Sterner. 2006. "Making Government: Community and Leadership in Mayan Guatemala." PhD thesis, Oslo University, Norway.

Falla, Ricardo. 2001. *Quiché Rebelde: Religious Conversion, Politics and Ethnic Identity in Guatemala*. Austin: University of Texas Press.

Foucault, Michel. 1991. "Governmentality." In *The Foucault Effect. Studies in Governmentality*, edited by G. Burchell, C. Gordon, and P. Miller, 87–105. Chicago, IL: University of Chicago Press.

Garrard-Burnett, V. 1998. *Protestantism in Guatemala: Living in the New Jerusalem.* Austin: University of Texas Press.

Goodale, Mark, and Sally E. Merry. 2007. *The Practice of Human Rights. Tracking Law Between the Global and the Local*. Cambridge: Cambridge University Press.

Grossmann, R. 2002. "Interpreting the Development of the Evangelical Church in Guatemala." PhD diss, Faculty of the Southeastern Baptist Theological Seminary.

Guatemalan Constitution. 1985. *Constitución Política de la República de Guatemala, 1985 con reformas de 1993* [Guatemalan Constitution 1985 with 1993 reforms] (1993). http://www.oas.org/dil/esp/Constitucion_Guatemala.pdf

Hale, Charles. 2004. "Rethinking Indigenous Politics in the Era of the *Indio Permitido*." *NACLA Report on the Americas.* September–October: 16–37.

Holland, D., and J. Lave. 2001. *History in Person: Enduring Struggles, Contentious Practice*, *Intimate Identities*. Santa Fe, NM: School of American Research Press.

Likosky, M., ed. 2002. *Transnational Legal Processes: Globalisation and Power Disparities*. Cambridge: Cambridge University Press.

McNeish, J.A. 2008. "Beyond the Permitted Indian? Bolivia and Guatemala in an Era of Neoliberal Developmentalism 1." *Latin American and Caribbean Ethnic Studies* 3 (1): 33–59.

Merry, Sally E. 1988. "Legal Pluralism." *Law & Society Review* 22 (5): 869–896.

Merry, Sally E. 1997. "Global Human Rights and Local Social Movements in a Legally Plural World." *Canadian Journal of Law and Society* 12 (2): 247–271.

Merry, Sally E. 2006. "Transnational Human Rights and Local Activism." *American Anthropologist* 108 (1): 38–51.

Messer, E. 1993. "Anthropology and Human Rights." *Annual Review of Anthropology*, 22: 221–249.

Moore, S.F. 1973. "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study." *Law and Society Review* 7 (1): 719–749.

Municipal Code. 2002. *Reformas al Código Municipal Decreto 12-2002 del Congreso de la República. Decreto número 22–20* [Reforms to the Municipal Code Decree 12-2002 of the Congress of the Republic. Decree number 22–20].

Ochoa García, Carlos. 2002. *Derecho Consuetudinario y Pluralismo Jurídico* [Customary Law and Legal Pluralism]. Guatemala: Cholsamaj.

Pitarch, Pedro, Shannon Speed, and X.L. Solano, eds. 2006. *Human Rights in the Maya Region. Global Politics, Cultural Contentions, and Moral Engagements*. Durham, NC: Duke University Press.

Rasch, Elisabet Dueholm. 2008. "Representing Mayas. Indigenous Authorities and the Local Politics of Identity." PhD thesis, Utrecht University, The Netherlands.

Santos, C.M. 2006. *Transnational Legal Activism and Counter-Hegemonic Globalization: Brazil and the Inter-American Human Rights System*. Working Paper. Coimbra: Centro de Estudos Sociais.

Sieder, Rachel, ed. 2002. *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*. New York: Palgrave Macmillan.

Sieder, Rachel. 2011. " 'Emancipation' or 'Regulation'? Law, Globalization and Indigenous Peoples' Rights in Post-war Guatemala." *Economy and Society* 40 (2): 239–265.

Speed, Shannon. 2002. "Global Discourses on the Local Terrain. Human Rights and Indigenous Identity in Chiapas." *Cultural Dynamics* 14 (2): 205–228.

Stoll, D. 1990. *Is Latin America Turning Protestant?: The Politics of Evangelical Growth*. New York, NY: University of California Press.

Tamanaha, B.Z. 2008. "Understanding Legal Pluralism: Past to Present, Local to Global." *Sydney Law Review* 30: 374–411.

Tax, Sol. 1937. "The Municipios of the Midwestern Highlands of Guatemala." *American Anthropologist* 39: 423–444.

Warren, Kay B. 1999. *Indigenous Movements and Their Critics. Pan-Maya Activism in Guatemala*. Princeton, NJ: Princeton University Press.

Wilson, Richard A. 1997. *Human Rights, Culture and Context: Anthropological Perspectives*. London: Pluto Press.

Wilson, Richard A. 2003. "Anthropological Studies of National Reconciliation." *Anthropological Theory* 3 (3): 367–387.

Yrigoyen, Raquel F. 1999. *Pautas de coordinacion entre el derecho indigena y el derecho estatal* [Guidelines for the Coordination Between Indigenous Law and State Law]. Guatemala City: Fundacion Myrna Mack.