Title

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Journal

Angelaki, 28(1)

ISSN

0969-725X

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Publication Date

2023-01-02

DOI

10.1080/0969725x.2023.2167785

Routledge
Taylor & Francis Group

Angelaki
Journal of the Theoretical Humanities

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/cang20

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To cite this article: Massimiliano Tomba (2023) SOCIAL PROPERTY IN THE COCHABAMBA WATER WAR, BOLIVIA 2000, Angelaki, 28:1, 73-86, DOI: 10.1080/0969725X.2023.2167785

To link to this article: https://doi.org/10.1080/0969725X.2023.2167785

Published online: 21 Feb 2023.

Routledge
Taylor & Francis Group

Check for updates

ANGELAKI
journal of the theoretical humanities
volume 28 number 1 february 2023

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water and the war

In August 1995, the World Bank vice president Ismail Serageldin stated that "the wars of the [21st] century will be about water" (163; see Shiva vii). It was not a prediction. It was a declaration. A declaration of war. A war being fought for access to natural resources and the way to manage them. But the war reaches back, and in depth, to mobilize other historical strata. It began 500 years ago with colonialism, with the imposition of new property relations, with the imposition of the state and the parallel depoliticization and atomization of the social. However, under the surface of a war for access to and appropriation of land, water, and natural resources, another war was taking place – that between incompatible legal and economic systems. One war follows a well-known script: with greater or lesser violence, it will accompany the struggle for the appropriation of increasingly scarce resources. Instead, the other "war" has always opened, and can open up, new scenarios and put an end to the colonial, appropriative parable. This article investigates the tensions between these incommensurable trajectories.

The Cochabamba water war in 2000 was the first water war of the twenty-first century that aimed to restore another practice of democracy and different property relations.[1] The fact that Cochabamba's war was over water is critical. Indeed, it is not merely the subject of a dispute concerning ownership. A Cochabamba woman stated, "If God gave us water, no human being should take it away" (Farthing and Kohl 8–11). Irrigators used similar language: "Water is *Pachamama* [Mother Earth] and *Wirakhocha* [Creator God] that is neither person nor spirit but rather the land that gives us life and its blood that is the water that allows for human life" (Hines 173). In Andean culture, the land is not thought to be a natural resource at the service of indigenous people, but as their Mother Earth, "which is why they give their lives to defend her" (Blanco 172). Water and land constitute a single entity that cannot be appropriated because, to use Western categories, it is not an object that stands before a subject. Although improper, it could be said that it is another subject with whom one relates. In the indigenous Andean culture, the term used to characterize this nexus of reciprocal relations is "*ayni*," which implies a dialogue and reciprocal bond.

ISSN 0969-725X print/ISSN 1469-2899 online/23/010073-14 © 2023 Informa UK Limited, trading as Taylor & Francis Group
https://doi.org/10.1080/0969725X.2023.2167785

In the rural areas of Cochabamba, the attempt to privatize and commercialize water violates customs and traditional norms. Here, *usos y costumbres* refers to practices that repeat and characterize everyday life; practices based on an intimate knowledge of the territory and the social context; practices which are accepted as endogenous and not imposed from the outside (Perreault 839). However, to these three dimensions it must be added that *usos y costumbres* are dynamic, that is, they are reconfigured in their encounter with other unprecedented practices, situations, and legal systems. As stated by an irrigator and activist closely associated with the Cochabamba Departmental Federation of Irrigator Organizations (FEDECOR):

> *Usos y costumbres* are closely related to an historical process, they have much to do with Andean culture, and also reflect processes of struggle between [*campesino*] communities and hacienda owners, for example […] In this sense they are not static, they are dynamic. (Perreault 840)

A dynamic conception of customs and traditions has to be understood in relation to concrete historical struggles.

During the 2000 water war mobilizations in Bolivia, a factory workers' manifesto read: "We don't want private property nor state property, but self-management and social property" (Dwinell and Olivera i47). The water war fought in Bolivia in 2000 gave us the term social property (*propiedad social*). Social property is not a new concept of ownership, but a practice that aims to restore another practice of democracy and different property relations in relation to water, to infrastructure for its distribution, and more. It is from the practices that emerged during the water war that I intend to start in order to extract legal and political concepts and categories and to rethink not only the essential question of water, but, more generally, an alternative political and legal framework. My intention is neither to make the water war an episode in a series of anti-globalization struggles, nor to judge the water war on the basis of pre-established models of efficiency and socio-ecological or organizational limitations (see, for example, Marston). It is not a matter of working with theoretical models to measure the distance or proximity between social practices that were in place in the water war and forms of neoliberal governmentality.

The perspective needs to be reversed. It is about extracting theory from practice – extracting from concrete social practices new concepts that require thinking about. It is about being schooled by Bolivian "water warriors (*guerreros del agua*)" and learning from them how the notion of social property has operated, operates, and can operate in social practices that are incompatible with the legal edifice based on the binary of public and private. As Oscar Olivera, activist and spokesperson for the water war, stated, the events of 2000 had to do with more than just water. The water war was an experiment "to unprivatize the very fabric of society" (Olivera and Lewis 47). What does it mean to go beyond the horizon of water? It means that the practice of social property does not have water as its own object because it dismantles the relationship between individual will and the object, which is fundamental in modern political theory. Social property places water in relation to a multiplicity of relationships of use, rights, and obligations between users. Priority is given to this network of obligations. Not the object – be it the water, the land, or the Earth. The water war has reopened a field of possibilities in which legal systems, property relations, and forms of life that are incompatible with the designs of the modern Western state are taking shape.

This article deals with these possibilities. In the first part I reconstruct the socio-historical and legal context in which the water war arose. In the second part I show the limits of the state's legal perspective on water defense. In part three I present the possibilities that water warriors have opened up in terms of reconfiguring the social, an alternative legal system and property relations. It is not a matter of choosing between the Western and indigenous legal systems. This is just another binary. The task of theory is to work in their

tension and show the field of possibilities that opens up there.

the social–historical context

If the long history of the water war overlaps with 500 years of colonialism, its short prehistory can be identified in the World Bank intervention and presidential Supreme Decree 21060 of 1985 that, in order to stop inflation, paved the road to privatization of state-owned companies. In reaction, in 1986 the miners' union organized a March for Life that involved thousands of miners until the military intervened to halt the march. What should be emphasized is that the intervention of the state not only served to suppress any resistance, but also paved the legal ground on which privatizations could be carried out. The latter aspect was explicitly carried out by Law 2029 of 1999, which gave the monopoly of water resources to the international consortium *Aguas del Tunari*. Law 2029 shows a dynamic characterized by three dimensions: the state intervenes by imposing a monopoly on resources; in this way, it attacks social and legal systems of self-management of resources at the community level; the social is thus leveled, paving the way for massive privatizations, free to impose themselves in a civil society of private individuals. It is important to keep this intertwining in mind because it shows that state intervention, its monopoly, and privatizations are not terms in opposition to each other. This script has been re-enacted countless times in the modern history of colonization within and outside Europe.

Law 2029 shows this intertwining of nationalization and privatization. Article 29 states:

> No natural or legal person, public or private, civil association with or without profit aims, anonymous society, co-operative, municipal or of any other nature, may provide services of water supply and sanitation in concession zones, without a concession issued by the Basic Services Superintendency.

In this way the state imposes its monopoly on water. The irrigators, who use their infrastructures for water distribution, are granted temporary licenses. But in fact, in a short time, they risk seeing their alternative systems of water supply, which are regulated according to *usos y costumbres*, become illegal. The attack, as pointed out by the *Coordinadora de Defensa del Agua y de la Vida* (Coalition in Defense of Water and Life),[2] is on each autonomous use of water, on communal or associative forms of organization, peasants and indigenous people that, through mutual aid systems, have their own water infrastructures. Under the state monopoly, not only are infrastructures snatched from the hands of communities, but the practices of self-management and water regulation become illegal. At the same time, Article 72 of Law 2029 stated that users "are obliged" to connect to the company network, undermining *de jure* and de facto any residue of legal autonomy. A juridical model that synchronizes alternative and, from the state's point of view, anachronistic legal systems was imposed. On this new legal basis, Article 19 of Law 2029 could be implemented: "The State will promote the participation of the private sector in the water supply and sanitary sewerage services." This led to the concession contract with the *Aguas del Tunari* consortium which established that the concession-holder had the following rights and duties with an "*exclusive nature*: transport and storage, distribution and marketing of drinking water from treatment plants or water wells to the users in the concession area" (Título II). Annex 5 of the contract made explicit the handing over of water resources from the state to the private company according to the same monopolistic logic present in Law 2029. Annex 5 also states that "the use of alternative sources will not be allowed." As if this were not enough, Annex 5, Numeral 1.3 established that if users own alternative water sources, for instance a well, the concession-holder had the right to install a metering system and the installation costs would be at the expense of the user (cited in Gutiérrez et al. 142). The logic of privatization went so far as to prohibit "the peasants from constructing collection tanks to gather water from the rain" (Olivera and

Lewis 9). Since rain, as such, could not be privatized, the law simply prohibited collecting it. If in Cochabamba the collection and distribution of water developed in community forms, through committees with a two-year term, and in harmony with customs and traditions, then Law 2029 declared these autonomous systems *illegal*. This is how legal synchronization of the state works.[3]

The price of water increased as much as 200 percent and *Aguas del Tunari* began to take control of community-owned water distribution infrastructures. But this privatization process would not have been possible without Law 2029 and without the state power to make decisions about the country's water resources. Law 2029 and its application show that the opposition is not between state and private. It is a clash between a legal system of individual private rights and a system of collective and community rights. This clash takes place on legal and extra-legal grounds. The water warriors defended systems of regulation and self-management of water, which from the point of view of the state are illegal, but which are in fact part of a different legal order, not compatible with that of the state. To demolish this alternative legal order, the state used both the violence of the law as well as military and police violence of a state of emergency.

After a number of protests and struggles, on 11 April 2000, the Bolivian government was forced to repeal Law 2029 and issue a new law, number 2066, which reformed thirty-six sections of the previous act. Law 2066, in addition to keeping open the possibility of creating a national water council, recognized traditional *usos y costumbres* and the presence within the territory of local units of popular participation (Assies 30). Law 2066 can be defined as a compromise between community practices of water use, supply, and management based on "natural authorities" and "socially established norms" (Art. 8, z) and the "original dominion of the state" (Art. 28). Although the *Coordinadora* won the battle against water privatization by forcing the *Aguas del Tunari* company to leave the country, at that point a new level of discussion and conflict regarding the future of the municipal water supply company (SEMAPA) was opened. It must immediately be said that the *Coordinadora*'s attempt to restructure SEMAPA on the basis of customs and traditions – on the basis of the practice of social property and social control – failed (Spronk 8–28; Razavi 1–19). The *Coordinadora* tried to transform SEMAPA into a sort of social enterprise, a water management system organized on the basis of local authorities revitalized in social practices (Linsalata 180). Raquel Gutiérrez Aguilar rightly observed that "current law […] allow[s] no room for social property and only recognizes classical forms of ownership: public or private, each with its variants (state, municipal, cooperative, corporate, individual)" ("The Coordinadora" 60).

Little could be done within the existing legal framework. There were at least two main obstacles on the path to real reform and social reappropriation of SEMAPA. On the one hand, the practice of social property was incompatible with both the regime of private property and state property; on the other hand, the forms of local authority and self-government were incompatible with the notion of unitary state sovereignty. Different, incompatible legal systems were set up against each other. The water war, its history and its aftermath, show that these systems cannot coexist side by side for long. SEMAPA returned to public hands under the control of municipal government.[4]

While the water war halted the march of privatization, bringing back state public property was no longer an option. As noted by Oscar Olivera, "nationalization, in the end, prepared the condition for the denationalization of our collective wealth. The opposite of the cataclysmic privatizations and de-nationalization of transnational capitalism is neither state capitalism nor state property" (Olivera and Lewis 156). This *neither–nor* logic is critical. The Cochabamba water war shows the alternative to the state property–privatization binary opposition. For this reason, Cochabamba, beyond the duration of its success, shows the possibility of disrupting that apparent dichotomy between

state public and private that continues to haunt modern history. This alternative, which has been labeled as social property, is the *practice* of undoing the entanglement that characterizes the concurrent birth of the state and private property.

ownership and social property

The modern concept of ownership was defined in the *Code Napoléon* (1804), which has served as a model for countless civil codes in many countries, not only in Europe. Its definition of private property has become classic: "Property is the right of enjoying and disposing of things in the most absolute manner" (Art. 544). The French Revolution and the *Code Civil* sanctioned a new demarcation between public power and private property: "Property belongs to the citizen, empire to the sovereign" (Blaufarb 208). This notion of property, based on an individual's free will to make use and abuse of the object, is at the root of many ecological disasters.

Today, not only has private property become an unquestionable dogma, but its constitutive categories have been naturalized to the point that, even when trying to think of an alternative, it operates according to modern property grammar. At most, ownership changes, so that the private individual is replaced by the nation state, or the territories stolen from indigenous peoples are returned in the form of property titles. The language of the Indigenous and Tribal Peoples Convention Article 14 of ILO Convention No. 169 ("Indigenous and Tribal Peoples Convention") shows the problem well. The first paragraph of Article 14 speaks of recognition of the "rights of ownership and possession of the peoples concerned over the lands." But the second paragraph clarifies the meaning of that recognition and the dependence of the property on the government that shall "guarantee effective protection of their rights of ownership and possession." Finally, the third paragraph clarifies that the entire dynamics of property relationships takes place in the state legal system: "Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned." At the basis of this and other articles remains the dominant Western legal grammar according to which it is not the single local authorities but the authority of the government that guarantees property and settles any conflicts. In 2004, the Bolivian Constitutional Court refused to recognize "indigenous claim to communal property on the grounds that it violated the right of private property, ruling that 'customary law … is not applicable to resolve a possible conflict of the right of property over land'" (Hammond 678).[5] From the state perspective the verdict is right. The two legal grammars, that of customary law and that of right of property, are mutually incompatible. The "solution" of constitutionalizing customary rights, water rights, and land rights only expands one pole of the tension: that of state sovereignty. This is a path that, even if pushed toward global constitutionalism, would only expand and intensify the categories of state sovereignty beyond the nation state – toward a public monopoly of power in charge of a supposed "Federation of the Earth."[6]

The experiment that took place in Cochabamba teaches us that the real issue about water and earth is not their protection through their encapsulation in some pompous catalog of inalienable rights or in the preamble of a national or global constitution. Even though in 2009 the Bolivian Constitutional Assembly made an effort to constitutionalize the protection of Mother Earth; even though Art. 2.6 of the 2010 "Law of the Right of Mother Earth" proclaims that the

> exercise of the rights of Mother Earth requires the recognition, recovery, respect, protection, and dialogue of the diversity of feelings, values, knowledge, skills, practices, transcendence, transformation, science, technology and standards, of all the cultures of the world who seek to live in harmony with nature,

in 2011 the Morales government, without prior consultation with the local populations, decided to build a 190-mile road through

the Isiboro Sécure Indigenous Territory and National Park (TIPNIS) (Delgado 373–91; Calla 77–83). Fernando Vargas, a TIPNIS indigenous leader, accused Morales of not being "a defender of Mother Earth, or indigenous peoples." He added that "[t]his is the beginning of the destruction of protected areas in Bolivia and indigenous peoples' territory" (Collyns). The government's decision perhaps contradicts the spirit of the declaration of the Rights of Mother Earth, but the power of the state is not limited either by the Rights of Mother Earth or by the acknowledged local autonomies of indigenous peoples. This is why Evo Morales's victory in Bolivia in 2005 cannot be called a "victory." Rather, it is the beginning of the defeat of the experiment begun in Cochabamba. It is the re-enrollment of the experiences of local self-government, local authorities and forms of social property in the grammar of the state. The issue does not lie in identifying Morales's tactical errors, but in the incompatibility between the practices of self-management based on the political pluralism of local authorities and the grammar of the state.

The tension between unity and plurality is implicitly contained in the definition of Bolivia as a "Unitary Social State of Pluri-National Communitarian Law (*Estado Unitario Social de Derecho Plurinacional Comunitario*)." Article 2 does not hide the tension when it states that

> indigenous peoples and their ancestral control of their territories, their free determination, consisting of the right to autonomy, self-government, their culture, recognition of their institutions, and the consolidation of their territorial entities, is guaranteed within the framework of the unity of the State, in accordance with this Constitution and the law.

Plurality is recognized, but within the framework of the unity of the State and within the limits established by the constitution. Recognition means dependence on the state grammar of modern law.

Predictably, this tension extends through the various articles of the constitution. Articles 190 and 290 refer to indigenous autonomy, authorities, and jurisdictional functions, even including (Art. 290) the expression of their will through consultation, but always in accordance and harmony "with the Constitution and the law." This is the feeble voice of plurality. But in the constitution the baritone voice of the state is dominant. Article 378.I concerns the different forms of energy and strategic resources which are essential for the development of the country; the second paragraph clarifies that it is "the exclusive authority of the State to develop the chain of energy production in the phases of generation, transport, and distribution." Article 298.II leaves no doubt that the "central level of the State has exclusive authority" over natural resources, minerals, and water sources.[7] Article 349.I reiterates that "natural resources are the property and direct domain, indivisible and without limitation, of the Bolivian people, and their administration corresponds to the State on behalf of the collective interest." The Bolivian people, as a whole and unity, only exists through the state that represents the nation, which therefore has "direct domain" on natural resources. Indeed, if according to Article 356, "[t]he activities of exploration, exploitation, refining, industrialization, transport and sale of nonrenewable natural resources shall have the character of state necessity and public utility," then from the previous articles it follows that this character of necessity and public utility is decided by the state.

The TIPNIS case shows the constitutional tension between plurality and unity, between the state's sovereignty and local authorities. Although Article 30 of the 2009 Constitution of the Plurinational State of Bolivia lists a long series of rights granted to "rural native indigenous peoples," all these rights depend on the state to guarantee and protect them.[8] And in so far as they depend on the state, the state can also limit and suspend them. Therefore, what Evo Morales stated on 31 July 2011 is not in contradiction to the constitution:

> We are going to do consultations, but I want you to know that they are not binding. [The road] won't be stopped just because they [the Indigenous peoples] say no. Consultation is constitutionalized, but is not binding, and therefore, the great desire we have for 2014 is to see the Villa Tunari – San Ignacio de Moxos road paved. (Qtd in Hindery 178)

Incidentally, it should be mentioned that while the *Anteproyecto de ley de la Madre Tierra* (*Draft Law of Mother Earth*) of 2010, drafted by indigenous communities, spoke of prior and binding consultation (*derecho de consulta y consentimiento previo y vinculante*), its translation into law (*Ley* 300, 2012) transformed that right into a vague consultative process.[9]

It is not a question of blaming Evo Morales for his inconsistency with regard to the promises he made in the election campaign or his references to *Pachamama*. Morales's language mirrors the grammar of the nation state. When he refers to the *bien común*, the common good of the country, he refers not only to the will of the majority, to which the minority must adapt, but also to the Bolivian people as a whole and unity, which he represented. As also reiterated by the vice president of Bolivia, Álvaro García Linera: "besides the people's right to land, the State – the State led by the indigenous-popular and peasant movement – has the right to prioritize the higher collective interest of all the peoples. And this is how we proceeded afterwards" (Svampa et al.). Linera's language, just like Morales's, is the language of progress and the state. What merges in this and other similar examples[10] is the clash between incommensurable juridical–political trajectories. Evo Morales and García Linera acted in the name of progress and superior national interest, which also includes indigenous peoples who opposed the construction of the road. Paraphrasing Rousseau, it could be said that within the framework of the modern concept of sovereignty, the particular will of the indigenous peoples has only one possibility, which is to conform to the general will of the state. If they refuse to obey, they will be "forced to be free" (Rousseau 58) – in the name of progress and superior national interest.

At least two considerations emerge from the legal grammar of the modern state: the first concerns the incompatibility between unity and monopoly of state power on the one hand and plurality of local authorities on the other; the second concerns the varied attempts to protect water and nature within a legal shell. It could be said that there is a direct proportionality relationship between the extension of a catalog of rights of subjects to be protected and the extension of the power called upon to perform this function. The 2010 UN Resolution 64/292 on "The Human Right to Water and Sanitation" confirms this grammar. Having acknowledged the importance of equitable access to water, the Resolution reaffirms "the responsibility of States for the promotion and protection of all human rights" and "calls upon states and international organizations to provide financial resources, capacity-building and technology transfer, […] in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all." This grammar neither excludes private sector management of water supply systems nor prevents the state, as happened in Bolivia, from claiming the right to regulate the use of resources for the general good. For this reason, "some indigenous-rights activists fear that a human right to water will provide additional leverage for states intent on wresting control of water resources from local communities" (Bakker 149).

The extension of rights and legal personhood to animals and nature, often hailed as a sign of legal progress, is an expression of a hypertrophic process of subsumption of the whole realm of life into the legal realm of the state. This extension does not constitute a paradigm shift in the state mechanism, but falls within the field of possibilities of modern power understood as a movement of depoliticization and colonization of the living transformed into a multitude of subjects to be protected. A real alternative must be devised beyond the constitutionalization of nature. It has to be devised in a completely different legal framework.

Like the one that emerged in the water war in Bolivia. Social property not only challenges the private/public binary. As a practice, it shows a third field of possibilities emerging in the tension between customs, authority, and the state. It is not a matter of picking sides for romantically good indigenous rights. It is not about emphasizing the potentially progressive role of modern law against backward and oppressive customs. It is about operating, as the water warriors did, in the tension between these terms. It is a tension that, while altering the terms at play, also opens up a third field of possibilities. It is time to investigate this field.

social property and the politics of presence

On 8 December 2000, the Cochabamba Declaration was drafted. The text is short. It is the result of discussions between different parties from different nationalities. The declaration can be read not as an epilogue to the water war, but as an attempt to keep that social and legal fabric of experimentation open. The attempt to point toward a common direction.

Article 1 declares that "water belongs to the earth and all species and is sacred to life." Article 2 defines water as a "fundamental human right and a public good." Water, continues Article 2, "should not be commodified, privatized or traded for commercial purposes." Article 3 affirms that "water is best protected by local communities and citizens." These three clarifications are part of a single constellation. Water cannot be commodified, privatized, or nationalized because it cannot be owned. It "belongs to the earth and all species and is sacred to life." One document of the *Coordinadora* articulated four forms of reappropriation: "reappropriate what is ours; reappropriate our rights; reappropriate the patrimony of the country; reappropriate the ability to say and to do, decide and execute the projects and plans that suit the people and the country" (*¡El agua es nuestra, carajo!*). In the phrase "Reappropriate what is ours," the terms "ours" and "we" do not indicate a set of individuals, but relations and reciprocal obligations between users. This means that the "reappropriation" does not only concern water or a "common good," but a form of life. This is why the water war points in a direction that goes beyond water as a common good. The right as a guarantee of full access by individuals to the common good for the satisfaction of fundamental rights is not what is at stake.

In this legal configuration, the right to use water is not an individual or collective right guaranteed by the state. It is the common use, according to customs and obligations, by the users that define the juridical field of a legal system autonomous from the state. In this alternative juridical configuration, water is not the target of a subjective right to property. Rather, water, and the plurality of relations to water, has juridical priority. This is an inverse relationship to that of modern Western law. If the latter is prompted by the individual will of the subject who exercises the right to property over external things, the grammar of the right to life instead gives priority to the use and, therefore, to the *way* in which social groupings relate to a common resource, according to regulations that go beyond individual rights and are instead rooted in the *usos y costumbres* of the ancestors.

In this context, social property, far from being an absolute right of the subject, is reconfigured in the concrete relationships between users and resources. The use of common resources is part of the democratic practice of local self-government, in which communities and "citizens" decide and do, discuss and execute together.[11] In the practice of social property, property relations take place at a distance from the state and are part of democratic regulations at the local level. It could be said that dominium of ownership is dispersed to the extent that political power and authority are dispersed. It is the community, through its own institutions, that collectively discusses and decides on common and individual use, and on the most appropriate way to preserve common resources. In this way, users are

bound to each other by reciprocal obligations, which also involve resources used in common. These become a subject among subjects and not, as happens instead in the modern concept of private property, an object of individual will.[12]

The Cochabamba water warriors showed in their practices that the alternative to private property is intertwined with alternative practices of democracy and government. There ensues a network of relations regulated by forms of self-government, in which rights do not precede, but follow use, and this, in turn, is regulated by a "system of reciprocal obligations" (Linsalata 102), which refers to existing forms in indigenous communities of the Andean area. Self-government, rights, obligations, and traditions constitute a set in which none of these elements has a real priority over the others or is subordinate to others. Restoring the proper use of water was a matter of *democracy*. Social property was not defined by ownership, but as a democratic practice based on the *relations of use* between the object and a plurality of users who, in addition to having rights, have reciprocal obligations. In this framework, the semantics of property cannot be reduced to ownership; rather, it is the expression of *proper* use relations in a community of users. Quarrels and conflicts continue to take place, but they concern the qualification of what is *proper use* instead of ownership.

In a public statement on 6 February 2000, the *Coordinadora* made it clear that the question of water, its use "according to traditional practices," is no different from the question of democracy, whose authentic meaning can be summarized in "we decide and do, discuss and carry out. We risked our lives in order to complete what we proposed, that which we consider just. Democracy is sovereignty of the people and that is what we have achieved" (6 February 2000, "Texts of the Coordinadora del Agua of Cochabamba"). But here, people, sovereignty, and democracy do not coincide with the concepts that bear the same name in the dominant canon of political thought. As it stood out in the 2000 Cochabamba Declaration,[13] saving water means different regulations based on local communities, customs, and traditions, and different practices of democracy. What is at stake is a practice of democracy which is not based on the state and the modern concept of representation. In another of the *Coordinadora*'s documents we read that "we are fed up with the simulation of democracy which only renders us obedient and impotent, and turns us into obliged voters" ("Texts of the Coordinadora del Agua of Cochabamba"). Undoing the "simulation of democracy" is something absolutely concrete. It is not a question of implementing democratic procedures within the existing constitutional framework. In the language of the insurgents and the *Coordinadora*, it is about "recovering the voice" of the people (see Olivera and Gutiérrez 166) to give rise to a correct practice of democracy (see Olivera and Gutiérrez 169). The theory of this "correct practice of democracy" must be extracted from the social practices of the insurgents and from the intersection of different traditions, from the women and the unionist tradition of the miners to the *usos y costumbres* of the peasants.

However, here we must also emphasize an asymmetry between the participation of women in protests and assemblies and those who instead went to negotiate with authorities. One woman complained that in "the countryside especially, machismo predominates" (Bustamente et al. 85). This culture also partly permeated the *Coordinadora*:

> Those who would lead, who would make up the commission that would be part of the Coordinadora, and who would come to represent the Coordinadora, were all men, and we women had to do other things, anything but be the leaders. (Bustamente et al. 85; also see Udaeta)

The struggle against the privatization of resources and the social fabric had to overcome this obstacle: women had occupied the public and political scene, but some roles related to representation and leadership, in terms of gender, reproduced the separation between public and private that was otherwise

questioned in the water war. Indeed, if the binary between public and private also separates "the market and politics, instrumental rationality and bureaucratic organization from home and family, spirituality, affective rationality, and sexual intimacy," if this separation, in which "men figured on the public side, women on the side of the private" (Scott 13), is one of the pillars of the modern national state and private property, then privatization cannot be really challenged without also questioning gender inequality. Insofar as the experience of Cochabamba, like many other political experiences in which women are direct protagonists,[14] shows another way of doing politics and practicing democracy which are not based on the representation or charisma of a leader, the water war mobilization began to alter not only the social and political fabric, but also people's subjectivity, habits, and mentality.[15]

The practice of the insurgents during the water war teaches us that doing democracy and undoing privatization are entangled. The democracy in action of the insurgents of Cochabamba disrupted the division between the political and the social. A different democratic practice, articulated in a plurality of local assemblies, authorities, and forms of self-government develops on the basis of different property relationships. And vice versa. *Social property* requires a different vision of democracy. In the words of the insurgents, in Cochabamba an "extraordinary pedagogy of democratic assemblies" took place. It was not based on representative democracy, according to which a leader speaks on behalf of everyone, but on the exercise of "direct democracy" where the "power of decision-making is reappropriated by social structures, which, in their practice of radical political insurgency, derogate from the delegative habit of the state power and exercise power themselves" (Gutiérrez et al. 170). This political pedagogy began to produce a "different way of exercising and feeling political power" and gave rise to a "reconfiguration of the state and the way to practice political rights" (170).

If "representative democracy," which the *Coordinadora* defined as a "*simulación de democracia*," is based on the principle of people's sovereignty; if political representation is the representation of the invisible *unity*, of the impossible *whole* of the nation and of its fetishistic political *identity*, which become visible through representative artifice and through an exclusionary act; if "representative democracy" simulates democracy, because a leader or group of delegates speaks on behalf of the nation and *re-presents* it in the sense that it makes it visible, then the *politics of presence* is completely different. It is not based on a political identity to be produced. It is based on political presence in numerous local assemblies, communities, and associations. It is based on an expansive plurality because it is open to anyone who participates politically in the life of the assemblies. This democratic openness, which also questions property relations, is what the Cochabamba experiment has offered to political theory. In Cochabamba, unity is disarticulated in the plurality of groups and social strata that do not need to be re-presented, because they are present. What the *Coordinadora* called a "*correcto ejercicio de la democracia*" is another vision of democracy as a practice. The water war opened up a "space" of practical and theoretical experimentation. This "space" has been hidden by the dominant juridical forms, but it characterizes and has characterized human life in an incomparably more extensive way than the brief parenthesis of modern Western European property relations can represent.

This is the long war that underlies the water war. The conflict is not between privatization or nationalization of natural resources. Nor is it for a right of free access to available resources. The conflict takes shape between incompatible legal and political systems. In Cochabamba, democracy in action in a network of "assemblies and councils" (see Olivera) also reconfigures property relations, and creates space for the reconfiguration of institutions inherited, and constantly reinvented, from the past. What emerged in Cochabamba was a different legal trajectory based on the democratization and the common use of water and infrastructures, which from the state's point of view is

illegal in many respects. This different trajectory was rightly presented in terms of a "Copernican inversion" that "involves displacing the centrality of 'state' and 'institutional power' as a privileged space for politics to instead situate it in the polyphonic and plural social capacity for insistently distorting the heteronymous political order" (Gutiérrez, *Rhythmos of the Pachakuti* xxii). Cochabambinos and Cochabambinas were not defending water as an object, but forms of life in common and a way of practicing democracy in the politics of presence.

Social property, the term that the experiment of Cochabamba has left us, is not the result of an appropriation or expropriation of common resources, infrastructures, or means of production, but the consequence of their democratic use, or what the insurgents called *autogestión*. The water warriors of Cochabamba, in their practices, recombine different historical layers and temporalities to shape another way of practicing property, democracy, and institutions articulated in a system of reciprocal obligations. In the words of an activist of the water: "we are learning how to fortify and consolidate an alternative to the system which we oppose" (Olivera and Gomez).[16] With the same modesty as the Cochabamba insurgents, we can say that it is a question of learning from their political and social experiments to start envisaging other democratic practices which are alternative to modern Western law and its proprietary forms.

disclosure statement

No potential conflict of interest was reported by the author.

notes

1 During one of my conversations with Marcela Olivera, she pointed out that, in the water war, terms like "recuperar" and "reconstituir" the social fabric were very common among people. The writing of this article owes much to Marcela, her generosity, and her political insights.

2 The *Coordinadora* arose spontaneously. At the beginning of the conflict, the activists of the *Coordinadora* sought refuge in a convent, and the nuns accepted. It was not clear who or what the *Coordinadora* was, so much so that people asked, "Where is '*la señora coordinadora*,' […] the brave female coordinator who is defending water" (Beltrán 35).

3 On the term "synchronization," see Tomba 9–10.

4 On the appropriation of water and SEMAPA by the state, see Crespo Flores.

5 The principle stated by the Court is that "customary law cannot violate the Constitution and the laws." This means that indigenous territories are not only not an autonomous jurisdiction from the state but are subject to forced institutionalization (*institucionalización forzada*) and state dominion of lands (see Chivi).

6 An example of this legal scaling-up is found in Ferrajoli.

7 Article 304, which should recognize rural native indigenous autonomies and authorities clarifies the extent of this authority: "Irrigation systems, hydraulic resources, sources of water and energy, *within the framework of State policy*, within their territory" (Art. 304.III.4).

8 Article 30 provides indigenous people the right to "self-determination and territoriality" (Art. 30.II.4), "the collective ownership of land and territories" (Art. 30.II.6), and "to be consulted by appropriate procedures, in particular through their institutions" (Art. 30.II.15).

9 On the impossibility to translate the indigenous legal system into the grammar of the state's liberal framework, see Bellina.

10 In 2007, despite the Ecuadorian government's declaration that it would have suspended the extraction of oil from a field within the Yasuni National Park, despite the attribution of legal rights to nature by incorporating *Pacha Mama* (Art. 71) in the 2008 Constitution, in 2013, Rafael Correa's government announced that, for economic reasons, the extraction of oil had become necessary.

11 As we can read in a statement of 6 February 2000 by the *Coordinadora*: "For us […] this is the

true meaning of democracy: we decide and do, discuss and carry out" ("Texts of the Coordinadora del Agua of Cochabamba").

12 These "ontological" differences at the basis of the subject–object and subject–subject relationship are primarily based on different property relationships.

13 An English translation of the Cochabamba Declaration is also available in Olivera and Lewis.

14 See, for example, the case of women in Turkey and Kurdistan (Üstündağ).

15

> After the Cochabamba Water War, when people returned to normal life, many women who had participated in the protests described profound changes in their identity as community members, especially relative to their participation in activities that would have been off-limits to them prior to the water war […] participation cannot be mandated by decree; it is part of a profound cultural change that has to permeate all social actors. (Bennett et al. 121–22)

16 The article was provided to me by Marcela Olivera and is the English translation of "La crecida de las aguas. Los bienes comunes restablecidos por la gente en Bolivia" also published under the title "La crecida de las aguas. Los comunes y la visión Andina del agua restablecidos por la gente en Bolivia y los Andes," 2016, in desinformemonos.org/la-crecida-de-las-aguas.

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