UNIVERSITY OF CALIFORNIA SAN DIEGO

The Search for Indigenous Justice in Plurinational Bolivia: Contested Sovereignties, Entanglement, and the Politics of Harm

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Anthropology

by

Amy Michelle Kennemore

Committee in charge:

Professor Nancy Grey Postero, Chair
Professor Joseph D. Hankins
Professor Luis Martin-Cabrera
Professor Carmen Soliz
Professor Rihan Wen Xin Yeh
Professor Elana J. Zilberg

2020

The dissertation of Amy Michelle Kennemore is approved, and it is acceptable in quality and form for publication on microfilm and electronically:

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Chair

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DEDICATION

To all the Mama T’allas and Tata Mallkus
Hilacatas and Kurakas
of Qullasuyu

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VITA

2020	Doctor of Philosophy, University of California San Diego
2014	Master of Anthropology, University of California San Diego
2013-2019	Editorial Assistant, *Journal of Latin American and Caribbean Ethnic Studies* (University of California San Diego)
2012	Master of Latin American Studies, University of North Carolina Charlotte
2009	Bachelors of International Relations, University of North Carolina Charlotte

PUBLICATIONS

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ABSTRACT OF THE DISSERTATION

The Search for Indigenous Justice in Plurinational Bolivia: Contested Sovereignties, Entanglement, and the Politics of Harm

by

Amy Michelle Kennemore

Doctor of Philosophy in Anthropology

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Professor Nancy G. Postero, Chair

This dissertation examines the effects of state-led decolonization in Bolivia among historically marginalized rural indigenous communities the Andean highlands. As part of its efforts to decolonize society, Bolivia's revolutionary 2009 constitution declared the country a "communitarian, plurinational state" and granted indigenous people the right to exercise their own forms of justice. My analysis shows significant disagreement over the meaning of justice as indigenous leaders develop grassroots legal strategies to implement this right in a variety of

contexts. At the national level, indigenous legal activists seek to redirect institution building processes back toward their own longstanding project of self-determination, revealing significant disagreement over who decides the proper role of the state in plurinational Bolivia. At the local level, I show how winning legal recognition of jurisdiction over (often decades-long) land disputes in rural highland communities carried with it the onerous task of untangling the extremely complicated and historically constructed problems that were often entangled into the disputed land itself, including competing claims to land rights and government corruption. Unable to address communities' practical concerns, local organizations lost legitimacy, often leading to more even uncertainty or conflict.

Ultimately, this research shows how liberal law operates to maintain hierarchies of race, even in context like Bolivia, where new forms of legal pluralism have been advanced as a tool to dismantle them. I approach to indigenous justice, not as an object with distinct values and practices to be studied, but rather as a diagnostic tool that leaders take up to analyze overlapping structural harms masked by state recognition and discourses of indigeneity. Writing from the uncertainties that indigenous legal activists face as they come up against the constraints of their own legal strategies, my research shows how the search for indigenous justice nonetheless opens critical space for imagining alternatives from the perspective of entangled and always-contested social projects on the ground.

Introduction

"The law is our weapon now!"

On March 21, 2017, the National Council of Ayllus and Markas of Qullasuyu (CONAMAQ), a confederation of highland indigenous organizations in Bolivia, celebrated its 20th anniversary in a small event hall in the city of Cochabamba. Looking back at its history, the organization had much to celebrate. Founded in 1997, CONAMAQ was a vehicle for the movement to "reconstitute the *ayllu*," or restore traditional communal institutions and territory. Later, at the turn of the twenty-first century, CONAMAQ also led calls for a constituent assembly to re-write the constitution in mobilizations against the neoliberal government of "Goni" Sánchez de Lozada. This momentum paved the way for the historic election of the country's first self-identifying indigenous president, Evo Morales Ayma, in 2005. The following year, in 2006, CONAMAQ formed part of a coalition of indigenous and peasant organizations referred to as the Pact de Unidad (Unity Pact), which participated in the drafting of a new constitution.

Approved by popular referendum in 2009, the constitution formally "re-founded" Bolivia as a "plurinational, communitarian state." As a result of their concerted and historical efforts, CONAMAQ and other social organizations of the Unity Pact are considered the key architects of Plurinationalism Bolivia. In the words of Aymara philosopher Rafael Bautista, they are the "historic subjects" who produced the plurinational state and are thus those who fill it with content and meaning (2010; see also Postero 2017, 44-45).

Yet, rather than celebrate the plurinational moment in which they helped construct the decade prior, participants at the CONAMAQ anniversary meeting that day critically reflected on

how those successes got away from them. In Bolivia, economic indicators have risen in the country in the decade following the passage of the constitution, largely the result of the Morales government's state-led development model based on natural resource extraction to fund social welfare programs and large-scale infrastructure projects. However, many indigenous groups have clashed with Morales, criticizing him for a shallow discourse of indigenous rights and values in international arenas while violating their rights to territory and self-governance at home.

Following opposition to Morales' development policies by several CONAMAQ leaders, the organization was divided by pro-MAS factions in December 2013. Ever since, it has existed as two parallel organizations: one, popularly referred to as "CONAMAS" (the pro-government faction that tows the party line of Morales' political party, the Movement Towards Socialism, or MAS); and another, "CONAMAQ *orgánico*". Despite claiming to be the "organic" (and thus legitimate) representative of its grassroots bases at the community level, leaders have struggled to keep the organization afloat over the years. CONAMAS continued to receive government support while CONAMAQ orgánico was forced out of their headquarters in La Paz.

One by one, as leaders spoke at the Cochabamba meeting, they evaluated the paradoxes of MAS party politics as well as other challenges such as ongoing poverty and discrimination against their fellow community members. When it was his turn to speak, Tata Samuel Flores, former *kuraca* (indigenous leader) from the Marka Quila Quila of the Qhara Qhara Nation, shifted the focus toward the indigenous organization itself. "We can't just expect for our rights to be fulfilled. We fought for this beautiful constitution, and then what do we do?", he asked rhetorically. "The plurinational state arrives and we just sit here with our arms crossed?! The colonial state, the neoliberal state, and now the socialist state, with Evo, with China, they're all the same!" He went on, pacing back and forth in front of the room. "We're living in a different

historical moment now, brothers and sisters, of division, fragmentation, and co-optation. And we have to act – *enough* with marches, *enough* with protesting. That doesn't work anymore," he asserted. "Nor do social organizations, they don't represent us!," he said in a condemning tone, referring to the fact CONAMAQ itself had become part of party politics and thus distanced themselves from their bases. "We have to exercise our constitutional rights as indigenous native peoples," he added, reminding them of traditional norms and procedures rooted in communitarian forms of democracy. Then, holding a small dog-eared copy of the constitution up in the air, he declared "That's self-determination, brothers and sisters, that's what the constitution guarantees. The law is our weapon now!"

As part of its efforts to decolonize society, Bolivia's revolutionary 2009 constitution granted people the right to exercise their own forms of justice. Yet, by the time of CONAMAQ's anniversary event in 2017, widespread social movement fragmentation and division suggested new forms of exclusion had been built into the subsequent project to construct the plurinational state. In this dissertation, I follow indigenous legal activists as they seek to implement this right in a variety of contexts to show that there is considerable disagreement over the meaning of justice itself. To do so, I focus specifically on the weapon Tata Flores invoked, the law, examining how it is wielded to contest the meaning of justice in Plurinational Bolivia, asking what gets dismantled and what gets constructed as a result. At the national level, indigenous legal activists such as Tata Samuel Flores and others convoke meetings to analyze the limits of state law and generate proposals for alternatives. According to Bolivia's legal framework, decree laws have the same status as state law (laws passed by legislative assembly at either national or departmental level), and both are subordinate to constitutional law, the specific weapon Flores refers to as a tool to challenge state government.

Surpassing government officials at municipal and departmental levels and judicial authorities, they take their to demands directly to the Plurinational Constitutional Court, located in Bolivia's juridical capital of Sucre. Some of them have worked directly with the Court and other state authorities to reach formal agreements to back their demands, and in some cases have even successfully challenged state legislation that violated their constitutional rights. Examining the nature of barriers that indigenous legal activists, peasant union leaders, and rights advocates seek to overcome with new legal strategies, as I do in the first part of this dissertation, offers a critique of the Morales administration's project to construct the plurinational state from the perspective of indigenous sovereignty.

As new legal strategies have gained momentum, indigenous legal activists have also started forming networks to disseminate their strategies to rural communities. Most of these cases were born out of small-scale land disputes or conflicts over natural resources at the level of the community, following which the two parties involved seek a resolution in distinct jurisdictions. While one party may appeal to their traditional indigenous governing bodies, the other may resort to the Western, ordinary justice system. This creates a larger conflict over who has the authority to resolve the problem: local indigenous peasant organizations or the state. In theory, this is precisely why new mechanisms of legal pluralism recognizing the equality of indigenous jurisdiction have so much potential. They clear up any discrepancy over who has the sovereign authority to decide questions over land tenure and access to resources; they define the obligations that come with such rights; and they decide how these rights and obligations should function in service of the larger political community's social project to which one belongs.

The second part of this dissertation follows these legal strategies as they circulated and were taken up by ayllu and peasant union leaders at the local level, asking what concrete effects

new legal strategies might have on community members' access to security and material well-being. I found that legal strategies intended to resolve local conflicts often relied on images of territorial unification and economic solidarity that were out of sync with the reality on the ground. While such emancipatory discourses did provide a horizon of indigenous empowerment as a tool of political mobilization, they were not helpful in understanding the nature of injustices people sought to resolve. In Andean communities, factors such as climate change and the negative effects of mining and monoculture crop production have disproportionately affected poor Aymara and Quechua peasants and increased conflicts for access to sparse lands. Unable to address communities' practical concerns, local organizations lost legitimacy, often leading to more even uncertainty or conflict.

Such outcomes also raised different questions over the nature of social harms that rural indigenous peasants experienced in their everyday lives. What is the nature of 'wrongs' or social harms that have been committed here? Who or what should be made accountable for them? Considering that state corruption and uneven land policies were entangled in local disputes, what should the role of the state be in resolving them? To the extent that local institutions were governed by their own local norms and procedures, exercising a robust form of indigenous self-determination, on what values, norms and procedures should this new institution be based – indigenous, native, or peasant justice? Who or what decides these questions? Overall, I found that recognition of indigenous jurisdiction alone, without sufficient economic resources and institutional support, did not offer indigenous leaders a viable tool to resolve concrete disputes in their territories over land or natural resources. By researching contested meanings of justice across as legal strategies traveled across two very different scales – national and local – my research shows the gaps between political horizons around indigenous justice and the "cruddy"

(Povinelli 2011) material reality that indigenous people – racially marked by their indigeneity – face in their daily lives.

The central objective of this dissertation to contribute to better understanding of the nature of underlying tensions between the promise of plurinationalism, on the one hand, and the dilemmas and uncertainties of realizing this project in practice, on the other. To do so, I take up Black feminist and civil rights activist Audre Lorde's maxim "the master's tools will never dismantle the master's house" (1984, 110). Writing in the early 1980s, Lorde was concerned with how patriarchal, racial, sexual, and class-based exclusions were built into and (thus reproduced by) the very sites of White academic knowledge production that purported to theorize about such problems. Using the "tools of a racist patriarchy" to examine the privileges it afforded, she warned, meant that "only the most narrow parameters of change are possible and allowable" (ibid.). Lorde's metaphor calls attention to the multiple ways in which systems of oppression work through the appropriation or partial inclusion of those voices most critical to them. Similarly, this dissertation shows how state law operates to maintain hierarchies of race and power, even in context like Bolivia, where new forms of legal pluralism have been advanced as a tool to dismantle them.

Yet, my research also offers a unique window into how law might serve as a site for indigenous critique and political action toward meaningful decolonization. Subsequent chapters ask what it means to *search for indigenous justice in Plurinational Bolivia* from the situated perspective of the dilemmas and undecidable questions that accompany ongoing political struggles for structural transformation. Considering that law itself is entangled in their struggles in complex ways, can it be a sufficient tool to understand (and thus) dismantle overlapping, often-evasive colonial harms? This dissertation shows that, while liberal law did not offer the

blueprints for pursuing the different meanings of justice I encountered in the field (oftentimes eliding them), wielding the master's tools nonetheless made visible the law's very entanglement with many of the injustices that people faced in their everyday lives. Across the chapters of this dissertation, I make the case for building an approach to indigenous justice that can better listen and learn from the analysis of indigenous leaders and community members as they confront this tension their everyday lives.

The rest of this introduction chapter will set the stage for understanding the different ways that alternative forms of justice are imagined, enacted, and contested in Bolivia. A central objective of this chapter is to provide background information and conceptual frameworks necessary to understand the dilemmas and complexities that I encountered in the field. I do so across three interrelated themes that subsequent chapters will address in more detail. Across each section, I also outline the specific arguments of the dissertation and its main contributions to the literatures on legal pluralism, race and indigeneity, decolonizing research, political economy, and political anthropology

First, I outline three key sites where indigenous values and practices have been incorporated into the state structure advanced in Bolivia's 2009 Constitution and discuss how they are understood as tools for indigenous emancipation as well as for decolonizing the state. Following Nancy Postero's (2017) recent work in decolonization in Bolivia, I draw from political theorist Jacque Rancière (1999) to consider how efforts to institutionalize social movement demands acts as sites of ongoing contestation over the meaning of justice: Are new mechanisms of legal pluralism up to the task of effecting major economic or political change? Or, to the contrary, what kinds if alternative ways of imagining and pursuing justice are foreclosed as a result of efforts to construct plurinationalism in practice?

Second, I introduce an analytical framework to consider how contested notions of sovereignty and the law shape the conditions of imagining and pursuing justice in different contexts. As mentioned, in my research I found that emancipatory discourses around indigenous justice were out of sync with the reality of challenges people faced on the ground. This section outlines contributions in the field of political anthropology to make the case for examining the effects of recent transformations in Bolivia through the lens of fragmentation and entanglement.

Third, I return to the question of indigenous justice to consider how it might serve as a diagnostic tool for analyzing the overlapping, often elusive forms of social harm that informed efforts to strengthen indigenous native peasant jurisdictions analyzed in this dissertation. I build on my colleague Vianca Copa's notion of "*lo propio*" (our own) to outline an approach that can be more attentive to the dynamic processes through which community leaders seek out alternatives from within (and against) the limits of power formations. Rather than characterizing indigenous justice as "outside" of liberalism and state law – or an essentialized, codifiable set of norms or practices – I build the case for approaching indigenous justice as an analytical tool for analyzing the entangled nature of always-contested social projects on the ground.

Following my elaboration of these three themes, I outline each of the subsequent chapters and their main arguments to provide an overview of these various modes of searching for indigenous justice across different scales, from the national courts to provincial tribunals and community organizations.

Finally, I end this introduction chapter with a brief discussion of the political context in which I conducted my research and how I came to study indigenous justice in Bolivia, along with some of the specific dilemmas and challenges that shaped my project. This section

introduces some key terms and discusses how I integrate discussion on collaborative research relationships into each chapter.

1. Dismantling the Master's House (and Constructing the "Casa Grande"): A Study of the institutionalization of indigeneity as a site of disagreement

On August 9, 2018 the Bolivian government inaugurated the Casa Grande del Pueblo (Great House of the People), the new headquarters of the administration of President Morales. The building showcases a sleek modern architecture that contrasts with the colonial architecture of the Plaza de Murillo, the center of La Paz's government (see Figure I.1). Large glass walls on each side of building feature a line of three orange blocks with indigenous-inspired graphics running down the center, which are thickly framed by the seamless slate-grey concrete of the building's structure. The Casa Grande del Pueblo houses five of the government's twenty ministries and the offices of the president and vice president, as well as President Evo Morales himself, who lives in a luxurious new residency that boasts a sauna, jacuzzi, and gym on the 24th floor, just below the rooftop, which also serves as a landing pad for Morales' helicopter. Construction of the Casa Grande del Pueblo took several years to construct and cost a reported USD $34 million.

Figure I.1: Areal view of the Casa Grande del Pueblo overlooking Plaza Murillo (photo source: *The Guardian,* August 16, 2018)

During my visit to the Casa Grande del Pueblo, I was struck by the dramatic architecture and interior artwork, especially the building's centerpiece, a two-story, multi-layered neon and metallic mural by renowned Bolivian artist Roberto Mamani Mamani entitled "Suma Qamaña," a concept attributed to indigenous notions of Vivir Bien (Living Well), that depicts the intercultural dialogue among the country's diverse ethnic groups. Visitors are allowed to visit the rooftop, which offers a stunning view of the surrounding city of La Paz that spills down from the edges of the migrant city of El Alto. I asked one of the military guards where the name of the building originated. "It's because of Evo, of his origins," he explained. "He's originary, and in his community (pueblo) they call it the great house because it belongs to everyone. So, this is like that but a house for all Bolivians (*todo el pueblo*), this is everyone's house."

Figure I.2: The interior of the Casa Grande (photo source: Amy Kennemore)

The Casa Grande del Pueblo is the latest of a series of dramatic transformations underway in Bolivia since Morales' historic election as Bolivia's first "indigenous" president in 2005. Morales rose to power amid waves of widespread protests against neoliberal policies at the turn of the twenty-first century, which had devastating effects for many indigenous, peasant, and urban poor sectors who mobilized across of series of mass uprisings between 2000-2005 to demand change. During his campaign, Morales promised to bring an end to neoliberalism, nationalize Bolivia's extractive industries, and end the US-backed war on drugs (Lehman 2006; Postero 2017). Morales also fulfilled his promise to enact deep and lasting structural reform by passing legislation to elect a constituent assembly to re-write the country's constitution. Historically, the Constituent Assembly included for the first time the participation of indigenous and peasant organizations, referred to as the Pacto de Unidad (Unity Pact), that were charged with design the architecture for a radically different nation-state (Garcés 2010).

While conducting my research, it was common for MAS officials to emphasize – in personal interviews, public presentations, official statements, as well as in [often numerous] publications – the importance of constructing new institutions as mandated by the constitution. "Revolutions don't happen overnight," was a common phrase iterated by MAS officials to acknowledge limitations in the government's so-called *"proceso de cambio*," (process of change). The emphasis on a *proceso* calls attention to the long-term and ongoing nature of structural transformation as well as the fact that wide-sweeping institutional reform is no easy task. The building of the Casa Grande del Pueblo represents how symbolically indigeneity is the central driver of transformations through the incorporation into state institutions alongside preexisting forms to decolonize the state from within, largely on the basis of principles of interculturality, or dialogue and reciprocal change.

The great irony of the Casa Grande del Pueblo is what its namesake represents for indigenous native peoples, the "community" the soldier referenced when I asked him what the building was named after. Throughout Latin America, indigenous groups often use the figure of the "Casa Grande" to talk about integral notions of territory; particularly when making claims to autonomy and control over natural resources, the figure of the Casa Grande does not refer to the infrastructure itself but rather a different kind of social project that is sustained on the basis of fundamentally different ways of relating to territory and reproducing social life in a collective way. In Bolivia, economic indicators have risen in the country in the past decade following the passage of the constitution, largely the result of the Morales government's state-led development model based on the expansion of natural resource extraction to fund social welfare programs and large-scale infrastructure projects. As mentioned in the previous section many indigenous groups have clashed with Morales, criticizing him for a shallow discourse of indigenous rights and

values in international arenas while violating their rights to territory and self-governance at home, as state-led development has led to conflict as indigenous people defend their territories from mining, oil, gas, and road projects (see Laing 2015; McNiesh 2013; Postero 2017). These disputes call attention to the fact that in Bolivia decolonization should not be taken as a necessary good, but rather as a contested discursive field over how to best address the ongoing legacies of colonial racism and dispossession in Bolivia (Postero 2017).

In her recent ethnography of Bolivia's process of "indigenous state-making," Postero (2017) draws from Ranciére to consider ongoing contestation over the meaning of plurinationalism in the decade following President Morales' arrival to power. Importantly, she calls attention to the fact that there are multiple meanings of decolonization in contemporary Bolivia: while some emphasize the need to bring an end to structural racism and overturn structures of inequality built into the political economy (Chivi 2011; Portugal 2011); others focus on more cultural aspects of colonization, calling for recognition of Bolivia's diversity and equal opportunities for all groups by democratizing political participation to include them (Patzi 2009; Vega Camacho 2011). Focusing on state ritual performance and symbolic transformations of the Morales governments so-called "democratic cultural revolution," Postero shows discourses around indigeneity and decolonization work to create a consensus around a particular notion of justice that emphasizes economic liberation and national sovereignty.

Ranciére's emphasis on aesthetics is useful to understand these processes, as it calls attention to other forms of policing that go beyond institutional structures that are deeply engrained in society. For Rancière "policing" is the implicit law and order that acts to maintain what he calls the "distribution of the sensible," or the allotting of roles between those who have a "part" and those who are the "part with no part" (ibid.). In other words, policing manages a given

distribution of places and roles in society so that certain activities are visible and sayable while others are seen as noise, lacking a role or place in the order of the *logos* or reasoned discourse (ibid., 29). For Ranciére, politics, in contrast, entails calling attention to this "miscount," not as victims in need of recognition and reconciliation from a higher sovereign authority, but as equals positing the "existence of a common world" between speaking beings who are not considered as such (Rancière 1999, 53). Postero argues that, in Plurinational Bolivia, even as Morales has sought to symbolically undo colonial legacies of policing that have historically excluded indigenous peoples from having a "part" in the country's political life, state discourses and performances of indigeneity have nonetheless been transformed "from a site of emancipation to one of liberal nation-state making" (2017, 5). Approaching new institutions as ongoing site of political contestation in this dissertation, as Postero does with decolonization, helps to make a simple point that is often overlooked in more celebratory views of recent transformation in Bolivia, namely that the incorporation of indigenous values and practices into the plurinational state can also act as a form of policing.

The first part of this dissertation focuses on the different efforts of indigenous legal activists to redirect projects of state making back toward their own social projects. Not only do these indigenous legal activists constantly present appeals to the Plurinational Constitutional Court, they travel across the country and region to attend workshops sponsored by NGOS as well as government institutions, and some of them have also received university training as human rights experts in programs co-sponsored by law departments in Sucre. Many of them are formally trained human rights experts and can recite the contents of the constitution, international indigenous rights conventions, and dozens of laws by memory and often do so in organizational meetings or in legal documents or when presenting their demands to state

officials. They also pool together their own resources to host meetings that articulate national networks of indigenous leaders, holding press conferences to make their demands public. They travel to La Paz to make demands in the Legislative Assembly and Electoral Court. When visiting La Paz to make an appeal to state authorities or attend an NGO-sponsored workshop, they also frequent the offices of government ministries. They write open letters to President Morales demanding respect and equality. Focusing on the nature of barriers indigenous legal activists seek to address with such action offers a window into new forms of policing as well as ongoing forms of political contestation over the meaning of the plurinationalism in Bolivia, as well as who decides the best way it should be constructed.

The figure of the Casa Grande del Pueblo is useful to capture the discursive and material nature of this project of decolonization (dismantling the master's house of liberalism and global capitalism) through the integration of indigenous values and practices (indigenous autonomy rooted in alternative worldviews, namely collective notions of territory and government). The first part of this dissertation offers a study of policing and politics by focusing on three interrelated sites of institutional construction indexed by the figure of the Casa Grande del Pueblo as ongoing sites of state building (constructed on the principles of decolonization, interculturality, and plurality), and as I will show, disagreement.

First, is a new model of "Integral Development" promoted by the government based on the incorporation of indigenous principles of Vivir Bien as an alternative to modern capitalism. As Postero's (2017) study of indigenous state making makes clear, consensus around economic liberation among Bolivians, including indigenous groups that benefit directly from state-centered model of development, forecloses other options, in particular more radical indigenous demands for self-determination. In Chapter 1, I show how the weakening of CONAMAQ illustrates one

aspect of what such a consensus implies for indigenous organizations: a lack of access to much needed economic resources to support the institutional operations of their organization. But also, throughout this dissertation it becomes evident that a central tension of ongoing contestation is around fundamental questions of political economy. Chapter 3 returns to the question of "communitarian economy" that serves as a pillar of integral development to consider the effects of discourses in masking the reality of economic practices and processes of subordination on the ground. Focusing on integral development as a site of disagreement provides a space to consider the multiple scales through which fundamental questions about how natural resources should be allocated (and towards the construction of what type(s) of social project) are contested and decided in Plurinational Bolivia.

Second, is the construction of "Intercultural Democracy" as a mediator across the different forms of democracy recognized in the 2009 constitution – representative democracy; participatory and direct democracy; and communitarian democracy (art. 11). Taken as separate forms of government, these different forms of democracy be associated with distinct visions of citizenship, representation, and political participation. While representative democracy is tied to liberal principles of citizenship for the protection of individual property rights and the common good, the emphasis on direct and participatory forms of democracy are variations that open up more space for inclusion of collective forms of decision making. Ultimately, representative democracy and direct or participatory democracy do not challenge the underlying premise of liberalism tied to a hierarchical system of government that regulates a social contract for managing state and society relations and the political economy (Garcia 2018; Garcés 2013). Communitarian democracy, in contrast, represents a radical challenge to direct and participatory and representative democracy in that it is based on a different assumption of authority rooted in

collective forms of self-determination. Similar to the communitarian economy, much of the definition of communitarian democracy in Bolivia stems from institution and principles described in research on the traditional Andean ayllu (see Esteban and Albó 1997; Fernández 2000; THOA 1995).

Intercultural democracy does not represent a fourth element of democracy per se but rather serves as a normative guideline for establishing the coexistence among these three different government systems in practice, outlined in subsequent legislation such as the 2010 Electoral Regime Law and the Electoral Body Law (García 2018). Fernando Yapur García suggests that, as such, intercultural democracy should be thought of as an "institutional product under construction" rather than a predetermined normative horizon to be fulfilled (78). Ultimately, he suggests, the meaning and form that intercultural democracy will take rests on "from where or which ideological political matrix it is thought and postulated" (2018, 78).

My research shows that there is significant disagreement among (and within) indigenous, native, and peasant organizations over the meaning of these democratic systems, as well as their proper relationship to different procedures and practices of regulating social life. Is the field of power determining the meaning of intercultural democracy a struggle between this already hybrid plural democratic form (the MAS political party leading the *proceso* to construct the Casa Grande del Pueblo) as a means to dismantle exclusive forms of liberal democracy (the elite master's claim to rule on the basis of old forms of policing racial difference)? Or, does disagreement emerge from outside this field, from claims to indigenous sovereignty (explored in Chapter 1) that are highly critical of both political parties and social movements that they claim do not represent them? Or (as I raise in Chapter 2), how might be better understand the enunciations of those who straddle multiple lines in which they might have part (in some

contexts) and no part at all (in many others)? Here, Rancière's notion of democracy as the "surplus community" (anyone and everyone who is outside the distribution of parts) is useful for ethnographically demonstrating how other forms of political activity and ways of organizing social life have already been excluded from the MAS-driven *proceso* (see Guitiérrez 2014; Salazaar 2015). This dissertation discusses new institutions constructed at the national level (Chapter 1) as well as more local provincial level (Chapter 4) to consider the meaning of intercultural democracy as a site of disagreement, but also as product in construction "from below".

Third, efforts to implement new mechanisms of legal pluralism in Bolivia have been the focus of state officials, NGO organizations, and grassroots organizations as a pillar for materializing much of the promise of the constitution. In these efforts, another central category has emerged in these efforts that, similar to forms of communitarian democracy, is often held out as a central mechanism to decolonize state justice: indigenous native peasant jurisdiction. All of the cases I examine in the second part of this dissertation were born out of new mechanisms of legal pluralism advanced in the 2009 Constitution, which recognizes equality between jurisdictions of indigenous native peasant jurisdictions to administer justice and those of the state (represented by agri-environmental, civil, and criminal courts) (art. 179.II). When I refer to "state justice" in this dissertation, I am referring to the general justice system organized and administered by either the central government or departmental entities, which are understood as "of the state" in the sense that they do not represent procedures and values of indigenous justice, a distinction that I discuss in more detail in Chapter 2).

Following the passage of the 2009 constitution, legal pluralism had gained new significance as a "buzz word" in Bolivia among many state justice ministers, academics, and

rights advocates alike who promoted indigenous justice as the central motor for radically transforming liberal, western institutions (see Santos and Exeni 2012). State officials organized workshops, passed laws, designed polices, and promoted protocols intended to dismantle the state justice system and integrate a plurality of cultural values and alterative visions of forms of democracy, territory, and justice economies into the architecture of the plurinational state. Following the passage of the constitution, the MAS government restructured the Plurinational Constitutional Court to integrate two indigenous magistrates as well as a special chamber for addressing cases dealing with indigenous native peasant jurisdiction, supported by an arm of the Secretaría Técnica y Descolonización, a special "Decolonization Unit" made up of an interdisciplinary team of social scientists, *aumautas* and *yatiris* (shamans), and constitutional lawyers. The Plurinational Constitutional Court is the only entity that can decide "jurisdictional conflicts" – a new legal mechanism that indigenous or peasant union leaders can use to contest the authority of state courts to decide a concrete case.

Especially considering the fact that justice systems throughout Latin America lack sufficient native language translators or lawyers (not to mention intercultural mechanisms for translating abstract concepts such as rights across cultural divides), these changes represent efforts to improve access to justice across cultural divides. Yet, more than just a pragmatic legal tool for indigenous peoples to access justice within their communities according to customary practices, new mechanisms of legal pluralism have been held out by activists, academics, and government officials alike as a mechanism to decolonize the state justice system. For legal scholar Boaventura de Sousa Santos (2012), for example, new mechanisms legal pluralism represents a form of "transformative constitutionalism" in that the incorporation of indigenous justice into the heart of the nation-state is the result of counterhegemonic struggle, designed on

the basis of the very subaltern practices groups that have historically excluded in state making processes.

I first heard about efforts to strengthen indigenous jurisdiction as a strategy to exercise indigenous self-determination from my colleagues from the La Paz Departmental Association of Anthropologist (ADA La Paz) in October of 2014. ADA La Paz is a small group of independent researchers who work closely with national-level organizations such as CONAMAQ but also smaller local-level urban neighborhood associations, merchant organizations, and agrarian unions throughout the Andean highland and valley regions. Two of ADA La Paz's founding members, Pedro Pachaguaya and Aldo Baily, had been working with agrarian union leaders from Zongo, rural Aymara community three hours north of the capital city of La Paz, to present a jurisdictional conflict to the Plurinational Constitutional Court.

I was fortunate to be in the courtroom on October 20, 2014, the day the judge ruled that indigenous courts could take exclusive jurisdiction over the case and handed over the massive, hand-bound case files to the leaders. I can speak to the sense of empowerment that accompanied the moment as they wrapped the records in their *aguayos* (traditional woven cloth native to the Andean region) and marched out of the Courthouse into a plaza full of *yatiris* (indigenous shamans), bands, news cameras, and fellow community members. But I was also struck by a seeming difficulty Zongo leaders faced in articulating the historical significance of their victory to an array of publics: to the liberal media; indigenous leaders and rights activists; to themselves and fellow community members. Moreover, Copa (2017), an Aymara constitutional lawyer and former member of the Decolonization Unit, who examined the procedural steps Zongo and other leaders must take to present a jurisdictional conflict, argues that paradoxically, new mechanisms

of equality built into the restructuring of the Plurinational Court act as "concealment devices" that mask ongoing exclusions and inequality.

Despite significant barriers in presenting a jurisdictional conflict, the number of cases that community leaders brought to challenge the jurisdiction of state authorities in particular cases gradually increased over the years while I conducted my research between May 2014 and August 2019. Largely due to the obstacles that communities met when trying to access formal autonomy, these mechanisms offer an increasingly important way to demand rights to exercise self-determination. Across different chapters of this dissertation I show how the legal victories themselves were taken up for different ends: by union leaders to challenge the discriminatory practices of departmental state judges and corrupt authorities (Chapter 2); for community members to morally obligate their own indigenous leaders to respond to ongoing violence and impunity in their community (Chapter 3); or to convince local parties involved in a local dispute to stop resorting to extortionist lawyers or corrupt legal system in their search for justice (Chapter 4). Taken together, these chapters point to a different nature of contestation over the meaning of plurinationalism in practice, namely that disagreement entails multiple directionalities and scales at once.

While notable for the revolutionary principles they represent, each of these three areas – Integral Development, Intercultural Democracy, and Legal Pluralism acts as new form of government that seeks to produce a consensus around the relationship between complex notions of democracy, political economy, and justice. By ethnographically tracing how these areas of institutionalization are also sites of disagreement, my research contributes to a better understanding of ongoing processes of contestation around plurinationalism in Bolivia. Ultimately, what is at stake in these sites of institutionalization is the extent to which pluralistic

forms of organizing social life will reconfigure state institutions and how, in turn, processes of institutionalization will support (or hinder) the fluid and dynamic nature of those forms as they are incorporated into the state.

2. Jurisdictional Entanglements: Sovereignty, Law, and the Politics of Harm

As I researched the concrete effects of new mechanisms of legal pluralism in rural communities, I found that reforms did not actually change long standing structures of poverty or disputes over land tenure and natural resources. A great deal of the difficulty I encountered while researching local level conflicts stemmed from the fact that state discourses of legal pluralism saturated the way that many people talked about the nature of harms facing their communities. The uncertainties surrounding efforts to strengthen indigenous native peasant jurisdictions led me to approach the relationship between sovereignty and the law through the lens of fragmentation and entanglement. An underlying presupposition of this approach is that, while state and indigenous justice can be understood as diametrically opposed (based on the principle that to construct the "Casa Grande" one must first dismantle the Master's House of liberalism, to extend my analogy), in practice both social projects rely on different modes of borrowing and lending from each other's different governance structures, practices, and discourses.

My focus on social projects reflects a particular view of the relationship between sovereignty and law as intertwined and always contested. This perspective is in line with a general reconsideration in political anthropology of ideas of sovereign authority that have been traditionally attributed to the modern nation-state, formal principles of law, or territorial rule (see Comaroff and Comaroff 2006; Hansen and Stepputat 2006). Drawing inspiration from Agamben (who was also building on Foucault), political anthropologists have reconsidered the definition

of sovereignty rooted instead to claims to exercise legitimate violence (Hansen and Stepputat 2005). Using ethnography, scholars have called attention to practices of "mimickery," "outsourcing," "collusion," and "counterfeiting" that constantly blur neat lines of rule or obligation associated with the state (Burr 2005; Comaroff and Comaroff 2006; Hansen and Stepputat 2005, 2006; Sieder 2011).

Important to note is that the emphasis on de facto forms of sovereignty gained importance at a particular global junction, when state sovereignty appeared to recede, and other private actors and forms filled the spaces in a "dialectic of law and disorder" informed largely by the logics of neoliberal globalization (Camaroff and Camaroff 2006). A similar concern is also reflected by anthropologists researching indigenous autonomy in parts of Central America. Particularly in isolated areas where there are low economic stakes (in terms of natural resources that lead to conflicts between indigenous groups and the state or transnational actors) or the presence of paramilitary or illicit economic activity, recognition of indigenous autonomy hardly represents an affront to state sovereignty or global capitalism (Hale 2011; Sieder 2011).

Especially when researching the effects of new mechanisms of legal pluralism in improving rural communities' access to security and material wellbeing, I found that multiple overlapping de facto forms of violence and impunity appeared to be the system of rule, even if attached to state apparatuses such as the mayor or the police. Chapter 3 draws from Elizabeth Povinelli's (2011) focus on less visible forms of violence, in particular different modes of "abandonment" or "exhaustion" that shape different notions of social harm in similar "grey zones" (Sieder 2011) of fragmented sovereignties.

An immediate question about the utility of applying such approaches in what some call "post-neoliberal" Bolivia would appear to be the recent shift back toward a state-centered model,

where even conflicts between indigenous groups and the Morales administration can be read through a more traditional lens, where indigenous sovereignty and national sovereignty are competing or even "nested" (Simpson 2014). Indeed, sovereignty, even defined in terms of claims to legitimate violence, is still closely related to more classical forms of Walter Benjamin's ([1921] 1996) reflections on "law making" "law preserving" violence that would seem to reorient the site of contestation back toward a clash between state and indigenous sovereignty. Yet, especially in the isolated regions where I went to research the source of jurisdictional conflicts (and efforts to promote new legal strategies to overcome them), I found that struggles over sovereignty did not always relate to the state. Similar to Abram's (1977[1988]) earlier "Notes on the Difficulty of Studying the State," indigenous activists made explicit calls to rethink assumptions of sovereignty by focusing on the "different kinds and registries of sovereignty" that overlap in a given context and are reconfigured over time. My research, in focusing on how de facto practices of sovereignty are tied to ethical questions of social abandonment and belonging, on the one hand, and corruption and impartiality, on the other, contributes to better understanding of the "underlying, shifting and mixed political rationales" (Stepputat and Nuijten 2018) of fragmentation weakening alternative social projects.

Indeed, as I show in the second part of this dissertation, it quickly became apparent in these cases that winning legal recognition of jurisdiction over (often decades-long) land disputes carried with it the onerous task of resolving the extremely complicated and historically constructed problems that were often entangled into the disputed land itself. My approach to entanglement draws inspiration from Donald Moore's (2005) analysis of a resettlement scheme in Eastern Zimbawe, where he shows how competing claims of sovereignty combine to produce an "entangled landscape" of contested rule. Similar to other political anthropologists at the time,

he shows how the fundamental problem for the subjects of the resettlement scheme (groups that had been violently evicted from a white-owned farm during the country's war for independence), was that they were caught between competing demands regarding land use and rights: while a local chief claimed that only he had the right to allocate the land, state officials threatened to fine or evict individuals who did not follow the standardized land use practices.

The contribution that Moore brings to this field with his focus on "entangled landscapes" is twofold: First, drawing from Lefebvre's ([1974] 1991) notion of the "production of space," Moore traces how "selective" or "situated" struggles over land, labor, and rights are entangled with historically contingent material factors as well as cultural meaning. Second, Moore emphasizes that landscapes are not produced through layers of separate strata representing distinct configurations of rule: "Neither serial nor successive, they are copresent, sometimes as haunting, other times as explicit invocations, shaping a plural terrain where no single space prevails" (ibid., 22). From this perspective, Moore adds, the different notions of power outlined by Foucault (sovereignty, discipline, and governmentality), cannot be understood as lineal and unfolding in distinct historical moments. Rather, they represent configurations of "triads in motion" that become reworked and further entangled in grounded struggle.

In Chapters 3 and 4, I take a genealogical approach similar to Moore's to show how the law and situated claims to sovereignty have historically become entangled in the disputed land itself. Chapter 3 examines a land conflict in the indigenous territory Jacha Marka Condor Apacheta, which served as the site of the late nineteenth-century indigenous uprising during the 1899 Civil War and later as the birthplace of the movement to reconstitute the ayllu that led to the foundation of CONAMAQ nearly a hundred years later in 1997. Located in the arid corners of the highland department of Oruro, other factors such as fluctuating markets, migration, and

climate change combined with situated sovereign practices to produce a landscape marked by fragmentation and impunity. Chapters 4 and 5 examine a dispute over a sector of land between neighboring communities in a much different context, in the valley region of the province of Inquisivi in the Department of La Paz. There, agrarian unions had remained an important institution to much of rural peasants' political life and organizing land rights and use since the 1952 revolution. I show how, in this case, the lens of entanglement situates the difficulty of resolving the conflict (which ultimately left the future of the Mixed Tribunal uncertain) in interconnected processes of racialized dispossession, domination, governance, and strategies of resistance.

Approaching the uncertainties of resolving local community members' problems in both cases from the perspective entanglement also helps call attention to how the plurinational state, far from resolving to injustices these groups have faced in the past, acts as a new form of reparations politics that has further become entwined into them. Time and time again, a central challenge I encountered in the field was how to find a common frame to locate and evaluate overlapping social harms facing rural communities (or in some cases, who or what even to blame for violence or suffering). Moore argues that what is at stake in claims to authority over entangled landscape is far from an absolute assertion of sovereignty but rather the relative "traction" that claims to rights could gain in disputes over land. As Moore demonstrates, such traction depended on the efficacy of resettlement beneficiaries' argument to rights and authority on the basis of situated cultural frames and traditions. They challenged the chief's claim to membership by demonstrating he had not historically suffered for the territory as they had, thus questioning his authority to decide how the land should be used (ibid., 282). In this dissertation, I focus on what I call the "politics of harm," or disagreements over the nature of harms underlying

a claim to rights or rule, to help orient my analysis toward the uncertainties and historically contingent material factors that shaped different ways that justice was imagined, enacted, and contested.

3. The search for indigenous justice

The question of entangled, overlapping harms brings me back to Lorde's (1984) warning about the limits of the "master's tools" for imagining and enacting alternative forms of justice. To what extend do the partial inclusion of rights and emancipatory discourses around indigenous justice in Plurinational Bolivia limit the parameters of justice in a similar way? In the US, critical race theorists have long worked to demonstrate the fundamental relationship between race and the law to call attention to the ways that racism and white supremacy are built into the structure of the country's legal institutions (see Bell 2000; Crenshaw 1988; Harris 1993). At the turn of the twenty-first century, at a time when political struggles increasingly appeared to be pushed into the legal realm, legal scholars Wendy Brown and Janet Halley (2002) cautioned that "so saturated by legalism is contemporary political life that it is often difficult to imagine alternative ways of deliberating about and pursuing justice" (2002, 19). Similar to Lorde's warning to Black feminists, the interventions made by contributors to the edited volume (from critical scholars such as Lauren Burlant, Judith Butler, and Michael Warner, among others), served as a call to leftist activists to recognize new techniques of power operating through the very instruments that left reformers engaged in their search for social justice.

Scholars analyzing human rights have raised a similar caution to the limits of the law following the end of the Cold War. As historian Samuel Moyn suggests, the defeat of communism left a void of grand narratives for social change and justice, what he calls the "last

utopia" of human rights. In "The Most We Can Hope For…" Wendy Brown (2004) raised concern over the dominant discourse of human rights as an international project of moral good to reduce suffering. Her work, along with recent debates on human rights and humanitarianism, cautions us to consider how moral imperatives to respond to the suffering of victimized individuals elide deeper questions of structural inequality, while acting as a potent source of governance and domination (see also Asad 2000; Brown 2004; Fassin and Pandolfi 2010; Meister 2011; Moyn 2010; Ticktin 2011). These scholars call on leftist activists top rethink their seemingly unquestioned reliance on the law and to also continue to engage in leftist critique of the law, in order to better understand what was produced.

Critically engaged scholars have tended to take a different position regarding the law in Latin America, criticizing "top-down" views of the globalization of law for overestimating their positive regulatory effects. The central argument they make is that hegemonic uses of the laws reproduce the very silences that such critiques seek to address. Much of this position draws from legal scholar Boaventura de Sousa Santos, who, together with César Rodríquez-Garvito, advanced the notion of 'subaltern cosmopolitan legality' to call attention to the dialectical processes through which subaltern actors' engagements with the law reshape the ways that "global rules are defined" (2005, 11). Particularly throughout Latin America, activist researchers have combined efforts to address epistemological processes of colonialism, what decolonial scholars coined the "coloniality of power" (Quijano 1991; see also Escobar 2008; Mignolo 2002), to expand the field of legal pluralism as a platform for politically engaged, theoretically innovative collaborative research. Similarly, decolonial scholars have also directly drawn from Lorde's maxim on the master's tools to differentiate their school of thought from that of important postcolonial scholars such as Gayatri Chakravorty and Homi Bhaba (see Mignolo and

Tlostanova 2007). For decolonial scholars, while postcolonial thought may offer important critiques of colonialism, they ultimately rely on epistemological assumptions of Western modernity that constructed the "master's tools" and thus "stops at the level of changing the content but not the terms of the discussion" (Tlostanova 2019, 167).

Activist anthropologists in Latin America have also grappled with using the "master's tools" of their own making, referring to the historical role of anthropology that functioned in service of (and was facilitated by) colonial interests (see Trouillot 2003), in support of claims to special rights or territory on the basis of cultural difference (Field 1999; Hale 2006). The dilemma of supporting rights-based political agendas stems from the need for engaged research that seeks a better understanding of how techniques of power and governance operate through rights, in particular multicultural recognition. They ask how and when to engage in a social critique that can be attentive to the fluid, messy, and contradictory nature of social belonging while also addressing the shorter-term pragmatic demands of identity politics in their activist and collaborative engagements (see Brown and Halley 2002; Engle 2010; Povinelli 2002; Rappaport 2005; Speed 2006). Legal scholar Karen Engle, in her analysis of the limits of the human right to culture, "urges advocates away from acceptance and deployment of static and essentialized cultures" to raise the question of whether the emerging legal right to culture was ever up to the task of structural change for equality that it claimed to address.

Indeed, acknowledgement of the limits of the multicultural reforms of the 1990s is almost widespread among scholars. While recognition of special rights based on cultural difference provided mechanisms for political participation, even offering some groups substantive material gains, they did not address long-standing demands for self-determination or structural change (Engle 2010; Postero 2007; Hale 2004; Povinelli 2002, 2011; Richards 2013).

This is precisely why a look towards indigenous justice in Bolivia, as an alternative to liberalism and global capitalism can be so enticing. At the same moment that a global consensus around neoliberalism and multicultural rights appeared to affirm an "end of history" (Fukuyama 1992), Bolivians took to the streets to bring an end to widely unpopular neoliberal policies alongside indigenous movements that demanded recognition of their full collective rights to territory and self-determination (see Postero 2007; Gutiérrez 2008; Lazar 2007; Olivera and Lewis 2004).

Yet identity politics, democracy, and human rights have taken a much different turn in the present juncture. As current debates over reparations in United States highlight, there is no straightforward way to address the historical disadvantages that racist policies of the past have produced; policies fail to capture the dispersed ways in which racism is embedded in institutional and social life and always have unintended consequences. As Political theorist Pachen Markell suggests, "understanding the meaning and sources of injustice is part and parcel of understanding what injustice itself is and why it is objectionable; and it has important implications for the question of how best to respond to it" (2003, 21).

Moreover, the look towards Bolivia also raises questions around a "search" for indigenous justice of a different kind, as an alternative to modern capitalism and liberalism that ignores the material constraints and aspirations of people racially marked by indigeneity on the ground. Especially as alternative social projects are constructed out of (and intertwined with) the very material of dominant social projects, historically entangled with them in complex ways, is the imagined Other who is the subject of indigenous justice really able (or willing) to fully dismantle the master's house? I agree with scholars who caution that emphasis on radical difference (as a tendency within decolonial and ontological 'turns' risks doing) often ignores the ways in which people have always historically engaged with liberalism and capitalism,

overlooking the dilemmas and emergent politics that are produced as a result (Asher 2013; Bessire and Bond 2014). What are we asking of those who inhabit the "borders" of colonial difference when we posit the potentiality of their worlds as remedies to the ills of modernity (Asher 2013)? Following Povinelli, if this potentiality is the "ethical substance" that morally and politically connects our worlds, we need to be attuned to the gap "between those who reflect on and evaluate ethical substance and those who *are* this ethical substance" (2011, 11). Revisiting Spivak, Kiren Asher argues that failing to think through this connection runs the risk of over determining the potentiality of alternative social worlds and speaking for – rather than with – those with whom we collaborate.

Asking what it means to search for indigenous justice from the perspective of uncertainties and overlapping experiences with social harm, as I do across this dissertation, I seek to reorient analysis toward grounded struggles as they are entangled with new emancipatory discourses around indigeneity. To do so, I approach indigenous justice not as a set of attributes or "customary" practices to be codified and measured. Nor do I take indigenous justice to necessarily stand in binary opposition to state liberal justice. Rather, I see indigenous justice as a diagnostic tool that allows its proponents to analyze and thus better respond to these different forms of structural harm. To better understand how justice is defined as it comes up against the limits of the law, I draw from my colleague Vianca Copa's use of the concept of *lo propio*. As mentioned previously, during her time at the Constitutional Court (2012-2014), Copa worked alongside Indigenous Constitutional Magistrate Tata Cusi Gualberto to elaborate various interlegal mechanisms for the Court and thus saw first-hand the limits of institutional reforms (discussed in Chapter 2). Yet, she argues it is precisely from within the tight spaces of

negotiating with state power that new forms of political and legal thought as well as practical procedures and institutions emerge, a process she refers to as the construction of *lo propio*.[1]

Roughly translated to mean "our own," *lo propio* encapsulates a range of actions and aspirations that can be attributed to struggles for self-determination and belonging: "belonging to us;" "done by us;" "in our own employ;" "owned by us;" or something that exists "to and for us." In the way that Copa (2017) uses it, *lo propio* describes four interrelated aspects of indigenous justice among Aymara and Quechua as an anticolonial tool of self-determination. First, *lo propio* is characterized by continuity in terms of historical struggle and use of ordinary law as tools of recognition to advance the long-term project of self-determination. This continuity is paired with a dynamism in the development of new tools and departing from the limits imposed by state recognition. Second, *lo propio* refers to a sense of justice and rights based on everyday lived experiences, a collective "self" that serves as the site of critical reflection at the same time as images and representations of identity imposed from others. From an Indianista-Katarista perspective, this implies rethinking and updating anticolonial thought regarding the oppressed-oppressor dichotomy to account for the current situation of domination, which diffuses sites of oppression and forms of internal colonialism among indigenous groups in increasingly more elusive ways. Third, similar to Rancière's notion of politics, *lo propio* emerges not through recognition but through exercising equality, through new legal practices and institutions that emerge in efforts to validate that equality and have it respected by others. Fourth, the anticolonial potentiality of *lo propio* does not emerge "outside" of or "beyond" the state but rather internal to it, occupying its spaces of recognition to expose its contradictions and placing "cracks" in its foundations. In this sense, *lo propio* is at once the site of constituting new political

and legal thought and the development of new procedures and institutions in actual legal terms (ibid., 160-169).

In this dissertation, I argue that meaningful decolonization must first start from the perspective of different grounded struggles over rights, land, and labor. I find *lo propio* to offer a productive way to engage Lorde's maxim, acknowledging the tight spaces people find themselves in that limit reflecting from this perspective. Yet, to the extent that indigenous leaders were able to dismantle the houses of the colonial masters, the hacienda patrons, corrupt lawyers and judges, and even the governmentality of efforts to construct the plurinational state, indigenous communities also faced another elusive question: What type of house they were going to construct in place of these dominant social projects? What form(s) of justice could restore the "community"? In the end, I found that legal recognition of indigenous jurisdiction, while limited, nonetheless created the conditions of possibility for community members to raise these questions on their own terms. Reorienting analysis of indigenous justice toward the complexities of uncertainty of actually exercising it in practice, this dissertation aims to additionally open space toward that tends.

4. Play by Play: Outline of the Chapters

Chapter 1, "Constructing 'Our' Plurinational State" shows how the law operates as a site of indigenous critique and political action in ongoing contestations over the meaning of the plurinationalism in Bolivia. I focus on the situated experiences of native leaders from the Qhara Qhara Nation to reconstitute their territory since the 1990s as an entry point to examine the institutionalization of their demands under the presidency of Evo Morales. Focus on the nature of barriers indigenous legal activists seek to overcome with their actions calls attention to how

efforts to integrate indigenous practices and values into the state acts to mask other forms of exclusion.

Chapter 2, "Gente de poca fe [People of little faith]" explores the question of legal pluralism by focusing on the uncertainties surrounding the implications of the unprecedented Zongo decision in favor of jurisdiction over a local mine. I examine the different ways that union leaders, government officials, indigenous legal activists, rights advocates made sense of the legal victory to show how legal mechanisms such as a jurisdictional conflicts serve as a site to state disagreements on multiple directionalities and scales.

Chapter 3 "Subletting the Gardens" shifts focus to the community level to examine the effects of new mechanisms of legal pluralism that circulate and are picked up as tools to mobilize local community leaders into action. I examine the background of a decade-long case of violent dispossession in the indigenous territory Jacha Marka Condor Apacheta. Focus on factors such as migration, climate change, and global markets call attention to overlapping forms of violence and processes of fragmentation that have weakened local indigenous governance institutions. I show that the lack of a framework for locating and analyzing dispersed forms of social harms experience on the ground ultimately acted to defer harm– and the obligation to respond to it – back onto community members themselves.

Chapter 4 "Constructing the Mixed Tribunal," analyzes the effects of a Court ruling in favor of indigenous native peasant jurisdiction over a decades-long conflict between two neighboring communities in the province of Inquisivi, in the Department of La Paz. This chapter approaches the conflict through the lens of entanglement to show how the undecidable questions of the case stemmed from the fact that the land in dispute was sedimented with multiple overlapping layers of harm, recognition, sovereignty, and governance. Despite open

acknowledgement of corruption and distrust of the state justice system, Mixed Tribunal leaders were unable to establish an alternative. Before the potentiality of the Mixed Tribunal could be decided, community members had to find a common ground upon which to construct their different justice projects.

Chapter 5, "Redrafting the Blueprints" returns to the case of the Mixed Tribunal analyze the different arguments presented by community members and Tribunal leaders in the different hearings to resolve the dispute over boundary limits. I examine different modes of "suffering for territory" (Moore 2005) and "membership talk" (Simpson 2014) to consider why certain claims to rights and rules gained traction in the case over others. This demonstrates a central challenge of removing the "comma" separating indigenous, native, and peasants as a form of reparations politics tied to different ways of relating to the land. I show how, while in the end local leaders were unable to resolve the land dispute between the neighboring communities, efforts to construct the Mixed Tribunal nonetheless opened space for imagining justice from the sedimented landscapes in which their different social projects were entangled

The Conclusion Chapter, "Renovation Work" concludes by reflecting on the nature of ongoing contestation over the meaning of plurinationalism by returning to the material and ideological ground of the different social projects examined in this study. I also return to the different dilemmas raised by reflections over the difficulty of removing both the comma and the hyphen across the different chapters dissertation to consider understand how different institutions, political junctures, and expectations are also built into the challenges of decolonizing research.

5. Final notes: Situating the researcher, key terms, and engaging collaborative methods

Before I go further, let me briefly discuss the political context in which I conducted my research and how I came indigenous justice in Bolivia, along with some of the specific dilemmas and challenges that shaped my project. When I first came to Bolivia in 2011, (for my Master's thesis research in the for Latin American Studies program at the University of North Carolina at Charlotte) my interest in studying indigenous politics was certainly driven by an interest in the emancipatory promise of the structural changes underway in the country. It was during that initial research summer in 2011 that I first met Tata Gualberto Cusi Mamani, who at the time was running for a seat on the Plurinational Constitutional Court. Tata Cusi was from Jesus de Machaca, one of the 11 indigenous municipalities or territories that indicated its intention to seek the new status of "Indigenous Autonomy" in the referendum following the passage of the 2010 Decentralization and Autonomy Framework Law. I had attended an annual cabildo (assembly meeting) in Jesus de Machaca and had the pleasure sharing the 2-hour ride back to La Paz with Tata Cusi. The meeting had been quite contentious, participants from the different ayllus accusing others of being *egoistas* (acting out of individual interest) and bemoaning that most youth did not want to fulfill their community roles (obligatory 1-year service following the *thaki* system of rotational leadership that is central to ayllu government, see THOA 1995). In an effort to explain the contentious issues that were discussed at the cabildo, Tata Cusi spoke through a lens I could understand as a White foreign researcher from the US. "Look sister, it's like putting a Black face in the White House," he said, referring to the historical election of Barak Obama as the first Black President of the United States. "Here, indigenous autonomy, with Evo too, it's just putting a poncho on a municipality."

Unfortunately, Tata Cusi's framing of the nature of challenges of implementing the promises of plurinationalism were not included in my first master's thesis on indigenous autonomy. This was not because they did not seem important, but because I was struggling to see beyond my own lens of the emancipatory promises of indigenous justice. In particular, I found it difficult to grasp the complexities of dynamics of community members' concerns and experiences. My experience writing that MA thesis shaped my interest in political anthropology as a critical lens for understanding asymmetrical power relations and struggles for social justice against them, on the one hand, and the historical role of the discipline of anthropology within those power relations and struggles, on the other.

In later years, as I entered the PhD program in Anthropology at UC San Diego and continued conducting pre-dissertation research, I witnessed increased opposition to Morales from sectors of his support base. Theirs was a much different situated perspective of critique than early opposition movements from right-wing adversaries from the resource rich "*media luna*" lowland departments (states). Especially in the early years of the Morales administration, these elite groups stood the most to lose from Morales' platform of radical structural transformation and thus staunchly opposed it, often in confrontations that demonstrated overt racist attitudes and ultimately damaged the legitimacy of radical nationalist, federalist attitudes (Postero 2010). Tata Cusi, in contrast, supported the MAS government initially, and was appointed as one of the first Indigenous Magistrates of the Constitutional Court. Yet, by 2014, when I started conducting research for this dissertation, he had been removed from office after publicly questioning the independence of the Court. This was followed by years of public trials and defamation campaigns on the part of the Morales government, a form of political persecution Tata Cusi later denounced as "civil condemnation." Tata Cusi's treatment was not unique; as the Morales

administration lost support from across the political spectrum, it increasingly used state power to silence its opponents.

For many indigenous organizations in Bolivia, a decisive break with the Morales government came in 2011, following government plans to construct a highway through the Territorio Indígena y Parque Nacional Isiboro Sécure, TIPNIS, without consulting local lowland indigenous groups who inhabited the territory (see Fabricant and Postero 2015; Postero 2017; Laing 2012; McNeish 2013). In response, CONAMAQ joined together with the lowland organization the Confederation of Indigenous Peoples of Bolivia (CIDOB), which was already organizing a march across the country in protest. As marchers reached La Paz, they were met with police violence and government repression, formally breaking from the Pacto and the Morales government shortly thereafter. This break eventually led to the takeover of the CONAMAQ headquarters in La Paz by pro-MAS factions of the organization (and the birth of CONAMAQ *orgánico*) mentioned above. Across the country, local organizations also appeared increasingly fragmented. In Jesus de Machaca, for example, increased internal division over conversion to indigenous autonomy eventually led to a stalemate and halted the process. All of these confrontations and processes of fragmentation set the backdrop for my research. My own critical view of the Morales administration draws from the perspective of those protagonists engaged in struggles to construct "our" plurinational state (as indigenous legal activists such as Samuel Flores often put it).

Over the several years that I conducted dissertation research in Bolivia, between May 2014 and August 2019, the indigenous and peasant organization leaders, human rights advocates, social scientists, lawyers, and government officials I met were constantly engaged in ongoing discussions over how to better realize the promise plurinationalism in practice. Whether in

national summits held by indigenous organizations in La Paz or Sucre, in cabildo (town hall) meetings among community members in ayllus, in the small offices of indigenous leaders in small towns, in the living rooms of migrant families in periphery cities, in the spaces of anarchist collectives in La Paz, or on long bus rides commuting back and forth between them, I observed (and often took part in) endless conversations that critiqued state law and sought alternatives. Collaboration among this loosely articulated network of researchers varied greatly in terms of time, process, form, and overall end product.

The variation of political agendas among and within different groups becomes more apparent as I move across the different chapters. The first part of this dissertation focuses more at the national level, discussing recent institutional transformations and national discourses around plurinationalism and decolonization that are contested by indigenous legal activists in a variety of sites: in national fora (government-sanctioned, NGO-sponsored, and grassroots), in institutions such as state ministries, the departmental courts, as well as in urban spaces that are collectively run and host discussions among indigenous leaders working in different areas throughout the nation.

Many times, I would visit the communities of indigenous leaders who were working to implement constitutional rights at the national level to better understand how their own grounded struggles informed different strategies. Because many of them traveled to La Paz regularly (invited to participate in NGO-sponsored workshops or traveling to present a demand to congress or one of the ministries), I met with leaders more regularly in La Paz to discuss ongoing legal proceedings. I also traveled to Sucre regularly during my research, which is the judicial capital of Bolivia and thus where the Plurinational Constitutional Court is located. This is also where the Indigenous Native Peasant Justice Tribunal is located (Chapter 1). Indigenous legal activists who

formed the tribunal also received formal training as human rights experts through a program sponsored by the Plurinational Court. In this role, they also traveled around the country offering community leaders consultation regarding how to exercise their constitutional rights in concrete cases. As mentioned, many of these leaders took a staunch position against political parties and social organizations (such as the MAS and CONAMAQ).

But this did not imply that they did not work with peasant union leaders or even form alliances with MAS officials to pursue their own agendas. Indeed, important to note is that, many other times, indigenous legal activists who I worked with and who promoted efforts to implement new forms of legal pluralism were also leaders of agrarian union federations that were staunch supporters of "brother Evo" and the MAS. But even as they saw themselves as helping fulfilling Morales' mandate, this was at the same time a mandate they themselves had set. That indigenous leaders would have to invest their own time and energy to teach me these complexities of identity and politics was a central dilemma that I had already faced since my first trip to Bolivia. In this dissertation, I highlight the heterogeneity of different groups' agendas, and the difficulty which they map on to different categories.

Removing the "comma" separating indigenous, native, and peasant politics

As mentioned at the beginning of this introduction, representatives from the different indigenous, native, peasant, and workers organizations that formed the Unity Pact historically participated in a popularly elected Constituent Assembly to propose what plurinationalism should look like in practice. Drawing from influential Bolivian intellectual René Zavaleta Mercado, scholars have championed the direct participation of as addressing a longstanding problem in Bolivia's history, namely that successive state-building projects in Bolivia have

historically failed because the historic national-popular bloc represented by the Unity Pact, what Zavaleta (1986) coined the "*sociedad abigarrada"* (variegated or motley society), have historically been excluded from nation building projects (Tapia 2010). Combining Marxist and Gramscian analyses of history, Zavaleta used the term *lo abigarrado* to call attention to the different cultural practices, modes of reproduction, political subjectivities, and temporalities produced as a result of different groups' situated struggles. He argued that successive republican, liberal, and revolutionary states existed merely as "apparent" or partial states constituted on dominant ideologies because they had failed to include *lo abigarrado.*

The official legal category "Indígena Originario Campesino" (Indigenous Native Peasant), singular and without a comma, is a new category of rights that in many ways encompasses the diverse histories that make up *lo abigarrado.* Whether rights should be awarded on the basis of separate political and ethnic identities (indigenous, native, or peasant) or should include an all-encompassing subject of rights (to encompass all indigenous native peasants inclusively) was the subject of heated debates among the organizations of the Unity Pact (Shavelzon 2012, 93). As the Decolonization Unit of the Plurinational Constitutional Court would later interpret it, the category represents "an all-encompassing and totalizing instrument of the nations and people that inhabited these lands before the colony and the republic," thus preventing the segregation, differentiation, or discrimination of rights for indigenous, natives, and peasants belonging to these separate collectivities" (UD 2017, 22).

But this category artificially brings together identities – indigenous and peasant -- that were not always unified and have in fact been in opposition on many occasions. In the Andean highland and valley regions many Aymara and Quechua groups use the term o*riginarios* (natives) to refer to a status as the original land owners. As I discuss further in Chapter 1,

originario is a fiscal category dating back to the colonial system for administering labor and tributary payments through using already existing native institutions of rotational labor through *mitas* (turns). Caciques (native lords), through a "reciprocity pact" with the crown, were allowed to maintain authority and communal property in exchange for collecting tribute and enforcing forced labor in the mines. This tacit agreement with the Crown formed a central strategy of early efforts of caciques to maintain communal landholdings in response to liberal elites' efforts privatize landholdings following independence from Spain, largely through relentless legal petitions and efforts to recuperate colonial land surveys (making claims to the land as originarios based on the terminology of the registries). The term *comunarios*, or native community members, often appears in these petitions as a term linking the claimant to the original owners of the land on the basis of the colonial tributary payments or cédulas of their ancestors and is commonly used in highland communities to this day.

Natives were also acutely aware of their status as *indios*, in the *sistema de castas*, a hierarchical system based on biological discourses of race that ranked Spanish at the top, with mixed-blood people (castas) in the middle, and Indians and African slaves at the bottom (Cope 1994; Larson 2004; Postero 2007). Scholars have shown how, even as race mixing and a growing mestizo class blurred such categories, racism was a marked feature that saturated daily life through implicit social codes, access to education, living spaces, dress and even anxieties and fears (Canessa 2012; Gilly 2003; Larson 2004; Postero 2017; Weismantel 2001). The main difference between originarios and campesinos (both considered Indians) stems from if native peasants sold (or lost) land titles and went on to work on large estates in exchange for a small plot of subsistence, or if they were able to maintain communal lands (or decided to wage legal battles in recuperation of them). Because the exploitative labor system of the large estate

latifundio system was also called "*colonato*", those who worked on the haciendas were also referred to as *colonos*.

Following the nationalist revolution led by the Movimiento Nacionalista Revolutionario (MNR) in 1952, education and universal suffrage was extended to native peasants, but formal integration into the state was through legal status as peasant workers and not based on racial or ethnic categories. The corporatist structure of the state largely reflected the ideology of mestizaje predominant throughout Latin America, which sought to assimilate the native population into a project of national unity. In the process, the category "indio" was eliminated and replaced with "*campesino*" (peasant) (Dunkerley 1984; Postero 2007; Yashar 2005). The revolution was also followed by the 1953 Land Reform, which awarded individual land titles to *ex-colonos* as a means to break up the oligarchy and liberate Bolivian peasants.

By the late 1990s when CONAMAQ was founded, the movement to reconstitute traditional ayllu structures had gained momentum throughout the highland region. This matched a general shift from class to ethnicity as well as multicultural reforms that accompanied an emphasis on the term "*indígena*" in the 1980s and 1990s throughout Latin America. In Bolivia, the term indigenous is largely associated with lowland indigenous groups and international indigenous rights frameworks such as the ILO No 160 and United Nations Declaration of the Rights of Indigenous Peoples. Yet, it is also common for indigenous legal activists who would identify as Quechua or Aymara to refer to themselves as "indigenous native peoples and nations," especially as a way articulate this international rights discourse and framework. However, important to note is that what these different, overlapping trajectories highlight is that terms such as peasant and native cannot easily be mapped onto differing positions among (or within) a given indigenous native peasant organization in Bolivia.

In chapter 1, I highlight how stark divisions between indigenous and peasant politics are rooted as much in specific histories of political organizing and state regimes of governance as in intellectual/activist discourses that supported them. However, there is also a risk in making generalizations about either group according to these historically constructed distinctions, because in fact both groups have consistently borrowed practices and ideas not only from the state, but also from each other's organizational logics in forming different strategies of resistance and survival.

In this dissertation I use the term *indigenous legal activist* not to refer to an ethnicity as much as a more cosmopolitan actions of those seeking to materialize their constitutional rights in a variety of ways. I also use the term *community leaders* to refer to some of the same indigenous legal activists, as most of whom are serving or have previously served in leadership roles in their communities. Thus, while the terms are difficult to separate, I use the two terms indigenous legal activist and indigenous leader not to distinguish their an actual titles *per se* but rather the different roles they are playing at a given moment: while indigenous legal activists articulate a network of national level efforts and tend to be focused on state policy or law reform, indigenous leaders serve an obligatory position at the community level and are either representing the specific interest of their community or acting in a role to respond to a concrete problem such as a land dispute.

Unlike indigenous legal activists from the Qhara Qhara Nation, other community leaders were loyal to the MAS party and also saw value in channeling their demands through political parties and social organizations. I also refer to these peasant agrarian union leaders as indigenous legal activists, as they embrace a particular vision of collective leadership based on the principles of collective deliberation and consensus at the grassroots and not act on their own interests (see

Grisaffi 2016; Linera 2005; Pachaguaya 2007, 2019), and that they articulate these values as they articulate national networks to generate policy proposals and promote legal strategies on the basis of such principles. Similar to the "frontier Nasa" Rappaport (2005) collaborates with in Colombia, these legal indigenous activists navigate roles as intermediaries who move across the obligations and privileges of different spaces from the community level to the arenas of national politics and also negotiate with other structures of knowledge and resources tied to NGOs and outside researchers such as my other Bolivian collogues and myself

Because of the complexity of fluidity of categories and notions of belonging in Bolivia, more unifying concepts such as "*lo abigarrado"* (as a reference to a subaltern national-popular block) or the now all-inclusive "indigenous native peasant" category might be appropriate as analytical terms to discuss this history to refer to a general excluded subaltern or counterhegemonic national-popular block. However, as mentioned, I found the differences between the groups mattered, revealing tensions among them and how they were considered relevant in terms of relating to the state. So, across the chapters of this dissertation, as I use different terms, I also aim to show how and when such categories matter in terms of membership and claims to rule and rights. This focus points toward underlying tension between organizations, communities, and sometimes even among family members, which I return to in the final part of this dissertation: whether to "re-insert" the comma back into indigenous-peasant politics, or if there is a meaning of justice that could encapsulate the complexity of agendas and experiences of the heterogenous groups.

Removing the indigenous-colonizer "hyphen" marking collaborative relationships

As s a first-generation student from a White working-class background, I have appreciated the critiques of that many Bolivian scholars raised against the asymmetrical privileges of their European and North American counterparts. In particular, I took inspiration from Silvia Rivera Cusicanqui's (2010) critique of decolonial scholars, who, she noted, may claim projects of decoloniality that seek to decenter academia as the central cite of enunciation, but in fact reproduce the very logics of coloniality by generating new abstract and complicated theoretical concepts that are removed from the ground of struggle. This, she argues, produces a double exclusion as Bolivian researchers are then pressed to use such concepts to demonstrate their scholarly merit, calling attention to ongoing asymmetries in the "political economy of knowledge" build into neoliberal academic institutions (ibid.).

When designing my dissertation research project, I initially took inspiration from a growing focus throughout Latin America on engaged collaborative research. Throughout the region, legal pluralism has gained impetus as a platform for non-indigenous/indigenous collaboration. While the specific methodologies and practices of this field vary significantly (see Sieder 2011), researchers often share an explicit ethical commitment to knowledge production that validates indigenous peoples' epistemologies and legal systems in support of their interlocutors' political agendas. As a North American anthropologist eager to decolonize knowledge practices and excited about possibilities of new forms of institutionalized legal pluralism and interculturality in Bolivia, I brought with me ideas about these different types of collaboration and sought out ways to design engaged research that could similarly support grounded struggles for justice.

Living and working in Bolivia for more than five years while conducting my dissertation research marked a new sense of being an outsider. In a context marked by the legacies of

colonial racism, I was made acutely aware of the privileges that my whiteness afforded me, doubly so by the fact that I was a woman working on a doctorate degree from a prestigious North American university. In this way, I felt more complicit in the historical role of anthropology as a discipline that had produced epistemologies of colonial racism, claiming the right to produce authorized knowledge over indigenous peoples. Paradoxically, the main reason that I was drawn to Bolivia – to study broad sweeping efforts to overcome this past – also entangled me in its legacies. Especially before I started living full time in Bolivia in 2014, my research was largely marked by my interlocutors' attempts to help me understand, as Tata Cusi had attempted to do, the nature of limits to decolonization. The challenge of decolonizing my own relationship to the racially charged comma (separating indigenous, native, and peasant politics), discussed above, was another.

One challenge in conducting collaborative research stemmed from the various notions of what this term meant. From early on, when planning my research design, in conversations with Bolivian colleagues it became clear that my own notion of collaboration did not resonate with how they imagined collaboration. As Rosanna Barragán (2008) points out, the discipline of anthropology was institutionalized much later in Bolivia than in other countries, which allowed for a more organic reciprocal relationship between the social sciences and social movements. Barragán contrast these "bridges" with different "chasms" that arose as a result of the structural constraints of knowledge practices: first, chasms between North American Bolivianistas who conduct extensive research projects supported by their home institutions (and thus go on to get prestigious jobs in academia) and their Bolivian colleagues, who face a more precarious situation as "nomads" (bouncing from temporary jobs working for NGO-funded research institutes or in government positions); and second, chasms between Bolivian researchers and the communities

with whom they work on the basis of the practices and demands that structure the conditions of their nomadic research relationships (ibid.). As my discussion on the political context in which I conducted research highlighted, there were always multiple (at times conflicting) agendas among groups. The agendas of those involved in my own collaborative endeavors in Bolivia were also often only "partially overlapping" (Briones 2017) in a given meeting, diverging in others.

Another tension stemmed from how this situated history also marked expectations and assumptions about what research is, as well as what kinds of products should result and towards which agenda (Rappaport 2017; Briones 2017; Briones et al. 2007). This is where my dissertation project intersects with my research on the possibilities and limits of engaged collaborative research as a response to the asymmetries built into Western science (see Kennemore and Postero 2020). In a recent article, co-authored with Nancy Postero, we take inspiration from scholars who urge respectful dialogue, such as that of Jones and Jenkins (2014), a New Zealand White settler and a Maori who encourage researchers to "work the hyphen" or to acknowledge (and make productive use of) difference between the indigene-colonizer that marks much of the collaborative relationship between White researchers and their indigenous interlocutors. Yet, at the same time, we identified other collaborative endeavors that seek to blur lines (researcher/activist, insider/outsider, Western/indigenous) that reproduce assumptions about how "we" as collaborators are positioned in relation to "them" (in particular, see the interventions of Briones et al. 2007; Briones 2017).

Similarly, in my own research, I have taken inspiration from these discussions to consider how the uncertainties of efforts to promote and strengthen indigenous justice in Bolivia might be better understood through collective modes of thinking. Particularly with two of my closet colleagues, Vianca Copa and Elizabeth López, we've thought about different modes of collective

engaged research and thinking (Briones et al. 2007), that seeks to better understand the complexities of structural transformations through attention to micro-practices read from the very different situated perspectives that we all bring with us. This is particularly necessary because of the many different situated perspectives and understandings on land disputes that (as the discussion on entanglement above illustrates) are extremely complicated and seemingly impossible to resolve. This is a methodology that we have developed gradually while working on other co-othered texts (see Copa and Kennemore 2019, Copa, Kennemore, and López 2018; Copa, Kennemore, and López forthcoming). Yet, what we found is that this kind of collective labor takes hard work and thus is an ongoing form of thinking and writing together we continue to aspire to.

Important to note that much of the analysis presented in this dissertation is the result of years of ongoing conversations that in many ways were already a form of co-theorization in the sense that they were not marked by a certain expectations or intentionality ("doing" research, Rappaport 2017), but rather a shared "love and rage" (Haraway 2016) that strung together our endless conversations about justice. In an attempt to foreground this in a more conventional way, I also blend my own perspectives on justice with already elaborated theories such as Copa's notion of *lo propio* elaborated above.

But also, across the chapters of this dissertation, I consider other moments in different collaborative relationships where such efforts of collective research and thinking largely *did not work*. To do so, in each chapter of this dissertation, I include a small vignettes entitled "working the indigene-colonizer hyphen," that demonstrate the different assumptions, power dynamics, and agendas that shaped the conditions of collaboration. Rather than offer a celebratory vision of co-theorization as a normative decolonizing practice, the aim is open space for collective

thinking and acting across different situated perspectives. I will return to reflect on what this approach offers as an object of study in the final conclusions of this dissertation.

Chapter 1

Renting Out the Master's House

("So that the Indian governs for the Indian himself")

1.1 Introduction: Sacrifice and Struggle

I first met Tata Samuel Flores of the Qhara Qhara Nation in La Paz in August 2015. We were introduced by Ruth Bautista, a Bolivian sociologist who works for the Institute for Rural Development of South America (Instituto para el Desarrollo Rural de Sudamérica, or IPDRS), a relatively small non-governmental organization (NGO) that supports grassroots rural development initiatives throughout the region. Largely through participatory action research, and in collaboration with indigenous leaders and peasant farmers, IPDRS documents the local experiences of rural indigenous peasant communities in their struggles for land and rights to produce a variety of outputs ranging from short texts to elaborated case studies, books, videos, and teaching material. The aim is to generate multiple platforms of dialogue and exchange for local communities to share their experiences toward the advancement of research and knowledge production on rural development that serves their own initiatives and interests. Ruth invited me to their office in La Paz to meet Flores and to help write a short article for their online series *Diálogos*, which offers brief overviews and reflections of relevant stories.

In January of that year, Flores had formed, along with leaders from Qhara Qhara and other Indigenous Nations, a national-level institution called the Indigenous Native Peasant Justice Tribunal of the Plurinational State of Bolivia (Tribunal de Justicia Indígena Originaria Campesina del Estado Plurinational de Bolivia (henceforth JIOC Tribunal). Before our meeting, Ruth shared with me a three-hour interview that one of the Institute's researchers had previously

recorded with Flores discussing the formation of the JIOC Tribunal. Once in the IPDRS office, Flores wasted no time picking back up where he had left off, going on excitedly for another two hours sharing their experiences of struggling against state bureaucracy and poorly implemented laws. I was excited to meet Samuel in person precisely because of the sheer passion and excitement I heard when he spoke about the actions he and fellow indigenous leaders were taking to defend their constitutional rights.

The story began with the struggle of the Marka Quila Quila (where Flores is from and has served as a *kuraka*) against departmental officials from National Institute of Agrarian Reform (INRA), the state institution responsible for overseeing land titling. The main issue was a requirement that the Marka Quila Quila have legal standing (*personería jurídica*) as a social organization that had been introduced by a Presidential Decree[1] modifying the 1996 Land Reform Law. Repeatedly, INRA officials had blocked indigenous leaders' efforts to collectively title the territory as well as have political representation in departmental and municipal government by refusing them legal personality on the basis of the decree. In response, leaders presented a "popular action"[2] appeal to the Plurinational Constitutional Court to challenge its constitutionality. This legal strategy, along with many others that I will discuss in this chapter, was successful in the sense that it modified parts of the state law and led to the construction of new institutions that act as a new site of political action in the face of social movement fragmentation. "Things aren't done like the government says with a law, with a decree, but rather

[1] Decree Nº 29215, emitted August 2, 2007, introduced that modifications to both the 2006 and 1996 land reform laws as part of the Morales government's Community Land Reform Renewal Act.

[2] Similar to *amparos*, or legal protections common throughout Latin America, popular action suits are a legal tool available to citizens to ensure against rights violations by governments, with the difference being a collective subject rather than individual.

through the ways we are struggling. With sacrifice, they will be obtained," Flores explained in our interview the first time we met. "Rights don't remain like that only on paper, we are materializing the constitution."

This chapter examines different meanings of justice that are contested as indigenous legal activists such as Flores and others from the Qhara Qhara Nation seek to "materialize" their rights to indigenous self-determination. In many ways, the experiences of indigenous legal activists from the JIOC Tribunal speaks to a growing concern among human rights advocates throughout Latin America over an "implementation gap" (Stavenhagen 2006) between the promise of indigenous rights and state policies that fail to uphold (or even violate) such rights in practice. In Bolivia, especially following the 2011 "TIPNIS controversy" over government plans to construct a highway through the Territorio Indígena y Parque Nacional Isiboro Sécure, it has become increasingly apparent that even revolutionary rights such as those advanced in the 2009 constitution fail to guarantee indigenous peoples rights to territorial autonomy and self-determination (see Fabricant and Postero 2015; Postero 2017; Laing 2012; McNeish 2013). Focusing on implementation itself, some scholars have also shown how procedures such as consultation also have their "shady sides," especially in generating divisions over compensation or tradeoffs for much needed development in communities affected by a proposed project (Schilling-Vacaflor 2017; see also Wright and Tomaselli 2019). Other scholars have also focused on the an increased "judicialization of politics," which in Latin America not only refers to a a growing tendency to rely on the judiciary in struggles for justice discussed in the Introduction Chapter but also a more pointed use of the courts as a counter balance to hold governments accountable for polices that violate their rights (Sieder et al. 2005; see also Hirschl 2011).

Similarly, in this chapter I show that a central problem in implementing rights is not only that they remain "on paper," as Flores put it. Rather, what indigenous legal activists seek to address are the very processes of institution building, (paradoxically, carried out in the name of implementing the constitution), that have produced new exclusions. In doing so, they also use the courts to challenge the authority of MAS-led executive and legislative branches of government. The MAS party was formed by grassroots social organizations that see themselves as the "drivers of change" (García et al. 2015.).

However, as I will discuss, indigenous legal activists are highly critical of party politics that they see as distancing leaders from their grassroots, inevitably leading to their betrayal. Thus, I argue, by asserting that *they* are materializing the constitution, indigenous legal activists are also seeking to redirect institution building processes back toward their own social projects, which are grounded in antient notions of territoriality and communal forms of reproducing social life. Theirs is an ethical project of negotiating and reconstituting communal forms of government in the face of centuries of overlapping processes of fragmentation.

In this way, unlike more recent focus on the strategic use of the law as a tool for justice, indigenous legal activism in Bolivia is certainly not new. Historians examining colonial and later republican court archives have shown how indigenous leaders flooded the courts with complaints against the abuses of local authorities in order to maintain their own authority over communal landholdings (Barragán 2012; Gotkowitz 2007; Kuenzli 2013; Mendieta 2010; Platt 1982). The first part of this chapter situates the contemporary movement to reconstitute ayllu institutions in the long history of indigenous legal activism in Bolivia to better understand the entangled nature of law and sovereignty in contemporary rights claims.

Through the lens of this entangled history, I then analyze the nature of the barriers these leaders sought to address following the passage of the 2009 constitution. I suggest that these actions offer a form of indigenous criticism from the perspective of indigenous sovereignty. Similar to the "politics of refusal" that Audra Simpson (2014) describes among the Iroquois in North America, a great deal of the legal strategies deployed by indigenous legal activists are driven by a refusal of the terms of recognition imposed upon them by state law. Yet, complete refusal does not seem like an option for many indigenous leaders: without access to much needed economic resources to support their social projects, they remain dependent on outside structures of funding to sustain them. Throughout the chapter, I show how, by "renting out the master's house," or by borrowing and appropriating the economic and discursive material available to them, indigenous legal activists nonetheless imagine and contest different forms of justice. They are seeking to construct a different moral framework for organizing their social lives grounded in their territories.

1.2 The Qhara Qhara Nation: From fragmentation to reconstitution

When Spanish colonizers conquered the region in the 16th century, the present-day reconstituted territory of the Qhara Qhara Nation formed part of the Qaraqara-Charca Federation, a grouping of several multi-ethnic native territories of the Andean region that were under Inca rule (Bouysse-Cassagne 2017; Platt et al. 2010; see also Figure 1).

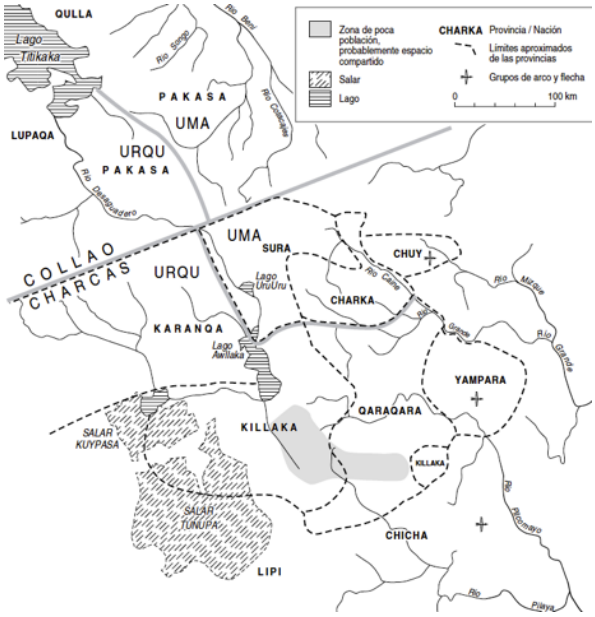

Figure 1.1**:** Qaraqara-Charca Federation (Platt et al. 2010)

In the 1570s Viceroy Francisco de Toledo consolidated a *reducción* (reordering) system , reorganizing the pre-colonial system of *mitas* (turns), a rotational system of forced labor in the mines (see Barragán 2016; Klein 1992; Platt 1982). To ensure the administration of labor and the collection of much needed tributary payments, the Crown formed what Tristan Platt (1982) refers to as a "reciprocity pact" with the *caciques* (native lords under the Inca empire): they were allowed to maintain authority and communal property in exchange for collecting tribute and enforcing native's forced labor in the mines. Yet, the reducción system also fragmented pre-colonial provinces and redistributed power to crown-appointed authorities (called *corrigedores*).

In response, the caciques sent a complaint to the Crown, calling for "mercy and justice," and demanding the king "remedy" the problems brought by Toledo and the corrigedores. The document, called the *Memorial de Charcas,* was recovered by Waldemar Espinoza Soriano in 1966 from the General Archive of the Indies in Sevilla, Spain. In it, the caciques made clear that they were authorities over their lands and expected to be respected as equals (Espinoza 1969; see

also Claros 2011). To make support their argument, the document outlined pre-existent territorial organization and systems of authority and rule, which was contrasted it with the "disorganization" brought by the Viceroy Toledo's reforms. In doing so, it also provided ethnographic and historical material that would later become central in the movement to reconstitute the ayllu. Especially for indigenous legal activists from the Qhara Qhara Nation, the *Memorial* has served as a crucial guide for investigating tributary records in the National Archives in Sucre to support their claims as well as to recuperate ancient institutions

Granted, historians have shown that the picture on the ground was far from the cohesive narrative presented in the cacique's claim. As Platt et al. (2010) observe, caciques likely homogenized much of their representation of territorial and ethnic units in efforts to support their argument as legitimate authorities. They note, for example, that systematic reference to the "seven nations" that made up the Province of Charcas[3] (as opposed to referring to them as "federations" as they tended to be organized under Inka rule), was likely a strategy to claim greater jurisdictional authority to make up for previous losses of territory (ibid., 58-68). In this sense, the cacique's emphasis on order and homogeneity was a "language of contention" (Roseberry 1994) to assert authority on the basis of Viceroy Toledo's logic justifying reducción system to ensure the efficient administration of land and labor in service of the Crown.

Indeed, the varied and dynamic nature of land tenure among rural Andean communities is precisely the fact practices of fragmentation, subdivision, or rotating cultivation acts as a form of "risk reduction" to mitigate these factors (Barragán 2007b, 46; see also THOA 1992; Urioste 1989).The discrepancy between different systems of recognition can also generate problems defining boundary limits or establishing rightful ownership, as multiple documents can exist that

[3] QaraQara, Charka, Chicha, Killaka, Karanqa Chuy, and Sura

would seem to partially grant property rights to the same exact sector of land. Moreover, scholars analyzing the application of early land reform efforts in the late nineteenth and early twentieth centuries demonstrate that land surveys were uneven and inconsistently applied, having devastating effects in breaking up communal landholdings in some regions and met with fierce resistance in others (Gotkowitz 2007; Medieta 2010). Focusing largely on petitions and legal complaints, scholars examining subsequent land policing in Bolivia demonstrate that there is no coherent application of the law or singular actor driving a particular claim to land rights (Barragán 2007c; Soliz 2017).

In the specific case of the Qhara Qhara, the Curaka Choquevilca and several other caciques successfully claimed ownership of fields in Potosí and Porco by arguing they were in their territory. This strategy allowed them to obtain certain benefits for themselves and for their communities and thus likely prevented a great deal of fragmentation that other communities' experiences (Rasnake 1989). As I will discuss further below, ethical values articulated in collective notions of territory must also gain "traction" (Moore 2005) as a shared aim of the collective good. They cannot be separated from contingent material factors or transformations in the political economy that place different lines of fracture on communal relations that are not easy to mend, especially not with rights alone. In many ways, this is the nature of "struggle" and "sacrifice" that Flores emphasized in their own efforts to materializing the constitution.

Following independence from Spain, the authority of the caciques was further diminished by early liberal policies that sought to privatize landholdings. The 1874 Ley de Exvinculación (Disentailment Law) marked one of the most concerted efforts to impose liberal ideals on to the rural countryside of highland Bolivia, abolishing the ayllu communal land system, imposing the sale of individual land titles, and forcing communities to address problems of land tenure as

individuals rather than through the ethnic representation of communal leaders (Ari 2014; Larson 2004). Liberal policies were informed by a "dual discourse" about the nature of Indians and their place in the nation: first, that Indians were "barbarous" and incapable of political reason (thus in need of universal public education); and second, that Indian communal organizations maintained ethnic ties that prevented them from relating to the State as individual citizens (justifying the destruction of communal property as a juridical base for property rights) (Postero 2007b, 32-33).

Allowing Indians to have individual property, the most liberal of the arguments went, would break them from the conditions of oppression that was the cause of their backward condition (Gotkowitz 2007).[4] Liberating the Indian was also necessary to modernize the country; yet, following independence Bolivia remained reliant on Indian tribute. This points to an underlying "*señorial paradox*" identified by Zavaleta (1968): to eliminate the Indian race would eliminate their ability to be the master. As a result, ruling white-mestizo classes were never able to secure national unity, nor its accompanying sense of sovereign authority (ibid.).

At the time of the passage of law in 1874, for example, the idea of diversifying the tax base and eliminating dependence on Indian tribute did not have support from many sectors of society – including indigenous communities that distrusted any new arrangements with the state (Barragán 2012). Moreover, many indigenous communities had already been consolidated as *cédulas de composición* (titles certified by colonial officials) under the Crown and were thus suspicious of new surveys. Yet, by the 1880s, an expensive war with Chile had generated the urgent demand for tax revenues and thus widespread privatization of land was undertaken. As a

[4] The *mita* system had been formally abolished in 1812 with the liberal Cortéz of Cadiz, one of the first and most liberal legislations of the time that framed the "Indian question" in terms of a lack of individual property rights and freedoms constraining native's opportunities for advancement in society (Barragán 2012, 2016).

result, paradoxically, at the very moment that communal landholdings were prohibited by the 1874 Disentailment Law, several decrees appeared legally recognizing communal titles.[5] While pro-indivisos acted as a type of collective claim, they were not considered to be recognition of fully judicial status as had been with prior arrangements with the Crown (Gotkowitz 2007, 34). These are the titles that would later be consolidated after the 1990s as part of multicultural reforms as Native Community Lands (Tierras Comunitarias de Origin, or TCOs) (see Barragán 2007c).

Failure to fully implement the 1874 Disentailment Law demonstrates the always contested nature of elite hegemony. As Olivia Harris emphasizes, the ambiguity of modern law is precisely due to the fact that it is "a continuous attempt at fixity and closure that is undermined by the impossibility of its own project" (1999, 5). In addition, this history calls attention to the fact that processes are highly contingent. Through a combination of uprisings, negotiation, strategic alliances, and legal pressure, the law was effectively "distorted" (Barragán 2012). As Barragán emphasizes, "we are not faced with a law but rather a long process, under different regimes of government and historical contexts, in which the state did not necessarily have a sustained, coherent, or persistent policy" (2012, 25).

Similar to Rancière's (1999) notion of politics, law from this perspective is not regulatory at all but rather acts as a site for staging a disagreement. These disagreements were based on a radical presupposition of equality: a contradiction of the logos between the master and slave that challenges the logic of a police order that locates them in such a subordinate position.[6] In this

[5] This is evident in various modifications such as the 1881 decree allowing permitted *proinidiviso* (undivided) titles and the 1883 measure that exempted native communities that had from new land surveys (see also Gotkowitz 2007, 33-34).

[6] Drawing from Aristotle, Rancière locates the radical potential of politics in the primary contradiction of the *logos* that grants the right to command – which requires that those who obey

way, the law can be understood as a tool to stage a disagreement, merely by calling attention to the "surplus" of parts and roles that it is unable to fix. However, the caciques were also acting on a presupposition of equality as sovereigns who also had authority to decide the terms of that order. For Rivera Cusicanqui, the early agreement with the Crown established an idea of the "two republics" affirmed their authority, which "implied some kind of mutual recognition between colonizers and colonized" rights to territory and jurisdiction (1991, 39). She argues this conception of territory, invoking a normative arrangement of coexistence with the colonizers, can be seen as a "minimal program" in anticolonial struggles from the sixteenth century to today (ibid.).

Efforts to resist land usurpation and later demand restitution of communal lands gave rise to the twentieth-century "*cacique apoderado*" movement. Important to note is that the source of authority itself was also challenged along with the law and processes of fragmentation. If, for example, early caciques in the *Memorial* asserted their authority on the basis of their status as lords (within blood line of Inka rule), that authority was directly challenged by the 1874 Disentailment Law, which not only sought to prohibit communal landholdings but also banned local indigenous leaders from formal positions of authority, thus further diminishing their power. As Gotkowitz notes, because the law did not say that apoderados could *not* be Indians (2007, 35), it opened up a window for a new generation of community leaders who would appropriate the title *cacique apoderado* to assert the legitimacy of their position as authorities acting on the interest of their communities. For the indigenous legal activists of the Qhara Qhara Nation, this form of rotational leadership was grounded in territoriality and not an abstract assertion of

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both understand the order and that they must obey it (1999, 16). Such a contradiction "gnaws away at any natural order," Rancière, suggests because it establishes a presupposition of equality that can be demonstrated through disagreement (ibid.)

authority on the basis of lordship or modern theories of state sovereignty (Hansen and Stepputat 2005).

However, such values are not built into rights and recognition alone but rather are sites for enacting and contesting different meanings of justice. Seen through this lens, the law also served as a site to stage a disagreement. Indeed, perhaps what is most notable about the cacique apoderado movement is the sheer incidence of their actions in shaping land policy, even when not technically considered capable to participate in the country's political life as full citizens (Baragán 2012). Ultimately, they became the "bearers of their own law" (2007, 4). Scholars emphasize that the failure of Bolivia's first land tenure legislation and its uneven application would shape the form that both liberalism and the law would take over the course of the twentieth century (Barragán 2012; Gotkowitz 2007; Kuenzli 2013; Soliz 2017). I also agree with Gotkowitz's assertion that the use of the law was not only instrumental but rather an assertion of sovereignty. For her, cacique apoderados "also claimed the right to determine the law's meaning and how it would be applied." As I suggest below, indigenous legal activists from the JIOC Tribunal, in their various legal appeals and forms of indigenous criticism, are also asserting a claim as sovereigns to decide the contents and meaning of state legislation.

1.3 "Neoliberal multiculturalism" and the movement to reconstitute the ayllu

Recovering the history of the cacique apoderados was a central focus of the Andean Oral History Workshop *(Taller de Historia Oral Andina*, or THOA), which played central role in the 1990s movement to recover traditional ayllu institutions and seek collective territory rights. An important work by THOA was *El Indio Santos Marka T'ula* (1984), examining an important figure in the cacique apoderado movement. The book portrays the devastating effects of the

republican era in breaking up communal land holdings, particularly through the "double faced" nature of "creole laws" that promised equality by upholding the former tributary pact made with the Crown, on the one hand, and the fraudulent practices of land surveyors and judges to extort and trick the Indians into selling their land, on the other. They did this by issuing fake titles, carrying out multiple surveys, discriminating against their community appointed apoderados, while issuing favors for non-Indian lawyers who also usurped land for themselves and other landlords (THOA 1984; see also Rivera 1991; Mamani 1991).

The THOA emerged out of the Katarista movement in the 1970s, named after the Túpac Katari rebellion against Spanish colonial forces in 1781. The Katarista's took a hardline against the assimilationist policies of the Revolutionary Nationalist Movement (Movimiento Revolucionario Nacional, or MNR) that took power in 1952. The MRN extended education and universal suffrage to native peasants, but formal integration into the state was through legal status as peasant workers and not based on racial or ethnic categories. Oral history workshops also served to raise consciousness of histories of resistance against racism and discrimination at the hands of Creole elites as well as the persistence of ongoing marginalization on the basis of their status as Indians. THOA research and similar scholarship documenting the ayllu that was published around the same time (see Albó and Ticona 1997; Harris 1997; Marcelo Fernández 2004; Molino 1999), has offered much of the foundational material in indigenous communities' efforts to reconstitute their traditional institutions and practice.

However, despite academic discourses that idealize the *thaki* (*camino*, or path), the leadership system of upward rotation based on service and obligation to the community, Spedding (2016) calls attention to the fact that in practice there is little empirical data on the origins, variability, and operational nature of these political systems. She offers a careful reading

of the genealogy of material cited by many anthologists to demonstrate that they rely on historical documentation and oral histories or interviews by a leader, noting that it would be in their interest to essentialize or romanticize their systems to the anthropologists (ibid.). The relationship between anthropologist and informant described by Spedding also highlights one of the "bridges" of the close relationship between social movements and social science researchers in Bolivia discussed by Barragán (2008), evident in the close interrelation between research and indigenous organization's own documents (see also Cameron 2013; Arnold and Yapita 2009). Much as the *Memorial de Charkas* offered a guideline for reconstitution efforts in the ayllus and markas of the Qhara Qhara Nation in the early twentieth century (see Figure 2), contemporary academic research on communities' histories in scholarship on the ayllu has been foundational to the highland movement.[7] As I will show below, in their own reconstitution efforts, indigenous legal activists today emphasize the ethical principles of leadership and thus fill these institutions with meaning about justice that stands in contrast to a judgements of state institutions that they deem to lack such principles.

[7] According to a 1995 THOA publication, the ayllu, with its internal system of labor, reciprocity, and rotation of power, is attributed to an Andean practice during the reign of the Inca Empire. More recently, it evokes a sense of resistance against ethnic violence and marginalization under Spanish Colonial and Republican rule. Multiple ayllus within a larger territory constitute a *marka*, which are both governed by the logic of the *thakhi* (*camino*, or path, referring to an upward system of service through the annual rotation of power) and the principle of *chachawarmi* (shared male-female leadership). Political representation is direct and participatory, and elections are held through the traditional form of public voting by forming a line behind the candidate of choice (Taller de Historia Oral Andina, 1995). Since the mid-1990s, the symbolic performance of ritual and commemoration, combined with the use of traditional attire, such as the red ponchos (*wayrurus*), woven leather whips (*chicotes*) worn by indigenous leaders (also called *jilacatas, curakas, mallkus*), have been a central aspect of the return to ayllu-based practices.

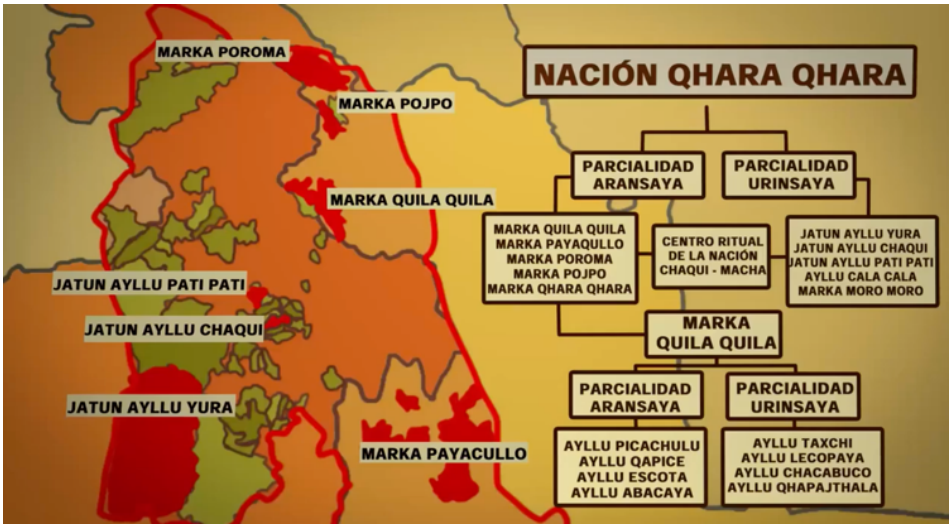

Figure 1.2: Reconstituted Territories of Qhara Qhara Nation (areas in red) within pre-colonial times

Moreover, as Carmen Soliz (2017) points out, most of the historiography on the cacique apoderado movement emphasizes the impact of the MNR in breaking up native communities, a contrast to the agency of indigenous communities to resist such processes under earlier liberal and republican regimes. Tracing claims for land restitution shortly after the 1953 Land Reform Law, however, Soliz found a plethora of petitions to then President Paz Estenssoro by comunarios articulating their demands with that of the nationalist discourse. She argues that, despite a tendency to see this period as one of assimilation and a breaking up of indigenous communities, comunarios not only gained back some lands lost to hacienda landlords in the late nineteenth century but also reshaped the legacy of the agrarian revolution (ibid.). Attention to this history is important, as it offers a different window into the uneven application of the law as a result of grounded struggles over land and rights of comunarios and colonos, often against hacienda owners but also in conflict with each other (see Chapter 4).

In the case of the Marka Quila Quila where Samuel Flores is from, for example, comunarios were awarded "pro-indiviso" titles were awarded in 1900 following modifications to

the 1874 Disentailment Law. The Movimiento por la Tierra, a multi-year initiative to document and disseminate 1,000 case studies of struggles for land and rights across South America sponsored by IPDRS has worked with local community leaders to document many of the stories of efforts to reconstitute the territories of the Qhara Qhara Nation. [8] Because the many of the areas in the territory of the Qhara Qhara Nation were relatively isolated, many of its communities were not as devastated by hacienda expansion as in other regions of Cochabamba and thus were able to maintain many of their collective titles.[9] Community leaders from Quila Quila recall that haciendas that did arrive brought laborers with them, who were incorporated into the community as *foresteros* (aggregate members who have a lesser degree of rights and obligations than natives) (MT 2016). While these groups did receive individual property titles, there are also several restitution titles awarded to other comunarios between 1973-1990, reflecting ongoing efforts to recuperate land under the MNR, as Soliz (2017) also found.

Because they did not work on haciendas, comunarios were able to maintain some traditional practice and also did not formally organize as unions following the Revolution.

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[8] The background of reconstitution effort is described in the case study of the Marka Quila Quila elaborated by Samuel Flores in collaboration with researchers from IPDRS, as part of the organization's multi-year, region wide participatory action initiative Movimiento por la Tierra; see https://porlatierra.org/docs/c9659d4b642fef3d310a4968296ec5cb.pdf. The various stages of the path to autonomy in Yura has been documented by Cabrera and other indigenous leaders from the Jatún Ayllu in close collaboration with researchers from IPDRS; see *Caso 41 Jatun Ayllu Yura: identidad, territorio y autogobierno (*available at: https://porlatierra.org/casos/41/avances); Memorial del seminario Autonomía y gobiernos indígenas Jatún Ayllu Yura (Potosí), 9 y 10 de Sepiembre de 2017; "El territorio originario Jatun Ayllu Yura da un paso más hacia su autonomia, " (available at: https://www.sudamericarural.org/index.php/noticias/que-pasa/6133-el-territorio-originario-jatun-ayllu-yura-da-un-paso-mas-hacia-su-autonomia).

[9] This period marked a second wave of widespread land surveys following the Civil War that devastated many communities that had managed to maintain their communal titles. Gotkowitz notes that these processes were uneven: while some communities continued to resist the encroachments by hacienda owners, others were forced or tricked into selling their titles, often forced to work as colonos on land they previously owned (2007, 31).

However, leaders from Quila Quila also remembered that their identity as natives was diminished during this period. For instance, Tata Pablo Zeballos, former Curaca Mayor (High Authority) of the Qhara Qhara Nation who is also from the Marka Quila Quila, recalled that they weren't even aware that they had collective titles until he found them in a wooden box his father had hidden in their house. "We thought we were unions," he recalled in his testimony. "But there it was, clearly. Where we came from and we were going, our territory" (cited in MT 2016). Because of distrust of state officials (who often stole or forged documents as part of their early land grabs, see THOA 1984) it is common for leaders to hide documents in their homes, which might explain why Tata Zeballos' father had hidden Yura's titles away. Yet, the year Tata Zeballos found the documents, 1993, marked a turning point culminating in the movement to reconstitute the ayllu in the highlands.

The highland movement coincided with a more general shift in emphasis from "land" to "territory" that the marches of lowland indigenous organizations such as CIDOB had critically brought into the national arena (Barragán 2008; Postero 2007). These marches that began with the 1990 "March for Territory and Dignity" were led by lowland indigenous groups to demand collective rights to and recognition of the multiethnic character of Bolivian society. In the highlands, members of the Katarista movement would go on to form the Unified Confederation of Rural Workers Unions of Bolivia (Confederación Sindical Única de Trabajadores Campesinos de Bolivia, or CSUTCB), became an important site of political mobilization around calls to recognize the multiethnic character of Bolivian society.[10]

[10] The 1983 *Political Thesis of the Second National Congress* made the call for multiethnic society clear: "we ought to say enough with false integration and homogenization that attempts to depersonalize by the imposition of Spanish (*la castellanización forzosa*) (…) there cannot be true liberation if the plurinational diversity of our country and the diverse forms of self-government of our peoples is not respected" (CSUTCB 1983; cited in Albó 1992, 54).

Within the Katarista movement there were already multiple "strains" that represented a range of strategies and agendas in relation to the state. One the one hand, were more Ayamara "nationalist" strains represented by Felipe Quispe, who led the Red Offensive of Tupakatarista Ayllus (Ofensiva Roja de Ayllus Tupakataristas). Otther more moderate factions called for reform and integration into the state by competing in national elections (see Linera 2008; Postero 2017). Moreover, across several national-level summits that brought together indigenous, native, and peasant organizations at the heels of the 1990 marches, it was clear these diverse groups were unable to define a singular concept of territory among them (Regalsky 2010).

The moderate Revolutionary Liberation Movement Tupaq Katari (MRTKL) was led by Víctor Hugo Cárdenas, who formed a political alliance with Gonzalo Sanchéz de Lozado and served as vice president from 1993 to 1997. Wide sweeping multicultural reforms were undertaken during this period. The main two pieces of legislation that set the backdrop for contemporary efforts to reconstruct indigenous territories are the 1994 Law of Popular Participation (Ley de Participación Popular, or LPP) and the1996 Law No 1715 Land Reform Law, which formally recognized Native Community Lands (Tierra Communitaria de Origen, or TCO). The LPP increased the number of municipalities from a few dozen, primarily urban governments, to 311 in mainly rural areas with majority indigenous populations (Van Cott 2003, 756). It also created a new figure called Grassroots Territorial Organizations (Organizaciones Territoriales de Base, or OTB) represented by a community elected leader who is charged with requesting funds for local development projects and working with outside funders such as NGOs.

Scholars use the term "neoliberal multiculturalism" to call attention to the convergence of cultural recognition and territorial rights alongside neoliberal decentralization and privatization in this period (Hale 2004; Postero 2007). Analyzing the effects of implementation among

lowland Guaraní, Postero (2007) shows how laws such as the LPP acted as a form of governmentality in that it regulated indigenous demands within this participatory model (2007; for discussion in the highland regions see also Arnold and Yapita 2009). NGOs occupied a central role in efforts to implement the reforms, often hired by municipalities as consultants to advise local political leaders and organize community members, as well as draft and implement planning projects (Kohl 2003; Postero 2007, 170). External financing and development aid also grew with the prominence of neoliberal reforms, channeled from multilateral institutions, development bank, bilateral cooperation agreements, and transnational organizations such as the United Nations to the local level through the growing NGO sector in Bolivia (Alvizuri 2009, 190).

In the highlands, indigenous legal activists from the Qhara Qhara Nation were active in the region-wide movement to reconstitute the original nations Killacas, Qhara Qhara, Chichas and Charcas. To establish an institution that could articulate the four nations and negotiate with the State with legal tools, they also founded the Council of Ayllus del Norte Potosí (CAOP). In 1997, these efforts converged with the formation of the National Council of Ayllus and Markas del Qullasuyo (CONAMAQ). These organizations also partnered with DANIDA, a Danish international finance organization that has supported titling efforts throughout the country working first with lowland groups and then expanding efforts in the highland region between 2000-2006. These organizations also paired with Bolivan NGOs that often worked closely with local community organizations as "*técnicos*" (technical advisors) to assist them in meeting formal requirements for collective titling such as the elaboration of organic statutes.

As I will discuss below, in both territories of the Marka Quila Quila and the Jatún Ayllu Yura of the Qhara Qhara Nation, efforts to consolidate collective titles have ignited local

conflicts over boundary limits and severely stalled the process. In Yura, after five years of efforts to resolve boundary limits between several communities, they ultimately lost their funding in 2007 (see MT 2015). In Quila Quila, disputes over land concessions given to a state-run cement mining company, the Fábrica Nacional de Cemento Sociedad Anónima (FANCESA), in 2000 led the local municipal government to retaliate and annul legal recognition of the communities as an OTB, thus denying them legal personality and closing off formal channels of participation. These grounded experiences with barriers in reconstituting their territory since the 1990s have shaped many of the situated critiques against processes of institutionalization under the Morales administration. Analyzed from the perspective of indigenous sovereignty, their criticisms call attention to new mechanisms of exclusion in plurinational Bolivia. Far from resolving the neoliberal multiculturalism of the past, these processes are further entangled with its legacies.

Table 1.1 "Development worker"

Working the indigenous-colonizer hyphen
Development worker

Quite often, my research relationships with indigenous leaders were marked by an assumption that I worked for foreign international aid organization or did some type of development work. This was most notably the case with CONAMAQ leaders. One afternoon, for example, one of the leaders called me several times and asked me urgently to come to their office. The normally quiet office was full of non-indigenous *ténicos* (technical consultants) who had worked with them in the past, so I sat by an indigenous leader who was waiting in the hall and introduced myself as a foreign researcher studying in Bolivia, but also emphasizing (as I had learned to do by that point) that I had lived there for several years. While waiting to talk to the other CONAMAQ leaders, he asked me if I could get some sewing machines from the US for his community. "I always try to bring what I can fit into my suitcase," I told him. "A sewing machine sounds a bit too large, but I can check it out if you show me what you are looking for."

Inside the main office, the urgency became clear. Following the division of the organization in 2013, the government had reportedly threated NGOs, warning that if they supported CONAMAQ *orgánico* either by providing institutional support or through development projects that they would be expelled from the country. They had managed to maintain a small office in Sopocachi not far from the organization's main headquarters for a

couple of years after pro-MAS factions violently took it over. by But, unable to secure financial support to pay rent, were being forced to move out. The little amount of funds CONAMAQ *orgánico* did have had dried up. If they did not come up with some money within a couple of weeks, they were going to lose the office.

The leaders asked me if I knew of any "*proyectitos*" that might help them scrape by a bit longer. They were referring to some extra small-scale projects (a one-off project that pays $2000 USD) that may arise occasionally out of surplus or as a subsidiary of larger, multi-year project proposals that tend to be highly funded ($50,000-$300,000USD annual budget). As far as I knew, any type of funding I knew of would need to be applied for the year prior. "Since I don't work in development, I'm just not sure how development works," I responded, trying to explain that if there actually were extra funds available by some organization, then that kind of thing would not be something I would ever really ask (or be told) about. Feeling useless in the situation, I excused myself but said that I would nonetheless ask around (as I did and, as I suspected, was not successful).

On my way out, the leader I had been speaking to in the hall had pulled up an image of the sewing machine he wanted to get for his community. It was an industrial weaving machine that seemed so large and heavy it might not even fit in the back of a pick-up truck, let alone my suitcase. "Sorry brother," I conceded again, "like I said I don't work in development, I'm just a researcher." Despite efforts to build collaborative research relationships with indigenous leaders (precisely in the hopes of better understanding processes of social movement fragmentation), the legacies of "neoliberal multiculturalism" often marked our relationships, even more so for those who were excluded from the benefits of state-led efforts to decolonize that past.

1.4 Indigenous criticism and intercultural democracy

"That's when I realized something was wrong in the territory," Martha Cabrera, an indigenous legal activist from the Yatún Ayllu Yura of the Qhara Qhara Nation recalled in an interview in December 2019. Yura had just received notification that their autonomy statute had been approved in a Constitutional Court review, a final step in the years-long process of formal conversion to Indigenous Native Peasant Autonomy.[11] Hearing the news, I called Cabrera to gather her reflections, looking back from the other end of a process that started in the 1990s and faced several setbacks along the way. She reflected on their first major challenge: consolidating

[11] Indigenous Native Peasant Autonomy is advanced in the 2009 constitution and subsequent 2010 Autonomy and Decentralization Framework Law.

their titles as a TCO. As mentioned above, in 2007 Yura lost funding from DANIDA, a Danish international aid organization that provides support for titling procedures for local indigenous organizations such as CAOP. At the root of the problem was a stalemate over boundary limits between several communities. Similar to Quila Quila, Yura was not as impacted by early twentieth-century expansion of haciendas. Yet, in their territory but there had been some landholders who either sold their land titles or were brought in as aggregate members that were awarded individual titles following 1953 land reform.

INRA's titling process is called "*saneamiento*,"[12] which involves both a technical process of surveying property rights and a juridical process of granting formal titles and overseeing land cessions. An important step in the technical process is to carry an "*inspección ocular*" or an on-site inspection to document demographic information, property owners' names, and establish boundary limits. In Yura, a commission was formed in 2002 to carry out titling but was unable to reconcile differences over natural markers that appeared to be erroneously labeled with different names on the different titles. Critiquing Law No. 1715, Spedding and Llanos suggest that, in general, it "only superficially understands the ways in which land ownership is administered in the western part of the country," based largely on lowland indigenous notions of territory (1998, 14). Internally, the problem stemmed from the fact that notions and practices of relation to the land had been formed in relation to very different historically situated contexts, as well as ways of articulating with dominant groups, the state, and capitalism (Albó 1985). Externally, it stemmed from the fact that heterogenous and dynamic systems of land tenure – largely

[12] Stemming from the verb *sanear* (to clean up; to sort out; to rationalize), *saneamiento* literally translates to sanitation, but also can refer to remediation in terms of improving or correcting a given situation.

developed as a defense mechanism to shifting pressures on the community – were largely illegible to the state.

Similarly, in Yura, a kaleidoscope of overlapping land claims meant that efforts to codify practices or title disputed land ignited dormant tensions. This points to a more widespread challenge of titling territories heterogeneous and fluid land tenure systems, as bureaucratic forms themselves do not have sufficient measures to document natural boundary markers (Barragán 2007b). Moreover, centuries of unevenly implemented (highly contested and often contradictory) land reform policies have produced multiple titles themselves that all exist in a "shadow world" (Nuijten 2003) of legality (see Chapter 4).

In March 2002, the Bolivian government passed Supreme Decree No. 26559, establishing procedures for what is called a "*saneamiento interno*," (internal titling) with the hopes of resolving such problems. Procedures for carrying out internal titling are largely understood as a participatory mechanism of reconciliation, which is facilitated by INRA but carried out according to the norms and procedures of local organizations (see Fundación Tierra 2007). According to Fundación Tierra, an organization that proposed the procedure, internal titling allows for more efficient coordination between local organizations and the state, a kind of "new local social pact regarding land property sanctioned by a community assembly and subsequently legally recognized by the nation-state" (Urioste, Barragán, and Colque 2007, Ivi, fn 18).

However, in such cases the state and outside organizations appear as a mediator in local disputes rather than a source of the problem. Indeed, this was the nature of the "wrong" Martha was referring to. When she first heard about the decision to drop funding for titling procedures in Yura in exchange for another ayllu, Cabrera was at a departmental level meeting of the Consejo de Instituciones de Tierras Comunitarias de Origen (CITCO), an organization sponsored by

DANIDA that brought together united state institutions, technical consultants, and social organization leaders.

At the time, Cabrera worked for CITCO but also was serving a one-year leadership role as Mama T'alla (community leader) of Tocarge de Yura, the ayllu where she was from. COAP leaders couched the withdrawal from the titling process as a decision taken by Yura and not the organizations. She denounced COAP and CITCO on the spot. "Lies!" she asserted, replaying the episode in our conversation. "I'm from Yura," she had proclaimed in front of the meeting's participants. "I know what happens in my territory and this is the first I am hearing about this, it's false!" To demonstrate there had been fraud, Cabrera demanded to see a signed *acta,* or signed statement, kept by community leaders to document any agreements or decisions.

In principle, if Yureños had decided to withdrawal from titling procedures, such a resolution would have been made at a public assembly and thus recorded in the ayllu's registry (*libro de actas*) and signed by those present at the meeting as testimony of the resolution. Community leaders would then send a notification to any necessary parties on an official letterhead, signed and stamped by the leaders.[13] In national level meetings such as those carried out by the JIOC Tribunal, meetings are also recorded in the individual *libro de actas* of the different ayllus or organizations of the community leaders in attendance. Similar to the cacique apoderados of previous eras, in principle contemporary community leaders are mandated to take action on behalf of the community. This serves as accountability to the grassroots who sent the leader to the meeting on their behalf. Just as a local ayllu would send a notification to parties, the

[13] Following the thaki government system of rotational leadership and male-female duality (*chachawarmi*), 6 pairs of leaders simultaneously serve in their obligatory service positions to oversee assembly meetings, administer justice, offer council, keep up registries, collect tributes to ayllu, etc.

leaders who are present also sign a formal resolution after a national-level meeting, which is photocopied and distributed (see Figure 3).

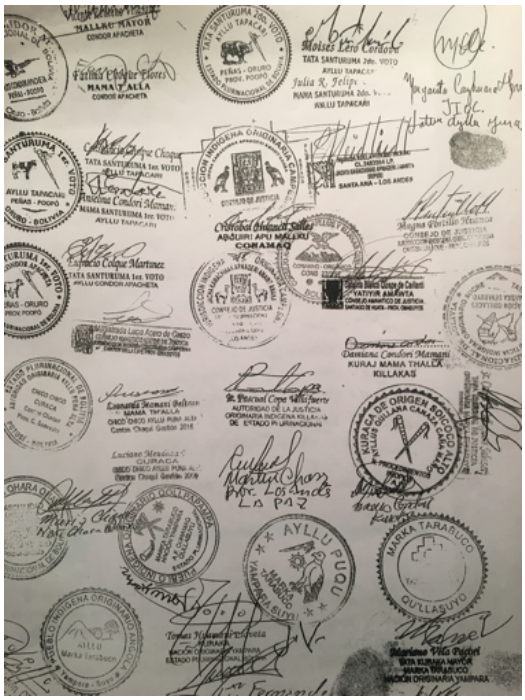

Figure 1.3: Community leader's stamps approving JIOC Resolution No. 01/2016, September 21, 2016 (page 2 of 5)

These registries mimic those of the colonial documents such as *revisitas* other government resolutions that cacique apoderados sought after and even reproduced by hand as part of twentieth-century movement to recover lands. Indeed, it was in examining a "peasant archive" kept by ex-Curacas of Mancha (located in Chayanta, Potosí), that Platt (2015) noted the common legal language demonstrating a "pact of reciprocity" between ayllus and the state. Similarly, stamped resolutions are in dialogue with the state and at the same time demonstrate a double articulation. Following Bhabha (1984) the stamps represent a form of "mimicry" in that they appropriate the Other and, along with it, the power evoked by its symbols. In doing so, mimicry also makes visible the ambivalence of the state's claim to power (ibid). The stamps

represent a radically different way of organizing social life and government that the state has never been able to fully assert authority over.

The CAOP leaders claimed to have received such a notification but one of them had left it in his community that day. Because of the organizational structure of institutions such as COAP, leaders were more disconnected from their grassroots. It would appear they were acting outside of the rules of such norms and thus violating the fundamental aims of reconstitution of their traditional institutions: to govern in and for their territories. Upon returning to the territory after breaking with COAP, for example, Cabrera later discovered that some of the communities had opted out of titling, but not notified other leaders. They had changed their opinion after several *residentes* in the territory (who opted for individual titling) spread rumors that titling would result in taxes and cut of community members from access to state resources.

As I will discuss further in Chapter 3, most comunarios do not live in their community full time but rather seasonally migrate back and forth from the urban areas as they engage in multiple economic activities (see also Barragán 2007b). This is largely due to a lack of availability of viable land to sustain indigenous communities and services and education within territories. Because obligatory service for a year interrupts other labor practices, it is common for many *residentes* to pay someone else to avoid community obligations. This allows *residentes* to maintain other economic activities outside rather than returning to the community while avoiding the sanction of losing land for not fulfilling obligations to the community.

The challenge for indigenous legal activists promoting reconstitution of collective territories is that land and leadership are monetized along with a range of other economic activities, rather than reflecting a sense of service to community (the “sacrifice” Flores referred to at the opening of this chapter). As Cabrera explained, the reason *residentes* from Yura had a

negative view of indigenous autonomy as "backwards" was that they merely saw their land as a way to diversify their economic means and not in terms of territory as an integral space for reproducing social life on the basis of collective principles and values of the greater good of the *ayllu*.

Granted, Colque (2007) emphasizes that the reason *residentes* pay their dues and occasionally grow crops on the land or sponsor community parties is not merely pragmatic or financial. For him, land has a symbolic value and thus such practices allow *residentes* to maintain an important cultural identity as Aymara-Quechua tied to community (ibid., 140-143; see also Chapter 5). Cabrera also lives part time out of her community, working in Sucre, where her eight-year-old also attends grade school. For her, as well as other indigenous legal activists from the Qhara Qhara Nation, service and sacrifice are a fundamental part of an identity they also connect deeply with in their emphasis on territoriality.

Following a decisive break with COAP, leaders were able to reconcile the conflict over limits on their own. Tata Fernández, who assumed leadership shortly after Yura decided to break from COAP, is a warm but stern leader. On many occasions, whether in long assembly meetings or NGO-sponsored events in support of grassroots efforts, presenters would draw out their interventions either seeking to share an experience or launch into a campaign of their own making. Other times, interventions are reiterative, repeating elements of what others have said to communicate consensus. Other times still, they are quite contentious, and parties can yell at one another for hours before someone finally decides to excuse themselves or are expelled.

With Tata Fernández's interventions, in contrast, there was a certain pointedness of his (often self-reflective) criticism of the indigenous movement. At a meeting to discuss their experiences in consolidating autonomy organized by IPDRS in their territory, for example, he

framed the problem in terms of more complicated competing claims to sovereignty. Offering his own reading of the long history of indigenous legal activism outlined in the first section of this chapter, for example, he noted

> There are always [individual] interests. Since the Spanish invasion, the great uprisings that have taken place are not because of what Spanish army did; or because the Spanish had the capacity. Rather, what has happened is that the indigenous natives themselves have betrayed the uprisings, the great leaders. And same thing happens now – not all of us think like the Ayllu or as indigenous people. There is always one or the other that is out of date, and that has been a very delicate issue.[14]

Here we see a self-reflexive form of criticism as an ethical judgement of community leaders who act on their own interests betray the greater good of the community.

This emphasis reflects the figure of the "traitorous intermediaries" (Geidel 2013) emerged in popular culture in the Bolivian highlands during the 1990s, noted by Molly Geidel. Using Jorge Sanjinés' film *La Nación Clandestina* (1989) as well as myths of the kharisiri, an evil fat-stealing being associated with Spanish colonizers in rural Aymara communities, Geidel suggests the figure of the traitorous intermediary reflects experiences of multiple elusive forms of violence following neoliberal restructuring (see also Albó and Barrios 1993). In the film, the main protagonist, Sebastian is a *residente* who returns to serve as a leader in the community and ends up making paternalistic decisions on their behalf, without consulting them first. Having betrayed them, he is expelled from the community. Ultimately, in penance, he returns to perform an old (nearly forgotten) ritual of sacrifice called the Danzante, in which he dances himself to death (discussed further in Chapter 5). The message, argues Geidel, is an ethical-moral one

[14] Forum on Indigenous Autonomy in Jatún Ayllu Yura, September 9-10, 2017. Partial transcripts included in *Memorial del seminario Autonomía y gobiernos indígenas Jatún Ayllu Yura (Potosí), 9 y 10 de Sepiembre de 2017*; "El territorio originario Jatun Ayllu Yura da un paso más hacia su autonomia," (available at: https://www.sudamericarural.org/index.php/noticias/que-pasa/6133-el-territorio-originario-jatun-ayllu-yura-da-un-paso-mas-hacia-su-autonomia).

similar to that of Tata Fernández: “The Indian Nation can be reborn only through eleimination of the traitorous intermediaries who promised to serve the people and betray them” (2013, 144).

As Cabrera later explained to me, in the case of Yura, it was only by dropping COAP and working through their own assemblies (for several years) that they were able to reconcile longstanding disputes over the boundary limits as well as reach an agreement on how to incorporate the communities who had opted out of titling actively into discussions. Similar to Fernández’s reflection, it indeed appeared to be quite a delicate issue, as other communities also felt betrayed by the residents, almost causing a complete stalemate to continue forward. Although it took several years and delicate negotiations with other communities in the territory, the Jatún Ayllu Yura was finally consolidated as an TIOC in 2012.

In addition to local social movement organizations, indigenous legal activists also direct a great deal of criticisms at organizations of the Unity Pact working at the national-level. As discussed in the Introduction Chapter, representatives from the different indigenous, native, peasant, and workers organizations that formed the Unity Pact historically participated in a popularly elected Constituent Assembly to propose what plurinationalism should look like in practice. On the one hand, the constituent assembly represented a radical new form of direct democracy in that it was made up of not only popularly elected members but also representatives from the different social movement organizations that formed the Unity Pact (Postero 2010).Yet, at the same time, political representation was channeled through the MAS political party and thus excluded more radical forms of communitarian democracy rooted in collective forms of authority such public assemblies that emphasize public deliberation and consensus (ibid., see also Garcés 2010; Gutierrez 2008).

Postero argues that tensions in actual democratic system in Bolivia must be understood from the perspective of a profound tension of wanting to dismantle liberal institutions, on the one hand, and using the very instruments of the nation-state to do so, on the other (2010, 2017). A great degree of this tension, she highlights, is rooted in aspirations and exceptions tied to the rapid rise of Morales and the MAS party out of the massive protests between 2000-2005. The MAS-IPSP, for example, was formed as a result of LPP, which had generated not only new channels of participation in local development planning such as OTBs but also the formation of new political parties that incorporate indigenous norms and procedures such as rotating authorities into municipal government. Donna Lee Van Cott (2005) uses the term "radical democracy" to refer to these forms of hybridization as a means to vernacularize and experiment with democratic forms to take limited openings of multicultural reforms and decentralization that would lead to eventual "arrival" to state power.

While reference to Morales' political party is often reduced to MAS (Movement al Socialismo), the second half of the name is also important in understanding how its members understand the party as a political instrument of their own organizations: ISPS, quite literally, stands for Political Instrument for the Sovereignty of the People (Instrumento Político por la Soberanía de los Pueblos). Fernando García, a Katarista sociologist who has conducted several collaborative research projects with the MAS grassroots, emphasizes that social movement organization support base sees the MAS as "theirs," rather than themselves as supporters of an ideology tied to the political party (see "*No Somos del MAS, el MAS es Nuestro,*" García et al. 2015). Similarly, Grisaffi (2016) offers ethnographic accounts of how the coca growers union of the Chapare (where Morales also served as union leader before the rise of the MAS), envision

their arrival to the state as a form of radical democracy (see also Grisaffi's 2013 article, "All of us are Presidents").

In national-level meetings with other indigenous organizations, indigenous legal activists from the JIOC Tribunal were also critical of *dirigentes* (agrarian unions leaders) because they claimed they represented inauthentic forms of authority tied to political parties. But also, this criticism stems from early frustration over the requirement of political party representation in the constituent assembly, which they claim limited more radical forms of direct democracy and hindered the process (see also Postero 2010, 2017; Garcés 2009; Shavelzon 2012; Tapia 2010).[15] "It's happening everywhere, now that the political issue has punctuated our Plurinational State,"

While to a much lesser degree I attended departmental level meetings by other agrarian unions affiliated with the CSUTCB such as the Tupak Katari Federation and its female counterpart social organization the Bartolina Sisas, I often heard this among these other members organizations of the Unity Pact as well. Even own coca grower's unions have expressed discontent with a gap in their relationship with President Morales, who expected to "lead by obeying" once in office but once in office was distanced from the grassroots assembly forms of decision making (Grisaffi 2016).

This is also where the stakes defining forms of intercultural democracy come more fully into view. During one NGO-sponsored workshop on legal pluralism in La Paz, an invited legal expert gave an exhausting presentation on what he referred to as the MAS government's "law

[15] Moreover, due to heightened conflict with opposition lowland elite groups that almost put the entire constituent process into crisis, the final stages of drafting the constitution were moved to Oruro and finalized outside of the deliberation of the Constituent Assembly located in Sucre (see Postero 2010). As a result, many articles of the constitution (particularly more radical proposals by the Unity Pact members) were "domesticated,"or radically modified in the final version that was eventally approved by popular referendum in 2009.

factory," estimating that over 1,700 laws and decrees had been passed over the course of the administration's three terms in office. As mentioned in the Introduction Chapter, according to Bolivia's legal framework, decree laws have the same status as state law, and both are subordinate to constitutional law. So, the estimate here refers to both presidential supreme decrees and laws passed by legislative assembly at either national or departmental level.

A great deal of this number stems from "organic laws" that were mandated by the constitution and approved within 180 days of its promulgation (see Exeni 2012). In this way, these framework laws can be understood in the more traditional as tools to structure the plurinational state, or, as Hobbes would have it, "Laws [that are] the walls of government, and nations" (1995, 109). To the extent that legislation continues to block their pathways to self-determination, it demonstrates a clear form of "law preserving" (Benjamin [1921] 1996) violence rooted in the legitimacy of the state to make the law.

The critique against MAS *dirigentes* of social organizations is that, following their "arrival" to state power, they've entered into working relationships with liberal institutions based on representative forms of democracy, acting on their own interests instead of a collective mandate reached by consensus. As Tata Fernandéz put it more concisely, the problem is that "Increasingly [leadership] seems like a political career (…) becoming a senator is seen as an objective, but I think that is doing a lot of damage to our Plurinational State."

1.5 Integral development: Barriers to territorial control and indigenous autonomy

The first time I heard the phrase "It's just putting a poncho on a municipality," was back in 2011, from Tata Cusi Gualberto, an Aymara lawyer who is from Jesus de Machaca, one of the of the initial nine communities who opted "yes" in the first referendum on indigenous autonomy

held following the passage of the 2010 Autonomies and Decentralization Framework Law (see Cameron 2010; Colque and Cameron 2010; Postero and Tockman 2020; Tockman 2017). This criticism, which I heard repeatedly among indigenous leaders and *técnicos* who accompany autonomy processes over the years, refers to limited visions of indigenous autonomy as merely replacing municipal government to manage local resources.

A great deal of this tendency is due to the fact that Bolivia's constitution recognizes four types of autonomy (regional, departmental, municipal and indigenous), which was the result of staunch opposition from elite groups from resource rich groups from the so-called "*media luna*" region, which threatened to separate from Bolivia during the Constituent Assembly (Postero 2010, 2017; Garcés 2010; Shavelzon 2012). As a result, in Bolivia discussions on autonomy often tend to center on more liberal discussions over local versus centralized government. In the city of La Paz, for example, ambiguous graffiti denouncing "this autonomy is not mine, it's fake" (see Figure 4) reflects a related sense of lack of participation of civil society organizations over decision making, such as the elaboration of La Paz's municipal autonomy statute.

Figure 1.4: Graffiti denouncing autonomy in urban La Paz: “This autonomy is not mine, it’s fake”

Stenciled on walls throughout the city, it may also represent conflicts tensions between the municipal government of La Paz, led by Luis Revilla since 2010, a once-ally of the MAS who has since become staunch opposition. Whether a claim to citizenship or party politics, disenchantment with autonomy in this example is much different cite of enunciation than that reflected in discussions by academics and activist throughout Latin American indigenous autonomy as a radical challenge to the nation-state and global capitalism (see Escobar 2008; Gonzáles, Burgete-Cal, and Ortiz 2010).

At the same time, the notion of indigenous autonomy itself has been shaped in efforts to institutionalize indigenous peoples longstanding demands for territory and self-determination. Franz Rosales, a technical advisor for the Vice Ministry of Autonomies who worked on the theme for the entire tenure of the Morales administration explained the shift across different stages. First, was the constituent process, where, in the debates described above, the question of

"land and territory" of indigenous organizations in the Unity Pact such as CIDOB and CONAMAQ shifted to a focus on "indigenous autonomy" as an integral part of the state. Second, was a post-constituent period from 2009-2013 focused on institutionalization. "We've channeled, supported, managed an old demand that neoliberal governments didn't attend to," Rosales explained, referring to processes of designing the 2010 Autonomy and Decentralization law but also efforts to incorporate elements of demands for recognition of different norms and values into all state institutions. Third, around 2014, Rosales explained, he and others at the Vice Ministry of Autonomy started to realize a need to distinguish between "indigenous autonomy" from "self-government."

"That's been a big self-reflexive critique we've had," Rosales said in our interview in November 2018. "Indigenous communities already have self-government, they have for over 500 years now, it's their territoriality," he explained. "Autonomy just an administrative state role, so indigenous autonomy is the ensemble of self-government with statehood to administer resources of the central state. We confuse ourselves about that all the time." We went on to discuss many of the criticisms of indigenous peoples against institutional barriers, what many researchers and indigenous leaders refer to as a "torturous road" pointing to the sheer amount of requirements for various stages of process, from holding a referendum to elaborating an autonomy statute, constitutional review of the statute, and a second referendum approving it, among many steps that advancing each stage entails (see Villagómez 2018). "So many steps, it's painfully complicated," Rosales noted. "It's a labyrinth to achieve."

While formal conversion to indigenous autonomy in-and-of-itself does not guarantee territorial control or self-determination, it does open pathways to reconfigure state institutions. In the case of the Guaraní of Charagua (the first indigenous territory to formally convert to

Indigenous Native Peasant Autonomy in Bolivia located in Santa Cruz), for example, indigenous autonomy has opened a pathway to experimental new form of executive government to manage resources organized according to their own world views (Postero and Tockman 2020). The goal with autonomy with Jatún Ayllu Yura, Flores once explained, is that as each of the territories are reconstituted, as they are able to gain territorial control and law-making power, they will not only be able to negotiate with other autonomies in their territory. Rather, as members of the same nation, they will be acting in the interest of reconstitution of the entire nation. In other words, territorial control and autonomy in Yura's (located in Potosí) will strengthen efforts in the Marka Quila Quila (located in Chuqisaca) and vice versa, reuniting a historically fragmented nation.

Yet, bureaucratic procedures and the intervention of outside intermediaries can make accessing indigenous autonomy seemingly impossible to achieve. Similar to the experience with latent boundary disputes causing setbacks in Yura, certain procedures such as the elaboration of statutes (on the basis of the requirement that communities must codify their organization's history, values, membership and leadership rules), can re-ignite long standing conflicts or local power struggles over resources. In his analysis of contentious demands among divided factions in the case of Jesus de Machaca, another highland community, for example, John Cameron shows how internal divisions were played out through disputes over the statue's contents, ultimately causing a stalemate in the process (see Cameron 2013). Moreover, if approved, statutes must be reviewed by the Constitutional Court, a long interim period that also opens space for manipulation of the processes for local political interests, as the residentes had in the case of Yura. This was the case of Totoró (in nearby Charcas Province, Potosí department), when a local mayor backpedaled support for autonomy after the statue had been approved and launched a misinformation campaign throughout the territory telling community members they

would be cut off from much needed state resources, along with central-state benefits such as governmental bonds and infrastructure such as roads and health services. “In just one day seven years of work died,” Rosales lamented. “Puff, just like that.”

Yet, the indigenous leaders also have to confront a panoply of confounding legal mechanisms, like having obtain legal personality as an OTB. As mentioned, efforts to consolidate territory in the Marka Quila Quila have been blocked by local MAS officials on the basis of the requirement they have legal recognition as an OTB, which had been annulled following conflicts over concessions to a concrete company mining limestone deposits in their territory. This was a point of contention not only because of the conflict over participatory development planning since the 1990s discussed above. Rather, the requirement appeared to be politized, as it was invoked by departmental INRA officials to block the consolidation of their collective titles in favor of the peasant union’s agenda to seek out individual titles. Moreover, the requirement itself was new, introduced by two articles of Supreme Decree Nº 29215, emitted August 2, 2007, modifying both the 2006 and 1996 land reform laws as part of the Morales government’s program to “return land back to the hands of indigenous and peasants” (INRA 2010).

This requirement been by MAS officials used to impose municipal and departmental obstacles. As part of their own measures to consolidate autonomy, the municipal and departmental governments of Chuquisaca are required to elaborate organic statutes that outline local systems of government, including procedures for political representation and participation. During procedures for drafting the statutes, indigenous leaders from the Marka Quila Quila demanded their constitutional right to direct representation be upheld. At the municipal level, this would ensure direct forms of decision making to negotiate with local authority’s

development planning and allocation of resources. At the departmental level this meant participation in the Legislative Assembly and thus influencing laws that would affect their territories. Here, the stakes of representation and participation have a sharp double edge: laws create bureaucratic obstacles that prevent indigenous groups from exercising their rights as indigenous peoples, one of which is direct representation in local government to shape the law and development planning that directly impacts their territories.

1.6 Legal pluralism: renting out the master's house

Control over resources is related to another central criticism of indigenous legal activists regarding a lack of institutional and economic support for indigenous organizations in the area of legal pluralism. As mentioned in the Introduction Chapter, legal pluralism has become a sort of "buzz word" following the passage of the constitution among government officials, international rights advocacy organizations, and indigenous legal activists alike. While this has opened some spaces of support in access to formal education on rights to gain influence on the law as technical experts (see also Chapter 2), organic indigenous institutions such as the JIOC Tribunal have no sustained economic backing.

In 2015, when indigenous legal activists decided to form the JIOC Tribunal, it was in response to the various barriers they faced in their different efforts to consolidate their territory. Important to note is that the word "tribunal" in the title JIOC Tribunal might be misleading, as it does not imply that indigenous legal activists decide disputes over individual cases according to a particular area of the law (as in state courts). Rather, the JIOC Tribunal mainly operates as an umbrella institution to articulate indigenous groups' demands as well as offer legal counsel to indigenous leaders regarding problems in their own territories. At the national level, the JIOC

Tribunal also unites indigenous leaders from across the country to generate policy proposals and articulate networks of other NGOs, academics, rights advocates, national judges, state officials who champion their cause.

A central objective in the formation of the JIOC Tribunal is to articulate other communities to share strategies and create unity in the face of fragmentation of social organizations such as CONAMAQ. Lack of national-level organizations weakens local indigenous institutions not only because they are unable to channel development project as was the case under the era of neoliberal multiculturalism. Rather, organizations such as COAP also act as intermediaries between the state and financial institutions in formal processes such as consolidating collective territory rights or indigenous autonomy.

As the right to exercise their own forms of justice is also integral to indigenous self-determination, the JIOC Tribunal has also championed new mechanisms of legal pluralism. At the local level, indigenous legal activists travel throughout the country to promote their legal strategies and strengthen indigenous native peasant jurisdictions. The JIOC Tribunal, a small room attached to a brick home on the outskirts of the city, also houses community leaders who travel from afar to Sucre to present or follow up on their demands in the Court.

Granted, in terms of general day-to-day operations, the JIOC Tribunal does not need much. A great deal of their ongoing work – analyzing laws and discussing strategies to overcome bureaucratic obstacles – unfolds in their communities and homes, as it relates to their grounded struggles to reconstitute their territories. On the one hand, reducing technical and economic dependency is a central goal as it thus allows them to maintain more control of their legal strategies. Because of this, indigenous legal activists often emphasize the importance of '*auto-*

gestion,' or pooling together resources to send a leader to carry out an agenda in the name of the community, just as the cacique apoderados had done.

On the other hand, they also struggle to maintain their political projects without backing. Moreover, there is an enormous asymmetry between indigenous justice institutions and those of the state, which have institutional spaces, salaried officials and secretaries, transportation, and time, among many other infrastructural supports. For this reason, a central criticism of indigenous legal activists is also that there cannot be jurisdictional equality between state jurisdictions and those of indigenous native peasants without economic and institutional support from the state.

Because of the lack of sufficient material support, JIOC Tribunal relies on piecemealing together donations to sustain their various initiatives. This mostly entails pooling together their funds, other form of collective "self-management" and care, and small personal donations from advocates. In September 2016, for example the JIOC Tribunal organized a national level summit to discuss the 2010 Jurisdictional Demarcation Law (another piece of controversial legislation critiqued for violating constitutional rights to exercise jurisdictional authority as equals to state judges [see Chapter 2]). A friend of the indigenous legal activists also owned a small arena on the outskirts of the city and loaned it out to the JIOC Tribunal. They then collected around one hundred mattresses from another friend to offer a place to sleep on the floor of the stadium for the three nights during the event to offer housing to the indigenous leaders during the summit. I also chipped in, gathering donations in GoFundMe to help buy food and also to pay for an official six-foot vinyl banner that indigenous legal activists also use in other public events.

Because their headquarters is not sufficient enough to hold national level meetings with an average of 100-200 participants, the JIOC Tribunal regularly uses a large meeting hall in the

Departmental Legislative Assembly that (often non-MAS) government officials supportive of their cause lend out to hold meetings (see Figure 5). One risk of using state institutions such as the Legislative Assembly is that it affords certain legitimacy to the state as the site of producing law. In Figure 2, JIOC Tribunal leaders sit below an enormous poster that depicts President Morales alongside Víctor Sánchez Morales, the MAS President of the Departmental Legislative Assembly, who was elect the same year the JIOC Summit was held in 2016. Across the top the giant slogan "together constructing the new Bolivia," reinforces the central message of MAS-led institution building as as its central madate to carry out the *proceso de cambio*.

Figure 1.5: JIOC Tribunal Justice Summit meeting hall of Departmental Legislative Assembly, Chuquisaca, Sucre (photo credit: Amy Kennemore)

Yet, at the same time, "renting out" state institutions in this way (as I refer to these and other practices of material and discursive appropriation of state institutions), also grants the JIOC

Tribunal significant legitimacy through an association with state power. This is not only due to the fact that events are carried out in the very buildings constructed to house the elite politicians of the early Republic that excluded them from it. Rather, in the context of Plurinational Bolivia, this is also an assertion of authority as the drivers of institution building. Similar to their organizational registries and stamps, this can be understood as another form of mimicry (Bhabha 1984) that enacts a disagreement over who has the right to decide how the state will be constructed.

1.7 Indigenous refusals

In addition to taking legal action to challenge state legislation, another strategy deployed by indigenous legal activists is to simply refuse the "gifts" of state recognition altogether (Simpson 2014). Flores centered a politics of refusal in our interview the first day I met him, back in 2015. Referring to the issue of legal personality, for example, he explained, "We don't need another identity, because we self-determine who we are as nations, as people, and the state should respond to that directly." Flores also framed the issue of legal personhood in terms of a lack of consultation, as it forces leaders into channels of participation such as OTBs, social organizations, or political parties that, based on their own experiences, goes against their very norms of justice justice, representation, and participation. "In that way we are dependent on a state that came after us, whether called a republican state like before, or [a] plurinational [state] now. (…). That's how we've interpreted the issue of preexistence. Nations and indigenous peoples have preexisting territories, so we don't need recognition, right?"

Yet, in contrast to the Iroquois' refusal to use state issued documents such as passports discussed by Simpson (2014), indigenous legal activists have selectively used some forms of

state recognition to refuse others. In response to being denied direct representation as indigenous peoples on the basis of lacking status as an OTB, for example, members of the Marka Marka decided they would register as members of the Qhara Qhara Nation on the 2012 census, which effectively established their "existence" as an indigenous nation thus opening a new pathway to demanding direct representation. Following this experience, they then filed a suit demanding the Electoral Tribunal recognize representation on the basis of their nationalities, which could also be self-identified on national identity cards.

Later, indigenous legal activists also negotiated with SEGIP, the state institution that oversees ID cards, to allow indigenous people to change their nationalities on their cards for a reduced rate.[16] For Flores, just making the change is enough to mobilize political action. "Once you change your ID cards, that's usually the end of the problem," he later told indigenous leaders in a meeting in La Paz to consult them on resolving a local land dispute. "That's when you start exercising your jurisdiction, your justice."

Tata Fernández has also urged other indigenous leaders to enact their own politics of refusal. In the forum sharing their experiences of consolidating indigenous autonomy in Yura, for example, he defined self-determination in terms of refusal, of "not asking the state to do it for me." Here, he was also scolding indigenous leaders for "sitting with their arms crossed" as Flores had in the CONAMAQ anniversary meeting cited in the Introduction Chapter. Yet, at the same time, Fernánzes also framed the problem in terms of bad implementation – as the state offering a gift not worth taking. "If the state says, 'I will,' then maybe we don't want it to do [what it says], because maybe it's violating our self-determination."

[16] A full discussion of the jurisprudence and legal mechanisms deployed in this strategy has also been elaborated by IPDRS, see Pachaguaya and Flores 2016).

"We are just doing what [indigenous] people demanded of us,"[17] Vice Minister of Autonomies Gonzalo Vargas stated in a public forum in La Paz in November 2018. He was responding to our own study analyzing the bureaucratic barriers to accessing formal indigenous autonomy (see Copa, Kennemore, and López 2018). His response was similar to Rosales (who I had spoken to as part of the study), who justified the barriers as "the first experiments of planting [autonomy] in statehood." Similarly, in the public forum the Vice Minister deflected indigenous criticism by noting that there had to be *some* kind of institutional procedure to incorporate indigenous autonomy into the plurinational model. "I worked with leaders in the Assembly" he said, "we're doing what they asked for." In contrast to Quila Quila leaders' direct confrontations and experiences of state violence, these state officials appear genuinely sympathetic to the nature of barriers indigenous communities face in accessing autonomy. Yet, this common response also misses the point of what, exactly, was being asked of the state. Tata Fernández, who was also in the crowd, took to the microphone to offer a correction. "We don't need to elaborate our statutes, we know what our laws are." He explained. "The only reason we should have to write our laws down is so that you understand us; so that respect us; so that the Indian governs for the Indian himself. That's it!"

1.8 Conclusion

In their relentless efforts to materialize their rights in practice, indigenous legal activists analyze the limits of state legislation, question its underlying assumptions, and (at times) even

[17] Our critique was largely based on the analysis of indigenous leaders from various regions of the country many of whom were also present at the forum. This study was for UNITAS, as part of a multi-phase project on citizen participation and sustainable development goals. For more discussion and analysis of the Vice Minister's response, see also (Copa 2018)

effectively modify its contents to advance social transformation to overcome ongoing injustices. In many ways, the actions of indigenous legal activists mirror those of early cacique apoderados discussed in the first section of this chapter. Similar to what Barragán (2012) noted in her analysis of numerous petitions from different leaders of the movement, these indigenous legal activist "literally lived to '*hacer trámites*' [file legal appeals or procedures]" and wield the law in a form of "ratification chain" to challenge local authorities by seeking out resolutions from the highest courts. In this chapter, I have shown how, from the perspective of indigenous legal activists' search for justice, the Plurinational State is imagined as a vehicle for indigenous self-determination in a similar way that these early indigenous legal activists might have.

Focus on the nature of barriers indigenous legal activists seek to address with their actions calls attention to how efforts to integrate indigenous practices acts to mask other forms of exclusion. Within their own territories, themes such as communitarian democracy, integral development, and legal pluralism within territories cannot be separated, as processes of institutional formation in one area can greatly impact ability to materialize rights to territory and self-determination in another. In this sense, the situated perspective of indigenous legal activists reveals not only ongoing contestation over the meaning of justice in Plurinational Bolivia. Rather, as I have argued in this chapter, it also reveals significant disagreement over who decides what the role of the state should be in realizing justice in practice.

Simpson's (2014) notion of a politics of refusal also offers compelling corollary to understand how the actions of indigenous legal activists assert their right to decide these questions. For her, in refusing the gift of citizenship, Iroquois challenge the sovereignty authority of the US and Canada because their refusal "comes with the requirement of having one's own political sovereignty acknowledged and upheld, and raises the question of legitimacy for those

who are usually in the position of recognizing: What is their authority to do so? Where does it come from? Who are they to do so?" (ibid., 11). Asking the same sorts of questions, the JIOC Tribunal represents a form of *lo propio* in the sense that it emerged in response to the very to concrete barriers that blocked the materialization of indigenous people's rights in practice.

Always negotiating the tensions of their "nested" condition of sovereignty in relation to multiple others, indigenous legal activists must use the different materials available to them to construct new institutional forms. While these strategies may very well operate through mechanisms of state recognition, they are nonetheless tools forged and wielded "in our own employ," to materialize their rights by overcoming such obstacles. Indeed, as a new institution it was constructed precisely out of the spaces of recognition, occupying them to expose their contradictions. It is an institution that exists "to and for us."

Chapter 2

"*Gente de poca fe*" (People of little faith):

Legal pluralism at the intersections of policing and politics

Figure 2.1: Leaders of Central Agrarian Peasant Union of Zongo receiving legal records following Plurinational Constitutional Court decision in favor of Indigenous Native Peasant Jurisdiction (SCP 0874/2014), Departmental Court of Justice, El Alto (photo credit: Amy Kennemore)

2.1 Introduction: Setting a precedent

Around 9am on October 13, 2014, community members from Cagua Grande (Zongo Valley of the Department of La Paz), began gathering outside Departmental Court in El Alto. A few months earlier, the Constitutional Court had awarded the Central Agrarian Peasant Union of Zongo jurisdiction over a small scheelite mine (a calcium tungstate mineral used in processing tungsten) that had been operating in their territory since the 1970s. Two years prior, in 2012, the local agrarian union held an assembly meeting in Cagua Grande, the community where the mine is located, in response to several accusations against the miner, Oscar Bellota: he refused to pay workers their benefits, sexually harassed several women, "tricked" locals in to selling their land titles, and contaminated their land. Following the agrarian union's norms and procedures, such actions were considered serious violations against the community and warranted his expulsion.

In response, Bellota pressed charges against 33 of the community members for aggravated robbery, misdemeanor theft, and damages to personal property. Five of the community members were arrested shortly thereafter and held on preventative detention. Bolivia has one of the highest rates of preventative detention in Latin America, with a majority of the population being poor indigenous peasants who unable to provide tax ID and domicile information and/or hire a lawyer.[18]So, rather than try to defend the case through the state justice system, Zongo union members formed a Justice Commission to seek alternatives.

Central to their legal strategy was Article 179.II of the 2009 Constitution, which formally recognizes equality between indigenous native peasant and state jurisdictions. In collaboration with several activists, lawyers, and anthropologists, the union members created their own legal "tool": a small document that outlined rights to indigenous self-governance advanced in the new constitution along with recent legislation, as well as international agreements such as Convention No. 169 of the International Labor Organization and the United Nations Declaration of the Rights of Indigenous Peoples. Over the course of two years, the Commission would call on the contents of this document, often reciting it by memory in front of judges, prosecutors, and state officials to argue for the legitimacy, rather than criminalization, of their actions.[19]

They ultimately appealed to the Plurinational Constitutional Court. While this step was also met with significant barriers (see Copa 2017), on August 2, 2014, the Court ruled in favor of

[18] In 2013, for example, the Interamerican Commission of Human Rights found that 84% of the prison population was incarcerated without a sentence (cited in Derpic 2017, 110).
[19] Members of the Zongo Justice Commission collaborated with ADA La Paz members Aldo Balley and Pedro Pachaguaya on the case. Their experiences, along with the specific legal strategies they deployed, were later elaborated with support of researchers from IPDRS as part of their Movimiento Regiona por la Tierra y Territorio iniciative; See Pachaguaya and MArcani (2015).

Central Agrarian Peasant Union of Zongo.[20] In addition to recognizing the agrarian union's jurisdiction (and thus upholding the 2012 resolution expelling Bellota), the decision ordered the penal judge to transfer all legal records to union leaders and abstain from further involvement or knowledge of the case. This also meant that the five community members, who had been held in preventative detention for nearly two years, would be set free.[21]

Since the procedure for transferring legal records to an indigenous native peasant jurisdiction was new, there were no formal guidelines and it by went quickly. Judge Enrique Morales didn't offer an opening statement about the antecedents of the ruling but rather called the Agrarian Peasant Union leaders to the front of the room and read the Court decision aloud to a packed courtroom (see Figure 1, above Introduction heading). The leaders symbolically marked the transfer by receiving the large stack of legal records documenting the criminal proceedings against their fellow community members and wrapping it in an *aguayo* (traditionally woven fabric used in Andean rituals. The mood quickly turned as the judge ended the proceedings without formally releasing the detainees. Another procedure. More uncertainty. Commotion broke out as the judge left the courtroom but died down quickly as onlookers started filing down the narrow hallway chanting loudly. "*El pueblo unido, jamás será vencido….El pueblo unido jamás será vencido... El pueblo unido jamás será vencido…."* (A unified people will never be defeated).

[20] Sentencia Constitucional Plurinacional 0874/2014.

[21] My research on the case began in October 2014. All background information leading up to that time was provided by Juan Carlos Marcani and Pedro Pachguaya (who has worked closely with the Justice Commission since early on in the case), as well as Marcela Quispert Mamani, who was former agarin union leader and also served on the justice commission following the legal victory. In addition to multiple interviews and legal documents collected on the Zongo case, background information presented in this chapter is based on public presentations of their experiences to various grassroots organizations in the years following the initial Court ruling.

Out front of the courthouse, a *yatiri* (Aymara shaman) quickly began a ritual performance as people gathered. Yelling over the celebratory explosions of dynamite, one of the Zongo leaders declared, "Today state justice has died! Never again brothers, long live indigenous native peasant justice. ¡*Jallalla* indigenous native peasant justice!," "¡*jallalla*!" the crowd around him yelled in response. "Brothers we have the power, the weapon is in our hands, our self-determination; it's irreversible; it's undisputable!"

A few meters away, one of the younger leaders of the agrarian union struggled over the commotion to explain the significance of the victory to a news reporter:

—Reporter: What was awarded today?
—Community Leader: Indigenous native justice, according to our principles, our —
—R: [Interrupting] And what about people who commit robberies, or other violations, are you going use state jurisdict— ?

[several loud bangs of dynamite] "¡*Jallalla* indigenous native peasant jurisdiction!," yelled someone in the crowd. "¡¡*Jallalla*!!, others respond.

—CL: If there was a case that we couldn't resolve— delicate cases—yes, but we exercise indigenous native justice, according to our principles and territory: *akapacha, alaxpacha, and manqhap*–
—R: [Interrupts] But what types of crimes will you handle in your jurisdiction?
—CL: Ummm…we handle robberies and–

[Several loud bangs of dynamite] "Down with corrupt lawyers! Down with corrupt judges!!," someone yelled out as more dynamite was set off. "¡*Jallalla* Zongo! ¡¡*Jallalla*!!"

—Look, we don't separate things like that. We don't study the dead letter of written laws–
—R: [Interrupts] So what kinds of sanctions will you have?
—CL: Our sanctions are determined in an open assembly, through communitarian work, *this* is our —
—R: [Interrupts] Do you think "communitarian justice" a bad name? Because someone just told me it doesn't ex—
—Random man pushing his way through the crowd: Communitarian justice doesn't exist!
—CL: Yes, we have to drop that term. We exercise: *Indigenous. Native. Justice.*

In this chapter, I use the Zongo case as an entry point to examine how new mechanisms of legal pluralism serve as a site for evaluating and enacting different moral judgments over power and the use of the law. What the opening vignette illustrates is that claims to the right to exercise indigenous native peasant jurisdictional can be at once important symbolically while marked by uncertainty. Indeed, political theorist Benjamin Arditi emphasizes in essence this is what politics is about: an "expressive and disruptive" moment whose outcome is undecidable; using Ranciere's terms, he suggests it may entail the "transformation of the given or the defeat and/or assimilation of the insurgents into the existing order of police" (2009, 177-178). I suggest that the indigenous leaders' appeals to the courts in the Zongo case is not only about recognition of the value of indigenous justice as a corrective to misrecognition (about dropping the term "communitarian justice" as savage and thus lacking reason). Rather than saying (as victims) "You have wronged us and you need to do something about it," community members are sending the message "We are equal to you, and now were going to see whether or not you recognize that" (May 2010, 75-76). This is less about rational argument than about what is considered a political issue (Arditi 2009; de la Cadena 2010).

Yet, at the same time, much of the uncertainty surrounding Zongo and similar cases was due to the fact that there is also considerable disagreement over the nature of transformation itself: Which social order is the object of politics, that of the plurinational state, white-mestizo judges, corrupt lawyers, political adversaries, fellow community members? Considering the entangled nature of such social orders, how do we draw lines of distinction between them? Who decides these questions?

As Chapter 1 made clear, rapid processes of state transformation in Bolivia have engendered significant debate over how to reorganize social and political life as well as over who

gets to decide the proper role of state institutions in supporting different kinds of social projects. In this chapter, I consider how political subjects who are differently situated in relation to institutional practices make sense out of recent transformations. For indigenous legal activists and rights advocates faced with uncertainty, it was common for them to combine narratives around state corruption with moral judgements of "*gente de poca fe*" (people of little faith), lamenting the fact that they rarely resorted to their own organic institutions to resolve their problems. Largely mobilized in national-level organizational meetings or workshops to disseminate knowledge around new mechanisms of legal pluralism, such discourses were intended to strengthen and legitimize indigenous legal institutions, both to grassroots bases and government officials. Restoring faith in indigenous justice was one of the aims of promoting court rulings in favor of indigenous native peasant jurisdictions; challenging corruption and legal persecution of indigenous leaders seeking to exercise their rights was another.

I argue that, even as new mechanisms of legal pluralism were intended to dismantle the logics of the state and law, their entanglement with already existing "plural" legal practices as well as new forms of governmentality ultimately reproduce the "hope generating" (Nuitjen 2003) logics of state bureaucracy. In this way, I suggest, judgements and discourses about the seeming lack of belief in indigenous justice index the underlying difficulty of locating and talking about different experiences of injustice at the intersection of these different forms of politics and policing. Better understanding of this difficulty helps explain the nature of underlying uncertainties when legal victories themselves are taken up and made meaningful as a tool for diagnosing different social harms, which is the main focus of subsequent chapters.

2.2 New mechanisms of legal pluralism: the double face of "interlegality"

In Bolivia, over the past decade, the ethical values of indigenous justice have gained new historical and political significance. In the 2009 constitution Aymara principles such as *ama qhilla, ama llulla, ama suwa* (do not be lazy, do not steal, do not lie), along collective values such as reciprocity and equilibrium that were emphasized in the Zongo decision, are advanced as the new moral-ethical foundation of the plurinational state in Bolivia (art. 8). Claims to indigenous justice are understood as emancipatory in the sense that they enact these values, and in the process, challenge dominant Western epistemologies and states' claim to be the sole arbiter of justice (Santos 2012).

The Zongo precedent takes on particular meaning in this light. For more traditional adversaries of indigenous struggles such as the state or transnational companies, the political and economic stakes of indigenous jurisdiction were relatively low in the case. However, taken as an ethical debate over justice, at stake was not so much which party proved to be on the right or wrong side of the conflict, as much as the very nature of the wrong itself. In Zongo, more evident problems such as labor exploitation or contamination were understood as part of a much more serious infraction committed by the miner – social conduct that went against the community. In ruling in favor of indigenous jurisdiction, the Constitutional Court called into question the state's authority over such matters, generating a critical opening at the national level for more open-ended debates over what should be valued and how to best achieve it.

But how to harness this revolutionary potential of indigenous peoples' alternative frameworks of justice? Policy reforms to construct new mechanisms of legal pluralism in Bolivia are based on the principles of depatriarchialization, decolonization, plurality, and interlegality. Interlegality is an extension of what decolonial scholar Catherine Walsh (2010)

refers to as “critical interculturality,” which seeks to go beyond uni-directional and limited visions of bilingual education as a form of multicultural recognition (Aymara education for Aymara students). Rather, radical interculturality seeks transformation of liberal societies by encouraging reciprocal processes of dialogue and exchange between co-existing epistemologies (ibid.). Reform of the judicial system, from the perspective of interlegality, seeks to integrate plural socio-judicial systems into state institutions to decolonize them from inside out, producing a new unified plural legal system.

However, my research found that reforms to Bolivia’s judicial system did not facilitate this kind of multidirectional dialogue and exchange between different legal systems. This is most evident in the reforms to the structure of the Constitutional Court. In 2012, the Plurinational Constitutional Court was restructured to integrate two indigenous magistrates as well as a special chamber for addressing cases dealing with indigenous native peasant jurisdiction. As Copa (2017) notes, the fact that that the reforms created a “Special Hall on Indigenous Issues” alone underscores the limited scope of the role that indigenous justice would play in shaping the ordinary system in practice. Her research, based on her work at the Court as a constitutional lawyer between 2012-2014, provides a unique inside view of how cases of jurisdictional conflicts such as Zongo fare in the stage when under review by the court. One immediate limitation Copa notes is in the requirements for admitting a case, which demands an abundance of technical knowledge and also places unfair time limits on those presenting a demand. While the Office of Admittance Court may take months to review an appeal, they only give a timeframe of 72 hours for indigenous leaders to correct any observations. For indigenous leaders who live in isolated areas of the country or must travel 12 or more hours by bus, this is a difficult window

to meet and can significantly delay the admittance time for up to a year, as she observed (ibid., 87-92).

Another challenge occurs when jurisdictional conflicts are under review, a stage that can take between 12-18 months in some cases. The first stage of this process involves field research by a special unit designated to produce a report on concrete cases by an arm of the Secretaría Técnica y Descolonización. This special "Decolonization Unit" is made up of an interdisciplinary team of social scientists, *aumatuas* and *yatiris* (shamans), and constitutional lawyers working for the Constitutional Court. A key function of the Decolonization Unit is to analyze the applicability of indigenous native peasant jurisdiction concrete case presented to the Court in three main areas of validity: territorial, personal, and material[22]. In all jurisdictional conflicts, the Court must first assess if those claiming indigenous original peasant jurisdiction meet the established parameters: that they are legible (that they demonstrate that they have organizational structures attributed to indigenous native peasant groups) and that they are credible (that they have fully apply local norms and procedures with fairness and impartially in a concrete case under consideration).

The 2010 Jurisdictional Demarcation Law establishes the jurisdictional limits in three areas: 1) the case must follow Bolivia's system of established in the Political Constitution of the

[22] Territorial validity, which also includes subsoil rights; material validity, or the nature of crimes or violations seen under a particular jurisdiction (such as land and property rights that fall under the jurisdiction of the agri-enviromental judge; crime and civil disputes that fall under ordinary jurisdiction; and issues that fall under the jurisdiction of "organic" institutions such as a dispute over land or property among two members of the same community or affiliated to the same agrarian union, which governs its members according to a local system of its own norms and procedures. The 2010 Jurisdictional Demarcation Law elaborates the three main areas of validity to be measured in a given case: personal, territorial, and material (referring to nature of crime considered). For detailed judgment in each of the three areas of applicability weighed by the Court, see SPC 0093/2017 de 29 de noviembre de 2017, expediente 15966-2016-32-CCJ, "Análisis del caso concreto" (15-21 of judgement).

State, 2) it must be a conflict between the native indigenous peasant jurisdiction and the other constitutionally recognized jurisdictions; and 3) the court must determines the coordination and cooperation mechanisms between these jurisdictions, within the framework of legal pluralism. It's highly controversial. Article 10 significantly limits the scope of indigenous native peasant jurisdiction and has been the source of much critique, even by the Morales administration's own Vice Minister of Decolonization Félix Cárdenas, who publicly stated that the law was "racist" because it limits the treatment of serious crimes to "ordinary justice" (*Erbol 2017*). For him and others, the law violates jurisdictional equality advanced in the 2009 Constitution (art. 179.II), is paternalistic, and also limits marginalized groups' access to justice, as it doubly excludes the poor from accessing their own systems.

In practical terms, the significance of the Zongo precedent was that it challenged some of the underlying racialized power structures built into these legal categories. The Court decision did so in a couple of ways. First, the Zongo ruling opened the validity of indigenous native peasant jurisdiction to include third-party members who live within or have a business in an indigenous territory and have submitted to its authority. The miner Bellota, for example, had served on as Sports Secretary for Zongo's Central Agrarian Peasant Union, to fulfil the occasional obligatory role necessary to be affiliated with Cagua Grande. This was considered in the Court decision to be evidence that the union and not the state had jurisdiction over his land.[23]

Second, in winning a jurisdictional conflict with a penal judge, the Zongo case was able to supersede controversial Article 10 of the 2010 Jurisdictional Demarcation Law, which severely limits the scope of material that falls under indigenous native peasant jurisdictions to problems "internal" to the community. Because Bellota had placed criminal charges over all of

[23] See Constitutional Court Judgements SCP 1225/2013, DCP 003/2013, SCP 0874/2014.

the members of the community, awarding the Zongo Peasant Agrarian Union jurisdiction would technically award them jurisdiction over material that the 2010 Demarcation Law established as a "serious" crime and thus only admitted to ordinary justice. Indigenous legal activists from the TIOC Tribunal also submitted a "popular action appeal for unconstitutionality" to the Court in 2017, but it was also delayed for legal requirements and has stalled at the admittance stage. The Zongo case, in a parallel manner, would represent a kind-of "strategic litigation" in that it would challenge state legislation through other means, in a concrete court decision.

However, precisely because of the stakes, the decision was delayed as all Court decisions must obtain a 4-3 majority and it lacked full support. Interestingly, Copa also points out that, even as the fact that there is a minority of indigenous magistrates is another limitation of the reforms, this also leads to negotiations and alliances among the magistrates that would not otherwise be the case (2017, 107). In the case of Zongo, just at the critical moment when it had entered into this stage of obtaining votes, three Court magistrates were sanctioned with charges of "failure to complete responsibility," for accusations that they had ruled against the constitution on a notary law (*Correo del Sur* 2014). Of the three magistrates who were suspended until an investigation and trial could be completed, Tata Gualberto Cusi Mamani, Soraida Rosario Chanez, and Ligia Velásquez Castaños, Tata Cusi had been an outspoken critic of the Morales government and played a leading role in the first Court decision regarding Morales' reelection in 2014, which was ultimately approved.

The case against the three magistrates also demonstrates the underside of the "judicialization of politics" (Sieder, Schjolden, Angell 2005), that warns of a loss of independence following the increased use of the judiciary which politicizes its judgements. In this case, the suspension of Magistrate Cusi Gualberto followed his adamant and open opposition

against President Morales' right to reelection (on the basis that the new constitution setting a two-term limit didn't exist until the end of his first term) and has observed by the Interamerican Commission of Human rights. In the end, amongst the uncertainties within the Court, the Zongo judgment was finally approved in August 2014. Yet the limited scope of reforms, combine with politicization of the Court, demonstrates the contingencies of these cases from the perspective of a branch positioned at the intersection of policing and politics.

Moreover, the case against Tata Cusi was very public and went on for several years and became an arena for policing the role indigenous justice authorities more generally. Already, in 2012, Cusi caused a polemic when he publicly announced he read coca leaves to determine his judgements for the Court This was not only by racist opposition party members who used the statement to quickly denounce Morales' institutional reforms butt also among several MAS militants as well, who made public statements against Cusi to distance themselves from the mestizo liberal backlash decisions made in such a high Court that affects all Bolivians (*BBCNews* 2012). During the trial against Cusi, the Ministry of Health released private records revealing that he was HIV positive. For his part, Cusi denounced the government not only for violating his rights to privacy but also a "civic death," noting that, because his condition his Aymara clients (largely uniformed about AIDs and its transmission and with strong tendencies toward homophobia) refused to seek out his services as a lawyer (see Figure 2).

Figure 2.2: Indigenous Magistrate Tata Gualberto Cusi Mamami leaving the final hearing terminating at the Constitutional Court, June 1, 2017, nearly three years of public trials, with handmade sign that reads "Sentenced by Evo" around his neck (Photo credit: *Pagina Siete* 2017).

In general, these two very public polemic moments in Cusi's career as the first Constitutional Court Magistrate affectively reproduced the "tremble" of recognition (Povinelli 2011) not only among a mestizo-white liberal public but also among Aymara themselves. This demonstrates not only institutional barriers but also ongoing limits through the "demonization of culture" (Merry 2003; Santos 2012) that continues to be widespread.

2.3 The part with no part

In March 2018, my colleague Vianca Copa and I traveled to Quime (located in the Inquisivi province, department of La Paz), to follow up on a recent Constitutional Court ruling in favor of a new "Mixed" Indigenous Native Peasant Justice Tribunal. As I describe in greater detail in Chapter Four, this new tribunal was formed to find solutions to a land dispute over

boundary limits between two Aymara communities, Titiamaya and Sopocari, which both fell under the jurisdiction of Federation Tupak Katari.

The Constitutional Court decision had set a new precedent in that it recognized the Mixed Tribunal as an umbrella institution that could administer justice to both peasant unions and indigenous ayllus at the provincial level (Chapter 4 offers a detailed examination of this case).[24] We went to Quime to film the inauguration of the Mixed Tribunal along with subsequent hearings to resolve the conflict between the two communities as a sort-of mini documentary of the construction of a new indigenous native peasant institution. We were also interested to see the perspective of the local courthouse where the jurisdictional conflict unfolded: were there any mechanisms of legal pluralism implemented leading up to the Court ruling? What was their perspective on these types of cases? So, the day before the inauguration of the Mixed Tribunal in Quime, we went to visit the judge at the local courthouse to gather his reflections on the Court decision.

"I distrust this." The courthouse secretary, Raul Castro, sighed as he pulled out a sheet of paper from his records. "Both parties could come get photocopies, that's fine. But unfortunately, indigenous native peasant justice [authorities] can't uphold the law, they're not concerned with that; they don't know about law and that stuff." The paper he pulled out had a short letter typed on the La Paz Departmental Court of Justice letterhead and addressed to Jiliri Tata Mallku[1] of Justice and Boundary Limits of the Inquisivi Province Juan Basilio Quispe Mamani:

> Ref: TRANSFER OF ORIGINAL WORKS
> Sr.
> In 389 useful pages, I transfer for your knowledge the Jurisdictional Control book with the lawsuit pursued by Secretary General and other members of the Agrarian Union Sopocari against the Tata Mallku and other members of the Ayllu Titimaya for the

[24] SCP 0093/2017.

> alleged crime of encroachment, incompliance with the provisions of Resolution No. 10/2018 of February 8, 2018.[25]

Following the Zongo case, the transfer was a new procedure following a Constitutional Court judgement in favor of indigenous native peasant jurisdiction.

The secretary spun the paper around on his empty reception desk while he spoke, occasionally pausing to rub the single sheet between fingers and thumb and glance at its blank underside. “I hope they don’t have problems after this that make it worse,” he said. “You know, because sometimes when country people (*gente del campo*) get together it’s dangerous. Someone raises their voice, then the other….” He briefly glanced up at my colleague Vianca Copa and me but didn’t seem to notice our wide-eyed reaction to his frank remarks. Looking back down at the paper, he added “That’s why they have to have some higher authorities who know how to manage things, and lawyers to represent them too. They’ve got to have a lot of coverage, because if not this could generate subsequent problems.” He tossed the paper on the reception desk, offering it over for our inspection. “But that’s all I can tell you, because I don’t have the records.” He shrugged, adding “they ordered us turn them over. So, that’s what I did.”[26]

The courthouse was tucked away several blocks from Quime’s main plaza. Quime is a rural municipality in the Inquisivi province of the department of La Paz. Due to Quime’s relatively small population of less than 8,266 inhabitants, the courthouse oversees civil, commercial, and criminal disputes. In place of the official title, the Mixed Public Courthouse of Family, Child, and Juvenile Civil and Commercial Justice and Criminal Investigation of Quime, the more commonly used “Casa de Justicia” was hand painted in red block letters on its front

[25] Individual names of those involved in the case have been removed from citation and generalized by their titles.
[26] SCP 0093/2017, 15966-2016-32-CCJ

façade. The courthouse was a stark contrast to the overcrowded, bustling hallways of the La Paz Departmental Justice Tribunal in El Alto where Zongo leaders had celebrated their victory. Indeed, when we arrived that day, there was hardly anyone in Quime's courthouse at all, not even the judge. Just the secretary, quietly sitting alone at his desk.

Castro, a mestizo man around his mid-sixties, said was born and raised in Quime and had worked for 39 years in the courthouse. As courthouse secretary, he is the legal custodian of all legal records and administrative workings of the courthouse, bringing them to hearings and updating their contents, also being held accountable for the truthfulness of their contents.[3] In many cases, a single trial can easily accumulate hundreds of pages of legal documentation; so much so, that legal records do not fit in a single bounded folder and are bound by hand with yarn, which is also a much more economical than hardcover folders with adjustable metal binders. For this reason, he offered a gauge of any changes in procedure changes or mechanisms of legal pluralism promoted at in the administration of justice at the municipal level.

"No, no, no, this is the only case like this we've had, everything else is justice," Secretary Castro assured us that the courthouse did not coordinate with indigenous justice authorities to administer justice. For him, there was no reason to, as indigenous and state jurisdictions clearly dealt with separate matters. "Because, you see, [boundary] limits, that's a community thing – like an animal wandering over to eat someone's crops – it's internal to the community, we don't know about that stuff...here it's just individual proceedings, individual crimes."

Vianca probed further, elaborating other possible examples of coordination with indigenous justice. "I'm not sure if you've had experiences where – in some places they carry out the hearings in the language that corresponds to the place, like in Aymara, for example –

have you seen anything like that?" she inquired. "No. The lawyers could, perhaps, or maybe the part [*la parte*, referring to the client represented] could have a translator but there's no requirement," Castro explained. "But that's up to them to decide. Here [at the courthouse], in hearings, no, we don't have translators. It's not necessary – we could say it doesn't matter if they speak or don't speak because they're represented (*patrocinados*) by lawyers whose speak Spanish." The secretary started getting frustrated. "The part doesn't speak (*la parte no habla*)," he said, clarifying again how legal representation worked.

For the secretary, the jurisdictional conflict did not appear to be a challenge to his authority as much as an error made by the Court over the nature of the crime. He explained that the subjugation charges were only in the preliminary stages of investigation, when local indigenous justice authorities from the Federation came to the Quime courthouse to claim the files. He recalled that the issue of limits had already been addressed by the agri-environmental judge from the provincial court in Inquisivi, who ruled in favor of the plaintiffs. "However, after a while [one of the parties] claimed the land, so that's what the criminal judge was looking into," he recalled. "They keep talking about [boundary] limits, not encroachment. That's a different [legal] figure, they aren't dealing with the issue of subjugation, despite the fact that there is a *cosa juzgada* (final judgment)."

For the secretary, what was a stake in the jurisdictional conflict was a question of individual property rights – rights that been legally established by the provincial courts and possibly violated. The question of boundary limits, in contrast, was understood as something "internal" to the community and thus not a matter of (or affected by) the state or liberal law. In theory, this is why the precedents set by Zongo (in practical terms of shaping new jurisprudence)

might have an impact, because it opened questions such as judgments made by state justice officials and the terms of who or what counts as "internal" problems to the community.

Yet, not only had the Secretary not heard about the Zongo precedent (despite its having been issued by the highest court on the matter, the Constitutional Court in Sucre), he did not see it as a direct challenge to his authority or that of state justice as much as an error. When the resolution arrived order the transfer of records, Castro explained, he called the Quime courthouse judge and suggested that they send it back. Similar to local officials and land survey teams in the early twentieth century responding to decree laws that contradicted the intentions of the 1874 Disentailment Law (Gotkowitz 2007), Castro might see modifications to the Jurisdictional Demarcation Law as an error that went against the very purpose of ordinary law itself and thus willing to take a stand to ensure it is upheld.

This may also explain why he eagerly agreed to the interview, he wanted to set the record straight. "Before there was a lot of respect, a lot of fear of justice, of the judges," Secretary Castro said, reflecting on the problem with justice today. "But I don't know what has happened… there's a failure to comply with the orders. Justice is in vain, it's not fulfilled." He then added, "now, the peasant sectors do what they want; rapes, robbery; the miners, they abandon their children. It's not like it was before. No, before there was a lot of respect for justice, there was fear."

Different from the Zongo case, local indigenous justice authorities from the federation did not mark their legal victory by making a public spectacle out of the official 'handing over' of the legal records. Rather, Tata Basilio told us that a few months after he got the notification, he walked alone into the courthouse, picked up the 389 pages of legal records, signed off on the official transfer, and quietly walked out the door of the run-down, one-story brick courthouse.

Even if Castro and others were present the day that Zongo leaders staged a spectacle in La Paz, would he experience it as a polemic?

Table 2.1: "The Activist Anthropologist"

Working the indigenous-colonizer hyphen
The activist anthropologist

Following the legal victory in Zongo, anthropologist Pedro Pachaguaya and others working with the Zongo Commission began disseminating the legal strategies deployed by the Justice Commission in efforts to actively promote the legal strategy that won the Zongo case throughout the rural highlands. Considering that many local authorities (like the Secretary in Quime, described above) discriminated against indigenous leaders in their efforts to exercise indigenous native jurisdiction, the idea was to have a "manual" of rights, procedures, and jurisprudence on hand, which could serve as a tool for local community leaders to assert authority in the fact of a lack of respect.

However, a lack of respect and understanding for indigenous justice on the part of state officials did not always explain local power dynamics. This was most evident during a meeting in 2016 that Pachaguaya and I attended in the Jacha Marka Tapacarí Condór Apacheta territory while working with a Quechua-speaking family, the Quispes, in their efforts to resolve a longstanding land conflict with their neighbors, the Pillcos, which had expelled them from their community (see Chapter 3). Local indigenous leaders had decided to support the family by calling a special cabildo to evaluate the conflict. Because previous leadership of their ayllu had been reluctant to attend to the problem, family members speculated, they must have been bribed by the Pillcos. Now with more legal backing from historic precedents such as the Zongo victory, the hope went, the indigenous leaders that year, would act in "good faith" of indigenous justice to reach a resolution.

However, a few days later, they invited the Subprefect of Poopó to provide an "orientation" of how the case might be resolved, explaining he was the "highest authority" of the province and had experience with similar cases. During this meeting, the Deputy sat at the head of the meeting hall in between the Mallkus, and argued that since a Cabildo (a meeting of indigenous leaders and the community to resolve the case – one of the central mechanisms of indigenous justice) hadn't worked in the past, it wouldn't be a viable option for the family now.

A mestizo man in his mid-40s who spoke fluent Quechua, the Subprefect was well versed in the norms and procedures for administering indigenous justice. During the meeting, he sat in the middle of the six other Tata Mallkus at the wooden desk at front of the room. The Subprefect's wife, a slender mestiza woman dressed in tight jeans and high-heeled boots, had also traveled with him and sat quietly in the middle of the Mama Tallas on a small wooden bench perpendicular to the Tata Mallkus. Despite the fact that she did not hold public office and did not blend in as much as her husband, her presence nonetheless followed the principle of *chachawarmi*, or male-female duality in leadership, which was a norm of the indigenous *ayllu* leadership system. Speaking fluent Quechua, the subprefect greeted everyone and

thanked the leaders for the invitation. He wore a brightly colored poncho matching those of the other Tata Mallkus, which he had put on over his suit shortly after arriving. He also garnished a matching sombrero and *chuspa*, or small knitted bag that indigenous leaders wear to hold their coca in meetings and ritual ceremonies. However, unlike the *chuspas* the indigenous leaders adorned around their necks, his was embroidered with his last name, indicating that it was most likely a gift from an indigenous community in exchange for his service or to acknowledge his authority.

While the Subprefect's motives were unclear, the intervention nonetheless demonstrated an assertion of sovereign authority to decide what measures should be taken (or not) in the case. During the meeting, both the Subprefect and his wife strongly cautioned against holding a cabildo, stating that it would not be wise to "rush into things." He also responded to the Zongo example, which the leaders held out as making the difference between previous efforts to assert indigenous jurisdiction "I appreciate the importance of the case," the Subprefect told Pedro, "I saw you present it a while ago in Oruro, right?" But he then added, "if I understand correctly, the leaders [in Zongo] were from an Agrarian Union. You need to understand that justice is different here." He then added that he was an anthropologist before he became Subprefect, thanking us both for "wanting to know more about their local customs." Here, the underlying presupposition of policies designed to promote interlegality as a means to strengthen indigenous jurisdictions is out of sync with the nature of power dynamics limiting the indigenous leaders' authority. Here, the distribution of parts assigning authority do not render cultural practices rather noise; rather it is through knowledge of indigenous language and cultural practices that the state official claims authority to decide over matters in their territory.

2.4 Coordination and cooperation

Because of the decentralized and weak justice systems, any case that passes to the Constitutional Court starts and ends at the local level of municipal courts. Before indigenous leaders can appeal a case to the Court, it must first be refused by a lower-level judge, where they are met with a similar response to that of Secretary Castro, outright refusal. Following recognition, leaders also often need cooperation and institutional support to carry out their resolutions, such as a police presence. Often times, local authorities may go against a Court ruling, as disgruntled parties involve seek out other means to get a more favorable resolution and are often welcomed by local justice officials willing to cover the costs.

This pulls those involved, including even local indigenous peasant leaders, into the webs of extortion and discrimination in the state justice system: small claims cases accumulate into

hundreds of pages of legal records, the result of lawsuits that can go on for years, even decades, costing a significant amount of resources. If local indigenous peasant leaders seek to intervene at a given moment in this chain, they risk having their names appear on a lawsuit, and even jailtime. This had been the case in many of the jurisdictional conflicts, provoking fear among indigenous leaders and weakening their jurisdiction as they were unwilling to take significant measures to resolve a problem.

The lack of coordination and cooperation explains why later, in 2017, the Supreme Court, in collaboration with the United Nations, elaborated the "Intercultural Action Protocol for Judges," to "provide guidelines to achieve an adequate relationship with the authorities of the indigenous native peasant jurisdiction (…) to guarantee access to plural justice to indigenous nations and native peasants, based on the Political Constitution of the State and national and international standards on the rights of first nations and indigenous native peasant peoples" (Tribunal Supremo 2017, 6). The socialization of early legal precedents such as the Zongo case served as an early form of such protocol, with the idea that indigenous leaders could have examples of new mechanisms of coordination and cooperation "on hand" to strengthen their jurisdiction to address concrete problems as they arose. In addition, with the passage of the Demarcation Law produced a wave of government and non-governmental initiatives emphasizing "intercultural dialogue and exchange among jurisdictions." (see PROJURIDE 2011).

For the Vice Ministry of Indigenous Native Peasant Justice (of the Ministry of Justice), interjurisdictional dialogue has largely entailed a series of "*in situ*" meetings whereby state justice officials travel to different regions of the country to engage in dialogue and exchange across different justice systems. Such meetings occurred three times in Inquisivi, where the

Quime Courthouse is located, between 2017-2018, when the case that Copa and I were researching was under review and shortly before and after the Court decision in favor of the Mixed Tribunal was reached. As I will discuss further in Chapter Four and Chapter Five, leaders from the Mixed Tribunal often promoted these state-sponsored meetings among their grassroots in the hopes to engender support for their jurisdiction. In this way, such meetings can be understood as playing a supportive role and, through the emphasis "interjurisdictional dialogue," seek to bring indigenous leaders and state justice practitioners together to exchange experiences and learn. The idea is multidirectional exchange that is not facilitated by normal courthouse interactions.

I also found that, like interlegality reconfiguration of the Plurinational Constitutional Court, this ideal was also not realized in practice. These workshops follow a standard format of "participation and dialogue" that is increasingly becoming the norm among many NGOs, whereby participants work in breakout groups to discuss their experiences or respond to a particular set of prompts and then take turns presenting to the rest of the room. The idea is to generate discussion and reflection first, and then share with others for a larger debate towards policy reform (see Figure 3). While in the Ministry of Justice workshops, a large focus was on the specific problems that indigenous and union workers faced in exercising their jurisdictional rights, the format and presentation of the meeting was paternalistic and participants did not actively include state judge officials (who occasionally arrived, made a disturbance with noise of entourage while others where presenting, then spoke out of turn, gave lip service to coordination and cooperation and respect, before leaving early).

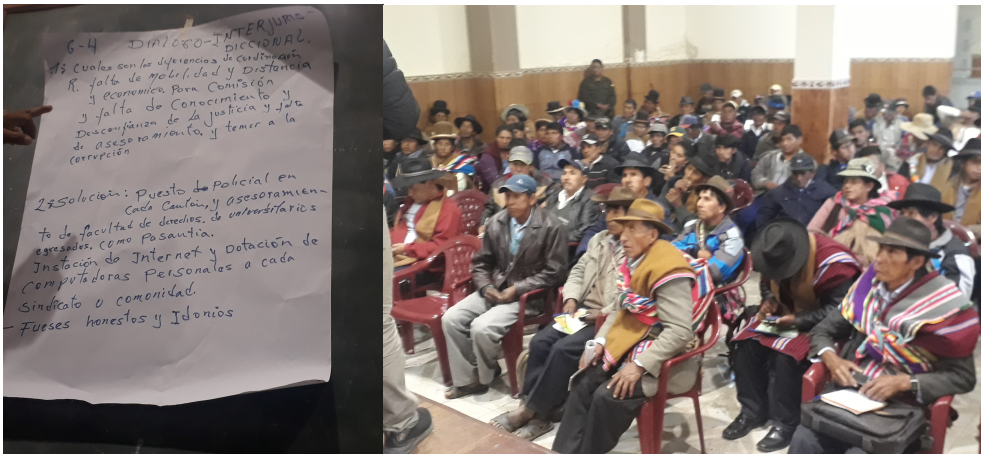

Figure. 2.3: Leaders from Mixed Tribunal of Inquisivi participating in "Interjurisdictional Workshop" held by Ministry of Justice in Ochoa, province of Inquisivi, May 18, 2018 (photo credit: Vianca Copa)

The list of challenges in coordinating with state justice officials are certainly relevant and echo those of the indigenous legal activists from the JIOC Tribunal discussed in Chapter 1. The issues the participants discussed (see the photo in Figure 3) are: lack of transportation, distance [between communities] and economic resources; lack of confidence in justice and legal advisors, fear of corruption. As potential solutions are: police post; council from law schools; internet and personal computers for leaders; honest and reliable judges. Often times, in meetings these points are glossed over and end up in a pamphlet following the event but have yet to make it into policy reform. Moreover, while government officials, similar to indigenous legal activists and advocates, emphasize that following Art. 179 of the constitution recognizing jurisdictional equality, indigenous and peasant leaders are "judges, equal to those of ordinary system,". In these meetings state officials also make it clear where the jurisdictional limits are, including those imposed by the jurisdictional demarcation law.

I suggest that in this way, state-sponsored workshops of the Ministry of Justice promoting indigenous originary peasant jurisdiction act as a new form of governmentality that works

alongside new legislation establishing mechanisms of coordination and cooperation between the different jurisdictions to limit the emancipatory potential of jurisdictional equality in practice. At the same time that such workshops promote the idea that indigenous peasant leaders are judges equal to those of the state justice system, these workshops also reinforced the fact that legislation establishes clear guidelines limiting their scope of validly.

2.5 "Gente de poca fe" (People of little faith)

Secretary Castro was not the only one who "distrusted" the Constitutional Court ruling. On March 16, just one day before our visit and two days before the inauguration of the Mixed Tribunal, representatives from Sopocari filed an Appeal for Reversal of Resolution No. 10/2018 (cited at the opening of this paper) that ordered the official transfer of the legal records from the Quime courthouse to local justice authorities. The appeal, elaborated and signed by a lawyer on the plaintiff's behalf, claimed that Tata Basilio did not have proper accreditation as Mixed Tribunal judge and thus requested that he return the originals to the courthouse.

While different than directly threatening the Mixed Tribunal leaders with legal persecution, as had occurred in other cases, the petition nonetheless sought to delay the Mixed Tribunal hearings to stall the case. This is another example of a common legal practice in Bolivia called "*chicanear,"* referring to "tricks" a lawyer might deploy to strategically delay a case. *Chicanearía* is a widespread practice of attributed to the "crisis" of the state justice system discussed below. Chicaneria ranges from the tactical use of formal procedures established by law such as filing incident complaints or annulments to practical tactics such as not attending proceedings (e.g. claiming health problems) or even paying attendants to hold captive one of the parties by freezing an elevator with them inside (see Foronda 2017, 214).

Similar to what Monique Nuijten (2003) illustrated in her anthropology of power and the state in Mexico, the insistence of community members to resort to state justice in seeking a resolution to their problems, despite explicit acknowledgement of the entrapment and exploitative nature of this system, speaks to the "hope generating capacity" of otherwise incohesive and seemingly endless bureaucratic procedures of the state justice system (Nuijten 2003). Far from victims with no agency exploited by corrupt intermediaries who have access to the secret workings of state power, she suggests that both rural peasants as well as brokers promising to have the right connections engage in the production of the idea of the state that sustains its centrality. What is notable about the Mexican state bureaucracy, Nuitjen argues, is the politicizing effect of its capacity to generate hope, drawing people into the bureaucratic machine of the state system for years, even decades, on end in search of justice.

A big source of jurisdictional conflicts in Bolivia lies in the conflicting legislations that open space for competing claims to rights. In the 1996 INRA law, for example, failure to acknowledge local indigenous peasant organizations' jurisdiction over rules such as quotas, property sales, and land use created internal discrepancy over jurisdiction. In their analysis over how this absence has played out in agrarian coca-growers' unions in the Yungas, Spedding and Llanos (1999) demonstrate how union leaders' authority was contested by resorting to state law. The title of their study *No hay ley para la cosecha* (No law exists for harvesting) (1999), refers to a common strategy employed by migrants or disgruntled union members to challenge local leaders by claiming that, since there was no law recognizing the union's right to dictate the date for initiating a harvest, they did not have to subject themselves to such rules. Here we see a clear example of what Moore (2005) calls "situated sovereignties," as disgruntled union members' strategic use of the law to challenge their local union authorities and thus to assert autonomy

from them, even as it may reinforce the state's legitimacy to have sovereign authority over such matters.

The specific phrase "*gente de poca fe,*" articulates a general tendency for local community members to resort to state justice instead of their own organic institutions. But also, is has been attached to a specific narrative of betrayal and mishap in the Zongo case. While the case was under the Court's review, a new legal figure called an "Auto Constitutional" was implemented that froze all proceedings until the Court reached a decision. This tool was particularly important in the Zongo case, as it protected the other 33 members faced with criminal charges from being held in prison for preventative detention. However, following the same logic, the mechanism it did not allow for the five who were already detained to go free. They would have to wait for the final Court decision and also hope that it was favorable. As the first section noted, this was a lengthy and uncertain process. Not long after the admittance of the case for review by the Court, one of the detainees was talked into getting a lawyer and appealing individually for release.

This backfired, as the case was suspended, there could be no trial to decide bail. Yet, the lawyer got to keep his money, arguing that he had done his job and deferring responsibility to the Court. Pachaguaya and Marcani (2015) point out that the lawyer likely knew about the suspension of the investigation and was thus exploiting the community member for money. Yet, not only did resorting to state justice backfire on the individual but effected the others who were detained. Because the legal records had to physically be transferred from the Constitutional Court in Sucre to the Departmental Court of Justice for the appeal to be considered, and sent back again, the case lost another eight months before it could be reviewed again by the Constitutional Court. This a structural problem of slow and inefficient bureaucratic system. But

also, filing for small appeals for an individual or any procedure that might require the legal record to be transferred is one of the easiest ways to stall a case and is also a quite common form of chicanery.

So, the rumors went, the miner Bellota or the Departmental Judge Morales (also rumored to be working together against the Zongo leaders) probably paid a lawyer to get one of the detainees to resort to ordinary justice to stall the case once more. Similar to what Gutpa (2005) shows with narratives of corruption in India, the narrative of "gente de poca fe" articulates a moral imperative through plot lines and twists and thus takes on significant currency in relation to broader efforts strengthen indigenous native peasant justice.

Following Gupta's (2005) discussion on "corruption narratives," which emphasizes the complexity of plot line and characters involved in a moral judgement of certain rumors around corruption, I suggest too that the "people of little faith" calls upon this narrative in some way. It reflects acknowledgment that those who do the betraying are also caught up in a system of extortion while at the same time calling upon them to endure in the face of adversity by believing in indigenous justice.

2.6 Conclusion

Shortly after the Zongo legal victory in 2014, several members of the community who were initially in support of the expulsion of the miner filed an appeal to the state Court, seeking to overturn the decision to give legal jurisdiction over the case to the Zongo Central Agrarian Union. This appeal threatened to overturn the whole precedent, and return the case to the ordinary justice system Rumors then spread that the miner, Bellota, had returned and thrown a *preste,* a local popular festival that plays a key role in ensuring membership sponsored by a

community, signaling his return. Much of this has to do with the fact that recognition of indigenous jurisdiction alone, without sufficient economic and material support, is not sufficient to address people material concerns or guarantee access to security. A large part, however, also has to do with union and party politics, which swayed leadership to support the miner Bellota, who did have the resources to influence his interest.

While presenting a jurisdictional conflict does not secure access to much needed economic resources or political representation, as formal conversion to indigenous autonomy would, it nonetheless provides legal backing for local peasant leaders to govern their territories according to their own norms and procedures. Ultimately, what is at stake in these sites of institutionalization is the extent to which pluralistic forms of organizing social life will reconfigure state institutions and how, in turn, processes of institutionalization will support (or hinder) the fluid and dynamic nature of those forms as they are incorporated into the state.

In the opening vignette, the leaders of the Zongo Peasant Agrarian Union were staging a disagreement with much of the logic expressed by Secretary Castro, against a judge who had largely discredited their claims and discriminated against them. For them, denying the existence of "communitarian justice" associated with much of the racism that denies them a part as judges. Faced with uncertainty, they were also seeking to assert their authority, to fix the unending appeals and demonstrate who had the right to decide. Yet as I have shown in this chapter, the victory itself was contingent on a correlation of forces that might also easily sway to another configuration in a matter of months. Government officials and police at both the national and municipal levels are quite willing to acknowledge and even at times respect indigenous jurisdiction, washing their hands of the obligation to respond to historically constructed and ongoing violence that they often times directly participated in and benefited from.

In the years following the early Zongo decision in 2014, legal pluralism had gained significant traction in Bolivia, promoted by government officials in workshops, documented and analyzed by advocate organizations, and claimed as a right by indigenous peasant leaders through appeals to the Constitutional Court. Examining Constitutional Court procedures, Copa (2017) argues that paradoxically, new mechanisms of equality built into the restructuring of the Plurinational Court act as "concealment devices" that mask ongoing exclusions and inequality. Similarly, I've shown how government workshops have the effect of policing, of acting as a form of governmentality that reinforces the limits of their jurisdictions through the embrace of intercultural dialogue and participation.

What effect does recognition of indigenous native peasant jurisdictions actually have in securing poor rural communities' access to security and material wellbeing? What were the nature of barriers leaders faced in exercising their right to indigenous justice in practice? In staging a polemic following the official transfer of the records to Zongo leaders, I suggest, the disagreement was not only to be tested by the Judge or a non-believing mestizo-white public misinformed by negative stereotypes. Rather, it was also demonstrating a surplus of meaning for themselves and their fellow community members. As the subsequent chapters will show, recognition of jurisdictional equality is taken up for community members to morally obligate their own indigenous leaders to respond to ongoing violence and impunity in their community (Chapter 3); or to convince local parties involved in a local dispute to stop resorting to extortionist lawyers or corrupt legal system in their search for justice (Chapter 4). What does it mean to believe in, cultivate, and achieve indigenous justice?

Chapter 3

Subletting the Gardens:

Abandonment and Exhaustion below the Threshold of Community

3.1 Introduction: Promoting legal pluralism

In the highland region, emphasis on strengthening indigenous native peasant jurisdictions started gaining traction in the years following the historic Zongo precedent. As I discuss in Chapter 2, despite the uncertainties of implementing indigenous jurisdiction in practice, activists promoted historical legal victories such as the Zongo precedent to restore local community members' faith in indigenous organizations. In this way, the legal strategy became a tool not only in efforts to improve local communities' access to justice and material wellbeing, but also as a means to strengthen indigenous self-determination. Pedro Pachaguaya and Aldo Baelly, the two anthropologists who had collaborated closely with the Justice Commission on the Zongo case, had been promoting the case in support of these efforts, and I also began collaborating with them to help document and disseminate cases.

It was in this context that in October 2015 we first met the Quispes, a family of Quechua-speaking farmers from the Coniri community that belongs to the ayllu Tapacarí. Tapacarí forms part of the collective territory Jacha Marka Tapacarí Cóndor Apacheta, an indigenous territory approximately 120km southwest of the departmental capital city of Oruro. In 2006, a violent conflict with a neighboring family, the Pillcos, had forced them off their land. For nearly a decade, the family has searched for justice, taking their case to both the state courts and their local indigenous leaders. Yet, the crime went unacknowledged and the Pillcos refused to comply with the few resolutions that local authorities had reached the matter. Meanwhile, the Quispes'

locked-up houses had become overgrown with weeds, slowly decomposing along with other abandoned houses in the community.

Our team first met the family in October 2015, after their cousin Toribia Lora heard a presentation about efforts to strengthen indigenous jurisdiction in a grassroots workshop held in La Paz. Toribia was a long-time affiliate of the National Council of Ayllus and Markas of Qullasuyu (CONAMAQ). Similar to the Jatun Ayllu Yura, social organizations formed by leaders of the Jacha Marka Tapacarí Cóndor Apacheta would go on to form CONAMAQ. Yet, unlike Yura, their grassroots communities had also remained affiliated with CONAMAQ as a national organization that articulates their demands. Hearing about indigenous legal activists' efforts to claim indigenous rights advanced in the constitution, Lora thought new legal strategies around legal pluralism increasingly promoted in these networks in recent years might inspire local indigenous leaders to take action to address her cousin's case.

The three cousins, Remberto, Fernando, and Mabel, are all in their late 30s and grew up in Coniri. Their parents, Augustín and Gregoria, built a small adobe house in the community by the main road, which they had gradually added to over the years. They mainly used the land for subsistence and pasture, and increasingly sold larger amount of beans and potatoes in the nearby market centers of Challapata and Huari. They now live in Challapata, where Remberto and Fernando work as mechanics and also take other jobs as day laborers. Mabel used to work mainly on nearby farms, but got a job waiting tables in a restaurant and is saving money to build a house of her own. As do most of our indigenous friends, they refer to Pedro and I as their siblings, and although I am not officially her daughter's godmother, Mabel and her eight-year-old Marianela have both given me that title.

Pedro and I had already been visiting regularly to meet with their leaders and discuss the possibility of holding a special cabildo to address their conflict. Over the course of the two years we worked on the case, Pachaguaya and I would often accompany the family in their many visits to the leaders in Peñas and we also held several meetings with them to discuss the challenges to exercising their jurisdiction. Because of these leaders' long affiliation with CONAMAQ, combined with a strong presence of NGO development and international aid organizations in the region, it was not that odd to have outside researchers or *técnicos* in these meetings. Moreover, the leaders had attended workshops on legal pluralism in Oruro and thus were already aware of cases such as Zongo.

While the previous year, they had gotten some support, the Quispes also expressed a renewed sense of hope in March 2016, as as we waited to meet their new indigenous leaders in Peñas, a rural town outside of Challapata where their headquarters are located. In addition to being armed with new tools of legal activism, they had heard that, unlike previous indigenous leaders, this new group of Tata Mallkus and Mama T'allas "walked together." This phrase refers to a shared commitment to govern in service of the greater good of the *ayllu*, rather than acting on individual self-interest alone. Following Jacha Marka's *thaki* (path) annual rotational leadership system, which is also based on Quechua-Aymara principles of *chachawarmi* (male-female duality), every year six couples serve together in an obligatory term of leadership. This is different from five-year salaried terms of elected officials and is traditionally seen as a central mechanism of collective leadership and service. So, when the family mentioned that the leaders "walk together," they were also placing value on this role as a service to the greater good of the community (the "sacrifice" indigenous legal activists cited in Chapter 1 emphasize). Their

difficulty in getting leaders to address the problem alluded to the fact that previous leadership had lacked such values.

Remberto, the eldest of the three Quispe siblings, wasted little time after we were welcomed into the leaders' office to launch into a campaign for help. "We're here because we want the justice that, really, we have been begging for, over and over again for years, for nothing," he said. After briefly recalling the violent conflicts, he went on to explain their frustrated efforts to access the state justice system. "We've gone to the state, but it was just a dirty trick. It's all run by paper. The police don't help and the judge just tells us to stop bothering him. Meanwhile, we spend all our resources." He then paused and looked around at the ten leaders that sat around their desks. "We're just trash there, right brothers?" he exclaimed, "we don't believe in the state anymore!"

With the leaders nodding in agreement, Remberto then shifted focus to the indigenous leaders:

> That's why we keep organizing to return to our community. That's where I grew up, you know that [speaking directly to one of the Tata Mallkus], you were my teacher when I was a boy. So many years looking for justice, I never finished school. The other leaders have abandoned us, ignored us. But you're not like the others, you can be different, you can set an example. You're our *tatas* (fathers), our *mamas* (mothers) and, thanks to our brother Evo, you're now national judges now, you're the highest authorities here. This could be historic. That's why we are here, to ask for support, to work together.

Almost in tears, Remberto closed his statement with a final plea. "We've been orphaned, thrown out," he said looking down at the floor. "Please, help us. We just want justice, that's all. Where else can we go?"

In this chapter, I focus on the Quispes' case to examine the effects of new mechanisms of legal pluralism in offering marginalized groups more access to justice and security. Remberto, by invoking President ("brother" Evo) Morales and renouncing his belief in the state justice system, was trying to convince his indigenous leaders to exercise jurisdiction over the case. Here the

efforts of indigenous legal activists and their allies to restore faith in indigenous justice that I described in Chapter 2 take on new meaning. They became a tool for obligating local leaders to follow the normative values of leadership and communal governance – to "walk together" and fulfill their obligation of service to the community. Moreover, in framing the family's search for justice as orphans, Remberto also expressed concern over their abandonment – by a corrupt state justice system to which they do not have access as well as the leaders of their own *ayllu* and fellow community members.

As I will show, aside from a few (albeit violent and traumatizing) clashes between the neighbors, there was little conflict outside of community members' different relationships to seemingly ordinary processes of abandonment and exhaustion. In the rural Andean highlands, factors such as climate change and the negative effects of mining and the booms and busts of the global quinoa market have disproportionately affected poor indigenous people and increased conflicts over sparse and exhausted land. Barragán (2007a) suggests that, paradoxically, strategies such as migration have been the central mechanism through which the "community" in the rural Bolivian highlands has been sustained in the face of the stark conditions that people in this region face. To avoid full disintegration, she adds, communal life "seems to entail and presuppose a certain magnitude of constant expulsion" (ibid., 2). In this chapter I show how, while the family's decade-long conflict might appear relatively small-scale and internal to the community, it was intimately linked to structural processes that have gradually weakened indigenous governance.

From this perspective, the challenge for addressing the family's problem was not only securing sufficient economic resources or institutional backing to strengthen indigenous jurisdiction. Rather, I suggest it also meant making ordinary, overlapping structural processes of

expulsion from the community "eventful" (Povinelli 2011), or the subject of sustained ethical and political action. What is typical about the family's abandonment and how and why should it be considered exceptional? What is the nature of social harm that has been committed against the community? And who or what should be made accountable for it?

My emphasis on eventfulness and abandonment in this chapter draws from Povinelli's (2011) reflections on late liberal modes of governance. As Povinelli emphasizes, crisis or scandal can be considered to be "eventful" in the sense that they reach a certain threshold of visibility, reflection, and response. They generate very public debates over what forms of harm are being committed (if they are even being committed at all), who or what should be blamed for their cause, and what actions may be deemed most appropriate to address them (ibid.) I show how locally grounded notions of indigenous justice circulated with discourses of indigeneity and development were taken up by the Quispes in efforts to make their abandonment meaningful. Ultimatley I argue that lack of a framework for addressing the complexities of structural violence in the agrarian economy acted to defer social harm – and the obligation to respond to it – back onto the family members themselves.

3.2 Experiences of dispossession

The Quispe and Pillco families both belong to the community of Coniri community that forms part of the larger Jacha Marka Tapacarí Cóndor Apacheta territory. Coniri is accessible about an hour-and-a-half drive down a small dirt road off of the main highway between the Pazña municipality and the outer limits of the town of Challapata. The road passes by the property of the Pillcos, the family who attacked and threatened the Quispse. The Pillcos have a medium-size milk processing plant and large brick house that is surrounded by several hectares

of land, predominantly used for quinoa cultivation and pasture for their cattle. Shortly after passing by a long driveway that leads up to the Pillcos' main property, the road splits off and leads up a small hill toward the Quispes' property. Several groupings of small one-bedroom brick houses constructed around inner courtyards mark the individual plots owned by different family members. Surrounding parcels of land have traditionally been used to grow potatoes, barley, beans, alfalfa and other root vegetables.

While the family had a long history of disputes land access with the Pillcos, tensions exploded one day, when cattle from the Pillcos' milk farm were grazing on the Quispes' property. Ferndando, a close cousin of the Quispe siblings who also lived in the community, went to confront Filemón Pillco, the eldest member of the family. According to testimonies from the Quispes, for several years, the Pillco had attempted to run the family off their lands, often threatening them with a handgun. According to the family, Filemón had always been aggressive towards them and claimed he would own the land. Pillco also harassed the family by letting his cows graze on the Quispe's alfalfa fields, destroying their crops.

Inter-ethnic conflict is rarely discussed in Challapata but may be one source of tensions between the family leading up to the violent conflict between them. In Challapata there is a notable difference between many upwardly-mobile Aymara groups (visible as those who own tractors or other expensive farming inputs) and others such as Quechua and Uru populations (who may work as seasonal laborers on their farms) (Arnold and Yapita 2009; Ormachega and Ramirez 2013). Moreover, interethnic conflicts are certainly not new in the region. Peñas was the site of one of the indigenous uprisings that broke out toward the end of the 1899 Civil War. Regional cacique Juan Lero, working alongside Zarate Willka, led the charge for indigenous

followers to take up arms in alliance with the Liberal Party to defeat conservative forces. Yet, the alliance was fragile and there were several indigenous uprisings, including one in Peñas

Many scholars have noted that, contrary to dominant narratives of this event as a "race war" against Whites and Criollos, the violence was much more complicated and involved (Gotkowitz 2007; Hylton and Thomson 2007; Kuenzli 2013, Mendieta 2010, 174). Mendieta (2010) points out that one of the difficulties of understanding the complexities of this time was because in isolated towns such as Peñas local authorities such as the corregidor and judge were also indigenous, and people likely took advantage of the chaos to "settle old accounts" (ibid., 180). Kuenzli (2013) adds that during and after the trial, Aymara embraced a constructed Inka identity that identified them with a civilized past to distance themselves from the uprisings. The legacies of this past are notable in sometimes racist expressions by Aymara against lowland indigenous groups (see Sturtevant 2015).

While not fully explaining the tensions between the two families, these ethnic and class differences are also noticeable (the Pillcos are Aymara and have expanded monocrop agriculture on their land while the Quispe are Quechua and were mainly producing small amounts of surplus for sale at the local markets). Persistent harassment provoked a heated dispute on May 23, 2006, which quickly escalated out of control. One of the Quispes' cousins confronted Pillco and, reportedly acting out of self-defense, shot and killed Pillco in a confrontation later that same evening. The cousin immediately turned himself in to the local authorities and was later sentenced to 30 years of jail time in San Pedro prison in La Paz. Several days later, eight members of the Pillco family stormed the Quispes' houses one evening and beat and tortured several of the families, nearly to death, in retribution. The Quispe immediately locked their

homes up and fled the scene to the nearby migrant commercial hub of Challapata, where they have lived since.

The closest police station to the community was more than an hour away. For the Quispes, a lack of security has meant that any attempts to return to harvest their crops or claim their land were met with violence. On one occasion, the two Quispe brothers were attacked while harvesting dried beans and forced to leave behind eight large sacks as they ran off their fields. The *transportista*, or van driver who was contracted to help transport the beans, gave testimony that one of the Pillco claimed it was private property and threatened him if he were to ever help the Quispes again. On another occasion, in 2008, the attacks were so severe that Agustín Quispe, an elderly member of the family, lost his eye. His wife Gregoria Quispe was also with him and had both of her legs broken in the incident. On that occasion, the family was not attempting to recuperate crops but rather had returned because departmental representatives from the National Institute of Land Reform (INRA) were conducting a land survey to finalize the collective titling process of the Jacha Marka Tapacarí-Apacheta. Forced to leave to seek immediate medical attention, they were not present for the inspection. As a result, the family's property was not registered as part of the TIOC during the titling procedures.

Yet, the violent conflict itself was not always central to their concerns. Equally, if not more significant was the sense of abandonment in the decade that followed, as their relentless efforts to safety return home turned to despair. As rural peasants, the Quispe family has had little if no access to the formal state justice system. Expensive medical costs meant that they could not afford an attorney to make either a civil or criminal case against their neighbor. The local doctor had reportedly refused to provide evidence of the Quispe's injuries when they went to the hospital following the Pillco cousin's attacks. They speculated that this refusal was due to the

fact that the doctor had been paid off by the Pillco before they could get there, to avoid any evidence from entering into a potential lawsuit.

The closest they came to legal support was an injunction issued by the agri-environmental judge in July 2007. The injunction did not provide for restitution for the conflict but only called for the Pillco to refrain from future trespassing or land encroachment. Thus, this ruling implicitly granted Pillco impunity for the violence already committed as well as for the economic loss from property damage and inability to harvest the crops. At the very least, however, the ruling acknowledged the family's rightful possession of the land.

However, in 2008 the judge reversed the injunction judgement. Irregularities in the legal records indicate the possibly of chicanery and/or corruption in the case. During proceedings, for example, the Pillcos reportedly delayed the investigation by using mechanisms established within the law such as filling counter complaints, finding excuses to not appear in court, and later evading formal notification of the court order. Indigenous leaders also failed to seek out conciliatory measures to resolve the conflict, a long-standing norm that is also codified in Jacha Marka's organic statute (2014, art. 21). The family speculated that this was likely due to the fact that the Pillcos had bribed or threatened the indigenous leaders from taking action.

While it is difficult to prove explicit acts of corruption, what was clear was the outcome: The 2008 judgement did not include the original witness testimonies nor certificates that the Quispes obtained from then indigenous leaders certifying they were members of the community. In addition to failing to mention that mention the adobe homes the Quispe family had constructed on their property, the judgement included a statement by one of the Pillcos claiming that they had "loaned" the land to the Quispe as an act of "good will." The Pillcos alleged they had a kind of a sharecropping deal whereby the family could use the land in exchange for a

percentage of the money made from the harvest. For the Quispes, this is experience As I will discuss further below, from the perspective of shifting practices of migration and subleasing out plots, this story seemed not only plausible but quite unexceptional. When Remberto declared that the family felt like "trash" and declared he no longer believed in the state, he was referring to these particular experiences of a lack of access to security and justice.

3.3 Entanglements of indigeneity, development, and social harm

While the conflict did not make headlines, members of surrounding communities were certainly aware of it, along with several state officials, judges, and lawyers as far as the department capital of Oruro. The family's pleas to their indigenous leaders shed light on a different notion of the Quispe family's abandonment. Remberto, in his plea to the indigenous leaders cited at the opening of this chapter, framed their search for justice as orphans who had been abandoned by the leaders of their ayllu. As he put it, "so many years searching for justice" had meant he was unable to finish school. Here, he was also demonstrating that he had not abandoned his responsibility to the community but rather was violently expelled, that a social order had been broken and must be restored. Evoking "brother" Evo also acts as a claim of citizenship to the new Plurinational State as well as discourses to encourage indigenous leaders of the "historic" moment for exercising jurisdiction over the territory.

There are several locally grounded notions of indigenous justice that can be articulated to Remberto's plea, which offer a framework for evaluating (and thus responding to) the family's abandonment. First, his claim as an orphan can be understood as a "situated" claim to sovereignty based in place (Moore 2005). The name Cóndor Apacheta, for example, is linked to an origin story of an orphan boy who threw an iron *morok'o* (pestle) at some pigeons for food

while transporting llamas and would later become wealthy. The boy's name was Cóndor Pablo Khalani (Remberto's second last name is also Calani). Remberto's claim to orphanhood articulated locally grounded principles of family tied to community and the greater good of the *ayllu.*

In framing their search for justice as orphans, the family is also speaking to a general sense of relatedness common in indigenous communities, reflected in the leadership names, such as Tata (Father) Mallku and Mama (Mother) T'alla. Remberto also felt good about the new leaders because he personally knew one of them, Tata Meliton Martínez Arroyo, who was his grade school teacher when he was a boy. This was a much more direct claim to membership and thus the leaders' obligation to address the family's problem. From this perspective, there nothing logical about the family's abandonment by their leaders. Rather, they are morally obligated as the mothers and fathers of the *ayllu* to take them in and offer help and guidance.

I went to interview Melit shortly after his term had ended in January 2017 to get his reflections on why it had been so difficult for the family to convince their leaders to fully address the problem. In our conversation, Tata Meliton recognized that small parcels were hardly enough to sustain one's livelihood. "You can't solve anything with a small parcel," he explained, "I have three kids, how could they survive off of that?" Then he said frankly, "Before there were good potatoes but now it's even worse, and as a result they abandon the land." This also explains one reason why it would be typical of indigenous leaders not to "walk together" (i.e. exercise jurisdiction to address land or resource conflicts such as the Quispe's): it's just not that worth it.

The scarcity of land and resources in the rural corners of the department of Oruro is tied to multiple overlapping processes. Arnold and Yapita (2009) note that historically proximity to the mines since the colonial period has contributed to ecological changes because of

contamination from the mines but also because of an increase in the demand for agricultural production to sell to local miners and their families. Given less time to rest between harvests, the land gradually became exhausted and thus less productive (ibid., 535).

Without a viable option, migration, sub-dividing parcels, and economic diversification are dynamic mechanisms that serve to mitigate tensions caused by an array of factors such as the slow degeneration of soil productivity, climate change, demographic pressures, and fluctuating national and international market prices, which shape the viability of the land (Barragán 2007a; Guarachi 2005; Harris and Velasco 1997; Plata, Colque, and Calle 2003). Focus on environmental and demographic shifts also point toward and underlying reason why conflicts over sparse land in the highlands are often naturalized as internal to the community. As Albó explains, in contexts were dominant groups do not have a direct economic relationship to peasant classes, "it's easier for the 'other' peasant individual or group, in constant conflict over local resources, to seem like the enemy" (ibid., 121-123).

This was precisely what happened among several ayllus in the 1990s. Indigenous communities had seen only minimal benefits of municipal development plans and the interventions of non-governmental organizations (NGOs) since the late 1980s. Initiatives such as those of Oxfam International and the World Bank followed at that time followed a severe drought in the mid-1980s had made many rural communities in the highlands a focus of international aid (Colque and Cameron 2009, 187). In 1995, electricity first arrived to Peñas as a result of President Sánchez de Lozada's hallmark 1994 Law of Popular Participation (LPP). As I discuss in Chapter One, the LPP decentralized the administration of public resources by increasing the number of municipalities.

Yet, the creation of new channels of participation in Grassroots Territorial Organizations (OTBs) generated competition and a series of conflicts labeled in headlines as "the war of the ayllus" (Arnold and Yapita 2009). This is also where the way that the conflict was made "eventful" generates particular debates over the nature of harm being committed while foreclosing others (Povinelli 2011). Arnold and Yapita make the point, for example, that news coverage of the conflicts effectively framed the issue as a problem of "indigenous poverty" causing violence and not the development interventions themselves (2009, 534-539). Paradoxically, the response was more development.

At the time when the Quispe were violently expelled from the community in 2006, they had potable water and electricity from solar panels. One of the families had built an extra structure alongside their house to process milk to make cheese and another had a large cage to grow rabbits for sale. To sustain their lively hoods, most if not all families migrate from their communities on seasonal or semi-permanent basis to mix economic activities. Apart from the year when he spent a great deal of time in Peñas as Tata Mallku in 2016, for example Tata Meliton mainly lives on the outskirts of the capital city of Oruro, about an hour-and-a-half bus ride from Challapata. Like the majority of community members, he is called a *residente*, or someone who mainly lives outside of the community but fulfills obligations such as paying land contribution and fulfilling leadership role as Tata Mallku. Practices such as migration and combining agricultural farming with other economic activities such as working as a day laborer, *trasportistas*, or (in Tata Meliton's case) an elementary school teacher, are nearly essential to sustain rural families' livelihoods.

These are precisely the practices of abandonment and voluntary expulsion from the community that Barragán (2007a) identified in her demographic survey of the region. In contrast

to the relatively young and robust rural population reported on census data, Barragán found an "aging and splintered" population. This revealed significant variation of household demographics (such as age, gender, and family size), which the author suggests corresponds to the accessibly of different types of economic activities. Without viable land, migration, sub-dividing parcels, and economic diversification are dynamic mechanisms that serve to mitigate tensions caused by land scarcity (Barragán 2007a; Guarachi 2005; Harris and Velasco 1997; Plata, Colque, and Calle 2003).

Barragán argues that the discrepancy with census data can explained by another strategy developed to sustain rural communities: having residentes return to their native communities to register in the census means that municipal governments will be allotted a greater percentage of resources for local development (ibid., 4). The census will report numbers that simply do not reflect reality on the ground. Indeed, the 2016-2020 Integral Development Plan for Antequera, the autonomous municipality under which Jacha Marka Tapacarí-Condor Apacheta is recognized as an Indigenous District, reported that migration was very high (reaching 90 percent). The plan noted ongoing issue of migration was largely due to ongoing scarcity of small landholdings for cultivation and a lack of collaboration (at local, departmental, and national levels) to improve the quality of life in the rural area, factors that combined with better living conditions offered by the capital cities of the interior of the country and employment opportunities in neighboring countries such as Argentina and Chile (Gobierno Municipal de Antequera 2015).

As discussed in Chapter One, it is common for many residentes to pay someone else to serve the obligatory leadership role in their place. This allows them to maintain other economic activities throughout the year, rather than returning to the community. Yet, in the case of Jatún Ayllu Yura discussed in Chapter One, this practice had negative consequences, as it led to

incentives for some community members opted for individual titling and took several years to negotiate.

In the highland region, in contrast, this practice led to secondary effects that are even more complicated, as vast waves of outmigration overlapped with a sharp increase in value of the land following the 2005-2014 quinoa "boom" in the highland departments of Oruro and Potosí where the grain has traditionally been grown. Since the 1970s, cultivation of the crop for subsistence had gradually declined. Yet, between 2005 and 2013, the global demand for quinoa spiked dramatically as it gained international fame as the "gold of the Incas" was discovered as a high-protein "Supergrain of the Future" (*Forbes* 2012). Long-term migration created the perfect conditions for some actors to rapidly accumulate land to take advantage of the quinoa demand. Unlike Tata Meliton, it is common for many *residentes* to pay someone else to serve the obligatory leadership role in their place. This allows them to maintain other economic activities throughout the year, rather than returning to the community. With many plots empty, for example, local community members were able to expand cultivation to neighboring fields with little resistance from their local leaders. This typically started with larger *aynuqas*, or communal plots that were managed by the *ayllu* (Winkel 2011).

Here the strategies of *residentes* took on a new role. Rather than paying to avoid leadership positions in the *ayllu* authority system, *residentes* would willingly occupy them to further facilitate the expansion of cultivation onto communal fields. Ormachega and Ramirez (2013) also found that *residentes* who had more access to means to diversifying their incomes were also able to invest in new inputs to profit off of the quinoa boom, furthering social differentiation. This is most emblematic of the rise of an important new actor in the region - *tractoristas* - or tractor owners, who could increase their income by quickly expanding

cultivation and also leasing out their services to communities that did not have tractors. For poor indigenous rural peasants who did not have access to this machinery, it became quite common for them to 'lease' their plots out to *tractoristas* and other local quinoa producers in exchange for some of the profits when the crop was sold to intermediary buyers. They would often sell their labor as day workers on larger plantations or even to harvest the crop on their own land. In this way, the quinoa 'boom' fixed a gap between poor indigenous peasants and a growing "bourgeois" Aymara or Quecha landowning class (ibid.). This offers a much more nuanced explanation of why indigenous leaders had been unwilling or unable to address the case, as the de facto accumulation of land was facilitated by institutional mechanisms built into the *ayllu* itself.

The discourses of development and indigeneity that produce ideas of a young and robust rural farming communities in the region mask this reality. Since the rise of the MAS government to power in 2005, officials have championed the "communitarian economy" as driving motor of a new form of "integral development" based on idealized notions of indigeneity such as "Vivir Bien" (Living Well) as an alternative to capitalism (based on a consumeristic logic of upward mobility based on "Living Better"). Both President Morales and Vice President García-Linera have been publicly critical of NGOs, accusing them of being a hold-over of neoliberalism and repeatedlying declaring they "use the poor" and only act for foreign right-wing interests (see Córdoba 2014). Instead of the top-down participatory model promoted by the World Bank and others during the era of neoliberal multiculturalism, the MAS government has promoted a form of "neocollectivism" based on the stated aim of "the dismantling of colonialism and neoliberalism and participation in local democratic spaces" (Ministry of Development Planning, cited in Córdoba 2014, 28).

In rural areas, poverty reduction and agrarian development has largely been discursive, promoting a tendency toward indigenous and sustainable development with a state support of social organizations to promote food sovereignty by rural production and preservation as alternative to globalized food systems (Cordoba 2014). Studies point out that poor rural families in the highland region have to buy nearly half of their food from external markets to denouncing the Morales government's use of genetically modified foods and pesticides and the fact that rural farmers are losing their productive role in the economy (Fundación Tierra 2016). Figure 1, which accompanied several news stories promoting the study conveys the message of desperation of this declining role and also serves as a figure of Morales' so-called "communitarian economy" to visualize the contradiction. At the same time that the serves to bring the issue to public debate, it does so through the image of a suffering elderly indigenous woman and young child that fails to generate much reflection at all over migration or the role of producers in the global economy in addition to groups such as the Quispe who have been dispossessed.

Figure 3.1: Image accompanying study on declining role of rural farmers in the national food economy, (Photo credit: *La Razón*, May 3, 2020)

In Challapata, as migrants the Quispes have benefited some from governmental social welfare programs that subsidize their kids' school lunches and other cash transfer programs. Yet, for poor families living in Challapata this tends to be minimal. For instance, the family receives 70 bolivianos (approx. $10 USD) for each child each time they complete another year of grade school. Over the course of years visiting the family in Challapata this translated to a new book shelf or table appearing in the family's shared bedroom. Yet, they explained they did not qualify for larger *bonos* (social welfare programs), especially not the infamous "Casas de Evo" or small brick houses that some communities in the department of La Paz had received.

"Sorry to say sister," Tata Meliton told me when I asked him if the Jacha Marka Tapacarí Condór Apacheta had from any state programs. "They've marginalized us, we don't get any of that," he said, eluding to the MAS government. In Jacha Marka at least, the leaders would also seem to be abandoned by the "Indigenous State" (Postero 2017). As previous have shown, it was

in the aftermath of fragmentation and barriers to accessing formal indigenous autonomy, some indigenous legal activists had begun to appropriate new mechanisms of legal pluralism as a tool to empower their communities. In addition to a relatedness to Remberto and willingness to help out, Tata Meliton was interested in strengthening indigenous jurisdiction and even traveled to the Justice Summit held by the indigenous legal activists from the JIOC Tribunal, discussed in Chapter One. However, in their efforts to resolve the Quispe's case, it was evident once again that lack of institutional support and resources did not provide the leaders with a viable option. Moreover, in this case, this acted to defer the responsibility back onto the family members themselves.

Table 3.1: "The White Savior"

Inserting the indigenous-colonizer hyphen
The White savior

"*Madrina, está bien*" (Don't worry about it, Godmother), *hermana* Mabel Quispe told me, pushing the 300 *bolivianos* ($45) I had in my hand into my chest to refuse my offering. The donation was meant as a contribution for transportation that day to attend a *cabildo especial*, as we had all agreed the previous week we would contract a bus to take everyone to and from the meeting "on-sight" of the conflict about an hour away from Challapata. I had already grappled for days prior over if, when, and how I could "chip in": I had the means and was able, so why shouldn't I help out? Or was this intention (or desire) marking too much the privileged and white savior complex that lingered beneath our relationships? The Quispes' distant cousin Lorena from Conamaq did not have this problem. Shortly after arriving that morning for the cabildo, she circled around the house handing out bills of a hundred bolivianos (around $15USD) to everyone, myself included, asking us to sign her NGO registry. The organization supported young female indigenous leaders and it was not out of the ordinary that there was funding to cover some of the travel expenses of the four young women that traveled with her as well as other participants to ensure a successful event. But I didn't have a rulebook nor an organization to establish guidelines for how to offer financial support. I could and did prepare food for the meeting, but more often than not my "solidarity" was spent strategizing law and analyzing the case, as that was where my interests fundamentally lie and what I wanted to learn most about.

My attempts to make some sense of the guilt that marked my desire to contribute financially had been complicated by the arrival two days before of another distant family member, *tio* Fernando, who had migrated to Argentina 15 years ago and who had since only

been back once to visit Mabel and her two younger brothers. I had already spent the night in the family's house where I stay when we are preparing for meetings, and was comfortably relaxing with Mabel and two other family cousins when Fernando arrived. Having worked with the family already over the course of two years, I certainly felt more like an "insider" than he. Yet, upon our introduction he made sure to remind us that was not the case. "What are you, some kind of missionary?" he asked bluntly. "No, no I'm here because I study legal pluralism. I'm here to learn about it, about how they're applying indigenous justice to go home again." I had tried over the years to be the voice of caution and realism in the case, to ground emancipatory discourses around legal activism in caution and pessimism. Yet, I struggled to maintain this stance when my own position was called out so bluntly by '*tio*' Fernando. His words stung.

However, this was little compared to the insults Fernando directed at his biological kin over the course of the next couple of days. He reminded them that they were uneducated, poor peasants, even more so because of the fact that they were going to so much effort to try to get their land back in the first place. I imagined that Fernando, as a Bolivian immigrant to Argentina, had experienced severe racism himself. This explained the ease with which he felt empowered inflicting that same racism upon his own family. This shed light on another difficult dimension of the colonial divide that continues to drives wedges into their own family, making the Quispes' abandonment all the more "sensible" (Povinelli 2011) not just to the state but to themselves.

I've heard that phrase, "*madrina está bien*" or "*hermana está bien*" a lot over the years. That day when Mabel refused my "contribution" it meant "don't worry about it" (i.e "don't worry about taking care of us in that way", "there's no need to be a white savior;" "that's not why or how we are kin to you"). Even as I acknowledge the problems of desire and hope, I just want to be able to respond "it will all be OK". The need for that assurance sits in my gut every time, as it marks the colonial divide at the same time that seeking it out directs our time and energies elsewhere.

3.4 Deferring social harm

The year that our group of researchers first met the Quispe in 2015 was in the middle of a one-year rotation of leadership. One of the Tata Mallkus at the time was related to Lora (the cousin of the Quispes who introduced us) and thus amenable to help out. So, on December 22, they held a meeting in the community to inspect what had occurred. Early that morning, we all piled into a small minivan at 7am and headed off to Coniri to meet the Tata Mallkus and Mama T'allas. Yet, we collectively grew anxious as the hours past and no one had arrived. "They called a meeting about the lake in Oruro," the family's aunt, Emeteria Calani, said breaking the silence. "I bet they all had to go to that." A week earleir, Lake Poopó reached the threshold of an

environmental crisis – “a picture of the future of climate change” in the international media, having coincided with the UN Climate Conference was taking place in Paris at that time. The issue attached to the event itself – climate change – had hit the region hard that year, with a drought that devastated local crops and especially quinoa, which had grown only about one-half its normal height and was withered and yellow in place of the normal bright purple and red when in bloom.

Emeteria was right, the leaders had gone to a speech given by Evo in Oruro on the drought. The leaders explained why the others were absent and apologized for the delay as the Quispes quickly escorted them into the small room of their house that had been locked up since they fled to permanently live in Challapata. It was immediately clear that there had been a violent conflict inside the home. Wasting no time, two of the leaders led a ritual by burning *palos santos* and lighting several candles on a small table that sat in front of the bed (see Figure 2). Kneeling in front of the table and speaking in Quechua, the family then passed by the table, waving the smoke to convoke Santuruma[1] to ask him to restore equilibrium and harmony in the community. Mabel, who had been tortured for several hours during the attacks, had started sobbing when we entered the house, but was calm as she watched the leaders and other family members pass in front of the candle. In this way, the ritual was also form of recognition of the family’s suffering by their leaders, and it did seem to make a difference.

Figure 3.2: Indigenous leaders conducting healing ritual in the Quispes' bedroom (Photo credit: Amy Kennemore)

After the ritual, we gathered in a circle outside where the family once again gave their testimonies and the leaders noted the burnt fields in the surrounding foothills. As they considered who might have authority over the case, a debate then ensued over whether or not there was a *corregidor* who represented the community. Unlike the *corregidores* who were Crown-appointed authorities during the colonial era, the *corregidores* the indigenous leader was inquiring about was the person in charge of representing local communities to ensure their interests were represented in local development budgetary planning. They represent the Territorial Grassroots Organizations (OTBs) that emerged out of neoliberal decentralization reforms of the 1990s discussed in the previous section.

At the time when the Quispes were violently expelled from the community in 2006, they had potable water and electricity from solar panels. One of the families had built an extra structure alongside their house to process milk to make cheese and another had a large cage to

grow rabbits for sale. While these supplemental projects were the result of small-scale sustainable development initiative sponsored by a local NGO, basic services were part of municipal development plans. So, a large part of the question about whether Coniri had a *corregidor* had to do with who was responsible for keeping the lights on in the community. If there were an active and registered OTB in Coniri, it could apply for funds from the municipality and its representative, the corregidor, would have the right to call for a cabildo, a community meeting to discuss the Quispes' situation.

The leaders decided that to hold a cabildo they would first have to formally register the community as a OTB), and to elect leaders.. Remberto wasn't very satisfied with the response and continued insisting on a cabildo. "But what about the problem with Pillcos," Remberto asked the Tata Mallku. "Well, that's gonna have to wait, son," he replied. "We will make a note of everything from today for the next leaders, so they can address it" he added. The meeting ended with an official naming of Remberto as president of the OTB of Coniri, followed by nephews, who were named OTB Committee leaders, and an uncle and aunt, who were named secretary of conflicts and a spokesperson. The newly elected community leaders then filed in a row and we all walked down the line congratulating them. "*Que sea en buena hora,*" everyone repeated them as they passed by to wish them good luck in their new positions.

Nothing would happen again until March 2016, when the family would return to Peñas to present their request a cabildo to try to resolve the conflict to new leadership. This was because, following local norms and procedures, the leaders who visited Coniri in December 2015 would step down at the end of their one-year term and there would be a three-month period of ritual and preparation of the new leaders. In the interim, the Quispe family had stamps made with their names and leadership title followed by "O.T.B. Comunidad de Coniri Ayllu Tapacarí" and held

regular meetings to strategize for how to move quickly towards a cabildo so they could return home. This would allow formal legal representation to the municipality and also allocate the redistribution of funds through the Annual Operative Plan that allocates the budget. However, the family would have to wait for formal recognition as an OTB and had already passed the timeline where budget requests could be submitted to the municipality.

Just as the Quispes finally convinced their leaders to carry out a *cabildo*, they faced another obstacle: the Subprefect from the neighboring municipal capital of Poopo intervened. The indigenous leaders were most likely concerned that in attempting to take action against the Pillco, they were overstepping their jurisdiction and thus risked facing a lawsuit. This is the concern other leaders expressed regarding exercising rights to indigenous jurisdiction without formal mechanisms of coordination and cooperation, discussed in Chapter Two. The Tata Mallkus introduced the Subprefect as the "highest authority" in their territory and asked him to "orient" the leaders and the Quispe family, who was also in attendance, over the best way to proceed (see "working the indigenous-colonizer hyphen," Chapter Two).

The Subprefect's final recommendation was to continue doing what the previous indigenous leaders had recommended, to register Coniri as an OTB. As the meeting came to a close, he made it clear that the responsibility would be on the Quispe family to reconstitute their community. "You need to call community meetings, speak with your neighbors," he advised. "You know how it works, you can't elect leaders or make decisions without consulting everyone." Here again, the responsibility is deferred to the family to reconstitute their community.

But there was not much else they could do but to organize to continue begging for leaders to hold a special cabildo before their term was over. Otherwise, they feared they would have to

begin all over again the following year. The leaders finally agreed. Upon hearing the news of leaders' support, the Quispe left the headquarters with a renewed sense of hope. However, they still faced a lot of uncertainty to ensure it would be carried out.

The first concern was getting the Pillcos to attend the meeting. As in the past, they expected the family would simply evade any notifications and thus attempt to stall the hearing through the end of the year. This would give the Pillcos time to "persuade" new leadership to ignore the problem, the family speculated, just as they had done in the past. To avoid this (and a potentially violent encounter with the Pillcos) the family requested that the local police deliver the summons to the cabildo. To deliver the notification to the Pillco, the family rented a minivan and set out for Coniri. (Because local municipalities lack state resources for security, it is a common practice is for community members to subsidize the cost of security forces by providing transportation, food, and at times accommodation when such services are needed. This is a form of "outsourcing" (Sieder 2011) security, not to private companies as has been discussed following neoliberal restructuring in other contexts (see also Comaroff and Comaroff 2006) but rather to poor native communities themselves.)

This step required several trips back and forth from Oruro, as the Challapata police initially refused. Then, the family called Pachaguaya and I to see if we could help. After several trips to the Vice Ministry of Indigenous Native Peasant Justice (and attempting to write up a formalized request within correct format to present to the Vice Minister, a talent of legal technical vocabulary that I have never quite learned), the Vice Minister finally sent a fax to the police in Oruro at 5pm on Friday, just in time to arrange for their agreement to attend the early-morning meeting the following Monday.

Another challenge was organizing for the cabildo itself. To do so, the family invited local authorities and community members to participate, with the hopes that more visibility and transparency would mean the resolution might be implemented. This took several trips to other provinces and as far as the capital city of Oruro. The family also rented a bus and prepared food they would take to the hearing for a mid-day *apthapi*, a communal meal provided for all participants. Like the costs of the police, it was expected in this way that the families cover the costs incurred in the administration of justice. We and other distant family members such as Toribia and the uncle who had arrived from Argentina also chipped in to support the meeting in different ways (monetary donations, cooking, contracting transportation, etc.) (see "working the indigenous-colonizer hyphen box above.) Several other rights advocates from La Paz also traveled to Challapata the night before to attend the meeting to show support for the indigenous leaders in their efforts to strengthen indigenous jurisdiction.

The cabildo served as a hearing for both families to present their sides of the story publicly. After a few of the Quispes emotionally went back over the series of events, it was the Pillcos' turn. Oscar Pillco, the main person accused of the violence against the Quispe, refused to attend the cabildo. However, he did send his mother. She opened by saying she was outraged at the whole "show," claiming the charges of dispossession and encroachment the family had filed with the agri-environmental judge were false. "They left!" she declared loudly. "They locked up their homes more than a decade ago, that's clearly what happened here," she exclaimed, waving her hands around. "We can all see for ourselves these homes have been abandoned."

One of the Tata Mallkus then intervened to remind the Pillcos' mother of the *ayllu*'s norms and procedures regarding land rights, that land has to be abandoned for fifteen years before it is taken, and only then following the decision of the ayllu on its distribution. In response, she

shifted her argument. “They sublet it to us,” she explained. “We are the ones who complete our social function.” Then she shifted her tone again, “I can’t live next to this class of people, they deserved to be dispossessed!” Realizing she had just contradicted the norms that were just explained to her, the mother then softened her tone. “Look, all I will say is that land is for those who work it, we comply with the law and also with what brother Evo says.” She went on, “Well, we’re the ones who are here (in the community) and that's what we do, we work our land. They abandoned their *parcelitas* (little plots) for good!” She then declared the meeting “ridiculous” and resigned herself from the cabildo, storming off towards her home a kilometer down the hill from the patio in front of the Quispes’ former houses.

During the *apthapi*, the leaders huddled in a corner of the yard deliberating. When they called the meeting to order, they announced that the property belonged to the Quispes and that the family should return home. “Be advised,” one of the younger Tata Mallkus stated, “this means you need to live here, you need to work at the community level.” Here again, the issue of guaranteeing the family’s security was a central issue. The leaders had already applied for resources allocated in the POA budget for a police station to be installed in the area without success. So, here too, the responsibility would be deferred onto the Quispes and other community members to supply permanent food, transportation, and accommodation if they wanted to ensure any kind of regular patrol or safety.

The Tata Mallkus proposed a possible solution: hold another cabildo with all community members present. To demarcate the land according to local norms, members of the neighboring communities would also need to be present to provide testimony over who it fairly belonged to. Strategies such as migration and subletting plots to maintain community ties means that boundary disputes within a community can be difficult to resolve unless there is significant

coordination among community members. However, many of the surrounding houses were also abandoned; these families, who long ago migrated to La Paz or as far away as Argentina, were unlikely to return for a meeting. Yet again, the resolution would not be implemented, but this time the family would still work on reconstituting Coniri as an OTB, as they had been advised.

3.5 Running out of steam

In our interview, Tata Meliton acknowledged the complexity of generating development projects given the political context and lack of funding. "Look," he explained, "to be able to do projects you have to have a diagnosis: you have to decide how we are going to do it, where it's going come from, how it's going to come, what it the most viable path, how many people are going to go down it, all these things," he said, vaguely referring to both exercising indigenous justice and development in the territory. "That's the way you have to diagnose it," he added. "Hopefully, or one will run out of steam (*ojala, se van a cortar pilas*)."

In the highlands, socio-environmental conflicts between neighbors or within families over land or precarious resources typically do not make headlines. Rather, they appear as "uneventful," "ordinary," even "generalizable" (Povinelli 2011). The people who are dispossessed by such conflicts seem to be stuck in a permanent state of "bare life" (Agamben 1998): they are not fully considered a subject of either legal or indigenous recognition. In the Quispes'case, we have seen the legal and political obstacles that made it seem nearly impossible for the Quispes' to ever return home. But there was always something else exhausting their efforts, things that were hardly visible, what Povinelli (2011) would call "quasi-events".

For instance, on one of our many back-and-forth visits from Challapata to Peñas, we got a flat tire. They had a spare tire on hand but the jack was wobbly and so it took extra time to get

it to work properly. This only delayed us a few hours but meant that Remberto didn't make it back to Challapata in time to go out to his day job in the fields. The car, an automatic two-wheel drive Toyota Camry, was not equipped for the unpaved dirt roads. Yet, it was in good condition and the family had placed a large read "For Sale" sign in the dashboard (see Figure 3). The reason for this was because the government had passed a new law prohibiting unregistered cars and the family wanted to avoid a fine or worse, that the car be impounded, and they lose the money they had invested in it altogether.

Figure 3.3: "For Sale" sign in Quispes' car heading to Peñas to meet indigenous leaders (photo credit: Amy Kennemore)

This car had been pressed into extraordinary service during these legal efforts. Leading up to the cabildo, they had also taken several trips to Poopó and Pazña to deliver invitations to local authorities as well as driven multiple times to the capital city of Oruro in a frustrating back-and-forth with the departmental police to mandate that local police attend the meeting to guarantee

participants' security. Granted, there was public transportation to and from all of these places and thus it would not have been impossible without a car. Yet, it would be more exhausting both economically and physically. On one occasion, we did not have transportation for the December 2015 meeting, for example, and so had to contract bus to take us to the community. Most participants piled in the van the indigenous leaders used to leave, yet there was not enough room for all of us. So, several of us stayed behind with the family to wait for someone to come back for us and we didn't get back to Challapata until 11pm that night.

The flat tire was just one of the many small but significant troubles. As we finally made our way back into town the day that we had a flat tire, we passed by fields of withered quinoa stalks. Emerteria Calani, a cousin of the Quispes, recalled how tall the quinoa used to grow before the drought, showering the landscape with clusters of bright red and purple as it came ready to harvest. The quinoa market also experienced a "bust" that year, plummeting from $4 USD to $0.06 per pound, where it has remained as a result of surges in commercial production in more developed countries such as Italy, China, and India (McDonell 2018). Emerteria explained the impact in terms of social mobility: "Years ago, I could get my daughters a laptop with just two or one *quintals* (large woven sacs)," she said, "but today it's barely worth anything." Then she added, "It's not worth it to be out there harvesting until dawn, for what? Nothing." How could the family make a living working these dry fields? No wonder so many people had migrated. But even that was no solution, as Emeteria's story showed.

Much of the ambiguity at the cabildo around how to resolve the Quispes' problem owed to the fact that some members of other neighboring families had "loaned" or sold their individual titles to the plantation owner. Explanations for this tended to hinge on other quasi-events that never seem to reach the threshold of harm quite like the rapid drop in the global price of quinoa

or a devastating doubt might. Yet they did animate concerns that drive backstage negotiations over land, bank loans for tractors, or decisions to migrate in search of a better livelihood. And the ordinary forms of harm experienced here tends to fold back onto the apparent bad "choice" of the individual subject – "I should have never sold my parcel, now my father is sick and I have no way to take care of him;" or "I'm glad I didn't take out a loan for a tractor; *he* did, and look at him now, he can't even afford gas to run it." The dispersion of guilt and blame makes it difficult to envision what justice might imply for the family, a question that was ultimately deferred onto the family members themselves.

Over the years since their expulsion from their lands, the family has gradually renovated the brick rooms constructed on their small dusty plot of land that sits at the edge of the town. At home they exchange the latest gossip with their *abuelos* or shed with tears over sick or distant family members, usually with the TV blaring loud in the background. Still hoping to go home, they work, repair flat tires, go on endless trips back and forth to Peñas, and wait. From the perspective of Povinelli's notion of abandonment, "something and yet nothing has happened" (2011, 132) here that is exhausting the family's efforts to return to their homes.

3.6 Conclusions

Similar to many other cases discussed in this dissertation, the reality that marked Jacha Marka Tapacarí-Cóndor Apacheta was far from that of a cohesive 'indigenous community' unified around collective territory and economic solidarity, as many discourses around indigenous justice would have it. Rather, just as in the Zongo case, it was quite common for indigenous leaders themselves to remark that their own bases were '*gente de poco fe'* ('people of little faith'), referring to the lack of legitimacy of many indigenous institutions to govern and

guarantee basic security to their community members. Indeed, as I have highlighted here, in the rural Andean highlands, factors such as climate change and the decreased viability of agricultural economies have disproportionately affected poor indigenous people and increased conflicts over sparse and exhausted land. This makes it clear that recognition of indigenous jurisdiction alone, without sufficient economic resources and institutional support, cannot offer indigenous leaders viable tools to resolve the disputes, even leading to more conflict and uncertainty.

Such outcomes signal that discourses around decolonization should not be taken as a necessary good, but rather as a contested field over how to best address the ongoing legacies of colonial racism and dispossession in Bolivia (Postero 2017). Indeed, if in the present juncture, sovereign power is increasingly characterized not by forms of direct state 'killing' as much as through forms of abandonment, exhaustion, and the 'letting die' of social projects (Povinelli 2011), narratives around two sovereign powers (Ayllu and state) in direct confrontation do not allow us to fully understand why indigenous leaders are unable to fully exercise jurisdiction over their territories in Plurinational Bolivia.

In this chapter, I've shown how a lack of access to justice and security in the Quispe's case overlapped with factors such as the slow degeneration of soil productivity, climate change, demographic pressures, and fluctuating national and international market prices. Paradoxically, strategies such as migration and diversifying economic activities act to sustain rural community life, even if, as Barragán (2007) found in her demographic survey, these are "little imagined communities" (cf Anderson 1983) made up of aging and splintered populations. Following Povinelli, "forms of suffering and dying, enduring and expiring, that are ordinary, chronic, and cruddy rather than catastrophic, crisis-ladden, and sublime" raise a different challenge for evaluating who (or what) should be blamed for the Quispes' abandonment (2011, 2013).

Not only is this absent from the discourse of the "communitarian economy" that has been the central pillar of the President Morales' economic and political "process of change" since the MAS government rose to power in 2005. Rather, emancipatory discourses around indigenous justice, similar to the 'state-idea' (Abrams [1977] 1988) offered only a partial view of the workings of colonial harm facing community members. I suggest that, in this way, such discourses risk concealing the "actualities of social subordination" (ibid., 63) that drive land and resource disputes. Indeed, analyzing the breakdown of indigenous governance from the perspective of the decline in the viability of agrarian subsistence reveals an underlying rationality of abandonment that made finding (and implementing) resolution in the Quispes' case a seemingly impossible task.

While there were locally grounded notions of indigenous justice that offered a way to evaluate the Quispe's expulsion from their land, it was not always clear what justice meant when it implied seeking out ways to respond to the "imperceptible relationship between quasi-events and ordinary life" (Povinelli 2011, 133) that have marked family members' lives in the decade since the violent expulsion from their home. Nonetheless, rituals of healing and the recognition of the violent conflict during the cabildo did serve to recognize at least that some form of harm had been committed, this form of recognition was unable to fully respond to the nature of abandonment that the family - and the community more broadly- experienced. As the case inched forward, it became increasingly apparent during the meeting that what the Quispes had lost in the initial act of dispossession was not so much a pre-existing communal way of life tied to the land. Rather, what they were seeking to maintain (and restore) were social obligations to each other and to their community in the face of multiple modes of abandonment in relation to a disappearing community that was an increasingly unobtainable, unviable reality in the first place.

Chapter 4

Constructing the Mixed Tribunal:

The search for indigenous justice in the wake of legal recognition

4.1: Introduction: legal victories

On March 19, 2018, indigenous peasant leaders from the Tupak Katari-Bartolina Sisa Mixed Federation met to inaugurate a new legal institution that had recently been recognized by the Bolivian Constitutional Court, the Mixed Tribunal Mixto. The Mixed Tribunal was formed in response to a dispute between two neighboring Aymara-speaking communities, Sopocari and Titiamaya, over boundary limits of land used for livestock and agriculture. The word "Mixed" in their institutional names refers to the fact that they act as an umbrella organization for both peasant agrarian unions and *ayllu*-based organizations, a pre-colonial Andean mode of territorial organization. Despite sharing common language, culture, and even kin, the two communities appeared to be at odds not only over the land dispute, but about how identity politics determined the ways they organized to make claims to the land in the first place. Sopocari was an agrarian union formed after the 1953 Agrarian Reform, and its members claimed land as workers entitled to the land they worked. Titiamaya, on the other hand, was reconstituted as an ayllu in 2015, and its members claimed las as original peoples seeking restitution from colonialism.

Both communities were affiliated with the Mixed Federation, which oversaw organic norms and procedures for resolving conflicts through local forms of deliberative and restorative justice. Yet, the Federation had been unable to offer reconciliation. Rather, for decades members from both communities had engaged in a series of costly lawsuits and countersuits in the state justice system over boundary limits that had never been formally established. The stakes of this

legal back-and-forth were raised in May 2016, when representatives from the agrarian union of Sopocari hired lawyers to press charges of land encroachment against several indigenous leaders from Titiamaya, accusations that could have led to their incarceration.

"Actually, I'm outraged by what they [lawyers] do to those poor families who have scarce resources, to those whom it cost tears to lose their territories," Tata Juan Basilio said indignantly. "In ordinary justice, the one who wins is the one who has more money," he asserted, adding "as native authorities we are the enemies of those who pillage the little that our brothers of indigenous blood have!". Juan Basilio headed the Justice Commission formed by the Federation to oversee the jurisdictional conflict as it passed through the Constitutional Court in Sucre. He and other Federation leaders had participated in several state-sponsored workshops held in by the Ministry of Justice in their province earlier that year that promoted constitutional recognition of "indigenous native peasant jurisdiction" (see Chapter 2).

In addition, several of the indigenous leaders working on the case had met indigenous legal activists from the JIOC Tribunal in their capacity as legal experts supporting cases presented to the Constitutional Court (See Chapter 1). Because of this, leaders of the Mixed Tribunal were more interested in pursuing an appeal to the Constitutional Court to assert the right to exercise indigenous native jurisdiction than the leaders of Jacha Marka Condor Apacheta, described in Chapter 3. In that chapter, I show how Quispe family appropriated the indigenous justice legal strategy as tool to construct a moral obligation to beg their leaders to hold a cabildo. For local leaders, the central dilemma was not so much as choosing sides but in locating the harm itself in contexts where structural violence and impunity were naturalized as a localized, problem internal to the community.

In this chapter, I analyze the case of the Mixed Tribunal to ask what happens when the indigenous justice legal strategy actually succeeds. Specifically, I focus on leaders' efforts to construct the Mixed Tribunal in the wake of state recognition. I show how, while there was a general consensus among leaders of the historical potential of the Mixed Tribunal, it wasn't clear what this project should, or could, actually look like in practice. What would the role of the state justice be in deciding this and other conflicts between community members? To the extent that the Tribunal Mixto would be governed by local norms and procedures, exercising a robust form of indigenous self-determination, on what values, norms and procedures should this new institution be based – indigenous, native, or peasant justice? What's the difference between these categories? Who decides? As became clear in the various hearings held by local leaders to resolve the dispute between the two communities, before the Mixed Tribunal could be established, the nature of the justice project also had to be decided.

The first part of the chapter traces the emergence of the Mixed Tribunal as a challenge to state jurisdiction and discusses how leaders viewed the favorable Court ruling as emancipatory for their fellow Federation members. Even as corruption and distrust of the state justice system was widely acknowledged, Mixed Tribunal leaders were unable to establish an alternative. To understand this uncertainty, in the second section I take a genealogical approach to the dispute as an "entangled landscape" (Moore 2005) to shed light on the extremely difficult nature of the task leaders faced in defining land tenure in their jurisdiction. As Moore puts it, "entanglement suggests knots, gnarls, and adhesions rather than smooth surfaces; an inextricable interweave that ensnares; a compromising relationship that challenges while making withdrawal difficult if not impossible. Attempts to pull apart such formations may unwittingly tighten them" (2005, 4). I suggest that, from this perspective, winning indigenous jurisdiction over the conflict carried with

it the onerous task of first untangling this extremely complicated and historically constructed problem, which was sedimented in the disputed land itself.

In the final part of the chapter, I focus on what gets dismantled and what gets constructed in Tribunal leaders' attempts to untangle this knot. As I will discuss, in the end, local leaders were unable to resolve the land dispute between the neighboring communities, leaving the future of the Mixed Tribunal uncertain as well. This reveals that legal recognition of indigenous jurisdiction, while it might have offered the potential to construct something new, did not provide the tools or the blueprints for accomplishing this task. The chapter concludes that, while unable to fully accomplish this task, winning jurisdiction over this entangled landscape nonetheless created the conditions of possibility for searching for justice on their own terms; for asking why it was that the two communities started walking down their different paths in the first place; and for searching for a common ground upon which they might be able to construct something capable of housing their different social projects.

4.2 Making History: The Birth of the Indigenous Native Peasant Mixed Tribunal of Inquisivi

As mentioned, the Mixed Tribunal was not a pre-existing institution but rather emerged in response to a conflict between two affiliated communities, Sopocari and Titiamaya. The central problem was a disputed sector of land between the two communities called Chijicalpampa, which both communities claimed as their own. State efforts had done very little to resolve the problem. Rather, as the following section will show, overlapping land tenure policies and corruption were a great part of the reason it was difficult to determine boundary limits. This meant that neither side was willing to accept any agreements over the matter. In

1980, for example, the Subprefect from Inquisivi and Quime's Central Agrarian Union held a visual inspection of the sector with both communities present. Representatives from Sopocari claim that an agreement was reached to establish new boundaries between the communities: in exchange for compensation of 8000 Bolivian Pesos (approx. $320 USD) to cover Titiamaya's legal expenses, Sopocari's boundary limits would include Chijicalpampa.[27] However, Titiamayans later claimed the document was forged and the legal back-and-forth continued.

In May 2016, tensions culminated in a heated confrontation between community members attempting to use the sector. In contrast to the violent conflict between the Quispes and Pillcos discussed in the previous chapter, fortunately this one did not escalate beyond a heated exchange across the boundaries and parting of ways. It was shortly thereafter that leaders from the Sopocari local agrarian union filed charges against Emilio Calle, then Tata Mallku of Titiamaya, and several other community members, for land encroachment. Because encroachment had been defined a criminal charge follow penal reforms Bolivia (see Chapter 2), this was a criminal charge that could lead to the preventative detention of the defendants while the case was under investigation.

Though the nature of the conflict did not warrant such a measure, the local judge has the power to make this determination and often with little oversight. [28] In response (and fearing the lack of guarantee to a fair trial), Calle sought alternatives. In this search, he met Samuel Flores from the Plurinational Indigenous Native Justice Court (whom we met in Chapter 1) and learned

[27] "Escritura pública de transacción y liquidación de viejos problemas de linderos" (No. 062/1980), the USD amount for the transaction is based on an exchange rate of 24.97 Bolivian Pesos to USD, from US Department of Treasury "Report on Rates of Exchange as of March 31, 1980."

[28] Bolivia has one of the highest rates of preventative detention in Latin America; in 2013, for example, the Interamerican Commission of Human Rights found that 84% of the prison population was incarcerated without a sentence (cited in Derpic 2017, 110).

about legal mechanisms intended as a mechanism of oversight to prevent such legal persecution. As I discuss in previous chapters, presenting a jurisdictional conflict questions the authority of a local judge to resolve a concrete case and can temporarily halt proceedings until the matter is formally reviewed by the Court. This meant Calle wouldn't be in danger of being held for preventative detention (as had been the case with Zongo leaders, discussed in Chapter 2).

In a parallel process, the Federation had also been seeking out alternatives to address their members' lack of access to justice. In late May of 2016, for example, shortly after Sopocari filed criminal charges against Titiamaya, the Federation held its annual plenary meeting that brings together local agrarian unions from central and sub central at the provincial level. There, the conflict between the communities was brought to the Federation leaders' attention. They discussed the possibility of claiming jurisdiction to circumvent the involvement of what they considered corrupt ordinary judges and attorneys in the problems of the organization's members.[29] During the meeting, participants agreed to form the Indigenous Native Peasant Justice Tribunal of the Province of Inquisivi. As stated in the meeting's resolution, the Tribunal was formed "so a true administration of justice existed to resolve ongoing problems in their communities."[30] I suggest that, similar to the JIOC Tribunal, this was a form of instituting *lo propio* (their own resolutions) that emerged in response to concrete problems, namely to address the sense of outrage against exploitative practices of state justice Tata Basilio expressed in the quote at the opening of this chapter.

Following the meeting, the Federation decided to pursue the demand of a jurisdictional conflict as a measure to prevent ongoing lawsuits among its members. To do so, they established

[29] Personal communication, Tata Juan Bascilio, May 3, 2018.
[30] Plenary Resolution, XX Congreso Ordinario de FSMTAMCO-PI, 29 May 2016.

the Indigenous Native Peasant Justice Commission, charged with pursuing a jurisdictional conflict with the Quime Courthouse over the dispute between Sopocari and Titiamaya. As Secretary Castro's attitude toward the legal pluralism in Chapter 2 made clear, there was not much cooperation on the part of local state officials. So, on August 2016, shortly after the local judge refused the plea for jurisdiction the Commission traveled to Sucre to present a jurisdictional conflict to the Constitutional Court. On November 29, 2017, nearly 15 months after the formal plea for a jurisdictional conflict had been presented, the Constitutional Court awarded the Mixed Tribunal jurisdiction over the case. [31]

Following the procedures for deciding a jurisdictional conflict, the Decolonization Unit then visited both communities to provide a report to aid Constitutional Court deciding the case. [32] In their report, the Decolonization Unit's made it clear that the Mixed Tribunal had jurisdictional authority precisely because of this new category of rights advanced in the 2009 Constitution, which "encompasses and totalizes the presence of nations and peoples that inhabit these lands before the Crown and the same Republic; and that today […] constitute in their totality only one historical subject" (DU 2017, 26). Also important for ensuring that the right to exercise justice according to their own norms and procedures was guaranteed for all parties involved was an assessment of local organizations. On this point, the Decolonization Unit noted, the recently reconstituted *ayllu* of Titiamaya (in December 2015) had changed the names of the leadership

[31] SCP 0093/2017, Expediente: 15966-2016-32-CCJ, La Paz.
[32] As discussed in Chapter 2, a key function of the Decolonization Unit is to analyze the applicability of indigenous native peasant jurisdiction concrete case presented to the Court. The 2010 Jurisdictional Demarcation Law elaborates the three main areas of validity to be measured in a given case: personal, territorial, and material (referring to nature of crime considered). For detailed judgment in each of the three areas of applicability weighed by the Court, see SPC 0093/2017 de 29 de noviembre de 2017, expediente 15966-2016-32-CCJ, "Análisis del caso concreto" (15-21).

roles (from secretary general to tata mallku), yet had maintained a parallel hierarchical style of representation according to the parallel regional organizations that represented them (CSUTCB and CONAMAQ).[33]

Moreover, the report added, the two communities were quite similar, sharing a common language, economy, organizational structures, and even kin. In fact, the only difference noted by the report was that "for historical reasons both communities had gone down different paths, one an *ayllu* and the other an agrarian union" (UD 2017, 22). From this perspective, a historical challenge for the Mixed Tribunal was understanding how this difference informs the communities' completing claims. The following section will further discuss how these claims are entangled not only in the disputed landscape itself but also in a legal culture based on the strategic and selective use of the law. While the main difference between these organizations tends to be thought of as having starkly different views around rights, land, and labor, in Inquisivi the institutional mechanisms for resolving deviation from such views is quite similar.

Finally, the Decolonization Unit also found that INRA and other bodies such as the agri-environmental courts had not been able to define property rights over the area in dispute. Rather, they noted, the dispute was "about the existence of a problem of boundaries between neighboring communities that has not been solved by their organic institutions" (UN 2017, 28). As a result, the report concluded, the jurisdiction of local indigenous native peasant justice authorities was clear: "how could it be considered encroachment if no predefined property rights existed?"

[33] A notable difference between Titamaya's organizational structure and many other ayllus that had been reconstituted as part of the movement spearheaded by Conamaw sinve the late 1990s was that titiamaya's leadership was not guided by *chachiwarmi* (male-female), a practice based on the pricinoke of genered parity (e.g. as was the case with the 12 indigenous leaders (6 husband and wife pairs) in the Quispe's case from the previous chapter).

(ibid.). This also challenged Secretary Castro's (Chapter 2) that there was already a "*caso juzgado*" (court decision) defining the rights.

In awarding the Mixed Tribunal jurisdiction over the land dispute between Sopocari and Titiamaya, the Constitutional Court had also formally recognized the Tribunal Mixto's jurisdiction over the entire province of Inquisivi. The Court also recognized the Federation's own mandate, reached in the plenary assembly meeting. In the judgement, for example, it specifically referenced the Tupak Katari resolution that cited the formation of the Commission to oversee the Mixed Tribunal, "with the goal of seeking out a solution to countless local problems, following the reported discredit of ordinary justice in this region."[34] Thus, recognition by the Constitutional Court had also provided organization leaders with institutional backing that could serve to consolidate this mandate permanently.

However, the future of the Tribunal Mixto also rested on the ability of the leaders to first find a solution to the boundary dispute between Sopocari and Titiamaya. So, following their Constitutional Court victory, the first order of business for Tribunal Mixto leaders was to formally inaugurate the new institution. This would be a part of the same hearing to resolve the land dispute between Sopocari and Titiamaya. On March 19, 2018, Federation members met in Quime's Central Agrarian Union headquarters, a small brick building a block downhill from the main plaza to inaugurate the Mixed Tribunal. Holding up a copy of the Constitutional Court ruling in his hand, Tata Basilio, the Federation leader who served on the Commission and received the legal records from Quime's Courthouse Secretary Castro, marked the importance of the occasion:

[34] SCP 0093/2017, 20.

> Why is this historical, brothers? Because before there wasn't justice for indigenous people. The constitution clearly states this, but it has been difficult for us to fulfill. We've faced discrimination and marginalization, and indigenous justice is always on the horizon. This is why it's historical for us! The day the judge handed over the legal files for this case, we were in tears, brothers. This will be the day, because we have suffered. They (the lawyers) have taken bread out of the mouths of our children. Tupak Katari and Bartolina Sisa sacrificed their lives so we could live better days. Thanks to this struggle, our brother Evo has installed through his Chamber of Deputies and the Senate this law that gives us equality. *But we still have to work to do, we still have to fight.*

Tata Basilio's inauguration speech highlights several ways in which state recognition of indigenous jurisdiction is understood by many indigenous legal activists as a project of indigenous emancipation. First, for marginalized populations who often have little or no access to justice, such legal victories carry significant symbolic value, as discussed with the Zongo case (Chapter 2). Materially, the potential of the Tribunal was also often described by its leaders in terms of offering poor rural indigenous peasants the access to justice. Reflecting on the importance of the Tribunal in a later interview, for example, Tata Basilio said he hoped that Federation members throughout the province could resort more to their local organic institutions to resolve their problems. "Be it in favor or against, in a short amount of time they spend less resources, and in addition without suffering from the mishaps of those who have studied law," he declared sternly.

Second, what was particularly significant about the Tribunal Mixto was that it could serve as an umbrella institution to administer justice over peasant unions as well as indigenous ayllus. While these organizations that have historically been viewed as diametrically opposed (in both structure and how they relate to the state and the land), in practice their norms and procedures are heterogenous and often interrelated. In Inquisivi, a region with more concentrated haciendas and strong agrarian union history, the movement to reconstitute the ayllu in Bolivia that began in the 1990s has only recently had an influence in the region. Indeed, Titiamaya was

only reconstituted as an ayllu in 2015.[35] In 2016, the Federation incorporated indigenous leadership roles such as the Tata Mallku (representatives of these newly constituted ayllus) into its institutional structure at the provincial level. This is also quite unique for an agrarian union but reflects both the range and dynamic nature of political organizations throughout the region, including mining workers along with peasant farmers among its grassroots.[36]

Third, such fluidity of representation in the Federation is what offers it such potential as a grassroots organization. This is because it represents a new historical subject of the plurinational state: the Indigenous Native Peasant (singular and without a comma).[37] Tata Basilio framed the potential of the Mixed Tribunal in terms of addressing the exploitative practices of local state justice officials of all Federation members – ayllu and agrarian union. Again, this was framed in terms of improved access to justice. "If I were to be in charge of only communities that were reconstituted [as *ayllus*], it would be very few," he said, explaining the historical importance of

[35] While affiliated with CONAMAQ (the social movement organization that championed the movement), their leaders seemed to have closer links to indigenous legal activists from the Plurinational Indigenous Native Peasant Justice Tribunal. While many of these indigenous legal activists take a more critical stance against the Morales government (namely seen as union and political party and thus removed from indigenous peoples demands for self-determination), most of the organizations in this region are pro-MAS and do not make a distinction between this and the Plurinational Constitution.

[36] The Mixed Federation is also different than that of indigenous organizations affiliated with CONAMAQ such as the Jacha Marka Tapacarí Cóndor Apacheta (Chapter 3) in that, having only recently officially incorporated ayllu leadership positions such as Tata Mallkus, they do not lead by the principle of chachawarmi (male-female leadership duality). Rather the Federation's leadership structure operates with a parallel female union organization, the Bartolina Sisas, which has a separate procedure for electing female leadership.

[37] As I discuss in Chapter 1, this was the outcome of intense debates among members of the Unity Pact in the Constituent Assembly over which rights and benefits would be afforded to which of these separate categories (see Shavelson 2012). Removing the comma was thus seen as a way to make this an inclusive category of rights, although in practice contentious conflicts over land rights tend to be formulated around such demands, as the experience of the Nation Qhara Qhara shows (see also Soliz 2017, for a historical discussion of these divisions following the 1953 land reform).

the Tribunal's unique "mixed" status. "There are a lot of communities that are unions and when it's mixed, we reach them too, because it's convenient for them to come to indigenous justice in order to have a resolution in the least amount of time possible."

Finally, in his inauguration speech Tata Basilio also situated the Tribunal Mixto's project within the historical project to construct the Plurinational State in Bolivia. By invoking 18th-century Aymara insurgency leaders Tupak Katari and Bartolna Sisa, for example, he was articulating their Tribunal with the historical struggle for indigenous self-determination. Yet, this struggle was also articulated not in terms of a radical break from the state and its apparatuses of domination, but rather through participation and inclusion within them. Insistence that it is the "law that gives us equality," even if such a law was now designed and implemented by those historically excluded from it, highlights consensus around liberal principles of justice (Postero, 2017).

Indeed, Tribunal leaders often reminded fellow Federation members that the Constitutional Court had "mandated" or "entrusted" them (*nos ha encomendado*) to resolve the conflict, also linking this task to "brother Evo's" historical project to construct the Plurinational State. In this way, Tribunal leaders saw themselves as playing an important role in helping President Morales ensure that the emancipatory potential of this project could be realized in practice. As I previous chapters have shown, the actual lines between indigenous and state justice are extremely blurred in practice, despite a tendency in academic and governmental discourse to portray them as diametrically opposed (Spedding, 2016). Regardless – or perhaps as a result of such a tendency – formal recognition of indigenous originary peasant jurisdiction in this case generated the need to establish such boundaries to resolve the land dispute. What role did the state play in creating the problem and, in turn, what should its role be in deciding a resolution?

Table 4.1: "The Legal Expert"

Working the indigenous-colonizer hyphen
Legal Expert

Vianca Copa and I forged much of our collaborative relationship out of shared concern over the blatant uncertainties (and often unintended negative effects) of strategies to strengthen indigenous jurisdiction. This was precisely why we decided to follow-up on efforts to resolve the conflict between Sopocari and Titiamaya: to better understand the nature of barriers to exercising this right, even when there might be significant legal backing such as constitutional court recognition. Not only did Mixed Tribunal leaders act independently of non-indigenous intermediaries such as legal advisors or NGO *técnicos*, they also emphasized that they would not permit members from the two communities to involve lawyers in the case. Yet, they did invite one indigenous legal expert on human rights, Raquel Huanca (an indigenous legal activist from the JIOC Tribunal) to participate in the hearings. Vianca and I, in contrast, presented ourselves from the onset as traditional social science researchers would: we were just there to observe and learn. From the beginning, we grappled with the issue of appearing as technical advisors.

Yet, our role in the case gradually shifted, as Mixed Tribunal leaders appropriated our presence as outside witnesses, which afforded then a degree of legitimacy and legal backing. Need for this was particularly evident by the second hearing, when leaders emphasized that we were *veadoras* (observers) as a way to demonstrate the Tribunal's impartiality to both parties involved in the conflict. In this way, we were often clumped together with other outside participants such as Huanca from the JIOC or even lower level union leaders, who also participated in the hearings. We were also part of efforts to document and disseminate jurisdictional conflicts in support of these processes, which Mixed Tribunal leaders also were excited to have in order to disseminate to their own organization grassroots. Copa is a lawyer who worked as part of the Decolonization Unit for the Constitutional Court and I am an anthropologist. So, we also volunteered our expertise as outside witnesses to provide documentation of the hearings.

Our presence served a role not only for legal backing and legitimacy in front of the two communities in conflict but also to promote their project at the provincial level among other affiliated member of their own organization. On one occasion, for example, during a provincial-level meeting of the Tupak Katari Federation in the city of La Paz, Tata Bascilio introduced me as member of an external oversight committee (this time alluding that I worked for the Constitutional Court (though Vianca formally was a constitutional lawyer for the Court from 2012-2014, I certainly was not and she was not present that day). "Our sister has delivered to the entire commission by computer via CDs," Tata Bascilio said pointing to me in the crowd. "This demonstrates the indigenous justice that we are integrating here brothers," Tata Basilio said, emphasizing "with these [discs] we know there is no bias." Holding up the CDs just as he had a copy of the Constitutional Court judgment on the day of the inauguration of the Tribunal, Tata Bascilio, pointed out that I was a foreign researcher to also emphasize the historical significance of the case.

During the meeting, Mixed Tribunal members were actively promoting an upcoming state-sponsored workshop held by the Ministry of Justice in Inquisivi the following month. They discussed the constitutional court ruling in favor of indigenous native peasant justice and

actively encouraged those present to attend so that they would start exercising their own rights. In this way, videos could act as a form of organizational memory of the formation of the Mixed Tribunal. But also, at that point in their specific efforts to resolve the conflict between Titiamaya and Sopocari, the leaders were concerned that Sopocari representatives, if unhappy with the Tribunal's final resolution, might attempt to spread rumors within the Federation to turn members against them.

After the second hearing (discussed below), Tribunal leaders grew concerned that the Sopocareños might also attempt to overturn their resolution by appealing to the Constitutional Court. This might also risk reversing their historic victory (and with it, the ability to expand the project of constructing the Mixed Tribunal beyond the single case). To prevent this, the leaders requested that Vianca and I help draft a document to be presented with a final resolution they could preemptively submit to the Court for review. We accepted and worked late into the night before the final meeting to make sure all steps of each hearing were carefully documented. Over the course of the following day, we also used my laptop to draft up the final resolution, taking turns typing frantically as the leaders dictated different elements of their decision out loud. This was when we more fully became intermediaries, helping to ensure the resolution was in a proper legal format to submit to the Court to ensure it was legible.

In stark contrast to the spaces of deep analysis and reflection opened up by the leaders' efforts to resolve the conflict, our frantic efforts were marked by uncertainty and rigid closure as we elaborated short choppy bullet points to emphasize the procedures for administering justice over the conflict. Even as our role in the case lent the Mixed Tribunal a degree of legitimacy, it not only reinforced the authority of state law in deciding justice over their own matters. Also, it reified the indigenous-colonizer hyphen that granted us authority over the law only on the basis of the distribution of roles that deems us more qualified to wield it. Reflecting on the dilemmas of the case, Vianca and I have discussed what kinds of practices might render this hyphen less necessary in their own politics. Taking that further, we reflected that a truly emancipatory politics would mean that we were not present at all. What would that imply for both their own social projects and those of anthropology?

4.3 Untangling the Knot

The sheer weight of the 389 pages of legal records that had been handed over to the Mixed Tribunal by the ordinary judge signaled how difficult it would be to resolve the conflict. The product of demands and counter demands made by both communities over the years, the documents did not offer a clear picture of who rightfully owned the land in question. To the contrary, they served as an index of the long history of overlapping notions of property and rights in Bolivia. For instance, indigenous leaders from Titiamaya based their claims to land

ownership as *comunarios* (also referred to as *originarios*), or natives to the community who predated colonial rule. During the colonial era, the community belonged to the Ayllu Cahua that, along with the ayllus Mikaya, Collana, Chiqa y Chimu, formed the Canton Yaco.[38] For legal backing to their claim they presented "Titulos Revisitarias" that were issued as *proindiviso* (undivided) titles in the 1882 by the Republican government. These were the titles I discussed in Chapter 1, which were awarded following modifications to the 1874 Disentailment Law that permitted communities to opt for pro-inidviso titles as a type of collective claim

For their part, representatives of Sopocari claim the land as grandchildren of *colonos* (tenants) who were forced to work for a local hacienda and thus received individual family titles *(sayañas*) as part of the 1953 Land Reform. This was part of the nationalist government's revolutionary project that sought an end to the hacienda system. While the ex-colonos did not officially receive titles until 1975, local agrarian unions were formed in Sopocari and throughout the province immediately following the reform and became the main political institution tied to administering land rights and use (DU 2017).

In the various hearings held by Mixed Tribunal leaders, community representatives presented documents awarded by INRA as well as judgements by institutions such as the agri-environmental courts. The titles each community presented in their claims to the land were the result of different regimes of state recognition. In terms of identity politics, the difference between the two communities is connected to different moments of reparations for harms committed in the past: While Titiamayans based their claims as comunarios as pre-existing rights to "land to the original owners" (collective titles as a revindication for colonialism and later

[38] The canton was established by Viceroy Toledo in 1591 as part of the consolidation of the *repartimiento* system.

republican dispossession), Sopocareños based their claims as colonos who, having suffered slave-like conditions of labor exploitation, were beneficiaries of the mid-twentieth-century land reform that awarded individual titles on the basis of the revolutionary slogan "land for those who work it" (Soliz 2017). This was what largely marked the distinction between their two distinct "paths," as the Decolonization Unit (2017) had phrased it.

In Chapter 5, I will discuss how possession of these titles were framed by both communities in terms of vindication for the suffering and humiliation of their ancestors, which acted as a form of "suffering for territory" (Moore 2005) to show that they had the right to decide how the land should be used. Here, I am interested in how such claims to rights and rule are entangled into the landscape of the disputed sector of land itself (Moore 2005).

This helps also explain the incoherent and contradictory way land reform was implemented on the ground by local authorities who disagreed with such modifications. In the case of early twentieth-century efforts, for example, the new teams of surveyors needed to measure the land, determine its value, and dispense titles included local judges, secretaries, and aids. Such teams would have likely disregarded prior surveys such as the one from 1882 that had awarded Titiaymayas proindiviso titles, "since they believed that the titles thwarted the very objective of the reform" (ibid., 35). In the neighboring ayllu of Challa, which had been awarded proindiviso titles in 1881, lands and goods lost to local towns people were overlooked (and sometimes supported) by local officials (Gotkowitz 2007, 82). From this perspective, laws wielded to contest multiple overlapping sovereignty projects are only as strong as the fragmented material used to forge them.

Moreover, in large part, confusion was built into the law itself, which failed to understand traditional (and dynamic) systems of land tenure. In Quime, for example, where the Puna

grasslands of the Andean cordillera meet the valley region, agricultural production mainly consists of potatoes, corn, and other hearty root vegetables. After a 2-3-year production cycle, soils typically lie fallow for a period of around 15 years. In the interim, agricultural land is periodically used for grazing llama, alpaca, sheep, and cattle. The landscape where the communities of Titiamaya and Sopocari does not form part of a cohesive territorial unit but rather articulated a shared (if heterogenous) culture and people across three ecological floors (Puna, Yungas, and Valley) they had ancestrally dominated (Fernández Q. 2011).[39] Yet, a provision of the 1874 Disentailment law that declared all "vacant" plots eligible for sale made it easy to breakup this system. These are early examples of "pillaging" that contemporary Federation leaders such as Tata Basilio declared themselves "enemies" fighting against with the formation of the Mixed Tribunal.

Petitions I found in the La Paz archives from the early part of the twentieth century demonstrate other long term strategies of indigenous legal activists discussed in previous chapters, namely to appealing to higher-level authorities to denounce the abuses of lower level officials.[40] In one petition to the prefect of La Paz in March 1925, for example, "indigenous comunarios belonging to the province of Inqusivi" (signed by Gregorio Aquilar, Emiliano

[39] This practice is characteristic of the ancient Aymara "vertical archipelago" system (Murra 1975) of trade across the different ecological niches of the Andes, from the fertile valleys up to the high arid grasslands. This was a complex and dynamic system that consisted of multiethnic units, or "islands," connected through the articulation of multiple affiliations of trade and migration (ibid., see also Platt 2009).

[40] Although the leaders did not directly identify with the history of the cacique apoderado movements (see Chapter 1), the struggles of these early indigenous legal activists against powerful local authorities has important antecedents in the case. In Yaco, in 1907, this movement was led by Cacique Apoderado Mario Mamani, who filed a complaint with the subprefect demanding the 1882 title (recognizing colonial tribute and territory) be upheld (Excerpts from the 1907 complaint (ALP/ EP, 1919, C 230) are included on historian Ramiro Fernández Quisbert blog *Historiadorbol*, available at: http://historiadorbolrfq.blogspot.com/2011/11/yaco-conflicto-de-tierras-en-su.html.

Mamami, Francisco Gusrachi, Santiago Huaranca, and Santiago Coque) requested the prefect send an "assertive order" to the subprefect to fulfil his mandate ordering the notary return official titles to them from December the previous year. In it they denounced that nothing had been resolved, "causing serious detriment, given that spending our money and time to travel to the city to complain of our suffering is not even sufficient for them to understand and to help us by dispatching and collaborating in our claims."[41] They went on to denounce the corregidor of Quime for abusing indigenous rights by overcharging them legal fees "under the pretext of notifications." Specifically, they reported that, in addition to paying a notification fee of 70 bolivianos, the comunarios were forced to give the corregidor five sheep and a horse, which were distributed to other local authorities.[42] These are early examples of "pillaging" that contemporary Federation leaders such as Tata Basilio declared themselves "enemies" fighting against with the formation of the Mixed Tribunal.

The petition also offers another example of how indigenous legal activist intellectuals articulate shifting national political discourses as a strategy to pursue their rights. have highlighted in previous chapters. Well into the 1920s, legal petitions for notarized titles or complaints against the abuses of local authorities throughout Inquisivi, suggesting boundary disputes or encroachments – as well as concerted efforts to use the law to combat them – continued to be widespread throughout the region.[43] This is similar to what Soliz suggests regarding comunarios' embrace of leftist nationalist revolutionary party of Banzer in the mid-

[41] APE / PE, 1924, caja 266, expediente 44.
[42] Ibid.
[43] Archival research conducted at the La Paz Archive in June 2019 revealed that a significant amount of cases between 1923 and 1928 were from Ichoa, but also demonstrated several from the Ayllu Cahua (with the specific community of Titiamaya is also referenced in several of them). However, as many of the documents were missing the analysis presented here is not comprehensive of the nature of all complaints that were listed in the archive catalogue.

twentieth century. While, in principle, the 1953 Land Reform favored individual land titles and thus went against the comunarios' long-standing struggles to maintain their collective landholdings, Soliz found numerous petitions that articulated with the government's platform. In this way, she suggests, they were acting within a "language of contention" (c.f. Roseberry 1994) that allowed them to embrace national-level modernizing programs "without forsaking their traditional political identity and longstanding set of material demands" (2017, 273). Soliz shows how, pressured to at least partially incorporate comunarios' demands to recognize collective rights, the revolutionary government adopted policies that largely went against its nationalist project (ibid.).

Contemporary narratives of state institutions such as INRA "mandating" the Mixed Tribunal can also be understood as a way to articulate with national-level discourses of the MAS government to address long-standing local political concerns. Yet, legislation and titling procedures themselves can generate significant problems, as they fail to account for norms and procedures at the heart of jurisdictional conflicts such those discussed in the Zongo case (Chapter 2; see also Spedding and Llanos 1999). Here is where situated assertions of sovereignties further entangle the state with local land disputes, as the parties involved seek out a favorable resolution by "forum shopping" Pimental (2011) in multiple jurisdictions at the same time. As mentioned in the earlier discussion of this case in Chapter 2, Sopocareños refused to receive notification of the inauguration and instead deployed a legal strategy of their own to stall proceedings. They were deploying their own strategic use of the law as a for of "selective sovereignty" (Moore 2005) to thwart efforts to address the boundary dispute.

However, at the same time that resorting to state courts allows union members a means to assert a degree of autonomy from their local leaders, such a strategy reinforces the state's

legitimacy to have sovereign authority over matters such as local land rights. This points to a paradox of how the "state idea" (Abrams [1977] 1988) is produced in contexts where it may otherwise appear quite absent. This is not only true in cases related to an endless search for land titles. Rather, as ethnographers have noted among NGOs working on women's empowerment (Ellison 2017; Sharma 2006), practices of self-rule and self-care associated with forms of neoliberal governmentality ultimately end up reinforcing notions of the state's authority to govern social life.

As we will see in the following section, this was another significant challenge that Mixed Tribunal leaders faced in claiming legitimacy to resolve the conflict: the state's authority was deeply ingrained in the political subjectivities of all members involved in the dispute, including in the Mixed Tribunal's own assertion of authority over the case. In this way, the double bind of governmentality is built into very legal strategy of claiming indigenous native peasant jurisdiction, which supposedly serves as a tool to break free from the binds of contradictory and poorly implemented state laws.

The discrepancy between different systems of recognition can also generate problems defining boundary limits or establishing rightful ownership, as multiple documents can exist that would seem to partially grant property rights to the same exact sector of land. This is also a result of the multiple, overlapping early twentieth-century land surveys mentioned previously. In addition, improper technical knowledge or underfunded bureaucratic procedures can result in complex local notions of marking boundary limits being wrongly registered or misnamed (Barragán 2007c, 100). Such complexity of traditional demarcation is evident in the aforementioned 1924 petition sent by Titiamaya comunario Vielo to the Prefect of La Paz. In addition to requesting the prefect order official testament of all *contribuyentes* (tax payers) of

Ayllu Cahua, the petitioner also elaborated the boundary limits in efforts to demonstrate the proper boundary limits to correct the notary's "error":

> The boundaries of the Ayllu Cachua are the beginning of the Tatiwichinca Vara varani, Pulchinta, Cellocelloni Villque, Tarojananta, adjacent to the Potoni estate, Coolampata adjacent to the same estate, Calasombreroni at the foot of Potoni, Panca Cillque with the Concha estate, Paconpata, the easy way to Concha at the foot where it crosses the adjoining Chejot with the hacienda Huailluma, Mojonpampa with it, Yaritani with it, Cupani pampa with it, Copani Chico with it, Tambo loma with it, Tojllavilque with the Czech community, Jancoñirque crosses the foot of the adjoining ex-community Micaya, where Pachachani Chanoa meets the Rio Grande Putunciri, then borders with Micaya through the Ananta valley, Calaguancani, Churi Mojon, Mesmamisto, Itappallonojoco, Chiar Joco, Querin Javira, Murill Javira, Apilloco Javira, Lahua Chiaña, bordering Chimo, and the river de Millocullco. These are the boundaries that separate us from the other haciendas and communities.[44]

Such descriptions are evident in petitions of caciques from Yaco dating as far back as petitions to the Crown in 1593 and they show the complicated way that land is demarcated, often by sacred stones and landmarks, and described in terms of how one might physically walk around the perimeter of the territory.[45] By the very nature of much more simplistic state titling procedures, they tend to omit such detailed ways in which boundary limits are demarcated in a community. The two systems of demarcation are simply incommensurable.

The topographical map of Titiamaya presented to the Tribunal Mixto highlights a similar misreading (see Figure 1). Elaborated by INRA in 1973, the map demarcates Titiamaya's boundaries in relation to the eight haciendas that have surrounded the community since the late 19th century. At the center top of the map, "Ch'eje Cala" has been written in hand, the root of which is an Aymara word meaning "pasture." This is the name that Titiamayas claim is the correct name of the area in dispute (which Sopocareños declare to be named Chijicalpampa);

[44] ALP/PE, 1923, Caja 257, Expediente 15.
[45] En 1593 Don Juan Apo Inca Alvarado Casaca y Cadenas, gobernador y cacique principal del pueblo de Yaco, presentó ante el escribano de su Majestad, Ruiz Gonzáles de Rivera, la relación de mojones de Yaco, cited in Fernández (2011).

although, likely using similar forms described by Barragán, it was simply never registered on the map. Later, in the registration of collective titles following multicultural reforms of the 1990s, for example, Barragán found that state functionaries continued to use old forms that listed haciendas instead of community names (2007c).

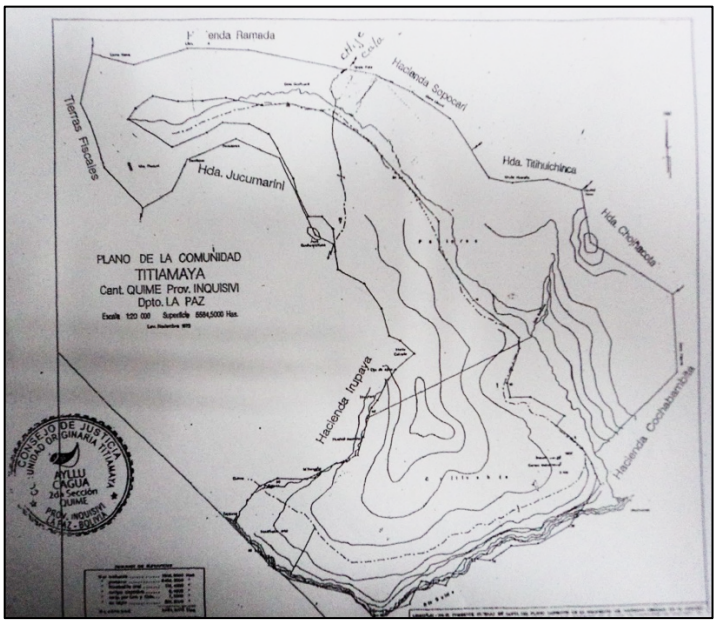

Figure 4.1: Topographic map of Titiamaya from INRA 1973 submitted to Mixed Tribunal leaders by Titiamayans. The map demarcates several haciendas surrounding Titiamaya, with boundary name "Ch'eje Cala" hand written (top center next to boundary of Hacienda Sopocari)

Granted, even the leaders of the Mixed Tribunal (native Aymara-speaking leaders native to the same province as the two communities) struggled to get the names of the boundary limits correct. In the final hearing, for example, leaders asked Copa and me to document the procedures to submit to the Constitutional Court. Using my laptop, we first typed up the resolution. Once complete, the leaders read it aloud to the meeting participants, who then approved the resolution. Leaders then gave me four copies of the Tribunal's custom letter head and asked me to go to the government's municipal office, located off the main plaza, four blocks away. Yet, after

photocopying the resolution, the leaders realized the boundary names were not correct, and the document would need to be changed.

This happened several more times until, about hour and a half later, nearly exhausted and running out of colored letterheads on which to print the resolution, a final version was reached. Then, as we were leaving, one of the community members from Titiamaya (who, as I discuss further below, Mixed Tribunal leaders had decided to rule in favor of) expressed concern that the leaders had not gotten it right.

The difficulty of defining boundary limits demonstrates how previous state titling procedures become entangled into the leaders' task of sorting out who is rightful owner of the land in the disputed sector. Engrained in the problem are highly contested regimes of recognition and land tenure policies that had sent the communities down two separate paths, one ayllu and one agrarian union, further ensnarling disputes over rights, land, land labor into the landscape itself. The complicated and historically constructed nature of the communities' dispute made it difficult, if not impossible, to decide who was legitimate owner of the land. Moreover, the Constitutional Court ruling, far from resolving who had authority to decide the border limits was further entangled into their claims. As I discuss in Chapter 2, in this particular case, Sopocareños had initially refused to receive the notification and attempted thus denied recognition that the Mixed Tribunal had jurisdiction over the case.

4.4 Dismantling the Master's House

"We are all of indigenous blood and for that reason there shouldn't be any fear or looking for help from legal advisors, brothers, because in this established courtroom lawyers will not be permitted!"

——Tata Basilio, opening of second hearing of the Tribunal Mixto, March 26, 2018

Tata Basilio's tone was stern as he initiated the second hearing of the Tribunal Mixto the following Monday. Representatives and several community members from Sopocari were present this time, filling the wooden benches on the left side of the room. The comunarios from Titiamaya all sat together on the right. Basilio scolded the Sopocariños for not appearing at the first hearing, pointing out that Tribunal leaders had invested their own time and money to attend to the conflict. After reminding them again of their Constitutional Court mandate to resolve the case, he asserted they had the final decision over the matter. "Indigenous justice is very clear, brothers," Tata Basilio stated. Holding up a copy of the ruling, as he often did throughout all hearings, he added, "we will reach a resolution that ordinary [justice] does not have attribution to revise."

Wasting no time, he then went on to explain how the hearing would proceed, according to procedures that the Tribunal leaders had decided upon shortly before the hearing started. In the Mixed Tribunal's hearings, each party would have a restricted time to present their case. "Simply the six [representatives from each community] will intervene, and the court ought to listen in silence," Tata Basilio instructed. This is much different than most indigenous peasant organization meetings, which tend to involve open debates until broad consensus can be reached, often lasting for several hours. Basilio, in contrast, made it clear that lengthy discussions were not going to be permitted. "I don't want you all murmuring to correct [someone] on something you planned to say ahead of time," he asserted, "you've already named those who are

responsible for administering the commission." He then added, "Like that we wanted to weave in how ordinary [state] justice does it, but we can go beyond the framework a bit."

In Tata Basilio's brief initiation of the second hearing, it was clear that there was uncertainty over what role ordinary justice would – or should – play in deciding the case. On the one hand, the Tribunal's legal backing to exercise indigenous native peasant jurisdiction was matched with its members' open acknowledgement of the corrupt and exploitative practices of ordinary justice authorities. Such acknowledgement validated the norms and procedures of their internal organizations as the only legitimate means of administering justice in the case. On the other hand, Tribunal leaders themselves didn't appear to be able to fully exercise their own jurisdiction. This tension was front and center of every meeting – quite literally – in the two hand-sewn oversized books of original documents in the court case that always sat alongside the crisp, newly notarized *libro de actas* (institutional registry) during the Tribunal Mixto's proceedings (see Figure 2).

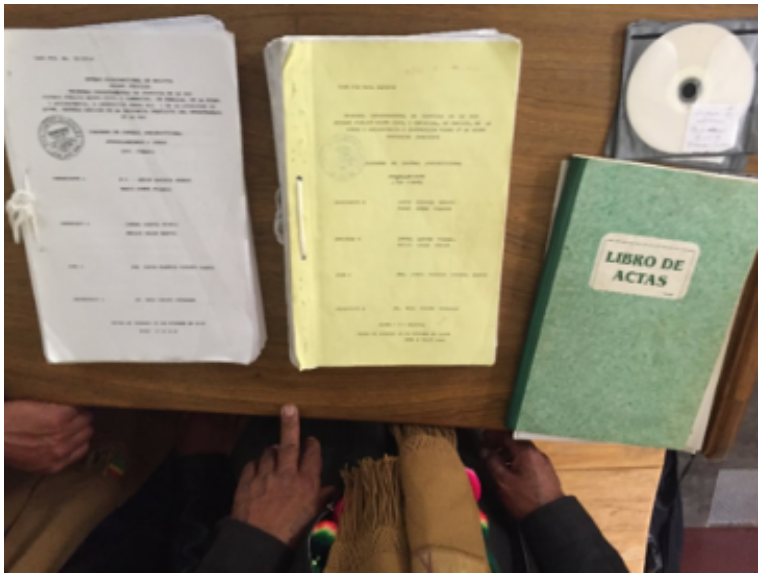

Figure 4.2: Leaders standing over the legal records from their bench in the Tribunal Mixto Courthouse (photo credit: Vianca Copa)

Similar to the decree laws discussed above, higher courts may have more authority over local justice officials, but this does not guarantee that the law will be upheld. Rather, as I discuss in previous chapters, concern over "people of little faith" is precisely that the law is "twisted" as a correlation of forces combine in a given moment (Barragán 2007c, 82; see also Barragán 2012). This is why time is such an important factor, Barragán suggests, because stalling procedures allows one to continuously search for a better outcome, or to gather more (or different kinds) of forces that might twist it in your own favor (ibid., see also Chapter 2).

A great deal of the concern stemmed from uncertainty. The Sopocareños had attempted to appeal the Constitutional Court decision awarded in favor and refused to attend the first meeting. This demonstrated that they were likely deploying a similar strategy. As expressed by the concerns of Mixed Tribunal leaders over the course of the various hearings held to resolve the dispute, breaking this logic of stalling by presenting *tramites* (as well as preventing the possibility that such a strategy might entangle them in future lawsuits), was the main challenge they faced.

This concern was most apparent in leaders' constant emphasis on impartiality during the meetings. Outside of the meetings, several of the leaders explained more specifically that they were concerned they would be accused by members of Sopocari of personally favoring Titiamaya. (Vianca's and my shifting role in the case discussed in the "intercultural dialogue" box above made this growing concern particularly evident). For their part, Sopocareños, in refusing to accept the notification, were also sending a clear message that they refused to acknowledge the legitimacy of the Mixed Tribunal. At the same time, the leaders were cautious about issuing sanctions such as fines or other penalties that might normally be the case when a union member refuses to attend a meeting. This could further encourage the Sopcareños to seek

justice by other means outside the Tribunal. For this reason, leaders emphasized they "wanted to weave" state justice procedures into the hearing, as Tata Basilio put it in his explanation of the Mixed Tribunal procedures cited above.

For this reason, leaders also regularly emphasized that they were not acting with bias for or against either side in the dispute. The right to impartial justice and due process were central tenants that Sopocareños might claim were violated if they find the Mixed Tribunal's resolution unfavorable. "The fact, brothers, that you are sharing lunch or housing does not mean you are being biased", Tata Basilio explained during one hearing, adding "If a *dirigente* (leader) or any brother from Sopocari offers me a glass of water this does not mean that I am being biased." This was contrasted with giving a lawyer or judge who demands "cigarettes or whatever else you have" to move a case along, which was considered a favor intended to "partializing" them.

However, at the same time, it also became visible over the course of the different hearings held to address the conflict that the meaning of impartiality itself– as a measure of fairness in the case – was also a fuzzy concept. One challenge in distinguishing between the two forms of justice was the fact that both practices had their own validating logics in terms of accessing justice. On the one hand, in indigenous justice, leaders are unpaid and work to "serve" the needs of their bases. Thus, *cabildos* (public meetings) held by indigenous and union organizations, especially extraordinary ones that are called to resolve a specific problem, are almost always "*autogestionado*," (self-managed); community members cover the cost of transportation, food, and housing costs in exchange for leaders' consultation and help resolving problems with other community members. Such practices of "pooling" resources to exercise justice contrast with those undertaken by overburdened lawyers and courthouse secretaries, which can easily lead to corruption (as discussed in Chapter 2). The problem Tribunal leaders

faced was that, while the former was accepted as a "norm", the latter was seen as "abnormal," as symptomatic of a failure to uphold the fundamental principles of independence and fairness in ordinary justice.

In general, what was at stake wasn't just the legitimacy of the Tribunal. Rather, having also participated in efforts that granted land rights to Titiamaya, leaders faced the possibility of having their names added to the list of those against Sopocari, if the case was ever turned back over to ordinary jurisdiction. Thus, just as Tribunal leaders felt compelled to strategically appropriate state law to establish their own legitimacy, (renting out the Master's house, to continue my use of the metaphor), they also oscillated between this concern and awareness of the need to expose its underlying contradictions for their search for justice. That is, they were both renting out the house, but showing how flawed that house continued to be.

Another challenge in resolving the case was that both parties insisted that a decision be made "on the basis of their documents." Approaching decades-long legal battles from the perspective of their "hope generating capacity" Nuijten (2003) also deepens our appreciation of the deeply subjective ways in which they get entangled in the state justice system. Here is where the strategy of searching for the right broker or intermediary comes into play, either to stall a case or to move it forward (ibid., 91).

Neither side could win with this approach. In large part, this was due to the fact that, the entangled nature of their situated struggles for the land examined in the previous section meant that it was seemingly impossible to delineate the boundary of the disputed sector in documentation. In a third hearing, held in the disputed sector itself, Mixed Tribunal leaders reviewed the documents several times before and after representatives from each community physically demonstrated the limits "on the basis of their documents" (see Figure 3)

Figure 4.3: Representative from Titamaya points out boundary limits demonstrated in their documents, while several Sopocarennos, look on suspiciously during on site boundary inspection April 19, 2018 (photo credit: Amy Kennemore)

Moreover, overlapping experiences with corruption also shaped a sincere sense of distrust of the validity of any documents emitted by state institutes. For instance, representatives of each community openly questioned the legitimacy of the other's documents, even as they asserted that theirs were valid. For their part, representatives from Titiamaya described how they were victims of the ordinary system, describing how the prosecutor refused to meet with them and that their request for a hearing before the agri-environmental judge was ignored. An older Titiamayan theorized that that this was because the authorities had been paid off, elaborating this by reenacting his encounter with what appeared to be a shady deal:

> One afternoon in the plaza of Quime, around 6:30, 6:45 at night, I live by the customs house, a bit above it, so I was going by the plaza like that when, he [the defensor del pueblo who is now the prosecutor] was passing by. Two or three steps later, I saw compañero Mario [from Sopocari, who pressed charges against them], sitting on this little step. He saw me, and he stopped, compañeros. So, I continue by, the prosecutor appeared on his other side, inside, hiding. Just like that an ordinary authority was partialized

> (biased), brothers of Indigenous Tribunal. These are the things they've done, there is no faith, and this why now I confide in you all [of the] Justice Tribunal, that you won't let this happen.

In response, Sopocariños also made a variety of accusations, ranging from stating Titiamayans had falsified documents to knowingly sell the land to them (to later pretend the transaction was falsified to get both the money and the land). During the on-site inspection in the disputed sector of land, Mario Conde, then secretary general of Sopocari's agrarian union, took his charge further, questioning the authority of Tribunal leaders as well. When it was his turn to present his case, for example, he stated that the issue was already a "*caso juzgado*" (case closed) by ordinary justice and "reminding" them that the Constitutional Court ruling did not annul the rights their documents gave them. "I will listen to whatever you have to say" he declared, "but these are final sentences [of the state courts] and I insist that they be upheld." He pointed out that, to do otherwise, would be to start from scratch; "if you repeal this, then where am I? Where are we?!"

What these examples highlight is that corruption was not a hidden secret but rather a fact that openly acknowledged (and engaged in) by all those involved. Indeed, the possibly of overcoming this was precisely one of the reasons that shaped how leaders imagined the potential of the Mixed Tribunal Mixto, as I discussed in the first section of this chapter. As both sides continue to engage in seemingly never-ending legal battles, neither side wins. At stake for both communities is significant amount of time and money spent searching for a resolution, and the real possibility of violence between them when they fail to reach one.

Toward the end of the on-site inspection, Tata Basilio intervened by offering an alternative:

> Sometimes we get advice from a lawyer. Lawsuits are the lawyer's farm, from which they can sustain themselves (*hacerse aguantar*) two, three years. Just like we harvest the land to keep our bellies full, their farm does the same. They give the orders, and you all keep going back over and over again to check [on your cases]; it's their work, their office. But the communities, it would be better if there was no decision. We have to straighten all of this out, brothers.

Using the allegory of the farm, Basilio reframed what was at stake in the case: an ethical imperative to orient their exhaustive search for justice towards their own social projects.

Here, he shifted the question away from trying to distinguish between right and wrong by measuring the degree to which they had engaged in corrupt legal practices. Instead, what he left both communities with was a moral imperative to recognize what kind of social project they were constructing as a result of investing their energies into one or the other jurisdictions, state jurisdiction or that of the Mixed Tribunal.

4.5 Uncertainty and oscillation

At the end of the on-sight inspection in the disputed sector of land, Mixed Tribunal leaders decided to hold one final meeting back at the Quime union headquarters the following week. There, they explained to both communities, a final resolution would be reached over boundary limits. However, once again representatives refused to accept the final invitation to the meeting, making a clear statement they disregarded the Mixed Tribunal's jurisdiction. As a result, the final hearing would end with as much, if not more, uncertainty than the first. Once again, representatives from Sopocari were not present, and this time Tribunal leaders were even more concerned that they might be planning a counter suit in the state courts against them. Although Mixed Tribunal leaders had expressed a desire to find some sort of compromise between both communities, in the end the Sopocareños refusal to attend the final resolution signaled they did not respect leaders' authority and may also have had something to hide (i.e.

maybe they were not forthcoming in their testimonies before the Tribunal). As a result, Tribunal leaders decided to rule in favor of Titiamaya and, carefully following all legal procedures, emitted a resolution documenting the case.

Determined to fulfil the "mandate" of the Constitutional Court, they also insisted on reaching a formal resolution on the conflict. Tribunal leaders commented that the Sopocareños' absence meant that they either refused to recognize their authority, or that they were in the wrong and had lied when pleading their case to the Tribunal Mixto. Suspecting the resolution would not be in their favor, leaders speculated, they must already be searching for some other legal (or non-legal) route to ensure they could keep the land. As a result, even though the Tribunal leaders had hoped to reach an agreement that would permit both communities access to the land, they were forced to rule in favor of Titiamaya; to follow their own ethical code and demand respect as authorities who had jurisdiction over the case. (This was where Vianca's and my role as witnesses documenting all of the hearings for a final report to be attached with the resolution and submitted to the Constitutional Court played a role. It provided some legal backing just in case.)

The drafting of the resolution, the final act of the Tribunal Mixto, was thus marked by considerable anxiety and uncertainty. The following day, copies of the resolution were sent to both the representatives of Sopocari and the Constitutional Court, declaring Titiamaya the rightful owners of the area in conflict, and formally demarcating the boundaries between the two communities. Yet, despite leaders' fears of a potential backlash, the tensions remained between the two communities. There were rumors that Sopocareños had returned to the land, disobeying the resolution, to plow the fields and begin to farm it again. Titiamayans occasionally reported conflicts yet had kept their distance, hoping to raise the question formally in a meeting before Federation leaders. Within the Federation there wasn't any real decision of the Tribunal's future

either. Several months after the final hearing, new Federation leaders were elected, leaving the future of the Mixed Tribunal uncertain. To bolster support for exercising indigenous native peasant jurisdiction through the union among its grassroots base, the former leaders continued promoting state-sponsored workshops.

4.6 Conclusions

The day before the final hearing, Vianca and I interviewed Tata Basilio to get his personal reflections on the experience of attempting to constitute the Mixed Tribunal. Already aware that Sopocari would not be present, he was visibly concerned, and also exhausted from the long, ten-hour trip from his community to Quime. Yet, despite the seemingly disappointing outcome of all of their efforts, he still spoke with the same inspiring and determined tone he had always taken when reflecting on the potential of the Tribunal. Indeed, it was at the beginning of this interview, in particular, when he had explained his vision of the emancipatory potential of the Tribunal, cited in the first section of the paper. For nearly an hour and a half, he went on about this potentiality, but also remarked on the different moments in the process where it seemed to oscillate out of their control. In closing, he offered an amended version of his definition of indigenous justice:

> Indigenous justice is taking a step forward in problems (*dar un paso en los problemas*). When one has problems, when there is no justice, they don't sleep or work, and half of the family gets abandoned. One has to administer their economy, and this also enters into the problem of getting justice. So, when we talk about justice, what we want to say is that we want to live free in the territory that we possess.

From this perspective, indigenous justice is defined as much by the rejection of the police order as it is by the withdrawal from its logics, that is, by convincing community members *not* to resort to the state to seek out solutions for their problems. Thus, in the wake of recognition,

resistance might be best considered in terms of constructing an alternative justice project that could house "whatever-being" or "form-of-life" (Agamben [1990] 1993) that does not accept the logics of the exploitative and corrupt justice system.

In this chapter, I've shown how, in the wake of legal recognition, Tribunal leaders were not able to full dismantle the colonial legacies of liberal justice, because they had to rely on the state to strengthen their own project and establish legitimacy. As a result, they were constantly confronted with its multiple contradictions and limits, even as they sought to construct alternatives. In the wake of recognition, Mixed Tribunal leaders were nonetheless pressed to rethink the meaning of indigenous justice in ways that were more adequate to diagnose and respond to the problem.

I argue that there are two key ways in which their efforts demonstrate this. First, returning to Tata Basilio's definition of justice as "taking a step forward in problems" the search for justice here entails allowing for alternative social projects to "strive," (Povinelli 2011). From this perspective, injustice stems from having to abandon one's own social project – work, family, the land, etc. – to cover the costs of an extractive ordinary justice system. Extending this with Tata Basilio's allegory of the farm to that of Nuijten's hope generating machine, we can see how the lawyer's farm is sustained by bureaucratic logics that send the "message that everything is possible, that cases are never closed, and that things will be different from now on" (Nuijten 2003, 91). Yet, history of both communities show that, far from passive victims caught up in a cohesive apparatus of state power, the communities' separate historical "paths" were twisted and ensnarled as a result of their constant negotiations and pressures on the law.

Second, the undecidable questions of the case stemmed from the fact that the land in dispute was sedimented with multiple overlapping layers of harm, recognition, sovereignty, and

governance. Rather than attempting to identify the categorical logics that define the differences between two communities, this chapter has shown how their two paths were historically constructed through interconnected processes of racialized dispossession, domination, governance, and strategies of resistance. At the same time, a great deal of the problem rested on the fact that, to a large extent, indigenous peasants' dynamic and heterogenous systems of land tenure have always evaded state capture (Barragan, 2012). Indeed, as a genealogical examination of the entangled nature of the dispute demonstrates, winning jurisdiction over the conflict carried with it the onerous task of first untangling this extremely complicated and historically constructed problem, which was sedimented in the disputed land itself.

In this sense, "*dar paso en los problemas*" implies not having to abandon their own social projects to ask such questions, instead freeing up the material of their social projects from the sedimented landscapes in which they have been entangled. Here, the challenge becomes deciding what constitutes appropriate forms of harm and sacrifice in the search for justice. By grounding their collective search for justice into the site in question, the actual farmland, Tata Basilio offered a decolonial option that articulated Mixed Tribunal leaders' vision of the Court ruling's emancipatory potential as an alternative means for Federation members to access justice.

Yet, to the extent that they were able to dismantle the houses of the colonial masters, the hacienda patrons, corrupt lawyers and judges, and even the governmentality of efforts to construct the plurinational state, they also faced another elusive question: What type of house were they going to construct in place of these dominant social projects? What were they going to plant in its gardens? As we will see in the following chapter, the answers to such questions, as much as the history of the two distinct "paths" that drive the communities apart, were equally

entangled in the state-led project of decolonization that sought to unite them anew a single political historical subject.

Chapter 5

Redrafting the Blueprints

Constructing a House on Common Ground

5.1 Introduction: asserting authority

These damned *q'aras* (whites)[46] have divided us!," Felmin Huaynoca yelled as he the stood up to in front of the small wooden desk in a headquarters where the Mixed Tribunal was housed. The Mixed Tribunal was the new institution created following Constitutional Court recognition of indigenous native peasant jurisdiction over the Titiamaya vs. Sopocari boundary dispute near the municipality of Quime, discussed in the previous chapter. "Perhaps we don't know?, *We* don't know?!," he added in an authoritative tone. "We are full of knowledge about our jurisdiction in our provinces, brothers!" Huaynoca, then Executive of the Federation Tupak Katari, was a slim Aymara man in his mid-60s who always wore the classic black leather jacket, black shoes, and black *sombrero* (felted fedora) sported by the militant Kataristas who founded CSTUCB since its foundation in the mid-1980s. He also wore a colorful *chuspita* around his neck (Andean woven bag for coca leaves) and a thick leather *kimsacharani*, a woven out of leather that is a symbol of justice and authority (the whip being a sanction issued by the leader who wears it).

[46] In the Aymara language, *q'ara* tends to refer to outsiders and opposed to *jaqi* a concept that simply means people but is defined by a shared set of local meanings and practice within a community. Canessa (2007, 2013) emphasizes that these terms are relational and shaped by context. In this reference, *q'ara* was referring more generally to white-European or mestizo outsiders, as a reference to colonial invaders, but, I will discuss below, can also be used from someone from the same community that has migrated to an urban context, no longer speaks Aymara, and does not participate in regular festivals or rituals, among other things (Canessa, 2013, 48).

Because he was Executive of the Federation Tupak Katari, he was technically the highest authority at the meeting, with the Mixed Tribunal representing an operative arm for administering justice of the Federation at the same provincial level. Yet, he did not participate in the meeting in this hierarchical role but rather as someone who was interested in seeing the promise of the Mixed Tribunal come to fruition. For this reason, Executive Huaynoca was frustrated that the Sopocareños had attempted to thwart their efforts, as they had a couple of weeks prior, by refusing to come to the inauguration. But they were present at this second meeting, a couple of weeks after the inauguration of the Mixed Tribunal. Crossing his arms like a disappointed father lecturing his children, he added, "Brothers, the law empowers us," adding, "the law is in our favor, not like before." Then, picking up the large stack of legal records that had been transferred to the Mixed Tribunal in the case, he then proclaimed, "We're going to take this justice down!"

Despite his authority and assertive presense, Executive Huaynoca had to contend with the law and the situated authority of the Sopocareños over the potential of the Mixed Tribunal. In Chapter 4, I examined the uncertainties of resolving the land dispute between Titiamaya and Sopocari through the lens of entanglement to show how the undecidable questions of the case stemmed from sedimented and overlapping layers of harm, recognition, sovereignty, and governance. This chapter returns to efforts to resolve the land dispute between the two communities to examine how the arguments presented by different sides as well as the leaders of the Mixed Tribunal seek to assert different claims to rights and rule. Following Moore (2005), I consider how certain arguments gained "traction" over others in terms of their articulation with different claims to rights and recognition, on the one hand, and locally grounded cultural practices and memories of "suffering for territory," on the other (ibid.).

I also consider the extent to which their different claims might represent a form of "membership talk" (Simpson 2014) that seeks to establish a common criteria for relating to the land and each other. The difficulty of engaging in membership talk, I suggest, sits at the very foundation on which they are working to construct the Mixed Tribunal as an alternative justice project. Before they can construct the Mixed Tribunal, I argue, they first must decide whether they should "re-insert" the comma back into indigenous native peasant politics, or if there is a meaning of justice that can encapsulate the complexity of agendas and experiences of the heterogenous groups.

Ultimately, resolving the land dispute hinged on this tension, which was further intertwined with forms of recognition in Plurinational Bolivia (rather than plurinationalism freeing them from the entanglements with the past). Before they could establish a new institution that capable of housing their different social projects, the first had to establish common ground. The search for indigenous justice, in this sense, was not just about exercising a right to resolve a land dispute but about figuring out how to imagine a different relationship to the land and to each other, as a foundation on which to construct something that could go beyond the need to receive that recognition in the first place.

5.2 Gaining traction: norms and procedures of rule

As mentioned, Sopocari refused to attend the first meeting. During the inauguration, and in their absence, the leaders deliberated how to best respond. The leaders walked a fine line between needing to assert authority over Sopocari by sanctioning them, and extending a message of inclusion and fairness, to convince them to submit to their jurisdiction. To avoid this during the first inauguration, some leaders openly speculated on why the Sopocareños weren't present,

offering justification. The most prominent of such explanations was that, considering that jurisdictional conflicts were a new strategy, Sopocareños just didn't understand what the Court ruling implied.

Tata René Mamani Condori, Executive Mallku of the Federation Mixta Tupak Katari, made this point clear, describing how the Sopocari union members had reacted in a recent workshop held by the Ministry of Justice in the neighboring canton of Colquiri. Similar to the Ministry of Justice workshop in Ochoa discussed in Chapter Two, this was a state-sanctioned event to "socialize" Bolivia's new legal plural framework. "Evidently, brother General Secretary from Sopocari didn't grasp the message well", Tata Mamani explained, "because he argued with the minister, saying 'our demand was in Sucre, how is it going to come here!?' In other words, [he meant] people lower than that. He didn't understand well what native justice is, so I imagine that they are taking another [route], right? (*están tomando otro, ¿no?).*"

By speculating the Secretary General was "taking another route," Tata Mamani was saying that the Sopcareños were resorting to state jurisdiction to see if they could stall the case and find a way to get the Mixed Tribinal leaders to back off seeking a resolution. The appeal to the Court for accreditation cited in Chapter Two confirmed this suspicion. In Bolivia, a great deal of this is due to land reform laws that do not fully recognize local institutions such as ayllus and agrarian unions that also administer land use and right, the "forum shopping" (Pimental 2011) discussed in previous chapters. If this were the case, leaders from the Mixed Tribunal might also find their names on a lawsuit for "meddling" in the case. They would have to establish legitimacy by demonstrating both their union norms and those of state justice were upheld.

Elaborating on Tata Mamani's reading of Sopocari's absence, for example, the Central Agrarian leader (who institutionally was higher ranking than the local Secretary General leaders at the community of Sopocari) noted,

> We were also at that meeting in Colquiri last Friday. The ordinary justice, they explained to us very clearly *compañeros*, that native authorities have the same authority as a judge, they can make decisions, resolve problems. So, just like that we have to move forward some way, we have to put it into practice. Obviously, it's not going to be easy… But I reiterate brothers, we still have to socialize [it], only then can we move forward on this matter *compañeros*.

Tribunal leaders also seemed willing to be more flexible regarding Sopocari's absence, considering that, while they had initially refused to accept the summons, community representatives later responded, asking for a suspension to a later date. At the same time the Sopocareños had sent a notice to the Departmental Court appealing the jurisdictional resolution and demanding the legal records be returned to the Quime courthouse, they sent a note to the Mixed Tribunal. Fermín Huaynoca, Executive leader of the Federation (at provincial level of Inquisivi), read the note aloud: "For commission reasons we are unable to attend the hearing convened, for which we request its postponement to another date that, indicated, we will attend without fail," listing the names of the five leaders who signed the letter.

This partial recognition of the Mixed Tribunal by the Sopocariños granted them some legitimacy in having authority over the dispute. This was sufficient enough to hold another hearing. Yet, the leaders were cautious of such strategic delays, more often than not a form of *chicaneria* ("playing the system") that was widespread and thus reinforced the logic ordinary justice. Executive Huaynoca navigated this tension after reading the note aloud. "Honest brothers, this justice doesn't wait *(no tiene espera*)," he said, seemingly frustrated. "This isn't ordinary justice, it can't delay, we can't be holding the next hearing a month from now," he asserted. "No brothers,

here things have to be fast" he said. "But," he added holding up Sopocari's request, "we have to be a little understanding. Respectfully, these brothers, they have presented their request."

For Titiamaya's indigenous leaders, who had attended multiple workshops sponsored by more radical indigenous legal activists and were adamant proponents of indigenous originary peasant jurisdiction, these excuses were not acceptable. Asking for a turn to speak (pidiendo la palabra), Tata Emilio Calle stated, "I just want to make it clear that we followed orders." "We're a little upset that they aren't here," he went on, "that they didn't want to receive the notification." He then explained that this had also been the case in the past, accusing Sopocariños of also refusing summons by state institutions such as INRA that had attempted to hold reconciliation meetings to resolve the conflict through reaching a peaceful agreement.

"So, I just want to ask that this indiscipline is taken into account, because one has to be disciplined." He then made the stakes clear, invoking the legal victory: "Now brothers, Tatas, this is a decision of the Plurinational Constitutional Court, which has awarded to the Indigenous Native Jurisdiction of Inquisivi, it's not like that for nothing." By emphasizing they were disciplined subjects, they were also demonstrating the authority of the Mixed Tribunal, an authority that was being disrespected by the Sopocareños.

Explaining Sopocari's absence during the first hearing, for example, Tata Mamani had made this point clear. "Look, as it's been three years, I think they are managing at least two books here," he said while gesturing toward the original copies of the legal records that sat on the desk in front of him. "The brothers have spent so much money, but I think that today they have not spent enough to understand this (*no han gastado tanto para entender eso*)," adding, "one has to understand that this is what indigenous justice is for." This comment extended a bit of sympathy

for the Sopocareños as victims of the extortionist practices of state justice. If this was what the Mixed Tribunal was mandated to address, they would have to be patient.

As the meeting drew to a close, all little over an hour after it began, it was clear that constructing this project would have to wait for another day. Yet, the leaders did decide to act fast, setting the date for the next hearing for exactly one week later, the following Monday, March 26. This is when they agreed that a resolution would be reached following no more than three hearings, regardless of whether or not both parties were in attendance of them all. After apologizing to leaders from Titiamaya and acknowledging their "obedience," he reassured them that they would stick to the established procedures. Then, addressing the leaders of the local agrarian union, he asked for their support. "We confide in you brother Sub Central," he said, "meet with the brothers from both communities, visit them so they are not in contempt of this justice (*no hagan desacato a esta justiciar*)."

Executive Huaynoca then followed, returning to the original mandate of the Mixed Tribunal, not in a Court decision but rather the resolution by the Tupak Katari Federation. This step, which I discuss in Chapter 4, decided in an 2016 assembly among the grassroots sections and sub sections of the entire province and thus had equal if not greater traction to demonstrate the Mixed Tribunal's legitimacy to administer justice over the case. "We brought the whole province together in the Congress, for what? To mobilize for justice, brothers. We can't suffer anymore, we can't endure, This is *utawijañani* brothers, we work for our justice to move toward what surely many other brothers hope for."

While the Constitutional Court had given them legal recognition, here the Executive was reminding them that first and foremost their obligation was to fulfill the mandate of the Federation Tupak Katari during the 2016 congress. As mentioned, this was the Congress when indigenous

authorities were incorporated into the organization and the Justice Commission was formed. But, also, referring to the nature of the task as *utawijañani,* an Aymara word that roughly translates to "how we will plant it, we will leave it", also signaled that they would need to establish some blueprints for constructing their justice project.

5.3 Reinserting the comma in Indigenous, Native, Peasant politics

As I discussed in Chapter Four, both communities insisted that the boundary dispute be decided "on the basis of their documents." During the hearings, representatives from Sopocari insisted that they did have documents showing they were the legitimate owners of the land, which were titles that passed down from their parents and grandparents that were awarded to them following the Agrarian Reform of 1953. As I discuss in Chapter 1, following the National Revolution in 1952, these titles were given to what were referred to as *pongos*, a category of hacienda workers who suffered conditions of near-slavery and humiliation, as a means to break up the oligarchy and liberate a new Bolivian working class (see Gotkowitz, 2007).

During the Tribunal hearings as well as in the Decolonization Unit report, members from Sopocari emphasized the suffering, humiliation, and subordination that relatives faced in slavery-like conditions at the hands of the *patrones* before the Revolution. Moreover, the report highlighted that, as "the union logic from its beginning had the purpose of defending the lands that were acquired as a result of the 1953 Agrarian Reform," land is the fundamental organizing element of political life of the community in Sopocari (UD 2017: 17).

For their part, Titiamaya was reconstituted as an indigenous ayllu in December 2015, and based their claims to ownership of the land on prior inhabitancy, which predated not only the hacienda but also the Spanish Crown. Similar to Sopocari, they framed possession of these titles

in terms of vindication for the suffering and humiliation of their ancestors. As a historical evidence of centuries of colonial oppression, they presented colonial and early republican era tax registers. As I discuss in Chapter 1, such documents are charged with almost mystical powers, having served as a vital tool for indigenous legal activists in the cacique apoderados movement since the late 19th century to make claims for their right to indigenous self-determination in the highland region (Ari 2014; Barragán 2012; Rivera Cusicanqui 1991; THOA 1984).

When presenting their documents to the Mixed Tribunal leaders, their counter claim was not just on the documents alone. Rather, Titiamaya representatives also presented a photocopy of the UN Declaration. The declaration itself is not recognition of a specific title or right to ownership. Rather, its insertion was intended to back their claim on the basis of prior inhabitance as first nations. Since presenting documents was a formal procedural step before the onsite inspection, the Mixed Tribunal leaders had representatives from each community send present them to a third-party notary one week prior to the hearing. The stamp on the photo copy of the UN Declaration seemed to communicate further legality to their claim on the basis of the motto "land for the original owners" that drove the cacique apoderado movement and is also supported by indigenous international rights frameworks (see Figure 1).

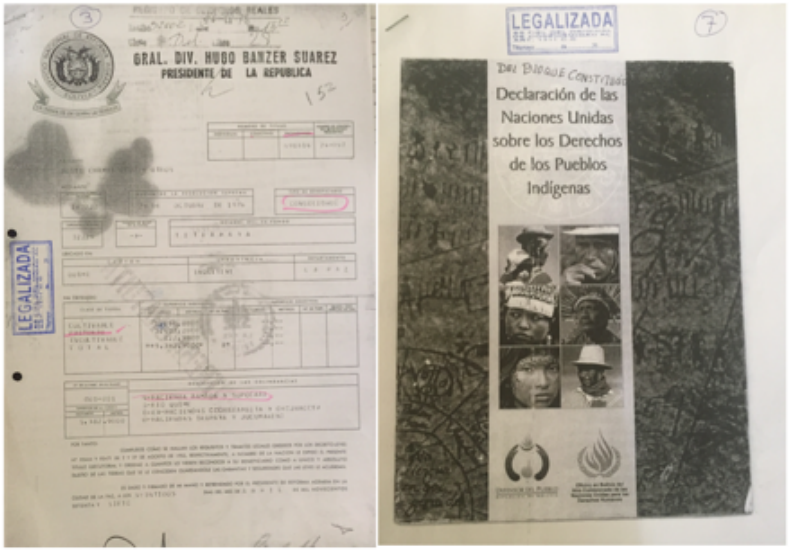

Figure 5.1: Documents presented to the Tribunal Mixto before the *inspeción ocular* in April 2018; Left a consolidated *pro-indiviso* title awarded to Sopocari in 1976 by the Military Government of Hugo Banzer; Right a notarized photocopy of the United Nation Declaration of the Rights of Indigenous Peoples

However, this claim did not gain much traction, as it was countered by Sopocareños on the basis of their suffering as *colonos* on the haciendas. In the second hearing, Sopocari Secretary General also framed his demand in terms of reparations and prior occupancy:

> After the land reform the *patrónes* didn't have power anymore and we were given land titles, because our grandparents, as slaves, were given rights to that property. We've lived there and worked that land for five generations now, each one with 50-100 years…that's 250-300 years that we have possessed that land, since birth!

The Secretary General went on to point out that Titiamaya had only recently been reconstituted as an ayllu, accusing them of taking advantage of indigenous rights frameworks to undermine Sopocari's legitimate ownership by claiming they were not originary, pre-colonial inhabitants.

Here, we see another iteration of debates within the Unity Pact over the comma in the category indigenous originary peasant, which unfolded in the constituent assembly (Schavelzon, 2012, 93). As I discuss in Chapter 1, a great deal of such debates centered on the fact that many

union organizations wanted to keep their organizational structure as peasants, but were concerned that this would exclude them from rights that corresponded to indigenous groups.

In his description of resettlement schemes in eastern Zimbabwe, Moore (2005) shows how governmentality operated through state standardized land use technologies. Displaced populations were granted access to land, but only if they used it according the rules and regulations set by state officials. This scheme entangled with the authority of a local chief, who claimed only he had the right to allocate the land and ordered local community members to reject state authority. As a result, they were caught in a double-bind; following either order might lead to a fine or even eviction. In response, they made claims to the right to the land by "suffering for territory," by claiming that whoever had suffered for the land had the right to it and thus to decide what it should be used for. This allowed them to challenge the local chief's authority, claiming he was an outsider who had not suffered for the land in the same way that they had.

Yet, Moore emphasizes that "subjects of power are active agents yet not self-sovereign authors of their own conscious will" (3). Similarly, in their testimonies, claims to land on the basis of suffering were made through a "language of contention" of reparations policies to address past harms. The entangled nature of their claims, however, shows now mapping the entangled nature of their suffering onto separate "paths" becomes more complicated. Indeed, in the Coime case I am analzing here, focus on early differences between colonos (those who decided to sell their titles) and ayllus (those who decided to maintain them as a collective claim of communal landholding) offers a more nuanced view into the nature of the conflict between Titiamaya and Sopocari.

As I discuss in Chapter One, the early nineteenth century land surveys were devastating to communal landholdings, yet unevenly implemented across the country. Local surveyors,

unaware of (or disregarding local systems of rotating crops, for example, declared many lands that were laying fallow available for purchase (Gotkowitz 2007, 31; Mendieta 2010, 149). They were then able to fragment communal holdings by declaring such lands vacant and awarding or selling them to comunariros as *sayañas*, or individual titles. For a variety of reasons, from personal interest to coercion or need to pay off debts to local judges, many comunarios sold their sayañas, some even becoming colonos working their former land for hacienda owners (Gotkowitz 2007). In Cahua the distinction in petitions is quite ambivalent, often a matter of some referring to the "ex-community" or "valley" of Titiamaya (and thus implying a position in line with distentailment), while others refer to themselves as "natives" or "*contribuyentes*", or taxpayers, often referencing the 1661 colonial tributes to further back their claims.[47]

Occasionally, the petitions also elude to trickery on the part of state officials or local landlords. In a 1923 petition, for example, Julian Vielo, a native contribuyente of Titiamaya, demanded the prefect order the notary to issue testament of the land survey of the Ayllu Cahua, including the names of all "legitimate comunarios" of the ayllu.[48] Vielo claimed the surveyor had made an error in the boundaries and requested that the names of two comunarios, Cipriacho Collque and Isidrio Flores, be excluded from the list, as they belonged to the neighboring ayllu Collana. He went on to state that the clarification was needed to "prevent our fellow humans (*congéneres*) from being tricked" into unwittingly selling the *sayañas* (individual titles) that had

[47] ALP/PE, 1924, caja 266, expediente 44, by Lornenzo Condori, for example, speaks as an indigenous member of the "ex-community" of Tititamaya in his request for a sayaña title issued to his father, native property owner of the same. Many of the ex-colonos from Sopocari involved in the land dispute shared the same last name. However, reference to ex-community or community also varied in the records that were consulted between 1923 and 1924, and do not necessarily indicate in the nature of their requests a correlation of interest between this reference and interests in selling or maintaining the titles requested; see, ALP/PE 1923, caja 257, expediente 35 and ALP/PE., 1924, caja 265, expediente 22, for a contrast of this use of language.
[48] LP/PE, 1923, caja 257, expediente 15.

been issued by surveyors as well as "unscrupulous buyers" taking their land. To do so, he requested the prefect notify all comunarios that they abstain from buying and selling land, "under severe penalties" of the law.[49] As I will discuss further below, the challenge for the Mixed Tribunal leaders was to give traction to this type of a common "we" by redirecting the source of the immediate conflict (being attacked by colonos) to its underlying cause: trickery and manipulation on the part of corrupt state officials.

Table 5.1: "The Tourist"

Working the indigenous-colonizer hyphen **The Tourist**
As part of the ongoing search for economic independence and efforts to recuperate their ancestral past, indigenous legal activists from the Qhara Qhara Nation have sent a legal demand to the state of Colombia to claim to the sunken treasures the Galleon San Jose, a colonial ship holding silver and other partonomy of their nation, which was taken from the Potosí mine and sank in 1708. In the 1980s, the Galleon San Jose was discovered on the shores of Cartagena, provoking a dispute over ownership between the US exploration company that discovered the ship and Colombia, later including Spain and, since 2017, the Nation Qhara Qhara. Samuel Flores, one of the indigenous legal activists discussed in the Introduction Chapter and Chapter One is particularly good at articulating collaborative networks on the bases of shared love and rage in the service of these types of projects. In 2017, he made his first trip to Colombia to present the claim for the treasures of Galleon San Jose. My friend Ruth Bautista and I were in Cartagena at the same time, for the annual meeting of Action Research Network of the Americas, an organization that emphasizes the work of Participatory Action and activist research, largely drawing from the work of Colombian Orlando Fals. Hoping to take advantage of his being nearby, we invited Samuel to present some of the experiences and legal strategies of the Qhara Qhara Nation at the conference.Understandably, Samuel was not that interested in the conference, though he is always eager to share stories about their legal strategies to sue the MAS government and guarantee their rights. On the final day of the conference, I reluctantly agreed to go along with Samuel and some of the Qhara Qhara Nation representatives on one of the many guided boat tours around bay of Cartagena. These boats form part of a massive tourist industry that consists of multiple companies circulating hundreds of people around a circuit of small beaches in the Caribbean, and stopping 30 minutes to 1 hour on each one. The services offered to tourists on each island are mostly by Afro-Colombians, who also compete to sell souvenirs, beer, and snacks to tourists as they cycle on and off the islands. The indigenous-colonizer hyphen inserted here is

[49] Ibid.

not intended to make them the object of tourism (gazing at and knowing the "Other"). Rather, its insertion is to keep them invisible as bodies facilitating the pleasure of the tourist. "Backrubs and more illicit services available upon request," a male tourist joked with his friend as we all got off the boat and were met with about 20 merchants eager to sell their handcrafts.

Horrified by my own Whiteness and complicity in the industry, I decided to go for a swim and just not engage with anyone. But I nearly ran over by a drunk tourist attempting to operate a Wave Runner, so I was back on shore within ten minutes. There, I found Samuel talking with a group of three Afro-Colombian merchants about their lawsuit claiming patrimony of the Galeon San Jose. "I'm not here for tourism," he told them, as I bought a couple of beers and some woven bracelets from them. "I'm here because we're presenting a case against Colombia and Spain to get back what they took, and with our labor! It's there….sunk off shore somewhere over there" he said pointing to the horizon. "We are getting our patrimony back," he explained, adding "and when we do, we need collaborators. That's you, we need someone to run the museum, for example." His "speculative fiction" (Haraway 2014) had gained a small audience, after one of the merchants signaled for his friends to come take a listen. "Do you know what your constitution says?," Samuel went on. "It gives you rights as Afro-Colombians, this is your island!"

Before we left the island, he had exchanged numbers with 10 vendors, and promptly sent them all information about the case and the Indigenous Court in Bolivia upon returning to our Airbnb after the tour ended. In Bogota, Samuel spent the week preparing to present himself before the Supreme Court and start networking to meet lawyers willing to support their case. Samuel frequently returns, accumulating new friends and articulating projects. Working through the different indigenous-colonized hyphens that serve as bridges, he creates a collective "we" that denies state sovereignty along with the forms of recognition it superimposes on their different social projects.

5. 4 Finding common ground: rights and rule over land

"We don't walk around with flowers," Sopocari's ex-Secretary Generali Armando Escarzo declared during his presentation at the second hearing of the Mixed Tribunal. "We show the people real product," pointing out that they work the land and make a living from it, also claiming that he had never seen anyone from Titialmaya farm the land. "Social function says just that, the product ought to attend to the people, to the family, that's social function."

As I discuss in Chapter One, the principle of "land who those work it" that was foundational to the Agrarian Reform movement has roots in progressive liberal debates at the turn of the 20th century over how to put an end to the *mita* system and modernize Bolivia's

economy (Barragán, 2012). In 2006, the same year Morales took office, his administration modified the 1996 INRA Law by decree, enacting the Communitarian Renewal of the Agrarian Reform Law. Perhaps the most significant modification of the law was that it established that land ownership must be demonstrated according to its "Economic-Social Function" setting new limits on the maximum size of land holding and mandating that land be put to use of the "well-being of the family or economic development of its owners, communities and indigenous, peasant, and originary peoples, according to the capacity of the use it is best suited for" (Art. 2).

Escarzo, a small-framed 72-year-old man, explained that in the 1970s, the two communities had oral agreements over rotating access the land, resolving any disputes over access with the principle of "*arreglaremos de buenos*" (we'll sort it out fairly), evoking a shared understanding that things would be given and returned equally among them ("*yo también te voy a devolver y ustedes también me van a devolver*"), which had underlined the initial arrangement. Acknowledging that such principles had faded into the past, Escarzo lamented that he wasn't educated and thus never wrote down any of the agreements they had made with Titiamayans, which he claimed would show that it rightfully belonged to Sopocari. By emphasizing that they were completing a social function, he was also claiming that, even if they didn't have such documentation, they were still the rightful owners to the land, "because," he declared loudly at the end of this presentation, "land is for those who work it!"

This argument did not gain traction merely because of a rhetorical promise of land reform by the Morales government, but because many communities throughout Inqisivi were its direct beneficiaries. Only three years after the decree, the law was celebrated as a success by the Morales government. In a report published by INRA, then Minister of Land and Rural Development, Bartolina Sisa member Julia Ramos Sánchez, heralded it as "Our Agrarian

Revolution" (INRA 2009). Claiming all previous reforms had only been carried out in the interest of powerful elites and companies, Minister Ramos was celebrating the new law as a new mechanism that would finally ensure that land tenure in the country was regulated according to the principles of "social function" that were fundamental to the rights and obligations of indigenous peasant organizations. Although the social function of the land had been recognized since the 1938 constitution, the MAS government often held out a discourse of the social economic function as a platform not fulfilled until they came into power. According the INRA report, for example, the government invested USD 32 million since the decree, titling more than 40 million hectares of land, mostly in the recuperation of governmental fiscal lands (13.6 million hectares) and with a large percentage (16.7 million hectares) in favor of small property owners.

Since Morales took office, the Agrarian Reform in the name of rural indigenous peasants has been a central platform of his government. Morales himself often makes personal visits to personally "hand over the deeds" (entrega títulos ejecutoriales), performances that are documented and published on INRA's Facebook page. Similar to the state performances discussed by Postero (2017), these events celebrate indigeneity; Evo and local leaders reenact indigenous peasant rituals of reciprocity and abundance, showered with adornments and wreaths overflowing with flowers and coca leaves.

Figure 2 shows one of such events in Quime in November 2015, when Evo delivered 382 titles to members of Marquivi, a community not far from Titiamaya and Sopocari. Yet, while the titles handed over to Marquivi did not directly impact their land dispute, many community members from Titiamaya and Sopocari were likely in attendance. Indeed, local indigenous peasant communities that I have talked to often express considerable excitement when "hermano Evo" pays them a visit. And, in this case, Evo personally delivered not only titles but also

houses, a market, and seeds to the entire municipality, promising more as part of the MAS-led municipal government's development plan. Here, we see how state performance gives significant traction to claims made on the basis of "social and economic function." In Sopocari Secretary Escarzo's defense of Sopocari's rightful ownership of the land, we see the centrality of social and economic function in agrarian union political organization. As he took it to mean, social economic function was not "walking around with flowers," a sideways comment to mark Titamayan's use of the sector grazing and pasture as *not* completing the social function of the land.

Figure 5.2: President Morales presenting titles in Quime (photo source INRA, 30 November 2015, https://www.facebook.com/pg/INRA-Oficial-Instituto-Nacional-de-Reforma-Agraria-722772297770716/posts/)

This argument generated some traction, to the extent that Titiamayans responded through the same argumentative framework of economic and social function. In their presentation, members of the ayllu Titiamaya, presented their claims to the land in a similar format, but according to different categories of what constituted legitimate land ownership. During the on-

site inspection, for example, Tata Calle didn't reject rights on the basis of a social function but rather how the term was defined. Pointing out that "Cochi" in Cochipampa, the specific name of the area in dispute, meant pasture, not farm: 'we've used it for grazing since before, because you see Cochipampa very clearly, to say 'Cochi', it's a place of pasture, with water, everything, perhaps it's to say '*cochisito*' (*bonito*, pretty).

Extending this logic, he elaborated his argument to counter Sopocari representatives' claim based on Ley INRA: "whoever believes them would say the 'land is for who farms it.' Well, we'd say how can you think you're the owner? It's for pasture, it has *cochi*, for grazing, it's not for farming." He then went on to challenge the logic of property rights and land use further, citing international conventions such as ILO 169 and the United Nations Declaration on the Rights of Indigenous Peoples, as well as a list of constitutional rights in favor of collective land rights. "The legal side of this is very clear, territory cannot be divided. This has to be respected, and you all as authorities know this. So, as indigenous peoples this ought to be respected."

A smaller-framed gentleman from Sopocari standing next to Escarza scooted forward and asked for the word. "I'm 67 years old brothers, when my father died he was least 80 years old," he said looking down as if he was speaking through his memories of his father. "The land belonged to the *patron*; they say it is theirs, but it belonged then to the patron, and dad was his servant." He went on, connecting his story to the success of Morales' land reform. "I haven't seen much work in my days. But Evo Morales says the land is not to keep packaged, the land is to work, the land is who works it, the one who fulfills a social function, economic function, uses and customs, they all work the same."

He then elaborated what that meant in practice "In this place we graze our animals from Mullinkati (land marker) up to the bridge and over to the roads. We use the rest for farmland." Here, he was blending a practice with the land for subsistence or ritual and belonging with a concrete economic practice of making the land useful – he was demonstrating the land had both an economic and social function that might have the most traction according to the 2006 land reform law that (in a rather ambiguous way) attempted to reconcile different visions of land use and historical claims to the right to ownership. At stake in these claims are not only how land is used and who gets to use it; rather it's also who gets to set the terms of that use: ayllu government or agrarian unions.

5.5 "Membership talk"

In her account of membership among the Kahnawá:ke (whose sovereignty is nested with that of the US and Canada), Simpson suggests that "seemingly antagonistic processes of 'tradition,' 'modernity,' and 'settlement' are what made forming an agreed-upon membership code in Kahnawá:ke deeply challenging, not to mention vexed, and biting" (2014, 10). She argues membership talk articulates different knowledges and ethical codes and the for, it takes will shape both present and future. She notes "'Who should be here? How should we do this?' 'Is this fair?' are a set of normative questions that find no easy juridical answers" (ibid. 2014).

There were only a few times during the hearings that claims to the disputed sector of land leveraged a form of membership talk beyond state recognition. The clearest example was a rebuttal to Tata Calle's argument that the land should be used for pasture because it has *cochi*, (for grazing) but also that ritual acts should also be considered a social function under the law. The response was again from Ex-Secretary General Escarzo from Sopocari, who was the most

adamant on asserting their rights on the basis of it fulfilling an economic function in line with their agrarian union notions of land use (planting crops for the good of the nation, not "walking around with flowers" as he put it). If they were to go by name, he argued, then that also needed to be cleared up. "As a representative, as a Sopocariño, and as a servant to God, truth be told in my testimony, during my birth until now, I am 72 years old, I've always worked in the community" he stated. "I don't go to the city, nor the mine. There [in the community] I maintain myself *(me mantengo)* all of my life." Then, he added,

> During this conflict, I have not seen any *comunarios* talk about or touch on our *achachilas*, the foundation of the world, as the Virgin says. Now, they say the limits of Ch'eje Kala, it doesn't have this name Ch'eje Kala it's called Jamphatu Kala, my father always adored this place, it was a toad, it appeared in the form of a toad. It was not Ch'eje Kala, but it is Jamphatu Kala.

Escarzo's logic of argumentation further demonstrated that identifying as a peasant member of an agrarian union, and even as an evangelical, did not imply abandoning one's identity as Aymara. In this sense, he was also questioning the Titiamayans claim to the land not in terms of legal recognition not on the basis of legal categories or land use, but their very relationship to the land itself.

In accusing Titamayans of not "talking about or touching on the *achachilas*" (ancestors and mountain deities that live in the landscape), Escarzo was also questioning Titamayans' very constitution as a person, as *jaqi* (Canessa 2012). Here, belonging wasn't expressed in terms of language or in terms of making oneself legible for legal recognition; but rather simply as being *jaqi*, in terms of "not one is but what one does" (Canessa 2012, 164). Canessa argues that for Aymara, being *jaqi* is not about genealogy but rather relatedness; about "being part of a shared community and engaging in ritual exchanges with the mountain" (2007, 217). But, he also adds, what counts as *jaqi* is always relative and situated for Aymara populations: "People follow

different paths, and according to which path one follows one may become *jaqi* or, indeed, *q'ara*, and the path becomes with how one comes into the world" (Canessa 2012, 121).

The Ex-Secretary General from Sopocari, in accusing Titamayans of not "talking about or touching the *achachilas,*" was proposing this as one critical criteria of belonging. Yet, at the same time, he was blending his claim to the right to the land on a logic of inheritance: it was his father who knew the toad and not him. Moreover, in emphasizing that he belonged because "he did not go to the city or the mines" he was excluding a great deal of others present who did, and not necessarily by choice.

Frustrated, Executive Huaynoca offered a different framing for why they were there. "Before indigenous people didn't even know how to read, no one remembers how it was. Before they saw us as animals, and they scared us, even children beat with stones." "The truth we are the founders of the Bolivian people, the legitimate *indios* that have been born in this land, in this Qullasuyu. In this Qullasuyyu we are brown blood, those that call us *indios*! Yes, we are proud *indios*, with pride we have to say we are *indios*. They have treated us as *indios*, but we aren't, we are Aymara, Quechua, Guarani." Then, raising his hands in the air, he asked, "until when are we going to be giving the *q'aras* our money, are the lawyers going to be handling our own matters, to *sacar plata* (withdraw money)?!"

Turning back to the question of membership and rights to land, the Executive added a moral criterion for weighing membership, based on betrayal. "Now we are the deceitful ones, brothers, we're not equal; people always like to lie, look to give *plata,* to give money to the authorities, brothers," he said. He was likely eluding to suspicions that the Sopocareños might be working with a lawyer to seek out a more favorable outcome if they are not happy with the Mixed Tribunal's resolution. But, rather than accuse them of this, he found a different frame that

situated them as belonging through shared experience of colonial harm. “Since our grandparents, and their parents, they’ve made us bait for the fish, for the tiger, for the lion, they made us swallow ourselves (*nos han hecho de caranda al pescado, al tigre, al león a ese nos hacian tragar, a nosotros),”* he said. *“*Now we are the grandchild.”

5.6 Conclusion

This chapter has approached the uncertainties around the Mixed Tribunal by focusing on how and when categories such as indigenous, native, and peasant matter in terms of membership and claims to rights and rule. As a justice project, the Tribunal Mixto sought to identify the underlying forms of harm that make it difficult to find an answer to such questions, to ask why it was that they started walking down their different paths in the first place. From this perspective, we can see membership talk as a way in which the blueprints of justice projects such as the Tribunal Mixto are drawn.

While Tribunal leaders were not able to resolve the conflict, they nonetheless forged new tools in their efforts to construct the Tribunal Mixto as an institution of indigenous native peasant justice. For leaders and *comunarios* alike, keeping the comma out of their politics also meant that they would have to agree upon criteria for who was the subject of their newly recognized jurisdiction. Yet, the insistence on the decisive role of legal documents authorized by the state made it nearly impossible to engage in membership talk sufficient to decide this. To return to the metaphor of the Master’s House, relying on state documents implied that “the Master” was the one who originally owned and still had the deeds to the house, rather than refusing a logic of seeking out more lawyers and titles to gain traction on paper (quite literally, the accumulation of hundreds of pages of legal documents).

As Simpson notes, "membership talk is articulated through an archive of knowledge, identification, and beliefs about what is right, what should be done; its design and its execution both portend much for the present and the future" (2014, 15). In seeking to find common ground, membership talk did not gain traction in the sense that it cleared up who had rights to the land, or the authority to decide that right and thus how the land should be used.

In some sense, it almost appeared that nothing had even happened in the first place. Rather than being consolidated, the Mixed Tribunal was "pure potential" (Povinelli 2011, 10) – it could be or not be – the alternative justice project that its leaders had imagined (see also Agamben 1998). For the time, there were no new lawsuits or violent clashes between the two communities, but it could very well happen again in the future. And the Tribunal Mixto may or may not be taken up again in the future. Or, it could slowly fade into the background of the Federation. What does it mean to search for justice from the point of view of this pure potentiality? If, in the end, leaders were not able to fully establish the Mixed Tribunal, what, then got constructed or dismantled as a result of their efforts? Executive Huaynoca, by framing the task of constructing the Mixed Tribunal as *utawijañani* (how we will plant it, we will leave it), also shifted that obligation onto the communities to decide for themselves.

Conclusion Chapter:

Renovation Work

Figure 6.1: House under renovation in semi-periphery town of Quillacollo (near city of Cochabamba) (photo credit: Amy Kennemore)

6.1 Introduction

Over the course of my field research, I would routinely visit the homes of those engaged in the various social projects I have discussed in this dissertation. Often these spaces were used to hold organizational meetings to formulate legal strategies or to welcome others to do the same in response to a concrete problem. Especially when meetings were held during the day, it was often difficult to hear what speakers were saying over loud and constant banging noises that

punctuated their different interventions. This is because, almost always, these homes were under renovation: adding stairs, some new windows, an extra room, or building an additional floor on top. All of the indigenous legal activists and community leaders I worked with were, to one degree or another, *residentes*. They had purchased a plot of land in a semi-periphery area of an urban center and gradually build it up over time.

In Bolivia, since the moment of fragmentation and co-optation that Tata Samuel Flores referred in his speech to CONAMAQ cited at the opening of the Introduction Chapter, indigenous justice and the law have been entangled in even more perplexing ways. In Samuel's speech to CONAMAQ *orgánico* members in Cochabamba at that meeting back in 2017, by declaring that social organizations did not represent them, he was partly refusing this legacy and calling for them to forge a new weapon and way of negotiating with the state. On multiple occasions over the years, I expressed my concern with him and other indigenous legal activists about an insistence on the law as their weapon of choice. What did they expected to gain out of investing so much time and energy into legal battles with the state? Was the law not just a regulatory mechanism that that oriented their justice projects toward the state? Could their critical energies be better invested elsewhere? The first time I asked Flores this (several months after I met him) he seemed slightly perplexed by the nature of my inquiry, responding "Sister, we're just enduring this moment, so we can educate our children, so we can nourish our communities." He then clarified why such an emphasis on the state as their main object of struggle. "It was easier before, with the right [wing], with Goni," he explained, (referring to neoliberal President Gonzalo Sánchez de Lozada, who held office from 1993-97 and 2002-03). "We knew what we were fighting against then. Now it's not as clear. Like all the governments

before, we are just going to endure this presidency too, for our self-determination, for *our* plurinational state. It has to start from *nuestra casa* (our house)."

Figure 6.1 shows a house that I passed on a trip to the semi-periphery town of Quillacollo which stood out for the size and scope of construction underway. While the indigenous leaders and families I worked with might have had a similar design in mind for the homes they renovated, the structure of their homes and the ability to renovate them was also contingent on a host of other interlocking factors – material, political, temporal, corporal, ethical – that shaped how, what, and why they were renovating. While varied, these projects shared in common the fact that they entail gradual and constant work. Similarly, while the conflicts and legal battles that brought me to their homes hardly seemed to advance (or would reach a resolution only to face more setbacks), the renovation work of their justice projects would continue – and so would the legal battles.

Over time, I started to see questions of law, sovereignty, and justice through a similar lens of renovation work towards that end (hence the abundance of building metaphors throughout this dissertation). At the same time, renovation goes beyond a metaphorical frame for capturing contested meanings of justice as differently situated actors take up the law as a tool to dismantle and construct social projects (hegemonic and otherwise) in the name of the plurinational state. Rather, I argue it also calls attention to the material conditions for seeking justice out. In this Conclusion Chapter, I return to the main themes outlined in the introduction to anchor the arguments of this dissertation in both the metaphorical and material question of renovation work. My goal is to build an approach to indigenous justice that demonstrates both the promise of plurinationalism, on the one hand, and the dilemmas and uncertainties of realizing this project in practice, on the other.

6.2: The Institutionalization of indigeneity as a site of disagreement

As Chapter One shows, for Flores and other indigenous legal activists from the Qhara Qhara Nation, self-sufficiency and recuperating a sense of community tied to their ancestral territory and cultural identity is central to their political agenda. The reason they focused on the law was because it was the instrument wielded against them constraining their efforts to achieve this longstanding goal. I argue that by asserting that they are "materializing the constitution", indigenous legal activists seek to direct institution building processes back toward their own social projects.

Yet, I also suggest that this is not just about a metaphorical renovation of the plurinational state to improve the implementation of policies. Rather, especially in the area of intercultural democracy, what is at stake is guaranteeing the right to direct representation at both the municipal and departmental levels to have negotiating power to manage the natural resources in their territory. This allows them to renovate their own projects of indigenous self-determination by breaking from dependency on outside funders and social organizations that they understand are working against that project. In this way, indigenous criticism and "refusals" (Simpson 2014) are directed not only at those who decide policy reform, but rather at the *procedures* of decision making and accountability that indigenous legal activists see as disconnected from the territory and its inhabitants.

Similarly, I found that the plurinational state's programs for integral development based on (supposedly) indigenous world views such as "Vivir Bien" or the "Communitarian Economy" have not generated new channels for restructuring the economy through the incorporation of

alternative visions of development. Neither have government efforts to implement autonomy following the 2010 Autonomy and Decentralization Framework Law, which, as I show in Chapter One, largely centers on liberal questions of the role of the state in redistributing resources and mechanisms of participation in development planning.

But also, as I show in Chapter Three, a disintegration of communal life in many rural areas has meant that accessing channels of participatory development for families such as the Quispes is not a viable option. In their case, it was precisely because of the decline in the viability of rural agrarian economies, combined with different strategies of survival such as temporary migration and mixed economic activities, that so many people are engaged in renovation work on small plots in the semi-peripheries of urban centers in the first place. Those indigenous leaders who do "walk together" do not have sufficient economic resources or institutional support to address the complexities of problems that emerge in their own territories as a result. Paradoxically, "integral development" created the conditions for deferring the responsibility back on the family members themselves to respond to structural processes that have weakened indigenous governance. This paradox demands more careful consideration of the risks and dangers of promoting legal mechanisms to exercise indigenous jurisdiction, especially in contexts marked by multiple and overlapping modes of abandonment.

Indeed, the uncertain outcomes of legal recognition of indigenous native peasant jurisdictions documented in this research also calls into question more celebratory visions of new mechanisms of legal pluralism as a site of decolonization and indigenous emancipation. Even so, I argue that it remains an important site of politics. Lacking economic resources, indigenous legal activists from the JIOC Tribunal "rent out" state institutions to hold events to promote jurisdictional equality. In this way, I argue, they enact a disagreement by demonstrating a

"surplus of parts", to use Rancière's terms, that excluded them from deciding the terms of incorporating indigenous justice and values into the state. Similarly, Chapter Three and Chapter Five highlight the symbolic value that winning legal recognition can have: through these decisions, they assert a claim to authority that is equal to the state judges who discriminate against them. While this strategy does not offer the same type of control over resources as indigenous autonomy would, it nonetheless has the potential to force external actors to submit to indigenous jurisdiction, eliminating top-down and limited or even corrupt procedures for carrying out consultation with indigenous communities over projects that may impact their territories. But this is also where I found that new mechanisms of legal pluralism acted more as a form of governmentality, of policing the distribution of parts and roles, than as politics. Opening up the question of the emancipatory potential of new mechanisms of legal pluralism to the multiple directionalities and scales through which they operate, as I have in Chapter Three, demonstrates the undecidability of such strategies. Whether that potential will produce politics, that is emancipation or equality, will have to be seen in the long, patient process to which these indigenous leaders are committed.

6.3 Jurisdictional Entanglements and the rationality of fragmentation

The dilemmas of fully resolving land disputes in these cases led me to rethink how power was operating through different processes of legal pluralism -- not the appearance of a mechanical policy or contested procedures for their application but rather through the messy underside of "sovereignty in practice" (Hansen and Stepputat 2006) that has characterized much of the field of political anthropology over the past few decades. As I have shown in this dissertation, plurinational regimes of recognition are entangled in already-embedded practices of

fragmentation, outsourcing, collusion, and counterfeiting (Burr 2011; Comaroff and Comaroff 2006; Hansen and Stepputat 2005, 2006; Sieder 2011). While traditional analyses tended to characterize sovereignty as emerging from and justifying the power of the nation-state, its territory, and its laws, since the early 2000s, scholars have begun to rethink sovereignty beyond the state, including at local levels, and in particular to analyze the appearance of new forms of legitimate violence in the context of neoliberal globalization (see Hansen and Stepputat 2005).

In many ways, my focus on how these different "kinds and registers of sovereignty" (Hansen and Stepputat 2005) continue to shape politics in Bolivia contributes to discussions around legal pluralism, demonstrating the potentials for non-state sovereignty. Yet, these projects are largely rendered invisible by the plurinational state's focus on its own institution building. In Bolivia, ironically, the "monistic" plurinational state is held out to be the hegemonic site of dismantling colonial power. (This points to debates within Bolivia about whether the liberal state can in fact dismantle colonial, liberal, and neoliberal forms of power inherent in the state. See Postero 2017). Yet, in the present juncture, as states are once again asserting sovereign power and the global economy is retracting, what can legal pluralism and indigenous justice projects tell us about power and efforts to resist it now? What does a focus on entanglement and fragmentation in Plurinational Bolivia contribute to our understanding of the underlying rationality of multiple processes of fragmentation both over time and in relation to the critical juncture of the present? What does the constant renovation of small brick houses on the edge of town have to do with any of this?

Elizabeth Povinelli (2011) offers one productive way to think about these questions in her discussion of endurance and exhaustion in *Economies of Abandonment*. To explain how those parts who do not have a part in society endure, she describes scenes from a little-known

1977 film, *Killer of Sheep*, produced as a thesis for a Master of Fine Arts at the University of California, Los Angeles. The film depicts the ordinary life of Stan, who works in a slaughterhouse in Watts, CA, in conditions with little promise of upward mobility. In one scene in particular that Povinelli focuses on, Stan and his friends have raised money to purchase an engine (an accomplishment that, along with their daily existence, straddled the lines of illicit and non-illicit endeavors), struggle to load it into the back of a borrowed truck and, physically exhausted, leave it perched precariously on the edge of the truck bed, where it falls off and is busted to pieces. The point of the story is that Stan and his friends continue to endure their conditions as they seek to change those conditions in which they must endure. The truck would not translate to upward mobility, nor would they have access to the materials that would make the project easier to achieve (a pully or high-quality tools and parts to install the engine properly), but it would make enduring the conditions in which they find themselves less exhausting.

Similarly, renovation work for many of my indigenous collaborators facilitates the means to better endure the conditions that they face, even as claiming rights holds out a promise of new tools and resources that could change their conditions in ways that Stan would never have imagined (although if Samuel Flores or other indigenous legal activists came across Stan in real life, they may try to forge an alliance, as Flores had with the Afro-Colombian merchants on the beach in Colombia). Metaphorically speaking, anyone can pick up the law as a weapon, but as my research has demonstrated, the potential of the law is forged out of the material conditions of those who wield it. It thus takes its force in relation to the ability to claim both a right to govern and a right over life exercised through violence. Yet, because sovereignty is always contested, it be weakened, and fragmented, providing political openings. This is why practices such as

stalling cases and filling countersuits become a tool of "situated sovereignty" for those who have less resources available, as it buys time to look for the right "correlation of forces" (Barragán 2012) to make the law work in one's favor. At the same time, such strategies of endurance and exhaustion create "entangled landscapes" (Moore 2005) that make it difficult to determine who rules.

The question of endurance and the law brought up in the quote by Flores in the previous section also points toward a related question of what I call the "politics of harm," referring to the difficulty in locating who or what is exhausting a given social project. As Flores noted, in the plurinational moment they found themselves in under the presidency of Evo Morales, locating the harm was more difficult than in the past. Having an indigenous president who publicly declared the plurinational state was working to decolonize the country and protect indigenous rights made it difficult to assert local sovereignty that challenged the national sovereignty. In the case studies analyzed in the second half of this dissertation, it was clear that winning legal recognition of jurisdiction over (often decades-long) land disputes in rural highland communities carried with it the onerous task of untangling the extremely complicated and historically constructed problems that were often entangled into the disputed land itself.

In Chapter Three, the central dilemma was not so much choosing sides but in locating the harm itself in contexts where structural violence and impunity were naturalized as a localized, problem internal to the community. In spaces marked by a considerable lack of access to justice, indigenous leaders' ability to resolve local land conflicts not only hinged on institutional barriers but also in their ability to address larger structural factors— migration, contamination, the viability of agricultural production, climate change, and a lack of security or police presence— that undergirded small-scale disputes over land or natural resources. This reveals that processes

of fragmentation in rural communities can also create the conditions for local authorities (state and indigenous) to defer responsibility back on to community members themselves.

In Chapters Four and Five, the communities were divided by categories of identity (peasant- indigenous) and forced to choose between overlapping reparations land policies. From this perspective, a central challenge facing indigenous leaders is how to diagnose entangled forms of colonial violence affecting their fellow community members, including competing claims to land rights and government corruption. This creates a situation where claims to sovereignty and the law alone cannot provide a solution, as what it means to achieve justice may be undecidable.

For Agamben, it is precisely in these zones of oscillation and indeterminacy that "ways and the forms of new politics must be thought" (cited in Povinelli, 2011, 10). This is because for those who inhabit such indeterminant and disorienting zones, the lines of citizen and outlaw, legality and legality, law and violence, and life and death, of the indigenous, native, peasant, are constantly blurred. Thus, as their lives oscillate from one pole to the other, the totalizing nature of "apparatuses that seek to govern and guide them toward the good" is at once exposed and also shown to be partial at best (Agamben 2009, 13-14). Renovation work, I suggest, is a form of *"lo propio"* (Copa 2017), a way to reproduce social life from within this disorienting zone, by inhabiting the cracks in a dominant social project and exposing its underlying contradictions.

6.4 The search for indigenous justice

Rather than attempting to identify the categorical logics that define the differences between different practices of administering indigenous justice this dissertation has tried to show how their two paths were historically constructed through interconnected processes of racialized

dispossession, domination, governance, and strategies of resistance. As was the case with Sebastián Mamani in the film *Nación Clandestina* (discussed in Chapter One), multiple, overlapping forms of harm and betrayal took him down different paths from his community, making him q'ara (white) in relation to them. For Sebastián, membership in his community could only be reestablished through his own sacrifice of dancing the Danzante until he died of exhaustion. Even then, his performing the ritual dance was contested by other comunarios. Fearing that they would stone him to death for returning to the community, Sebastián had begged the yatiri (elder shaman) to explain the nearly forgotten ritual dance.

The film also captures an underlying tension between organizations, communities, and sometimes even among family members that runs across the chapters of this dissertation: whether to "re-insert" the comma between indigenous and campesino/peasant back into politics, or if there is a meaning of justice that could encapsulate the complexity of agendas and experiences of the heterogenous groups. As the case of the Jatun Ayllu Yura (Chapter 1) illustrated, fostering a belief in indigenous justice in the face of scare resources and local politics requires significant time and dedication. From this perspective, the various criticisms outlined by the indigenous legal activists in their struggles for land offer a specific moral narrative of the proper way to organize social life grounded in territory. Their position stands in opposition to the figure of the "traitorous intermediary" (Giedel 2013) or insider who makes decisions on his own interest and without consulting the community, just as, in the film, Sebastián had done to his community forcing his expulsion. As I discuss in Chapter One, Giedel (2013) suggests that Sanjines ends the film with Sebastián's ritual sacrifice to send a message that the Indian nation can only be reconstituted by eliminating the traitorous intermediaries. In breaking with union and

state-affiliated social organizations and seeking out their own path, indigenous legal activists can be seen as taking a similar route, even as it leads to considerable struggle and sacrifice.

Yet, in the film, many community members were also distraught the day Sebastián returned. Having survived a violent conflict with the government alongside a local group of miners, they wanted to mourn the loss of their fellow jaqi who had been killed in the fight on the same sacred mountain where Sebastián was dancing. Preventing them from killing him, the yatiri finally put an end to the conflict explaining that the ancestors wanted him to carry out the Danzante ritual. After ordering them to "leave him be and listen! Understand his pain!," Sabastián was finally allowed to dance to death, to become jaqi again. The disorienting final scenes of the film explain a great deal of the tension in deciding what constitutes appropriate forms of harm and sacrifice in the search for justice.

Becoming and maintaining a status as jaqi is also difficult and vexing when seen through the lens of the entangled status people have with the state and markets and now nearly two decades of MAS party politics. This is also where the narrative framing of "people of little faith" that came out of the Zongo experience plays a role. It acts as an ethnical framework for acknowledging betrayal and the challenge of not betraying one's fell comunarios. In Zongo, people used this lack of faith to refer to the case of the detainee who tried to hire a lawyer to get out of jail. Tricked by the lawyer, he not only failed and lost his money, but caused a setback in the case costing everyone else eight more months of their time. Citing Laclau (1995), Arditi emphasizes that "if emancipation is a possibility rather than a destiny, then it is necessary to transform it into active hope" (2007, 28). For him, one place to start such a task is through a realistic form of imagination. He cautions, "it is important to recognize that we live in a plural world that lacks a foundation, yet we should act 'as if' there was a stable reality, that is, act with

the knowledge that such stability is only a dream" (Arditi 2007, 28). Renovation work is useful in this sense as it helps people to endure while also orienting their energies toward that horizon in a grounded and realistic way.

A significant challenge also lies in what Rancière calls the "logic of political subjectivization," which relies on an assertion of equality not on the basis of a given identity but rather the denial of an identity given by the other (indio, originario, colono, indígena, campesino, etc). This denial can only be enacted by demonstrating the gap of such an identification and what it is not, a kind of circular logic of "we are *and* are not" (1992, 62) that can be as disorienting as it is liberating (see also Arditi 2007). For this reason, Rancière suggests, "the logic of subjectivization always entails an impossible identification." This is where the question of justice as an ethical code comes to bear as a tool for deciding something else altogether: what it is we want to construct.

In Chapter Five, I suggest that efforts to construct the Mixed Tribunal been seen through the different layers of state and colonial recognition that had weakened their foundational structure – to keep the comma out of their own political debates over who belonged, and how they should relate to their land and manage their resources. To do so, they were also engaging in a form of what Simpson calls "membership talk," of debates among themselves about how to establish the criteria for formal membership and thus is fundamentally about rights and obligations, independent of the nation-state (Simpson 2014, 15). Here, indigenous justice was defined in terms of which argument gained the most traction, which demonstrated that no singular assertion of identity, or rights, or even having suffered for the territory was sufficient alone to effectively make a claim to the land.

6.5 Working the indigenous-colonizer hyphen: "staying with the trouble"?

Towards the end of my fieldwork, Nancy Postero and I wrote an article that examined the limits and possibilities of collaborative research, which helped us situate our own research within a particular political juncture of politics in Bolivia as well as to consider more critically the underlying assumptions and practices of collaboration across a variety of contexts (see Kennemore and Postero 2020). In the article, we take inspiration from scholars who urge respectful dialogue, such as that of Jones and Jenkins (2014), a New Zealand White settler and a Maori who encourage researchers to "work the hyphen" or to acknowledge (and make productive use of) the indigene-colonizer that marks much of the collaborative relationship between White researchers and their indigenous interlocutors. In small vignettes in each chapter, I also considered how different iterations of the indigenous-colonizer hyphen conditioned the possibility of approaching justice on different terms. These snippets of fieldnotes show how my own collaborative relationships were situated in (and thus shaped by) broader structural conditions and assumptions around "insider/outsider" (Rappaport 2005) researcher roles to consider what decolonization means across those divides.

At the same time, Postero and I drew inspiration from other collaborative endeavors that seek to blur lines that reproduce assumptions about who lies on what side of the hyphen (researcher/activist, insider/outsider, Western/indigenous), and how we as well as our collaborators are positioned in relation to that line (in particular, see the interventions of Briones et al. 2007; Briones 2017). With some of my colleagues such as Aymara lawyer Vianca Copa, I've forged a shared love of ethnography as a central tool to harness what we have termed, building on Haraway (see below), our "shared rage" about the paradoxes of using the law and the

state to construct alternative justice projects. This form of "love and rage" only partially overlaps with our indigenous colleagues, even at times sitting in tension with their own projects or agendas. This tension became ever more salient as we increasingly took a more pessimistic stance that questions our own research and promoting indigenous jurisdiction.

In *Staying with the Trouble*, Haraway (2016) calls upon engaged researchers to move away from a logic of "hope and despair" that marks most collaborative relationships. Her proposal is to combine situated perspectives across common grounds of "love and rage." She adds that this kind of relationship requires making "odd kin" because

> we require each other in unexpected collaborations and combinations, in hot compost piles. We become-with each other or not at all […] Alone, in our separate kinds of expertise and experience, we know both too much and too little, as so we succumb to despair or to hope and neither is a sensible attitude. Neither despair nor hope is tuned to the senses, to mindful matter, to material semiotics, to moral earthlings in thick copresence. Neither hope nor despair knows how to teach us to "play string figures with companion species". (2016, 4)

Haraway's "String Figures" form part of her proposal of new and imaginative figures of "SF" that, along with forms of "Speculative Fiction" such as that of Ursula Le Guin's "The Ones Who Walk Away," push us to think about what it might imply to turn toward rather than falsely "resolve the troubles" (ibid. 40).

The indigenous legal activists from the Qhara Qhara Nation, as well as those from Zongo and the Mixed Tribunal that animate the social projects discussed in this dissertation are, like Le Guin, engaging in speculative fiction in the way Haraway describes. "Staying with the trouble" for them implies much more than grappling with ethical dilemmas. It is the hard work that they dedicate most of their energy to their projects. It is how they articulate networks of shared love and rage that I occasionally get caught up in. It is their constant renovation work in the search for their own meaning of indigenous justice.

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