

Chapter 3  
Cochabamba Water War  
Practices of Social Property:  
(Draft – Please do not circulate without author's permission)

*The Beginning of the New Millennium: Cochabamba 2000*

In August 1995, the World Bank vice-president Ismail Serageldin stated that “the wars of the [21st] century will be about water.”<sup>1</sup> It was not a prediction. It was a declaration. A declaration of war. This war looks like a war for access to natural resources and the way to manage them. But it has a deeper meaning, in the sense that it goes in depth to mobilize other historical strata. The term “war” used in the water war may be disconcerting, but it emerges in Cochabamba as it emerged in the first Zapatista Declaration of 1994 which states: “According to this Declaration of War, we ask that other powers of the nation advocate to restore the legitimacy and the stability of the nation by overthrowing the dictator.” Two observations are necessary. First, the Zapatistas did not start the war. The war began 500 years ago with colonialism, with the imposition of new property relations, with the imposition of the state and the parallel depoliticization and atomization of the social. The Zapatistas, not unlike the Cochabamba insurgents, have reclaimed “other powers of the nation” in order to reestablish the legitimacy of the country. It is a war for the restoration of the social fabric, customs and traditions, and forms of community and collective life.<sup>2</sup> Under the surface of a war for access to and appropriation of land, water, and natural resources, another war is taking place -- that between incompatible legal and economic systems. One war follows a well-known script: with greater or lesser violence, it will accompany the struggle for the appropriation of increasingly scarce resources. Instead, the second “war” has always opened, and can open up, new scenarios and put an end to the colonial, appropriative parable.

The Cochabamba water war in 2000 was not just the first water war of the 21<sup>st</sup>

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<sup>1</sup> Ismail Serageldin, “Water: Conflicts set to arise within as well as between states” *Nature*, Nr. 459 (2009), p. 163. See Vandana Shiva, *Water Wars. Privatization, Pollution, and Profit*, Berkeley: North Atlantic Books 2016, p. vii.

<sup>2</sup> During one of my conversations with Marcela Olivera, she pointed out that, in the water war, terms like “recuperar” and “reconstituir” the social fabric were very common among people.

century. Many others will follow due to climate change, increasing global inequality, and reckless privatization. However, in Cochabamba there took place the first war of the 21<sup>st</sup> century that aims to restore another practice of democracy, different property relations, and the commons. In this sense, Cochabamba is part of a long war fought by the dominant trajectory of political modernity characterized by the nation-state, private property, and the capitalist mode of production against other political and social views and practices.

The history preceding the water war can be traced back to the conquest of America, Spanish domination, and the imposition of a new legal and political order that overlapped and largely destroyed the indigenous one. The long history of the water war corresponds to a clash between different juridical and political trajectories. The social composition of Bolivia is made up of a majority of descendants of Quechua and Aymara; a large part of the rural population lives and works according to customs and traditions. In Bolivia, as in many other states, the project of building a homogenous national state has never been fully realized. Different historical and social strata coexist. These overlappings of social and temporal strata have been highlighted differently under the aspect of developments and delays in the process of economic modernization,<sup>3</sup> of geographical obstacles in the construction of the nation-state,<sup>4</sup> of sedimentations and traditions of struggles.<sup>5</sup> The coming together of the urban population, *campesinos*, indigenous organizations, miners, and social movements has given rise to new forms of self-organization and alliances. In 2000, coca growers from the semi-tropical lowlands east of Cochabamba and highland Aymara *campesinos* joined forces during the water war with the rural and urban population of Cochabamba.<sup>6</sup>

The short prehistory of the water war can be identified in the World Bank intervention and presidential Supreme Decree 21060 of 1985 that, in order to stop inflation,

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<sup>3</sup> Andrew Pearse, *The Latin American Peasant*, London: Frank Cass, 1975, p. 2: "The chronological present often wears the appearance of a stratified outcrop of rock in which various formations from the historical past are present and, especially, where in spite of 150 years of republican independence, the social scene wears a colonial character, either by stagnation or regression, or by deliberate conservation."

<sup>4</sup> Jaime Mendoza, *El Macizo boliviano y El factor geográfico en la nacionalidad boliviana*, La Paz: Biblioteca del Bicentenario de Bolivia, 2016, p. 251-2. Mendoza described Bolivia as an agglomeration of incongruent elements and extravagant superpositions. He stated that "it is rather surprising that this country, made with such contradictory telluric and human elements, still stands." (p. 252).

<sup>5</sup> "Forrest Hylton and Sinclair Thomson, *Revolutionary Horizons: Past and Present in Bolivian Politics*, London: Verso, 2007, p 31, present their work in terms of "an excavation of the Andean revolution, whose successive layers of historical sedimentation comprise the subsoil, loam, landscape, and vistas for current political struggle in Bolivia" (p. 31).

<sup>6</sup> Benjamin Kohl and Linda Farthing, *Impasse in Bolivia. Neoliberal hegemony and popular resistance*, London, New York: ZED Books, 2006, p. 154.

paved the road to privatization of state-owned companies. In reaction, in 1986 the miners' union organized a March for Life that involved thousands of miners until the military intervened to halt the march. What should be emphasized is that the intervention of the state not only served to suppress any resistance, but also paved the legal ground on which privatizations could be carried out. The latter aspect is essential and Law 2029 of 1999 clearly shows a dynamic characterized by three dimensions: the state intervenes by imposing a monopoly on resources; in this way, it attacks social and legal systems of self-management of resources at the community level; the social is thus leveled, paving the way for massive privatizations, free to impose themselves in a civil society of private individuals. It is important to keep this intertwining in mind because it shows that state intervention, its monopoly, and privatizations are not terms in opposition to each other. This script has been re-enacted countless times in the modern history of colonization within and outside Europe.

Law 2029 shows this intertwining of nationalization and privatization. It is appropriate to take a look at the law. Article 29 states: "No natural or legal person, public or private, civil association with or without profit aims, anonymous society, co-operative, municipal or of any other nature, may provide services of water supply and sanitation in concession zones, without a concession issued by the Basic Services Superintendency."<sup>7</sup> In this way the state imposes its monopoly on water. The irrigators, who use their infrastructures for water distribution, are granted temporary licenses. But in fact, in a short time, they risk seeing their alternative systems of water supply regulated according to *usos y costumbres* become illegal. The attack, as pointed out by the *Coordinadora de Defensa del Agua y de la Vida* (Coalition in Defense of Water and Life), is on each autonomous use of water, on communal or associative forms of organization, peasants and indigenous people that, through mutual aid systems, have their own water infrastructures. Under the state monopoly, not only are infrastructures snatched from the hands of communities, but the practices of self-management and water regulation become illegal. At the same time, Article 72 of Law 2029 states that users "are obliged" to connect to the company network, undermining *de jure* and *de facto* any residue of legal autonomy. A juridical model that synchronizes alternative and, from the state's point of view, anachronistic legal systems is imposed. On this new legal basis, Article 19 of Law 2029 can be implemented: "The State

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<sup>7</sup> <https://www.lexivox.org/norms/BO-L-2029.html>

will promote the participation of the private sector in the water supply and sanitary sewerage services.”<sup>8</sup> This leads to the concession contract with the *Aguas del Tunari* consortium which establishes that the Concession-holder has the following rights and duties with an “*exclusive nature*” (Art. 14): “transport and storage, distribution and marketing of drinking water from treatment plants or water wells to the users in the concession area, including the transportation of raw water from the reservoir included in the concession” (Article 14.4). Annex 5 of the contract makes explicit the handing over of water resources from the state to the private company according to the same monopolistic logic present in Law 2029. Annex 5 states that “the use of alternative sources will not be allowed,” that is, systems independent of the company. As if this were not enough, Annex 5.13 establishes that if users own alternative water sources, for instance a well, the concession-holder has the right to install a metering system and the installation costs would be at the expense of the user.<sup>9</sup> The logic of privatization went so far as to prohibit “the peasants from constructing collection tanks to gather water from the rain.”<sup>10</sup> If in Cochabamba the collection and distribution of water developed in community forms, through committees with a two-year term, and in harmony with customs and traditions, then Law 2029 declared these autonomous systems *illegal*. This is how legal synchronization of the state works.

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

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<sup>8</sup> <https://www.lexivox.org/norms/BO-L-2029.html>

<sup>9</sup> Cited in Alvaro García, Raquel Gutiérrez, Raúl Prada, Luis Tapia, *El retorno de la Bolivia plebeya*, La Paz: Mela del Diablo Editores, 2000, p. 142.

<sup>10</sup> Oscar Olivera, *¡Cochabamba! Water War in Bolivia*, Cambridge, MA: South End Press, 2004, p. 9.

Mobilizations for the right to water began in December 1999. The *Coordinadora* led the insurgency against the privatization of water and organized a web of assemblies at the district levels.<sup>11</sup> After an escalation that turned Cochabamba into a war zone, the *Aguas del Tunari* company had to leave the country. But before arriving at the removal of *Aguas del Tunari*, the state exhibited its violence by declaring, on April 7, 2000, a “state of siege.” Social mobilization, which turned into anger when a young student was killed by machine-gun fire from a Bolivian Army captain, forced the police to communicate to the executives of the consortium that they could no longer guarantee their safety.<sup>12</sup>

If the water war halted the march of privatization, bringing back the state public property was no longer an option. As noted by Oscar Olivera, the “nationalization, in the end, prepared the condition for the denationalization of our collective wealth. The opposite of the cataclysm privatizations and de-nationalization of transnational capitalism is neither state capitalism nor state property.”<sup>13</sup> This *neither-nor* logic is critical. The Cochabamba water war shows the alternative to the state property-privatization binary opposition. For this reason, Cochabamba, beyond the duration of its success, shows the possibility of disrupting that apparent dichotomy between state public and private that continues to haunt modern history.

This alternative, which has been labeled as social property (*propiedad social*), is the *practice* of undoing the entanglement that characterizes the concurrent birth of the state and private property. Indeed, social property and self-management flourish together. This is why Evo Morales’s victory in Bolivia in 2005 cannot be called a “victory.” Rather, it is the beginning of the defeat of the experiment begun in Cochabamba. It is the re-enrollment of the experiences of local self-government, local authorities and forms of social property in the grammar of the state. The issue does not lie in identifying Morales’s or vice president Álvaro García Linera’s tactical errors, but in the incompatibility between the practices of self-management based on the political pluralism of local authorities and the grammar of the state.

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<sup>11</sup> Carwil Bjork-James, *The Sovereign Street. Making Revolution in Urban Bolivia*, Tucson: University of Arizona Press, 2020, pp. 67-85.

<sup>12</sup> <https://www.newyorker.com/magazine/2002/04/08/leasing-the-rain>

<sup>13</sup> Olivera, *¡Cochabamba!*, p. 156.

## *The Cochabamba Declaration*

On December 8, 2000, the *Cochabamba Declaration* was published.<sup>14</sup> In the background of this Declaration there is the water war. It is in the light of the practices of these social and political mobilizations that this Declaration can be read. It was stipulated after the agreement reached in April 2000 between the national government and the *Coordinadora*. The Declaration is not an epilogue, but a useful table of contents for digging into the history of the water war and bringing to light possibilities that have remained blocked. The water war as a social and political practice is also *theory in action*, a laboratory from which to extract political categories alternative to those dominant in the Western colonial tradition. It is not a question of reading this Declaration as a synthesis of the struggles for water but, on the contrary, of expanding the Declaration by recalling the numerous practical and theoretical anticipations of theory experienced in the months of the water war.

<b>The Cochabamba Declaration December 8, 2000</b>	<b>Declaración de Cochabamba 8 de diciembre de 2000</b>
We, citizens of Bolivia, Canada, the United States, India, Brazil:	Nosotros, ciudadanos de Bolivia, Canadá, Estados Unidos, India, Brasil:
Peasants, irrigators, workers, indigenous people, students, professionals, environmentalists, teachers, members of nongovernmental organizations, retired people gathered together today in solidarity in order to unify our efforts in defense of the vital right to water.	Campesinos, regantes, trabajadores, población indígena, estudiantes, profesionales, ambientalistas, profesores, miembros de organizaciones no gubernamentales, jubilados, nos hemos reunido hoy solidariamente para unificar nuestros esfuerzos en defensa del derecho vital al agua.
Here, in this city which is an inspiration to the world for the recovery of the vital right to water through civic action, bravery, and the sacrifice with which we confronted the abuse of the corporations, the governmental institutions, and the free trade agreements that destroy that right; in use of our freedom and dignity, we declare the following:	Aquí, en esta ciudad que es una inspiración para el mundo por la recuperación del derecho vital al agua a través de la acción civil, del valor y el sacrificio con el que nos enfrentamos al abuso de las corporaciones, de las instituciones gubernamentales y de los tratados de libre comercio que destruyen este derecho; en uso de nuestra libertad y dignidad declaramos lo siguiente:
For the right to life, for the respect of nature and the customs and traditions of our ancestors and our	Por el derecho a la vida, por el respeto a la naturaleza y los usos y costumbres de nuestros antecesores y nuestros

<sup>14</sup> <https://www.nadir.org/nadir/initiativ/agp/free/imf/bolivia/cochabamba.htm#declaration>. An English translation of the *Cochabamba Declaration* is also available in Oscar Olivera, *¡Cochabamba! Water War in Bolivia*, Cambridge, MA: South End Press 2004. The following English translation of *Declaration* has been revised by Marcela Olivera and I. **Marcela Olivera not only has provided essential documents for my work, but she also helped me to clarify some crucial political and social dimensions of the water war.**

<p>peoples, forevermore the following will be declared as an inviolable right concerning the use of the water given us by the Earth.</p> <p>1. Water belongs to the earth and all species and is sacred to life. Therefore, the world's water must be conserved, cared for, and protected for future generations, and its natural patterns must be respected.</p> <p>2. Water is a fundamental human right and a public trust to be guarded by all levels of government. Therefore, it should not be commodified, privatized, or traded for profit. These rights must be enshrined at all levels of government. In particular, an international agreement must ensure these principles are indisputable.</p> <p>3. Water is best protected by local communities and citizens, who must be recognized as subjects with full rights together with governments in protecting and regulating water. Peoples of the world are the only way to promote democracy and save water.</p>	<p>pueblos, por siempre lo siguiente será enunciado como un derecho inviolable en relación al uso del agua que nos da la Tierra:</p> <p>1. El agua pertenece a la tierra y a todas las especies y es sagrada para la vida, por tanto, el agua del mundo debe ser conservada, cuidada y protegida para las futuras generaciones y sus formas naturales deben ser respetadas.</p> <p>2. El agua es un derecho humano fundamental y un bien público a proteger en todos los niveles de gobierno; por tanto, no debe ser mercantilizada, privatizada o comercializada con propósitos de lucro. Estos derechos deben ser garantizados por todos los niveles de gobierno. En particular, un acuerdo internacional debe asegurar que estos principios no admitan controversia.</p> <p>3. El agua está mejor protegida por las comunidades locales y los ciudadanos que deben ser reconocidos como sujetos de pleno derecho junto a los gobiernos, en la protección y regulación del agua. Los pueblos del mundo son la única vía para promover la democracia de y salvar el agua.</p>
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The *Declaración de Cochabamba* can be read as a collective draft for the alternative political theory of the commons. Here is what emerges from the Declaration.

1. “*Nosotros*.” This is the first word of the Declaration. “*Nosotros*” is not “we the people” of the nation, but the citizens of several nations: “citizens of Bolivia, Canada, United States, India, Brazil.” Even more, as one can read at the end of the Declaration, that first term “we” points to a transnational citizenship that includes all “peoples of the earth” as the only way to promote democracy and save water. This statement implies a question: *what kind of democracy exceeds the nation state and can save water?* As a first approximation, it is possible to answer that it is neither an institutional procedure nor a theory of democracy, but a practice that prefigures new categories for reimagining democracy.

1.a. The forces in the field for the defense of water redefine both national boundaries and those of the notion of class. It is about farmers, workers, indigenous people, students, professionals, environmentalists, educators, nongovernmental organizations, retired people, and the list could go on because class unity is not built on the juxtaposition to another class but is articulated as plurality. The extension of informal labor and legal sectors differently rearticulates oppositions such as capital-labor, legal-illegal, democratic-authoritarian. The outcome of this rearticulation is uncertain. It is not decided by theory but by practice. The

insurgencies in Cochabamba and El Alto showed a different democratic practice, where power is not centralized and political agency is not individualized.

It is possible to see a parallel with the Zapatista Sixth Declaration which invited “all indigenous, workers, *campesinos*, teachers, students, housewives, neighbors, small businesspersons, small shop owners, micro-businesspersons, pensioners, handicapped persons, religious men and women, scientists, artists, intellectuals, young persons, women, old persons, homosexuals and lesbians, boys and girls - to participate, whether individually or collectively, directly with the zapatistas in this NATIONAL CAMPAIGN *for building another way of doing politics*.”<sup>15</sup> It is a question of investigating “*another way of doing politics*” that emerges in numerous political experiments in different parts of the world.

2. In Cochabamba, a plurality of social strata took the field for the “defense of the vital right (*derecho vital*) to water.” The water war is not motivated by the conquest of power but by the defense of a right that goes beyond the juridical horizon. In other texts of the *Coordinadora* there is talk of a “recovery” of the people’s right to question the legitimacy of government decisions. *What is the source of this right to be recovered?*

2.a. The “vital right” to water is also defined as a right to life (*derecho a la vida*), whose defense includes forms of local self-government and communities committed to the “protection and regulation of water.” These local communities “must be recognized as subjects with full rights (*sujetos de pleno derecho*) together with governments.” *What gives communities the status of “sujetos de pleno derecho?”* The logic, or the dialectic, of recognition is not adequate. These communities do not claim recognition in order to legally exist. They do not claim rights either, but act as subjects with full rights already, and their rights have not been conceded by any government. The dialectic, or even the struggle for recognition, starts from the premise of a common and shared juridical horizon, it starts from a wrong or from a more egalitarian redistributive request. In Cochabamba the local communities are subjects with full rights.

3. It is this different legal grammar that makes the “vital right to water” an “inviolable right.” This right and other similar inviolable rights are defined on the basis of the defense of concrete, vital contexts. It is not a question of the mere defense of life understood biologically, but of the form of life as an interaction in a concrete social context

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<sup>15</sup> *Sixth Declaration of the Selva Lacandona*, <http://enlacezapatista.ezln.org.mx/sdsl-en/>



rich in institutions, traditions and customs. It is by defending this social and vital context that it is possible to understand the water war as a form of civil action (*acción civil*) “against corporate, institutional and governmental abuse (*abuso*). Against trade agreements which destroy” the vital right to water.

4. The Declaration reflects the categorical shift made in practice by the insurgents. “Water belongs to the earth and all species and is sacred to life.” This affirmation derived from a different property regime. With this affirmation, water acquires priority over individual property rights and for this reason, the modern principle of *ius utendi et abutendi*, that is, the personal right of property as a right to use and abuse, is abandoned. It is replaced by the responsibility of taking care of water and any other natural resource for present and future generations. *What is the new grammar of the property forms that was practiced in Cochabamba?*

4.a. Taking care of water is not an individual moral responsibility, but a duty rooted in the practices of the local communities. It is the *use* that defines juridical relationships. These are relationships between communities, users and water. These are relationships based on what is defined in the Declaration in terms of “uses and traditions of our ancestors and our peoples.” It is the authority of these customs and their daily practice in the use of common goods that gives the community the status of *sujetos de pleno derecho*. Here, the right is founded neither on metaphysical principles nor on concessions of state power. It is a different legal grammar that is slowly drawing the outline of a different way of being together. The questions that emerge from the Declaration constitute the table of contents for rethinking democracy and property forms.

### *Democracy and Property*

On November 5, 2002, Gonzalo Sánchez de Lozada, a member of the *Movimiento Nacionalista Revolucionario* and president of Bolivia for two non-consecutive terms, in a public address at American University, Washington DC, referred to social movements in Bolivia stating that “they don’t believe in democracy.” Sánchez de Lozada contrasted the model of “representative democracy” to the “authoritarian communalistic democracy” based

on supposed assemblies of Bolivia's indigenous society.<sup>16</sup> It would be easy to argue that Sánchez de Lozada's statements, chronologically situated between the water war of 2000 and the gas war of 2003, are nothing more than an authoritarian reaction to social movements and their democratic practices from below. But this would be a simplistic, almost ideological response. If we take, as even liberals do, "representative democracy" as a normative model by which to judge democracy, the social and political practices that emerged in Cochabamba and the forms of assembly of indigenous communities *are not democratic*. In fact, they have to do with another way of practicing democracy and property relations.

The social fabric in which the Cochabamba water war took place is a web of legal systems and social and juridical stratifications. Spatial differentiations at the neighborhood, suburb, and rural levels show different configurations of those strata. Different temporalities correspond to these social strata, in the sense that social and political experience oriented towards *usos y costumbres* follows a different rhythm from that marked by the state. The tempo for deliberations in local community assemblies is not only quantitatively but qualitatively different from that of the decision-making process of the state and financial capital. In this complex social network, different reasons have enlivened the protest of rural peasants who saw in the *Aguas del Tunari* concession a violation of customary rights. Peripheral urban communities defended the communal water system that they themselves built; lower and middle class urban consumers reacted against the sudden increase in water bills.<sup>17</sup> In this intersection of social and temporal strata, the *ayllu*, the Inca community, becomes part of the local practices of self-government, forming a virtuous anachrony that hinders the synchronizing course of relations between individual property and the state. The question is not whether these community forms, such as the *ayllu*, evoked by Cochabamba activists were real or imagined.<sup>18</sup> In 2000, it became clear to the *Coordinadora* that the alternative was not between the privatization of natural resources and their nationalization. In Cochabamba the practice of social property showed a third way, alternative to the private/public binary: "[c]urrent law (...) allows no room for social property and only

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<sup>16</sup> Robert Albro, "The Culture of Democracy and Bolivia's Indigenous Movements" in *Critique of Anthropology*, Vol. 26 (4), 2006, pp. 390-392.

<sup>17</sup> Robert Albro, "'The Water is Ours, Carajo!': Deep Citizenship in Bolivia's Water War" in June Nash (Ed.), *Social Movements: An Anthropological Reader*, Malden MA: Wiley-Blackwell, 2004, p. 255.

<sup>18</sup> See Mary Weismantel, "Ayllu: Real and Imagined Communities in the Andes" in Gerald W. Creed, *The Seductions of Community. Emancipations, Oppressions, Quandaries*, Santa Fe: School of American Research Press, 2006, pp. 77-100.

recognizes classical forms of ownership: public or private, each with its variants (state, municipal, cooperative, corporate, individual).”<sup>19</sup> The alternative of social property can be explained not starting from concepts, but from concrete social and political practices from which it is possible to extract unprecedented theoretical material.

In a public statement on February 6, 2000, the *Coordinadora* made it clear that the question of water, its use “according to traditional practices,” is no different than the practice of democracy, whose authentic meaning can be summarized in “we decide and we do, we discuss and we implement. We risk our lives to achieve what we propose, what we consider right. Democracy is the sovereignty of the people and this is what we have done.”<sup>20</sup> But here, people, sovereignty and democracy do not coincide with the concepts that bear the same name in the dominant canon of political thought. As it stood out in the Declaration, saving water means different regulations based on local communities, customs and traditions, and different practices of democracy. What is at stake is a practice of democracy which is not based on the state and the modern concept of representation. In another of the *Coordinadora*’s documents we read that “we are tired of the simulation of democracy whose only purpose is to make us obedient and impotent voters.”<sup>21</sup> Undoing the “simulation of democracy” is something absolutely concrete. It is not a question of implementing democratic procedures within the existing constitutional framework. Here, the language of the insurgents and the *Coordinadora* becomes uncertain. In their documents we read that it is about “recovering the voice” of the people to give rise to a “correct practice of democracy.”<sup>22</sup> The theory of this “correct practice of democracy” must be extracted from the social practices of the insurgents and from the intersection of different traditions, from the unionist tradition of the miners to the *usos y costumbres* of the peasants. What emerges is not a corrective of modern democracy but another democratic practice whose grammar is different from that which has become normative in the modern Western canon.<sup>23</sup> If the latter gives priority to individual rights and introduces duties in relation to respect for the rights of others, the grammar of the commons is based on reciprocal obligations, from which rights follow, and not vice versa. Communal forms have been constantly attacked and in large part

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<sup>19</sup> Raquel Gutiérrez-Aguilar, “The Coordinadora. One Year after the Water War” in Olivera, *¡Cochabamba!*, p. 60.

<sup>20</sup> *¡Y...el agua sigue siendo nuestra!*, Cochabamba, 6 de febrero de 2000.

<sup>21</sup> *¡Basta de sufrimiento social!!*, Cochabamba 2000.

<sup>22</sup> “*¡El agua es nuestra, carajo!*” Cochabamba, January 27, 2000

<sup>23</sup> See chapter 3.

destroyed by state violence, private property, and the capitalist mode of production. Their memory has been eroded and altered in the name of progress and civilization which, in Western modernity, is essentially the work of the civil code.

The practice of the insurgents during the water war teaches us that property and democracy are connected. A different democratic practice, articulated in a plurality of local assemblies, authorities, and forms of self-government develops on the basis of different property relationships. And vice versa. *Social property* requires a different vision of democracy. In the words of the insurgents, in Cochabamba there took place an “extraordinary pedagogy of democratic assemblies” not based on representative democracy, according to which a leader speaks on behalf of everyone, but on the exercise of “direct democracy” where the “power of decision-making is reappropriated by social structures, which, in their practice of radical political insurgency, derogate from the delegative habit of the state power and exercise power themselves.”<sup>24</sup> This political pedagogy began to produce a “different way of exercising and feeling political power” and gave rise to a “reconfiguration of the state and the way to practice political rights.”<sup>25</sup> Gonzalo Sánchez de Lozada’s speech and that of the insurgents are not simply opposed to each other, but their grammar -- that of the representative state and those of the assembly democracies -- belongs to different political trajectories that are incommensurable. In the water war there emerges, on the one hand, a legislative trajectory oriented towards the privatization not only of water but also of the social sector. On the other hand, there emerges a different legal trajectory, which from the state’s point of view is illegal in many respects, based on customs and traditions (*usos y costumbres*) of the common use of water and infrastructures. This different trajectory was also presented in terms of a “Copernican inversion” that “involves displacing the centrality of ‘state’ and ‘institutional power’ as a privileged space for politics to instead situate it in the polyphonic and plural social capacity for insistently distorting the heteronymous political order.”<sup>26</sup>

In the following pages, the water war constitutes a prism through which to look at different forms of property and democracy. In 2000 in Cochabamba, the war against water

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<sup>24</sup> Alvaro García, Raquel Gutiérrez, Raúl Prada, Luis Tapia, “La forma multitud de la política de las necesidades vitales” in *El retorno de la Bolivia plebeya*, Bolivia, Muela del Diablo editors, 2000, p. 170.

<sup>25</sup> García, Gutiérrez, Prada, Tapia, “La forma multitud de la política de las necesidades vitales,” p. 170.

<sup>26</sup> Raquel Gutiérrez-Aguilar, *Rhythmos of the Pachakuti*, Durham and London: Duke University Press, 2014, p. xxii.

privatization quickly turned into a struggle against its nationalization. Social and political practices in Cochabamba challenged the binary opposition between private and state. They questioned the very right of appropriation of water. A different legal grammar, centered not on individual rights but on mutual obligations, was drafted. The insurgents of Cochabamba, in their practices, recombine different historical layers and temporalities to shape another way of practicing property, democracy, and institutions articulated in a “system of reciprocal obligations.”<sup>27</sup>

Following the theory in action of the *Coordinadora*, this democratic practice is articulated through four forms of reappropriation:

- [I] “reappropriate what is ours;
- [II] reappropriate our rights;
- [III] reappropriate the patrimony of the country;
- [IV] reappropriate the ability to say and to do, decide and execute the projects and plans that suit the people and the country.”<sup>28</sup>

These four dimensions are entangled with each other. The verb “*reapropiarnos*,” to reappropriate, does not express a change in ownership, but the undoing of private and state appropriation. It means the undoing of the hydra of privatization that erodes collective forms of the social and atomizes society. The trajectories of privatization overlap with that of colonialism and dispossession,<sup>29</sup> but they can take different forms. In the 1980s and 1990s, neoliberal policies were articulated along three axes. The first axis sees a reconfiguration of some functions of the state, which, on the one hand, withdraws from the social while, on the other, it strengthens sovereignty at the level of government decision-making processes. It could be said that the state is not weakened but re-articulated according to its primordial, non-democratic sovereign functions. A second axis consists of a constant attack on social and collective rights, trade unions and labor organizations. The third axis is a partial novelty.

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<sup>27</sup> Lucia Linsalata, *Cuando manda la asamblea. Lo comunitario-popular en Bolivia: una aproximación desde los sistemas comunitarios de agua de Cochabamba*, Tesis para optar por el grado académico de Doctora en Estudios Latinoamericanos, México D.F.: UNAM, 2014, p. 102. The dissertation was also published by SOCEE (Sociedad Comunitaria de Estudios Estratégicos) in 2015.

<sup>28</sup> “*¡El agua es nuestra, carajo! Vocero oficial de la Coordinadora de Defensa del Agua y la Vida*,” January 2000, Vol. 1, N. 1.

<sup>29</sup> Robert Nichols rightly shows how “dispossession” combines two processes: “it transforms nonproprietary relations into proprietary ones, while, at the same time, systematically transferring control and title of this (newly formed) property.” Robert Nichols, *Theft is Property. Dispossession and Critical Theory*, Durham & London: Duke University Press, 2020, p. 8.

The withdrawal of the state from the social leaves room - institutional room - for community forms. This is the case of the 1994 Bolivian Law of Popular Participation and the 1996 Land Reform Law. The former implements decentralization reforms and the improvement of local governance,<sup>30</sup> whereas the latter provides the legal framework in which indigenous communities can manage their forest resources within their territories. What has to be noted is that the process of decentralization proceeded together with privatization and decapitalization of the state.<sup>31</sup> The 1994 law confers juridical personality (*personería jurídica*) to indigenous communities and urban collectives, thus also giving the traditional *ayllu* “the opportunity to officially register with the state as a territorial base organization [...]”. Given these new political, economic, and cultural benefits, many communities that previously identified as peasant communities (in line with the 1953 agrarian laws) now opted for re-constituting themselves as *ayllus*.<sup>32</sup> These three axes work simultaneously. The privatization of industries, services and natural resources goes hand in hand with decentralization and the dismantling of collective forms of workers’ organization. To the extent that the dogma of the self-regulating market is affirmed, the social is left “free” to organize itself into a plurality of institutions capable of creating and regulating voluntarily produced laws. It is a system of privatization that can encompass state’s functions.

The production of a plural and multicultural space, useful for corporations to create market-friendly juridical systems, immediately became a battlefield in Cochabamba between incompatible social forms. The clash between different legal grammars, or rather incommensurable ones, can be represented as a clash between different temporalities. In the

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<sup>30</sup> The first article of the Law states: “The present Law acknowledges, promotes, and consolidates the process of Popular Participation, incorporating the indigenous communities, indigenous peoples, rural communities and urban neighbourhoods in the juridical, political and economic life of the country. [...] It strengthens the political and economic means and institutions necessary for perfecting representative democracy, incorporating citizens’ participation in a process of participative democracy and guaranteeing equality of representation at all levels between women and men (Government of Bolivia, 1994. Author’s translation).” See David Altman and Rickard Lalander, “Bolivia’s Popular Participation Law: An Undemocratic Democratisation Process?” in Axel Hadenius, *Decentralisation and Democratic Governance: Experiences from India, Bolivia and South Africa*, Stockholm: Almqvist & Wiksell International, 2003, p. 70.

<sup>31</sup> In 1994, a neighborhood leader expressed the following criticism: “But what happens with the Popular Participation Law? Each neighbourhood committee is empowered to make its own arrangements with the state without consulting any overarching organization. The intentions of the government are to divide and rule. It intends to debilitate the main organizations by putting local leaders in charge of small areas and [tying them directly to the state]. This guarantees that there are no solid institutions that question the government. It reduces the power of the popular movement,” in David Altman and Rickard Lalander, “Bolivia’s Popular Participation Law: An Undemocratic Democratisation Process?” in Axel Hadenius (Ed), *Decentralisation and Democratic Governance: Experiences from India, Bolivia and South Africa*, Stockholm, Sweden: Almqvist & Wiksell International, 2003, p. 81.

<sup>32</sup> Jose Antonio Lucero, *Struggles of Voice. The Politics of Indigenous Representation in the Andes*, Pittsburgh: University of Pittsburgh Press, 2008, p. 167.

case of Cochabamba there is, on the one hand, the asynchronous grammar of the practices of self-governance and self-regulation of water, of *usos y costumbres* that in the rural areas of the valleys have their roots in the Andean tradition,<sup>33</sup> on the other, the synchronizing violence of the market and the state. In Cochabamba, this clash between different temporal layers has become an explicit war between the social and the state.

*“Reappropriate our rights”*

In January 2000, the *Coordinadora* published a bulletin stating that its task is “to restore the right of the population not to accept decisions made by the government,” and to “question their legitimacy in relation to water.”<sup>34</sup> Here is where the path of reappropriations begins.

The use of the verb “to reappropriate” indicates both reclaiming possession of something that has been taken away and referring to a different tradition of democratic political practices, as well as a different semantics of the term “proper.” Five hundred years of colonialism correspond to five hundred years of violations and unjust government and now, in the spirit of Túpaj Katari and the insurgency of 1781, things had to be put back in their *proper* place.<sup>35</sup> The term “proper” here indicates a restorative movement, the act of putting things right after centuries of colonial violence. This restorative inversion of time is expressed in the term “*pachakuti*” which expresses the idea of turning or inverting time and space, of returning to a new beginning.<sup>36</sup> The term “*pachakuti*” contains the assumption that the cosmic order will be restored, in the sense of “a past capable of redeeming the future, of turning the tables.”<sup>37</sup> This restorative dynamic must be kept in mind to understand the political grammar of the rights in practice in Cochabamba. It is not a question of a return to a museum-like past and much less power changing hands. The term “*pachakuti*” has semantic layers that differ each time depending on the circumstances. One of these, perhaps the most appropriate for understanding the present, is characterized by a particular type of inversion,

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<sup>33</sup> Linsalata, *Cuando manda la asamblea*, p. 124.

<sup>34</sup> “¿Cuál es el problema en Cochabamba?”, January 2000.

<sup>35</sup> On the relationship between restoration and the correspondence between property and place in the Katari’s insurgency, see Sinclair Thomson, *We Alone will Rule. Native Andean Politics in the Age of Insurgency*, Madison, Wisconsin: The University of Wisconsin Press, 2002, pp. 206-7.

<sup>36</sup> Hylton and Thomson, *Revolutionary Horizons*, pp. 26-30.

<sup>37</sup> Sivia Rivera Cusicanqui, “Aymara Past, Aymara Future” in *Report on the America*, N. 25 (1991), p. 21.

i.e., from “inside to outside.”<sup>38</sup> The alternative legal structure made up of forms of self-government, common possession and reciprocal obligations, attacked by the dominant structure of the state, private property and individual rights, has found refuge within a community system of local practices. *Pachakuti* can also be this: the spilling over of this system from the inside to the outside, not as a question of scale, but as a change in a form of life and its legal and institutional structures. To use the language of the Cochabamba insurgents, it is a set of alternative practices of self-government that shape the “community or extended *ayllu*.”<sup>39</sup> Or, quoting another insurgent, “a new institutional framework (*una nueva institucionalidad*).”<sup>40</sup> During the water war, the insurgents were experimenting with a political and legal language alternative to that of modern law.<sup>41</sup>

It is useful to return to the Declaration as a table of contents. In regard to water, the Declaration speaks both in terms of “fundamental human right” and “vital right.” The two terms get close, without coinciding. As a human right, water is defined as a “public trust to be guarded by all levels of government, therefore, it should not be commodified, privatized or traded for commercial purposes.”<sup>42</sup> These are negative determinations which, as such, must be enforced by the government or international treaty. The modern grammar of human rights remains entangled in a substantial aporia which is why they are either generic moral references that can legitimize particular political actions, or they are positivized, that is, subsumed in the legal grammar of the state and enforced by the government. In this case, human rights become part of a catalogue of rights guaranteed by a political power which, seeing as it has the power to guarantee these rights, also has the power to limit or even suspend them in exceptional cases of public order. Not even the *Universal Declaration of Human Rights* escapes this logic. Its juridical grammar is articulated around a binary constituted by the relationship between power and rights to be protected. The former term depends on the state, or on an alliance of states; the latter term consists of a subject whose rights are to be protected. Politically speaking, the former term is political, the latter is private in the sense that it can exercise private freedoms but is politically passive. It is a

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<sup>38</sup> Aguillar, *Rhythms of the Pachakuti*, p. 50.

<sup>39</sup> García, Gutiérrez, Prada, Tapia *El retorno de la Bolivia plebeya*, p. 177.

<sup>40</sup> Oscar Olivera, in Linsalata, *Cuando manda la asamblea*, p. 170.

<sup>41</sup> Aguillar, *Rhythms of the Pachakuti*, p. 51: “during the 2000 and 2001 rebellions, beyond actions and accomplishments, an embryonic desire for a Pachakuti began to gestate.”

<sup>42</sup> *The Cochabamba Declaration*.



vulnerable subject, potentially a victim to be protected. It is by virtue of this binary that it is possible to extend juridical Declarations to any kind of non-political or depoliticized subject.

In Bolivia, an example of this juridical logic is the “Universal Declaration of Rights of Mother Earth,” signed in Cochabamba on April 22, 2010. This Declaration marks a political regression from the 2000 manifesto. It is a typical example of political contraction through ontological extension. The Declaration presents Mother Earth as a “living community of interrelated and interdependent beings with a common destiny.” This is the ontological extension. From here the Declaration turns towards the usual language of human rights and speaks of the necessity “to recognize and defend the rights of Mother Earth and all beings” through “prompt and progressive measures and mechanisms, national and international.”<sup>43</sup> Essentially, in so far as Mother Earth has “the right to be respected,” all “States, and public and private institutions” have a duty to recognize and protect those rights.<sup>44</sup> The interdependence proclaimed at an ontological level, translated into juridical language, presuppose a national and international power that guarantees the rights of a vulnerable subject. If there is politics, in this as in other similar Declarations, it is only on the part of the state and a power capable of protecting politically passive subjects.

A further step in this direction was taken in an attempt to constitutionalize claims relating to the defense of water and Mother Earth. On December 7, 2010, Bolivia’s Plurinational Legislative Assembly passed the “Law of the Right of Mother Earth.”<sup>45</sup> Here a vague reference to the cosmologies of rural indigenous people allowed the legislator to list the rights of Mother Earth and, more importantly, to affirm state obligations to guarantee and protect them (Art. 1). This integration does not add much to what is already contained in Article 34 of the 2009 Bolivian Constitution: “Any person, in his own right or on behalf of a collective, is authorized to take legal action in defense of environmental rights, without prejudice to the obligation of public institutions to act on their own in the face of attacks on the environment.”<sup>46</sup> Each intervention, be it on an individual basis or in the name of the collective, is mediated by the state in terms of legal actions (*acciones legales*). A similar grammar is also found in Ecuador’s 2008 constitution which, in Articles 71, 72 and 73,

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<sup>43</sup> *The Cochabamba Declaration.*

<sup>44</sup> *The Cochabamba Declaration.*

<sup>45</sup> <http://archive.wphna.org/wp-content/uploads/2014/07/2010-12-07-Bolivian-Law-of-rights-of-Mother-Earth.pdf>

<sup>46</sup> [https://www.constituteproject.org/constitution/Bolivia\\_2009.pdf](https://www.constituteproject.org/constitution/Bolivia_2009.pdf)

combines the indigenous language of *Pachamama* with the legal one of the state. The result is the translation of nature into a thing to which the state attributes rights that the state itself should then protect.

A kind of juridical algebra emerges. The longer the list of rights, the more extensive the power that must protect those rights. And, consequently, also the discretion of that power. In Bolivia, even though Art. 2.6. of the “Law of the Right of Mother Earth” proclaims that the “exercise of the rights of Mother Earth requires the recognition, recovery, respect, protection, and dialogue of the diversity of feelings, values, knowledge, skills, practices, transcendence, transformation, science, technology and standards, of all the cultures of the world who seek to live in harmony with nature,” the Morales government, without prior consultation with the local populations, decided to build a 190-mile road through the Isiboro Sécure Indigenous Territory and National Park (TIPNIS).<sup>47</sup> Fernando Vargas, a TIPNIS indigenous leader, accused Morales for not being “a defender of Mother Earth, or indigenous peoples.” He added that “[t]his is the beginning of the destruction of protected areas in Bolivia and indigenous peoples’ territory.”<sup>48</sup> The government’s decision perhaps contradicts the spirit of the declaration of the Rights of Mother Earth, but the power of the state is not limited either by the Rights of Mother Earth or by the acknowledged local autonomies of indigenous peoples. If the construction of the road was suspended it was only thanks to the social mobilizations of the indigenous populations and different strata of the population. In this regard, the inadequacy of the attempt to understand indigenous rights in the liberal democratic framework of rights and human rights should be noted. The incommensurability of the two legal trajectories concerns not only the difference between individual and community rights but also, and above all, the priority given to reciprocal obligations over subjective rights and to forms of common possession over private property.

The TIPNIS case shows the constitutional tension between plurality and unity. What happens, as in the case of TIPNIS, when there is a conflict between indigenous autonomies and the national interest guaranteed by the unitary state? In such case, the president, that is the personification of the unity of the state, powerfully enters the scene. Although Article 30

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<sup>47</sup> Ana Carolina Delgado, “The TIPNIS Conflict in Bolivia” *Contexto Internacional* vol. 39(2) May/Aug 2017, pp. 373-391; Ricardo Calla, “TIPNIS y Amazonia: Contradicciones en la agenda ecológica de Bolivia” *European Review of Latin American and Caribbean Studies*, Nr. 91 (2011), pp. 77-83.

<sup>48</sup> <https://www.theguardian.com/environment/2017/aug/15/bolivia-approves-highway-in-amazon-biodiversity-hotspot-as-big-as-jamaica>

lists a long series of rights granted to “rural native indigenous peoples,” all these rights depend on the state to guarantee and protect them.<sup>49</sup> And in so far as they depend on the state, as previously mentioned, the state can also limit and suspend them. Therefore, what Evo Morales stated on July 31, 2011 is not in contradiction with the constitution: “We are going to do consultations, but I want you to know that they are not binding. [The road] won’t be stopped just because they [the Indigenous peoples] say no. Consultation is constitutionalized, but is not binding, and therefore, the great desire we have for 2014 is to see the Villa Tunari – San Ignacio de Moxos road paved.”<sup>50</sup> It is not a question of blaming Evo Morales for his inconsistency with regard to the promises he made in the election campaign or his references to *Pachamama*. Morale’s language mirrors the grammar of the nation-state. When he refers to the *bien común*, the common good of the country, he refers not only to the will of the majority, to which the minority must adapt, but also to the Bolivian people as a whole and unity, which he represented. His rhetoric often took the form of internal colonialism, accusing indigenous peoples of being backward, of constituting an obstacle to national development, of being manipulated by foreign powers.<sup>51</sup> However, from the standpoint of the state, “backward” is anything that is out of sync with the rhythm of the state’s legal and economic system. This represents the tip of the arrow of historical time and everything that is not appropriate to its time is *de facto* and *de jure* backward. The state is a powerful mechanism of synchronization. Tensions between temporalities and between unity and plurality can only be resolved within the legal framework of state sovereignty, i.e., on the side of unity. And by the president who represents it. His power ranges from declaring a state of emergency in “the case of danger to the security of the State” (Art. 137) to the normal use of presidential decrees, such as that used in October 2010 by the Morales administration to open up fifty-six new areas for oil development, some of which were on indigenous territories and other protected areas.<sup>52</sup>

As also reiterated by the vice president of Bolivia, Álvaro García Linera: “besides the

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<sup>49</sup> Article 30 provides indigenous people the right to “self-determination and territoriality” (Art. 30.II.4.), “the collective ownership of land and territories” (Art. 30.II.6), and “to be consulted by appropriate procedures, in particular through their institutions” (Art. 30.II.15).

<sup>50</sup> Cited in Dewick Hindery, “Clashing Cosmologies and Constitutional Contradictions” in Hindery *From Enron to Evo. Pipeline Politics, Global Environmentalism, and Indigenous Rights in Bolivia*, Tucson, AZ: University of Arizona Press 2013, p. 178.

<sup>51</sup> Nancy Postero, *The Indigenous State. Race, Politics, and Performance in Plurinational Bolivia*, California: University of California Press, 2017, p. 130.

<sup>52</sup> Hindery, “Clashing Cosmologies and Constitutional Contradictions,” p. 174.

people's right to land, the State -- the State led by the indigenous-popular and peasant movement -- has the right to prioritize the higher collective interest of all the peoples. And this is how we proceeded afterwards.”<sup>53</sup> Linera's language, just like Morales's, is the language of the modern representative state. When he writes that the “Amazon is ours, it belongs to Bolivians,” the subject is “OUR State, our legislation, our government and our state public policies.”<sup>54</sup> It is not the “*nosotros*” with which the 2000 Declaration opens. Rather, it is opposed to that “*nosotros*.” Morales and García Linera talk about the state's power to make decisions. Including the decision on the state of emergency and the suspension of some fundamental rights. What merges in this and other similar examples<sup>55</sup> is the clash between incommensurable juridical-political trajectories. Evo Morales and García Linera acted in the name of progress and superior national interest, which also includes indigenous peoples who opposed the construction of the road. Paraphrasing Rousseau, it could be said that within the framework of the modern concept of sovereignty, the particular will of the indigenous peoples has only one possibility, which is to conform to the general will of the state. If they refuse to obey, they will be “forced to be free”<sup>56</sup> -- in the name of progress and superior national interest.

The tension between unity and plurality is implicitly contained in the definition of Bolivia as a “Unitary Social State of Pluri-National Communitarian Law (*Estado Unitario Social de Derecho Plurinacional Comunitario*).” Article 2 does not hide the tension when it states that “indigenous peoples and their ancestral control of their territories, their free determination, consisting of the right to autonomy, self-government, their culture, recognition of their institutions, and the consolidation of their territorial entities, is guaranteed within the framework of the unity of the State, in accordance with this Constitution and the law.” Plurality is recognized but within the framework of the unity of the State and within the limits established by the constitution. Recognition means dependence on the state grammar of modern law.

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<sup>53</sup> “El punto de bifurcación es un momento en el que se miden ejércitos.” Entrevista con Álvaro García Linera por Maristella Svampa, Pablo Stefanoni, Ricardo Bajo, in *Le Monde Diplomatique* (Bolivia), 02/09/2009: <https://rebelion.org/el-punto-de-bifurcacion-es-un-momento-en-el-que-se-miden-ejercitos/>

<sup>54</sup> Álvaro García Linera, *Geopolítica de la Amazonía: Poder hacendal-patrimonial y acumulación capitalista*, Las Paz, Bolivia, 2012, p. 66.

<sup>55</sup> In 2007, the Ecuadorian government declared that it would suspend the extraction of oil from a field within the Yasuni National Park, but in 2013, Rafael Correa's government announced that, for economic reasons, the extraction of oil had become necessary.

<sup>56</sup> Jean-Jacques Rousseau, *The Social Contract*, New York: Oxford University Press, 1994, p. 58.

Predictably, this tension extends through the various articles of the constitution. Articles 190 and 290 refer to indigenous autonomy, authorities, and jurisdictional functions, even including (Art. 290) the expression of their will through consultation, but always in accordance and harmony “with the Constitution and the law.” This is the feeble voice of plurality. But in the constitution the baritone voice of the state is dominant. Article 378.I. concerns the different forms of energy and strategic resources which are essential for the development of the country; the second paragraph clarifies that it is “the exclusive authority of the State to develop the chain of energy production in the phases of generation, transport, and distribution.” Article 298.II leaves no doubt that the “central level of the State has exclusive authority” over natural resources, minerals, and water sources.<sup>57</sup> Article 349.I reiterates that “natural resources are the property and direct domain, indivisible and without limitation, of the Bolivian people, and their administration corresponds to the State on behalf of the collective interest.” The Bolivian people, as a whole and unity, only exists through the state that represents the nation, which therefore has “direct domain” on natural resources. Indeed, if according to Article 356, “[t]he activities of exploration, exploitation refining, industrialization, transport and sale of nonrenewable natural resources shall have the character of state necessity and public utility,” then from the previous articles it follows that this character of necessity and public utility is decided by the state.

The 2000 Declaration, instead, lets us glimpse another political trajectory. When it insists on the duty to conserve and protect water, it refers to local communities that act as “*sujetos de plenos derecho*,” not subordinate to the government, but as equal partners. This means that their authority does not exist by concession of the government, but it is autonomous from state power. In the name of the “right to life,” of the *usos y costumbres*, of existing local authorities, the insurgents have created a “space” for a different kind of politics, democracy, and democratic participation.<sup>58</sup> It is a physical and temporal space. *Usos y costumbres* and a set of authorities, anachronistic from the point of view of the state, have generated fruitful chronotones. The water war was not just a war on water. It was fought by the state to synchronize alternative “anachronistic” legal systems, and to reshape society. On

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<sup>57</sup> Article 304, which should recognize rural native indigenous autonomies and authorities clarifies the extent of this authority: “Irrigation systems, hydraulic resources, sources of water and energy, *within the framework of State policy*, within their territory” (Art. 304, III, 4).

<sup>58</sup> García, Gutiérrez, Prada, Tapia, “La forma multitud de la política de las necesidades vitales,” p. 172.

the part of the insurgents, it was a war to restore the social as a rich articulation of institutions and legal forms autonomous from the state.

As the “right to life” refers to an authority whose source is not the government or some international treaty but the customs and traditions of the ancestors, this authority exceeds the limits of the constitution and the government. The grammar of the “right to life” is more in the order of duties and obligations than of rights. It implies respect for nature, customs, and the chain of generations that relate to nature or, in this concrete case, to water. In the formula “reappropriate our rights,” the rights that are reappropriated are “rights” of a different nature. One could say that the term “right” is here a false cognate. Indeed, the term “right” is not the common denominator guaranteed by the state, even with social pressure from below. These are legal forms that refer to and reconfigure community systems of self-government according to the “*usos y costumbres*” of the Andean tradition.<sup>59</sup> By analogy with the Western system, one could speak of collective rights. But the comparison immediately shows limits. The forms of work-shifts and the system of reciprocal obligation, known as the system of “*mitas y suyos*”<sup>60</sup> leads into the grammar of the commons better than the concept of collective right or the common good does. The two terms, *mitas* and *suyos*, connect a spatial dimension, strips of land (*suyos* in Quechua), and a temporal dimension, relating to the performance of work-shifts and service (*mita*).<sup>61</sup> This space-time combination places particular emphasis on a system of shifts, working for the community, accountability, reciprocal obligations, and role rotation. Together the two terms denote an organization of the territory, the regulation of agricultural cycles, access to resources, a government of the common forms of housing in the territory. In other words, a common form of being in the world. The result is that, in this context, the terms “right” and “life,” included in the right *to life*, express not a subjective right and life understood biologically and extended to the entire world of the living, but a *form of life* -- a way to inhabit the space, regulate the shared use of resources, assume authority and responsibility in the government of the community. It is a legal system that gives priority to obligations over rights. For this reason, it limits, without the need for state intervention, the right to property, understood as the owner’s right of use and disposal.

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<sup>59</sup> Linsalata, *Cuando manda la asamblea*, p. 124.

<sup>60</sup> Ibidem.

<sup>61</sup> S. Thomas et al., *The Bolivia Reader. History, Culture, Politics*, Durham and London: Duke University Press, 2018, p. 38.

*“Reappropriate what is ours.” Social Property I.*

On April 11, 2000, the Bolivian government was forced to repeal Law 2029 and issue a new law, number 2066. It contains 36 articles which, in addition to keeping open the possibility of creating a national water council, recognize traditional *usos y costumbres* and the presence within the territory of local units of popular participation.<sup>62</sup> Although the *Coordinadora* won the battle against water privatization by forcing the *Aguas del Tunari* company to leave the country, at that point a new level of discussion and conflict regarding the future of the municipal water supply company (SEMAPA) was opened. It must immediately be said that the *Coordinadora*'s attempt to restructure SEMAPA on the basis of customs and traditions, on the basis of the practice of social property and social control, failed.<sup>63</sup> The *Coordinadora* tried to transform SEMAPA into a sort of social enterprise, a water management system organized on the basis of local authorities revitalized in social practices.<sup>64</sup> Raquel Gutiérrez-Aguilar rightly observed that “current law [...] allow[s] no room for social property and only recognizes classical forms of ownership: public or private, each with its variants (state, municipal, cooperative, corporate, individual).”<sup>65</sup>

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

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<sup>62</sup> Willem Assies, “David versus Goliath in Cochabamba: Water Rights, Neoliberalism, and the Revival of Social Protest in Bolivia” in *Latin American Perspectives*, Vol. 30, No. 3 (2003), p. 30.

<sup>63</sup> Susan Spronk, “Roots of Resistance to Urban Water Privatization in Bolivia: The ‘New Working Class,’ the Crisis of Neoliberalism, and Public Services” in *International Labor and Working-Class History*, No. 71, 2007, pp. 8-28; Nasya S. Razavi, “‘Social Control’ and the Politics of Public Participation in Water Remunicipalization, Cochabamba, Bolivia” in *Water*, N. 11, 2019, pp. 1-19.

<sup>64</sup> Linsalata, Linsalata, *Cuando manda la asamblea*, p. 180

<sup>65</sup> Raquel Gutiérrez-Aguilar, “The Coordinadora. One Year after the Water War” in Olivera, *¡Cochabamba!*, p. 60.

to public hands under the control of municipal government.<sup>66</sup> The 2009 constitution put an end to the social property experiment.

In the water war, the conflict between different political, economic, and legal trajectories reemerged with particular intensity. The long history of the water war teaches us that the privatization of common resources and commons requires violent legal interventions that eventually atomize the social fabric and impose a new legal system based on private individualized juridical subjects. It requires the disintegration of local authorities and the depoliticization of the social by means of the monopoly of state power. Until the second half of the nineteenth century, Bolivian law recognized the *ayllu* as a juridical unit. The attack on the Indian community dates back to 1874 with the *Ley de Exvinculación* (Disentailment Law) which states that “No individual or group of individuals may take the name of community or *ayllu*, nor appear for such an entity before any authority.”<sup>67</sup> The language of the Disentailment Law shows the incompatibility between individual private property and communal forms of ownership.<sup>68</sup> The Disentailment Law produced a dual effect, which was actually two sides of the same coin. On the one hand, by dissolving the communal forms of possession, it recognized the absolute right of individual property to buy and sell land, thus giving rise to a fragmentation and atomization of ownership. On the other hand, it recognized the right of the state to expropriate the land for greater reasons of national necessity. In fact, the property, deprived of the local authority to which it was linked, became a right recognized and protected by state power. But in this way, it became a right dependent on the state, which also reserved the right to expropriate the land.

The law of 1874 is a typical example of “progressive” intervention by the state. It aimed not only at unchaining the land, but also at “freeing” Indians from communal bonds and hierarchies and non-state forms of authority. In other words, it presented the modern Western grammar of individual rights as a form of emancipation from communal and oppressive relics. Casimiro Corral, ambassador from Bolivia to the United States, member of

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<sup>66</sup> On the appropriation of water and SEMAPA by the state, see Carlos Crespo Flores, “Estatalización del agua en Bolivia” in *El Libertario*, Nr. 76, 2015: <http://periodicoellibertario.blogspot.com/2011/12/estatalizacion-del-agua-en-bolivia.html>

<sup>67</sup> José Flores Moncayo, *Legislación boliviana del indio. Recopilación de resoluciones, órdenes, decretos, leyes, decretos supremos y otras disposiciones legales, 1825-1953*, La Paz: Departamento de Publicaciones del Instituto Indigenista Boliviano, 1953, p. 226; Laura Gotkowitz, *A Revolution for Our Rights: Indigenous Struggles for Land and Justice in Bolivia, 1880–1952*, Durham NC and London: Duke University Press, 2007, p. 6.

<sup>68</sup> Gotkowitz, *A Revolution*, pp. 30-1: “the 1874 law paved the way for the most devastating assault against communal property since the seventeenth century [...]. In 1880, Indian communities held approximately half of Bolivia’s farmland; by 1930, the communities’ holdings had been diminished to less than a third.”



the Liberal Party, and the president of the Constituent Assembly in 1871, wrote that “the work of modern civilization is to free from encumbrance the estates of the aristocracy and the clergy which feudalism has invented.”<sup>69</sup> This was echoed by a document written by two anonymous lawyers from La Paz: “The states that are in the vanguard of civilization and progress in this century of steam and electricity have rushed to sell off communal, vacant, and uninhabited lands and even monastic assets, transferring them from dead hands to industrious hands, both national and foreign.”<sup>70</sup> In the name of civilization and progress, achieved through the legal violence of the state, communal land must be transferred “from *dead hands* to industrious hands,” the former being those of the backward indigenous communities, and the latter those of the modern capitalist, be it national or international. For the two lawyers who drafted this text, it would be the law of progress. The same one that already marked the trajectory of many other countries, and on whose tracks Bolivia was also to be placed: “History provides irrefutable proof. The United States of North America, France, Italy, Switzerland, Mexico, Central America, and all the states of Spanish America have sold off and sell off their state land, as well as their monastic assets, either to balance their budgets or yielding to the *powerful law of the progress of nations*.”<sup>71</sup>

Forms of indigenous resistance, first against state expropriations legalized with a decree of 1866 that declared community lands to be state property, and then against privatizations, must face, in addition to state violence, the violence of a normative conception of progress, meaning the accusation of being backward and of going against history. In doing this, they must face the economic discourse that sees the transformation of the community member into a hacienda *colono* as the way to improve their conditions; they have to face the liberal discourse which claims to free the indigenous community member from a servile state in which it would be “like *the human beast* used by all.”<sup>72</sup> They also have to face a Western “Marxist” discourse according to which the self-government of the peasant village and common possession of the land are backward forms, which the capitalist mode of production overcomes by preparing the foundations for the subsequent historical stage constituted by socialism.

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<sup>69</sup> Two Lawyers from La Paz, “Transforming the Property Regime” in Thomas, *The Bolivia Reader*, p. 181.

<sup>70</sup> Thomas, *The Bolivia Reader*, p. 182

<sup>71</sup> Thomas, *The Bolivia Reader*, p. 182

<sup>72</sup> Thomas, *The Bolivia Reader*, p. 182.

A different trajectory was experienced in Cochabamba. If the modern state, monopoly of power, and private property were born together through a process of demarcation that separated public authority and private property, the water war showed the practice of undoing the demarcation. This can be described as a process that cuts in half the ancient concept of *dominium*, which previously included both authority and property, and on the one hand abolishes privately owned public power, and on the other leads to the creation of undivided national sovereignty. This process of demarcation by the state separates not only sovereignty from ownership, but also the state from society, the political from the social, the public from the private. This process atomizes the social by destroying local authorities and forms of self-government. It is the same legal machine used in the war against the commons in Europe and in the colonies. In the Cochabamba water war, forms of undoing of demarcation were experimented. The practice of social property reversed the process of depoliticization of the social by redefining ownership, juridical nature and the protection of water.

The Declaration of December 2000 partially shows this change of course. Article 1 declares that “water belongs to the earth and all species and is sacred to life.” Article 2 defines water as a “fundamental human right and a public good.” Water, continues Article 2, “should not be commodified, privatized or traded for commercial purposes.” Article 3 affirms that “water is best protected by local communities and citizens.” These three clarifications are part of a single constellation. Water cannot be commodified or privatized because it cannot be owned. It “belongs to the earth and all species and is sacred to life.” For this reason, it can neither be privatized nor nationalized. In the phrase “Reappropriate what is ours,” the term “ours,” “we” does not indicate a set of individuals, but relations and reciprocal obligations between users. This means that the “reappropriation” does not only concern water or a “common good,” but a form of life that, as such, cannot be privatized or nationalized. This is why the water war points in a direction that goes beyond water as a common good. The right as a guarantee of full access by individuals to the common good for the satisfaction of fundamental rights is not what is at stake. At stake is a different notion of rights and property relations.

In this legal configuration, the right to use water is not an individual or collective right guaranteed by the state. It is the common use, according to customs and obligations, by the users that defines the juridical field of a legal system autonomous from the state. In order

to avoid confusion, we must understand social property as practice. In this alternative juridical configuration, water is not the target of a subjective right to property. Rather, water has juridical priority. This is an inverse relationship to that of modern Western modern law. If the latter is prompted by the individual will of the subject who exercises the right to property over external things, the grammar of the right to life instead gives priority to the use and, therefore, to the *way* in which social groupings relate to a common resource, according to regulations that go beyond individual rights and are instead rooted in the *usos y costumbres* of the ancestors. If social property is a right, the term “right” means something other than its modern Western synonym. Primarily, it means authority and therefore mutual obligations and responsibilities. It is as if the individual juridical subject had rights only insofar as it has obligations towards common resources and other users.

The concept of property, far from being an absolute right of the subject, is reconfigured in the concrete relationships between users and resources. The use of common resources is part of the democratic practice of local self-government, in which communities and “citizens” decide and do, discuss and execute together.<sup>73</sup> In the commons and in the practice of social property, property relations take place at a distance from the state and are part of democratic regulations at the local level. It could be said that dominium of ownership is dispersed to the extent that political power and authority are dispersed. It is the community through its own institutions that collectively discusses and decides on common and individual use, and on the most appropriate way to preserve common resources. In this way, users are bound to each other by reciprocal obligations, which also involve resources used in common. These become a subject among subjects and not, as happens instead in the modern concept of private property, an object of individual will.<sup>74</sup>

The Cochabamba insurgents showed in their practices that the alternative to private property is intertwined with alternative practices of democracy and government. There ensues a network of relations regulated by forms of self-government, in which rights do not precede, but follow use, and this, in turn, is regulated by a “system of reciprocal

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<sup>73</sup> As we can read in a text by the *Coordinadora* (Cochabamba, February 6, 2000): “For us [...] this is the real meaning of democracy: we decide and do, we discuss and execute.”

<sup>74</sup> These “ontological” differences at the basis of the subject-object and subject-subject relationship are primarily based on different property relationships.

obligations”<sup>75</sup> which refers to existing forms in indigenous communities of the Andean area. The practice of social property is also this: reappropriation of these traditions.

*“Reappropriate the patrimony of the country.” Social Property II.*

In January 2000, another report from the *Coordinadora*, in addition to opposing the privatization of water, claimed respect for “our water committees and cooperatives, and their *usos y costumbres*.” Herein lies the conflict between two legal systems. One based on the state and the privatization not only of water, but of the social as such. The other, founded on a network of committees and the dynamic tradition of *usos y costumbres* as a source of authority independent of the state.

The Water War is a war for the restoration of the social and the reappropriation of the country’s patrimony, for the restoration of customary practices under attack, for the defense of water as a practice of social property. The term “patrimony” does not refer to the country’s economic wealth, but to the “*patrimonio*” as a cultural heritage and rich social fabric of community institutions. The attack on this cultural heritage began with the arrival of the Spaniards in 1532.<sup>76</sup> In the 19th century, it took the form of nation-state organized violence. A series of legislative acts tried to dismantle forms of common property and communal self-government to make room for the new regime of individual private property. The Bolivian National Revolution of 1952 and agrarian reform of 1953 took another step towards building a unitary nation-state based on individual rights and private property. The Agrarian Reform Law of 1953, through a program of land expropriation and its redistribution, laid the foundations for an individualization of property and the erosion of the *ayllu* as an authority and jurisdictional space. Subsequently, leftist parties, trade unions and NGOs continued along the same path, trying to impose a “modernization” of the country, free from the archaic remnants of *ayllus*.<sup>77</sup> In the 1980s, Decree 21060 introduced new structural adjustments based on privatization and attack on trade unions. Thus, we arrive at Law 2029 of 1999, which inaugurates a new season of privatization without regard for local

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<sup>75</sup> Linsalata, *Cuando manda la asamblea*, p. 102.

<sup>76</sup> Thomson, *We Alone Will Rule*, pp.27-63.

<sup>77</sup> Silvia Rivera Cusicanqui, “Liberal Democracy and Ayllu Democracy in Bolivia: The Case of Northern Potosí” in *The Journal of Development Studies*, N. 26 (2990), pp. 97-121.

traditions and customs. Each phase of this long war sees the entanglement of economic violence and state violence.

This war, studded with conflict and violent repression, operates in the long run as silent violence of rights in the name of progress. It is in the name of “civil rights,” equality and formal freedom of the citizen-owner that the authoritative forms of rural communities have been dismantled. This is the liberal colonialism of the modern Western legal system.<sup>78</sup> The right to property constitutes a prism through which to read the different tones of this process.

The hierarchical structure of the *ayllus* is destroyed and the community form disintegrated to make room for atomized citizens, i.e., the elements of modern *demos*. The local authorities of the community that innervate the political fabric of the social are demolished in the name of the monopoly of power of the nation-state. But these processes met with punctual resistance from strata of the population not synchronized with the dominant temporality of the state. In 1739, an insurgency took place in Oruro, Bolivia with the aim of freeing the country from tyrants and re-establishing the empire of the ancient kings. Between the end of 1740 and 1750 a new insurgency in Chuani aimed to wipe out the Spaniards to restore former freedom.<sup>79</sup> In 1780-81, “the most powerful anti-colonial movement in Latin America prior to independence”<sup>80</sup> took place. The insurgency in the Andes expanded to the point that subsequently, Manuel de Godoy, Carlos IV’s prime minister, declared that “no one ignores how close we were to losing, around the years 1781 and 1782.”<sup>81</sup> Among the claims of the insurgency were the abolition of slavery and the restitution of the land to its rightful owners. New revolts punctuated the 19th century. In 1874, the Disentailment Law favored the partition and privatization of communal land, denied the recognition of the *ayllu* in favor of individual indigenous leaders as legitimate delegates of Indian communities. The struggles against these property regime reforms were particularly intense in northern Potosí, where the communities managed to prevent the entry of government authorities into indigenous territories.<sup>82</sup> New peasant revolts inflamed the

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<sup>78</sup> Uday Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought*, Chicago: University of Chicago Press, 1999.

<sup>79</sup> Hylton and Thomson, *Revolutionary Horizons*, p. 39.

<sup>80</sup> Hylton and Thomson, *Revolutionary Horizons*, p. 35.

<sup>81</sup> Hylton and Thomson, *Revolutionary Horizons*, p. 35.

<sup>82</sup> Benjamin Dangl, *The Five Hundred Year Rebellion. Indigenous Movements and the Decolonization of History in Bolivia*, Chico, Edinburgh: AK Press, 2019, p. 120.

countryside between 1952 and 1953, to the point of forcing the new government to create a commission for agrarian reform. In the 1980s, the state redesigned the country's property relations. In 1986, the privatization of the mines gave rise to a massive "March in Defense of Life."

The numerous stories of dominion and resistance that have characterized the last 500 years of history must be understood not according to a unilinear and teleologically oriented temporality towards the nation-state, private property relations, and the free market, but as an overlapping of historical layers. When new forms of political and economic dominion clash with traditional forms, in the tension between these different trajectories new political practices and configurations arise. The plurality of forms of legal systems and local self-government turns out to be anachronistic from the point of view of the synchronizing temporality of the state. This imposes, or seeks to impose, cultural homogeneity, a common language, and above all a legal system based on the unity of national sovereignty. But in the tension with the synchronizing temporality of the state, the anachronic strata do not remain unchanged. The alternative is not to choose the indigenous village over the state, indigenous cosmology over modern Western epistemology. The alternative lies in the tension between these different temporal and social strata. And this tension must be investigated as a field of possibility in which unprecedented political, social, and cultural forms arise not from theory or from academic classrooms, but from the practices of concrete historical agents. In Bolivia, the *ayllu*, its memory and its reconstitution in the 1990s, is an indicator of these alternative ways. As a practice of decolonizing Bolivian society, the *ayllu* is neither a remnant nor the subject of academic description, but a popular principle for imagining an alternative democratic future.<sup>83</sup> The return of the *ayllu* and to the *ayllu* can be understood in the temporality of *pachakuti* -- the restoration of institutional forms capable of reconfiguring the present to give rise to a different future.

When we refer to *usos y costumbres*, we must refer to practices that repeat and distinguish everyday life; practices based on an intimate knowledge of the territory and the social context; practices which are accepted as endogenous and not imposed from the outside.<sup>84</sup> To these three dimensions it must be added that *usos y costumbres* are dynamic,

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<sup>83</sup> Albro, "The Culture of Democracy and Bolivia's Indigenous Movements," p. 398.

<sup>84</sup> Tom Perreault, "Custom and Contradiction: Rural Water Governance and the Politics of *Usos y Costumbres* in Bolivia's Irrigators' Movement" in *Annals of the American Association of Geographers*, No. 98(4), 2008, p. 839.

that is, they are reconfigured in their encounter with other unprecedented practices and situations. As stated by an irrigator and activist closely associated with the Cochabamba Departmental Federation of Irrigator Organizations (FEDECOR): “*Usos y costumbres* are closely related to an historical process, they have much to do with Andean culture, and also reflect processes of struggle between [*campesino*] communities and hacienda owners, for example. And they reflect the [traditional] water authorities, they reflect the communal forms of decision making about water sources, and they also reflect communal norms of water distribution. ... In this sense they are not static, they are dynamic.”<sup>85</sup> This dynamism makes it possible to build temporal and spatial bridges with other social contexts. It is about thinking in terms of possible bridges between the Inca tradition of the *ayllu* and the commons, as Jose Carlos Mariátegui did when he pointed out the link between “Inca communism,” which was characterized by collective ownership of cultivatable land by the *ayllu*, the Russian MIR, and Western socialism.<sup>86</sup>

The water war opens up a “space” of practical and theoretical experimentation that allows for the construction of temporal and geographical bridges with legal structures and forms of ownership alternative to modern Western ones. This “space” has been hidden by the dominant juridical forms, but it characterizes and has characterized human life in an incomparably more extensive way than the brief parenthesis of Western European property relations can represent. Occidental law, in its celebration of freedom and a certain equality, is not only despotic when exported to the rest of the world,<sup>87</sup> it is also despotic towards temporal, legal, and social strata within Europe itself. This is the colonial war being fought inside and outside Europe. If these two sides are not kept together, the project of decolonization will inevitably get stuck halfway through.

Today, not only has private property become an unquestionable dogma, but its constitutive categories have been naturalized to the point that, even when trying to think of an alternative, it operates according to modern property grammar. At most, ownership changes, so that the private individual is replaced by the nation-state, or the territories stolen from indigenous peoples are returned in the form of property titles. The language of the

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<sup>85</sup> Perreault, “Custom and Contradiction”, p. 840.

<sup>86</sup> José Carlos Mariátegui, *An Anthology*, London: Monthly Review Press, 2011, p. 73.

<sup>87</sup> Peter Fitzpatrick, *The Mythology of Modern Law*, London and New York: Routledge 1992, p. 107 writes: “An advanced Occidental law, wedded in its apotheosis to freedom and a certain equality, becomes thoroughly despotic when shipped to the rest of the world in the formal colonizations from the late eighteenth to the early twentieth centuries.”

Indigenous and Tribal Peoples Convention Article 14 of ILO Convention No 169 (Indigenous and Tribal Peoples Convention, 1989) shows the problem well.<sup>88</sup> At the basis of this and other articles remains the modern Western legal grammar according to which it is not the single local authorities but the authority of the government that guarantees property and settles any conflicts. One other example is the Bolivian Constitutional Court's refusal in a 2004 ruling to recognize "indigenous claim to communal property on the grounds that it violated the right of private property, ruling that 'customary law... is not applicable to resolve a possible conflict of the right of property over land.'"<sup>89</sup>

The reappropriation of the country's patrimony interrupts the dominant legal colonial trajectory and appropriates a history characterized by continuity with the dynamic practice of customs and traditions. Reappropriating the country's patrimony means blending together continuity and discontinuity. Continuity with local culture and traditions, up to the *ayllu*. Discontinuity with respect to the imposition of an unjust economic, legal and property system. In the words of a Cochabamba insurgent, the water war "had to 'unprivatize' the very fabric of society [...] that had been fragmented and atomized by neoliberalism."<sup>90</sup> This atomization predates neoliberal politics. It dates back to the history of the long war of modern Western law against the commons. To unprivatize society does not mean putting property in the hands of society, provided that this step is possible and, technically speaking, means something concrete. To unprivatize society means nothing less than undoing the demarcation.

In Cochabamba something more than a water war was at stake. The de-privatization of the *Aguas del Tunari* water company and the fight against Law 2029 were questioning the link between state logic and property logic. The social practices of the insurgents were creating room for social property. It is this "room" made up of practices, institutions,

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<sup>88</sup> The first paragraph of Article 14 speaks of recognition of the "rights of ownership and possession of the peoples concerned over the lands." But the second paragraph clarifies the meaning of that recognition and the dependence of the property on the government that shall "guarantee effective protection of their rights of ownership and possession." Finally, the third paragraph clarifies that the entire dynamics of property relationships takes place in the state legal system: "Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned." [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)

<sup>89</sup> John L. Hammond, "Indigenous Community Justice in the Bolivian Constitution of 2009" in *Human Rights Quarterly*, 33 (2011), p. 678. The principle stated by the Court is that "customary law cannot violate the Constitution and the laws." This means that indigenous territories are not only not an autonomous jurisdiction from the state but are subject to forced institutionalization (*institucionalización forzada*) and state dominion of lands: Idon Moisés Chivi Vargas, "Justicia indígena y jurisdicción constitucional. Bolivia 2003-2004" in *Derechos Humanos y Acción Defensorial*, n. 1 (2006), p. 66-70.

<sup>90</sup> Olivera, Olivera, *¡Cochabamba!*, p. 47.



obligations, customs and traditions that has to be investigated and it is the task of theory to keep it open. The *patrimony* to be reappropriated is neither local nor national, but translocal. It is a question of listening to a polyphony of voices that in different geographical areas and different historical times have represented and still represent another way of practicing and understanding democracy and property relations. It is a question of showing how these voices make the modern Western canon of private property appear for what it is: a phenomenon that is geographically and historically so limited that, when compared to the plurality of alternative voices, it turns out to be only a limited fragment of human history.

The water war opened up a legal and institutional space that is alternative to privatization by transnational corporations and the state attempt to impose public ownership. A space for political experimentation that does not break the continuity with customs and traditions but reinvents them daily in the practices of local self-government by the users of the commons.<sup>91</sup> It is a space in which institutional models that foster democracy and participation are reconfigured and reinvented. It is these institutions that give shape to an alternative legality to that of the state.<sup>92</sup>

If in the long colonial war, battle after battle, society has been depoliticized, privatized, and atomized, then the water war, along with numerous other insurgencies, brought about a restoration of the political fabric of the social. What I am suggesting is that the water war is one of the many battles of the long colonial war. Privatization does not concern only ownership of resources. It means depoliticization and atomization. In Cochabamba, the mobilizations around the water war reversed course and “people took back politics from private hands.”<sup>93</sup> Cochabamba has shown how practices and discourses on property forms are both practices and discourses on democracy. A water war activist observed that during the mobilizations “the sense of individualism, the isolation and the fear of the unemployed disappeared under the spirit of solidarity.”<sup>94</sup> The interview continues: “people were afraid of the bullets, but not anymore.”<sup>95</sup> Democracy in action, what I have

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<sup>91</sup> Alexander Dwinell and Marcela Olivera, “The water is ours damn it! Water commoning in Bolivia” in *Community Development Journal*, Vol 49 No. 51 (2014), pp. 145-6.

<sup>92</sup> Gutiérrez-Aguilar, *Rhythmos of the Pachakuti*, p. xlii: “Our particular organizational structures have to be ‘legal’ and our methods of self-governance and exercising power also have to be legal [...] What non-state practices that regulate social coexistence and the struggle in marginalized regions mark the rhythm of time, assigning a new meaning to the term ‘to legalize.’”

<sup>93</sup> Lucia Linsalata’s interview of Oscar Olivera, 14 July 2010, in Linsalata, *Cuando manda la asamblea*, p. 148.

<sup>94</sup> Ibidem.

<sup>95</sup> Ibidem.

called democratic excess, unprivatizes society and allows the sense of isolation and individualism to be overcome. The democratic excess works at the institutional, economic, and emotional level. “People were afraid of the bullets, but not anymore.” The political project of modernity begins with fear. The fear of violent death and the fear of coercive power.<sup>96</sup> Overcoming fear in democratic practice means having the courage to face the instability of a set of democratic practices open to risk and conflict. It means accepting conflicts as political dimensions related to the endless question about the just order.

*“Reappropriate the ability to say and to do, decide and execute the projects and plans that suit the people and the country.” Politics and Democracy.*

On February 6, 2000, the *Coordinadora* published the fourteenth bulletin. Here, alternative systems of “irrigation and water consumption based on traditional practices” were presented as part of a different practice of democracy. “The true meaning of democracy: we decide and we do, we discuss and we execute.”<sup>97</sup> The link between democratic practices, dispersed sovereignty, and the reconfiguration of property relations was very clear to the Cochabamba insurgents. For this reason, the Cochabamba experiment is not an episode of radical democracy, but is connected to the countless insurgencies that have questioned the political trajectory of dominant modernity.

*Nosotros*, the term with which the 2000 Declaration begins, does not correspond to the “we the people” of a nation and does not aim to form a perfect union. Following the Declaration, the “*nosotros*” is made up of citizens of different nations — the Declaration enumerates the citizens of Bolivia, Canada, the United States, India, Brazil. The list could go on. This is the first semantic level of the term “*nosotros*.” A second level follows, in which social strata are listed: “Farmers, workers, indigenous people, students, professionals, environmentalists, educators, nongovernmental organizations, retired people.” This second semantic level is crucial, because the plurality of subjects is not reduced to the unity of the nation-state. One of the issues raised by the water war concerns the political articulation of

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<sup>96</sup> Thomas Hobbes, *Leviathan*, Oxford and New York: Oxford University Press, 1998, p. 84: “continual fear, and danger of violent death.” John Locke, *The Two Treatises on Government*, New Haven and London: Yale University Press, 2003: “the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers.”

<sup>97</sup> ¡Y... El agua sigue siendo nuestra! February 6, 2000.

this plurality of subjects in new types of democratic practices. Instead of the concentration of all legislative powers in a congress or Parliament, the Cochabamba insurgents followed a different political trajectory, characterized by a power dispersed in a plurality of local communities. And this is how the Declaration ends, drawing together political subjects whose scope omits the nation-state and instead includes “local communities” to be considered as “equal partners with governments” and “the people of the earth (*los pueblos del mundo*).” Their task is “to promote democracy and save water.”<sup>98</sup> This is the third semantic layer of “*nosotros*.” The juxtaposition of local communities and peoples of the earth is possible precisely by virtue of the dissolution of political unity into a plurality of subjects. *Los pueblos*, the peoples of the earth, are not a new cosmopolitan subject for a global democracy. They are made up of a plurality of local communities. The citizens of these communities do not receive citizenship by the grace of the state, by the circumstance of being born in one place or another. Citizens are the users in a system of reciprocal obligations; the *right* to use is “based on practices of self-organization unrecognized by -- and in no need of recognition from -- the state or the international community.”<sup>99</sup> If it is the authority of traditions and customs, their daily practice, that gives the community the status of *sujetos de pleno derecho*, it follows that the notion of citizenship is also profoundly modified. At a local level and as a practice, it does not depend on the state. It is neither an expression of *ius soli* (citizenship by birth) nor *ius sanguinis* (citizenship by bloodline). It is not even the “right to have rights.”<sup>100</sup> Citizens are the users in a system of reciprocal obligations that regulate community access to resources through common deliberative practices.<sup>101</sup> Citizenship is the concrete experience of being part of one or more collectivity. It is not the legal status decided by the state. It is something “highly physical” in that it has to do with a whole series of practices that encompass a variety of things from the attendance at meetings to the sharing of alcohol; it is “highly ethical” since it concerns a web of obligations and relationships of solidarity distinct from the affairs and interests of a group of rulers.<sup>102</sup> Anyone who is part of a neighborhood is also part of a social and institutional

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<sup>98</sup> *Declaration*

<sup>99</sup> Marcela Olivera, “Water Beyond the State,” *NACLA Report on the America*, Vol. 47, No. 3 (2014), p. 66.

<sup>100</sup> Arendt \$\$\$

<sup>101</sup> On the “new type of citizenship” that was emerging in the everyday practices during the water war, see Gutiérrez-Aguilar, *Rhythmos of the Pachakuti*, p. 19.

<sup>102</sup> See Lazar, Lazar, *El Alto, Rebel City*, pp. 264-5.

fabric that defines rights and political participation in the forms of local self-government. Although he or she does not have the legal title of Bolivian citizenship, he or she is part of the community, assemblies, and deliberative practices. Being part of the council of the community means taking on obligations and responsibilities. What emerges is not a right received by the grace of the state, but a fluid conception of citizenship based on membership, concrete practices and reciprocal obligations. A new practice of translocal citizenship was arising, or could have arisen, in the water war.

The water war put into practice this different political and legal grammar by combining traditional elements, harking back to local *usos y costumbres*, and innovative political elements generated by social practices. The 2000 Declaration states that the polyphony of voices and actions of social mobilizations “gather together today in solidarity to combine forces in the defense of the vital right to water.” The vital right (*derecho vital*) inverts the logic of modern law. It is not based on the will of an individual subject and on his right to have common resources such as water. Rather, the vital right is based on the vital need to access those resources, not only for individual survival, but for the existence of forms of community life. The defense of the “vital right to water” goes beyond the specific object, water, and is configured as a defense of customs and traditions, forms of life, and community practices whose legal existence is based on reciprocal obligations. Here is the inversion: the vital right evokes relationships of obligation rather than individual rights of access to a resource. From the point of view of law and modern political theory, the term “obligation” sounds like a limit, like the opposite of a right. But the term “obligation” not only shows the functioning grammar of the commons that underlies a different way of understanding democracy and property, it also shows a different way of understanding power and freedom.

This is where the politics of vital rights (*derecho vital*) to water comes in, its excess over the logic of individual rights, and its incommensurability with respect to modern Western legal grammar. This vital right does not have to be invented, but recovered through “civil action, courage and sacrifice.” It is right in action in the social practice of groups, assemblies, and communities which, in the name of the fair *use* of resources, must be counterposed to “corporate, institutional and governmental *abuse*, and trade agreements which destroy that right.” This “civil action” is not simple disobedience to unjust laws. It is the implementation of an alternative legal system. It is something that, in Western language,

recalls *jus resistentiae* as the right/duty to *restore* an unjustly violated order. The Western tradition of political thought has done everything possible to eradicate the right of resistance from the category of rights. And with relative success. However, not in the theory in action in Cochabamba. In the practices of the water war, resistance is not only *against* unjust laws. The “civil action” of the insurgents is *for* “the recovery of the vital right to water (*recuperación del derecho vital al agua*)”.<sup>103</sup> It is for the recovery, defense, and restoration of a form of life in common attacked by the dominant legal system characterized by the monopoly of state power and private property. If we can speak of the right of resistance, it is resistance to the dominant trajectory of colonial modernity. When the text of the 2000 Declaration states that the civil action is “against corporate, institutional, and governmental abuse,” the meaning of this statement is twofold. On the one hand, local authorities and the practice of social property limit and control governmental power, not on the basis of a system of checks and balances, but on the basis of the daily exercise of democracy in local assemblies and communities whose status is that of *sujetos de pleno derecho*. On the other hand, if the modern right of property has been defined in the formula *ius utendi et abutendi*, the practice of the insurgents disentangled the two terms. *Correct use* remains as a limit to *abuse*. And the correct use is defined on the basis of a continuous, dynamic reconfiguration of customs and traditions.

The right of resistance as defense and restoring of the vital right to water, is a right that has a reality as it is practiced in a situation of necessity, when forms of life in common are under attack. It is the defense of the excess of democracy in the *politics of presence*. The “representative democracy,” that the *Coordinadora* defined as a “*simulación de democracia*,” is based on the principle of people’s sovereignty. A “people” that is not really present but becomes visible, as a whole and totality, as represented in the various organs of the state, up to the president or the monarch who, in his person, makes the simulacrum of unity visible. Four hundred years of political theory of the modern state immediately become clear to Cochabamba insurgents when they define the “plebeian politics” that emerged in the water war as “the expansive movement of a politics of presence against the exclusionary politics of representation.”<sup>104</sup> Political representation is the representation of the invisible *unity*, of the impossible *whole* of the nation and of its fetishistic political *identity*, which

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<sup>103</sup> Declaration.

<sup>104</sup> García, Gutiérrez, Prada, Tapia, “La forma multitud de la política de las necesidades vitales,” p. 181.

become visible through representative artifice and through an exclusionary act. To make political sense, the identity of a group requires that someone be non-identical, excluded, and not part of the whole. The unity of the nation is always polemical, in the literal sense of the term: based on the exclusion of someone and the possibility of hostility. It simulates democracy, because a leader or group of delegates speaks on behalf of the nation, *re-presents* it in the sense that it makes it visible. But it is a ghost presence.

The politics of presence is completely different. It is not exclusionary because it is not based on a political identity to be produced. It is based on political presence in numerous local assemblies, communities, and associations. It is based on an expansive plurality because it is open to anyone who participates politically in the life of the assemblies. In Cochabamba, unity is disarticulated in the plurality of groups and social strata that do not need to be represented, because they are present.

What the *Coordinadora* called a “*correcto ejercicio de la democracia*” is a vision of insurgent democracy as a practice. Not the crowd, the multitude, or the constituent power, but a rich institutional fabric of democratic practices and local assemblies. It is a kind of “vernacularized” messy democracy.<sup>105</sup> It is this set of democratic practices that makes the state nervous. A riotous mass can be a challenge, quite a dangerous one, to the establishment and to what the state calls “public order.” But it does not question its grammar. The state is organized violence and is familiar with the language of violence, which from time to time it unfolds through the state of emergency. The state, instead, is allergic to the democratic excess which manifests itself on a social level as a democratic practice of dispersion of power in numerous local assemblies. These assemblies question the state monopoly on decision-making and restore the collective capacity to deliberate, “to recall, to hold accountable, and to force leaders and representatives to adhere to collective decisions.”<sup>106</sup> It is in this intertwining of political practices, local self-government, and forms of common

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<sup>105</sup> On the “messy democracy” see Uday Mehta and Massimiliano Tomba, “Messy Democracy as Practice and Attitude” forthcoming. On vernacularized politics and democracy, see Sian Lazar, *El Alto, Rebel City. Self and Citizenship in Andean Bolivia*, Durham and London: Duke University Press, 2008, p. 234; on the emergence of vernacular democracies that challenge the normative conception of democracy, see David Nugent, “Democracy Otherwise. Struggles over Popular Rule in the Northern Peruvian Andes” in Julia Paley (Ed.), *Democracy: Anthropological Approaches*, Santa Fe: School for Advanced Research Press, 2008, pp. 21-62. From a different perspective and a different geographic area, on the “vernacular ideas of popular sovereignty” which undermines liberal rights in the name of “the law of force” instead of “the force of law,” see Thomas Blom Hansen, “Democracy Against the Law: Reflections on India’s Illiberal Democracy” in A.P. Chatterji, T.B. Hansen, C. Jaffrelot (Ed.), *Majoritarian State. How Hindu Nationalism is Changing India*, New York: Oxford University Press, 2019, pp. 19-39.

<sup>106</sup> Olivera, ¡Cochabamba!, p. 57.

ownership that the term “social property” takes shape. It is what Sánchez de Lozada defined as “authoritarian communalist democracy” based on supposed assemblies of Bolivia’s indigenous society.<sup>107</sup> It is a matter of a plurality of local assemblies, the reference to customs and traditions, and to the *ayllu* as an institution and practice of “other democracy.” Here, the *ayllu* represents a challenge to the process of social atomization imposed by the state. Indeed, from the nineteenth century, from the national revolution of 1952, to the agrarian reform of 1953, to liberal and leftist politics, to unions and NGOs, Bolivia’s societal structure and commons have been attacked numerous times in the name of progress and against the anachronistic structure of *ayllus*.

This is the long war that underlies the water war. The conflict is not between privatization or nationalization of natural resources. Nor is it for a right of free access to available resources. The conflict takes shape between incompatible legal and political systems. In Cochabamba, democracy in action in a network of “assemblies and councils” experimenting with “processes of decision-making based on direct democracy,”<sup>108</sup> also reconfigures property relations, the legal system, and creates space for the reconfiguration of institutions inherited, and constantly reinvented, from the past. What was emerging in Cochabamba was not a different ownership of the right to have water available, but a different practice of the right based on systems of reciprocal obligations. These are systems whose structure gives priority to the relationship rather than to individual will. These relationships include both that which in modern Western language we will call intersubjective relationships, and the relationships with the territory, land and nature. Obligations follow, even towards the territory, which do not arise from some metaphysics, but from legal, social, and economic systems that are based on a different way of owning, which is incompatible with the modern Western concept of private property.

It is a question of noting the difference, even the incommensurability, between legal grammars and ways of owning. Today not only can common resources be privatized and sold, but, as evidenced by the insurgents of Cochabamba, “[d]ue to the vague broadening of the concept of ‘rights,’ societies and the money owners have converted rights into objects

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<sup>107</sup> Albro, “The Culture of Democracy and Bolivia’s Indigenous Movements,” pp. 390-392.

<sup>108</sup> Oscar Olivera, “After the Water War” in *ROAR Magazine*, <https://roarmag.org/magazine/oscar-olivera-water-war-commons/>

able to be bought and sold.”<sup>109</sup> It is not a question, as in Bolivia, of protecting *Pachamama* by encapsulating it in the preamble of a constitution. It is not even a question of restoring an authentic concept of “right” or of protecting rights with other rights. Much less is it a question of embracing a metaphysics or cosmology. In fact, thinking of changing a structure of property relationships by embracing a different metaphysics is still an idealistic approach. It is a question of taking a different path. The text just quoted above goes on to say, “we are learning how to fortify and consolidate an alternative to the system which we oppose.”<sup>110</sup> With the same modesty as the Cochabamba insurgents, it is a question of learning from their political and social experiments to start envisaging alternatives to modern Western law and its proprietary forms.

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<sup>109</sup> Oscar Olivera and Luis Gomez, “The Rising of the Waters. *The “commons” re-established by the people of Bolivia,*” 2006. The article was provided to me by Marcela Olivera and is the English translation of “La crecida de las aguas. Los bienes comunes restablecidos por la gente en Bolivia” also published under the title “La crecida de las aguas. Los comunes y la visión Andina del agua restablecidos por la gente en Bolivia y los Andes,” 2016, in <https://desinformemonos.org/la-crecida-de-las-aguas/>

<sup>110</sup> Ibidem.