

Indigenous Justice: Bolivian Community Justice and its Role in the State

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Introduction

In November 2006, the BBC published an article pithily titled: “Bolivia goes back to the whip.” The article detailed the rise of an indigenous leader in the small Andean country of Bolivia and how his election precipitated Bolivia’s return to traditional methods of justice. This was symbolized by tribal leaders, indigenous *mallkus*, carrying long ceremonial whips, *chilotes*. In 2006, the BBC speculated on the role that indigenous justice or community justice would play in the modern Bolivian state. In 2010, I arrived to that same Andean country without any idea that such a debate had started prior to my arrival. However, not much time passed before the distinctly Andean culture, alongside the seeming rejection of Western-style development, drew me to community justice as an example, a synecdoche of the changes occurring in Bolivian state.

The discovery of the existence of community justice complemented many of my own personal interests in social justice and tugged at my imagination of these strong foreign practices placed in the rural Bolivia. To me, community justice was part of the allure of the distinctly Bolivian identity evident on every street corner of La Paz and was also a living connection to Bolivian history. In Bolivia, one may only need to stop at corner shop or *tienda* to be reminded of the palpable connection Bolivians maintain between the past and the present. It is evident in the swinging *polleras*¹ of the indigenous *cholitas*², the rugged alpaca textiles, and the shared celebration of indigenous festivals at Tiwanaku, a sacred space in the highlands.

However, as tied to the past as Bolivian culture may have seemed superficially, during my time in Bolivia the population was humming with change. This change was brought by their first indigenous president, Evo Morales. A few weeks into my time in Bolivia, I would be peering into crowded ceremonial grounds in the altiplano of Tiwanaku searching for that same

¹ Traditional skirt

² Women of indigenous descent, not used pejoratively in Bolivia

Bolivian president as the crowd stretched their fingers towards the sky to welcome the sun and celebrate the Winter Solstice. Later, I would watch his helicopter struggle against the thin air to carry him away amidst the cheers of his people. It was easy to be swept into the collective adoration of this man and of the new Bolivian state project.

This thesis will attempt to determine the relationship between the recent addition of community justice to the Bolivian constitution and the relationship of the Bolivian state to its people. The reason community justice garners such academic attention and is relevant to the development of a state is because it runs contrary to the traditional concepts surrounding state building. In other words, community justice is symptomatic of a state design that rejects long-held principals suggested by academic elites such as Max Weber and Hobbes. Likewise, it creates new interpretations for the nature of a state, building on ideas by Benedict Anderson on the strength and composition of imagined communities. Community justice can be utilized as a vehicle to discuss these greater concepts within the Bolivian state system and to examine how such a system would fit into a modern state.

Both Weber and Hobbes championed the idea that a nation or state should exercise a “monopoly of violence” over its citizens. For Weber, this monopoly was founded upon the sole legitimacy of authority being the state. This violence can be interpreted as the day to day policing of a community and the right of the state to sentence and punish criminals for violations of law. In their eyes, such a singlehanded approach to violence and therefore to justice processes further cemented the state as a cohesive entity under which the individual garnered membership or protection. Contrarily, community justice arguable breaks the monopoly of the state over the power to enact violent punishment. Instead perceived non-state actors, authorities whose legitimacy is derived outside of the association with the Bolivian state grow to prominence under

the system of indigenous justice (Méndez et al. 1999). Instead of following the modern state, these processes actually reject the modern and base their processes on historical tradition—a former nation. For example, the Guaraní would no longer solely follow the authority of the Bolivian state but also the authority of the Guaraní nation, a separate entity from the formal state apparatus. In the context of Weber and Hobbes, the state could be threatened by these parallel and perhaps competitive imagined nations. In fact, instead of subjugating community justice and the ideas of a former (perhaps competitive) nation underneath the strict written Roman and typical judicial system, Bolivia has actually placed both systems on equal footing. In the past community justice was considered an “alternative” and subjugated to the regular system. However, now the new constitution finds them equal.

Since the constitutional inclusion of community justice seems to disagree with the basic understanding of the foundation of state, the matter is often fraught with controversy. The geographic and traditional variance of indigenous justice only adds to this controversy and creates a perceived gray area of the law that has raised suspicion of government neglect and human rights abuses. For this reason, the beginning of the discussion on community justice must involve a definition of what does and does not constitute indigenous justice. However, it is important to recognize community justice is not a new phenomenon. In fact, it derives legitimacy from centuries of practiced tradition and the law does not change that fact. Instead, the chapter will focus on how the government defines what is and is not community justice based on jurisdiction, while recognizing only pre-existing traditional practices. Likewise, that discussion will show how the definition has changed over the years to eventually welcome this pre-existing tradition as equal to the typical system of justice.

Although a frank and universal definition for such a varied system proves difficult, the first chapter of this thesis will tackle the task of explaining the processes and philosophies inherent in community justice. Likewise, it will detail the existence of indigenous justice throughout Latin America and the indigenous organizations that form the governing structures of Andean indigenous society. It is important to realize there are limitations on the jurisdiction of community justice. The Law of Jurisdictional Delineation forbids community justice from mediating cases of murder as well as from punishing women and children. These safety mechanisms are designed to prevent human rights abuses. However, there are instances in which indigenous justice ignores the strict outline of the constitution. The chapter will close with a discussion of how Bolivia specifically provides a prime ground on which to discuss community justice and its interaction with the Bolivian state. Only with this baseline understanding of community justice and specifically the role of community justice in Bolivia, can further discussion progress to the influence of this process on the Bolivian state.

Once an understanding of what constitutes community justice has been achieved, the next argument must address what is excluded from this definition. In this exclusion, lynching and peri-urban mob action must be addressed. I argue that lynching cannot be considered a legitimate extension of community justice for a variety of reasons. However, the prevalence of reporting on lynching and the juxtaposition of lynching and community justice in most academic literature begs a digression to refute such a connection. In many ways, community justice and lynching both occupy a spectrum of civic action. They are both processes propelled by a shared communal identity and both operate with very little government oversight or regulation. However, community justice, aside from being formally sanctioned within the government, contains a distinguishable structure of authority, a legitimacy based on historical tradition, and a

philosophical focus on community restoration. On the other hand, lynching arises with very little distinguished authority, becomes remarkable because of its lack of legitimacy, and focuses on pain or death to punish perceived offenders. For this reason, the two processes are incompatible. However, community justice and lynching both testify to the interaction of the Bolivian people with the state, which adds to the discussion of the modern Bolivian state and its relationship with the people.

After this delineation between community justice and lynching, the discussion will focus on the interaction between community justice and the Bolivian state in the fourth chapter. This chapter will present community justice as both complementary and contradictory to the Bolivian state through the analysis of the role of community justice in the Bolivian state. In many ways, community justice provides the fulfillment of the Bolivian mandate to become a “plurinational” society. The analysis for this chapter will focus mainly on a series of interviews that took place during a six week field school in La Paz, Bolivia. These interviews were undertaken with IRB approval and comprised of long discussions with relevant voices in the community justice debate, including university professors, a nongovernmental organization director, and an official from the Vice-ministry charged with community justice oversight.

During my time, I had the opportunity to interview Dr. Ramiro Molina Rivero, an often consulted expert on community justice and director of the Museum of Ethnicity and Folklore in La Paz, Bolivia. Likewise, I spoke with Dr. Franco Gamboa, a professor at the Catholic University of Bolivia and an authority on Bolivian politics. Thirdly, I spoke with Dr. Juan Carlos Eduardo Brañoz, the Director of Education of the National Electoral Court of Bolivia. Finally, one of the most informative of my interviews was with Jose Luis Vargas, the director of programs at the Network of Participation and Justice in Bolivia. These men were selected

because of their differing perspectives on the issue of community justice and their availability during the six week window during which I was in Bolivia. Their opinions and suggestions into further reading material were instrumental to the development of this thesis and to my understanding of community justice. Likewise, they provided a blended knowledge of the theory behind community justice and the real world practice in rural Bolivia.

The opinions of these men will then be compared with statistics, as well as my personal experiences while in Bolivia. Through these conversations, I was introduced to changes in the Bolivian state. Instead of one, cohesive state structure, the Bolivian state, just as community justice, is comprised of several different pockets of indigenous identity. The Bolivian constitution under the direction of Evo Morales proclaims that Bolivia is seeking to embrace a pluralistic national identity, rather than the conglomeration of the different identities into one distinctly Bolivian and yet muddled indigenously identity.

In conclusion, the thesis will attempt to add to the academic understanding of the role of community justice within Bolivia and the national project surrounding a development of a representational state. In many ways, only time will tell whether community justice, as an extension of the greater constitutional and structural changes, will add to the fraying of a cohesive national identity or will complement the indigenous communities search for significance on a broader national level. Likewise, debate remains whether the restorative mission of community justice holds true across indigenous traditions. In fact, such decentralization of power could arm local leaders with the ability to abuse their control of the community, an aspect that will be discussed later amongst other controversies surrounding community justice.

Chapter One: Indigenous Identity and Community Justice

Community justice, often referred to as communal justice, indigenous justice, or customary law, can be both a difficult and easy concept to define. Because community justice can take different forms depending on the cultural practices of the community in which it occurs, scholarly definitions of community justice often remain fairly general, often to the point of losing any real descriptive power. Community justice cannot be limited to any specific structures or processes because of this high level of variability. However, approaching it generally, community justice is a judicial system used by indigenous communities in order to preserve traditional practices of community management. In Bolivia, community justice is described as: “An expression of judicial pluralism that characterizes Bolivian society, forming an alternative mode of solution for conflicts” (Pairumani 2008).

This means that crimes committed within a traditionally indigenous territory do not pass through the typical civil or criminal court circuit. Instead, historical tradition determines whether an accused offender faces a jury of his peers, a single authoritative figure from the village, or some mixture of the two. This separation from the traditional system in favor of community involvement is one of the factors that most separates community justice from its counterpart in Bolivia. In an analysis of this communal involvement and separation, John Hammond, an expert in community justice, states:

“Unlike modern, rational law in the Weberian sense, under community justice the law is not a separate institution administered by specialists but an integral part of community structures. In this sense, the affirmation of community justice must be understood as proceeding from the assertion of indigenous peoples of a right to their own culture and self-determination” (Hammond 2011, 655)

This statement by Hammond exemplifies the connection between community justice and Bolivian indigenous identity. Ultimately, community justice allows a very intimate connection

between community peers and creates a clear expression of self-determination and independence for an indigenous community.

Although Bolivian community justice may characterize Bolivia, the use of this traditional indigenous method of justice can be encountered in many countries in South America. In Peru, the society has dubbed the process as “Communal Justice.” Within these different traditions, there are some similarities from which the definition of community justice can be based. Community justice uses traditional practices reinforced over years of historical practice. These practices often mirror the “ordinary” or state system and other times vary distinctly from the state mandated justice system.

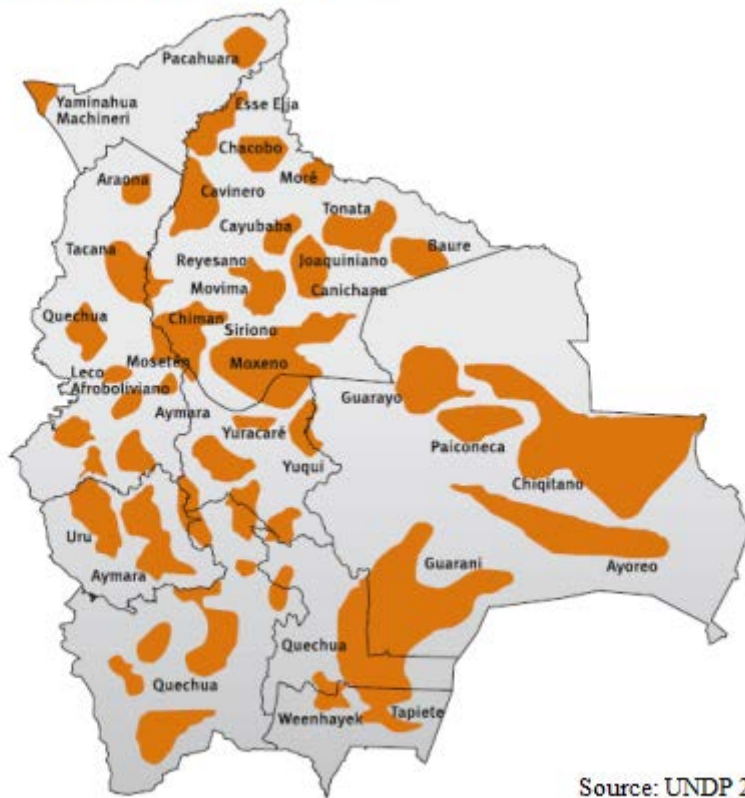
Community justice provides an ‘alternative’ to the ordinary or state justice system. The implementation of this alternative provides a significant break from the ‘ordinary’ justice system or the typical state system. The differences between the two systems manifests in almost every aspect, from the mechanisms and organization to the philosophy. While ordinary justice acts punitively, community justice provides a different route, emphasizing restoration and reparation of the societal cost caused by crime. Although occasionally punishments can be considered punitive, the overall intention of community justice seems marketed to maintain community unity. Often, a community leader mediates between two parties with an agreement on either a sentence for reparations, such as working for the wronged party, or strictly castigating punishment. While the ordinary system remains fairly rigid and restricted to the rights and rules dictated by law, community justice provides adaptability and interpretation specific to each case and culture.

One of the main differences between this ordinary system of justice and community justice lies in the holistic approach of community justice towards crime. In community justice,

there is no distinction between civil, criminal, agrarian, or other issues. All cases are brought to the same community officials. Likewise, these officials are almost always untrained and sometimes uneducated. Instead of receiving legitimization from some sort of higher education or law degree, these officials are elected by the community or inherit the role after intense participation within the community. Finally, these processes are entirely oral, which both adds some complication in practice as well as variety. On the one hand, community officials are able to use a great degree of flexibility and personal opinion within their deliberation, which gives them freedom beyond strict written and coded law. On the other hand, this freedom creates an incredible difficulty for review, standardization, and outside analysis of community justice. While some criticize the institutionalization seems to give community justice a rather vague, blank slate, it would be difficult to impossible for the government to effectively monitor indigenous justice from afar. (Hammond 2007).

One of the reasons why it is so difficult to find specifics about community justice is because of this “mosaic” (Eduardo Brañoz 2011) structure of all the different cultural traditions, and it is also part of the reason there is so much misunderstanding about the structures of community justice. The differences between two individual traditions can be drastic, and there are a multitude of coexisting traditions within Bolivia. Illustrated on the following page, **Map 1.1** presents the hodgepodge of indigenous territory and the numerous ethnic divisions within Bolivia. Each small pocket of indigenous peoples practices a unique form of community justice or indigenous justice.

Map 1 Distribution of Indigenous Lands



Source: UNDP 2007

For example, the Quechua tradition of justice uses processes that are very similar to traditional justice systems, while other traditions vary widely from the commonly understood system (Vargas 2011). The punishments vary between traditions as well. In an investigation by the CEJIS, the Center for Justice Studies, two different stories of community justice punishments arose from two different indigenous groups.

One of the narratives was that of a Chiquitano's personal experience with community justice. In this individual's account, he describes a system of *caciques*³ and chieftains that oversee the issues of justice within a community. The man in the trial, while intoxicated, had started a fight with another man. The perpetrator was offered the opportunity to work for the man he

³ Indigenous traditional leaders

assaulted as restitution, but instead chose to receive ten lashings as a penalty. In the end, both parties were content with the chosen punishment (Sistema Jurídico Indígena 2003, 140). This example shows that despite using violent punishments, the overall goal of community justice is to reunite a community, which was accomplished according to both men involved. Likewise, even within the judgments of community justice, there is a high degree of flexibility. The offender was able to choose how he would receive his punishment.

The other narrative described the processes that surround an Aymara conflict, and the imagined situation of a dispute between two sheep herders regarding the barriers of their grazing fields. This system uses a mixture of concepts from traditional justice and cultural customs. Witnesses are used to solve the conflict alongside a lamb blood sacrifice, a ritual burial of lamb bones, and the arbitration of a communal mayor. This form of community justice shows how even in one historical tradition, aspects of community justice can resemble both indigenous historical tradition and ordinary justice systems. Systems do not simply lean to one extreme or the other, but often blend justice systems as they see appropriate (Sistema Jurídico Indígena 2003, 140).

The authority figures differ in each system of community justice which can affect the types of typical punishments utilized. In some indigenous groups, such as the Chimani, Ese Ejja, and Tocana, there is use of a hereditary system of community leadership, where the “captain” is succeeded by his oldest male heir. This captain is responsible for maintaining the safety of an offending community member as he is punished. The Chimani and these groups use punishments such as the Palo Santo⁴—a punishment where a community member is tied to a tree filled with ants. The captain is responsible for restricting the amount of time allowed for this punishment in

⁴ This punishment is also used by coca syndicates in the Chappare region of Bolivia as a punishment and the implementation of these syndicates should be considered separate from any system of community justice.

order to preserve the life of the community member and protect human rights, usually only allowing this specific punishment for mere seconds. This singular reliance on one authority, the captain, could in theory open the door for power abuse, a subject that will be discussed further in the conclusion to this thesis. However as previously mentioned, other groups such as the Guaraní use a committee of community elders, and the Quechua use a system very similar to the traditional justice system. The Guaraní are known to use punishments such as whipping for stealing, while the Quechua have a more 'passive' system that uses "*celdas*" that act similar to prison cells for their community members (Vargas 2011). This variety between mechanisms of punishment and organization only scratch the surface of the variety found in the various indigenous justice systems.

Function of Community Identity

Community Justice often develops as the result of a strong communal definition of identity or citizenship, such as the collective citizenship defined by Sian Lazar. He states that in indigenous societies in Bolivia, citizenship does not fit the typical western notion of citizenship as a right. Instead of a right, citizenship becomes a responsibility to participate and protect the community. When an individual fulfills those obligations to the community, he receives the benefits of citizenship. However, when an individual neglects his or her responsibility, he or she loses the protection of citizenship.

This definition of citizenship affects the Bolivian community profoundly and only bolsters the support for community justice as a representation of this communal identity. Bolivian indigenous justice's primary goal is not to maintain rights for an individual, but to maintain community harmony through the encouragement of individual responsibility to the community. This responsibility to the community is an imagined construct, such as any

membership to a larger organization. Membership can be described as ascribing to the same historical and political mental construct (Lucero 2008, 111).

This shared experience would give the community shared moral values, which are often used as a basis for community justice. The Andean morals that can often typify the tenants of community justice are summed in the traditional Incan expression: “*Ama quilla, ama llulla, ama shua*” translating to “don’t be lazy, don’t lie, don’t steal” (Colleredo-Mansfield 2002, 638). When an individual violates these principles, he or she has harmed the community more than any other individual, and community justice seeks to repair that societal cost by forcing an individual to repay the cost he inflicted on the community. One of the primary principles of community justice involves reparation to society. As explained to me in during the summer of 2011 in Bolivia, community justice always seeks to restore a community member back to good standing through penance or reparation. This distinction often is lauded as superior to the strictly castigating state system, which often does not rehabilitate the criminal back into the good graces of society. However, while emphasizing the restorative nature of community justice, it must be noted that in the severest cases tried by community justice, offenders can be exiled from their community. This exile, the community justice equivalent of a death sentence, severs an offender from the support of the community and can leave lasting repercussions and damage within the community. For this reason, it is rarely used (Vargas 2011).

Likewise, the systems of community justice have developed in a distinctly nonwestern manner because of their rejection of individual value and merit in favor of community identity and citizenship. John L. Hammond, an expert scholar on community justice explains that: “community justice represents an alternative model to that of individual rights on which western legal systems are grounded” (Hammond 2011). Western legal systems are defined by the defense

of individual rights. However, communal identity negates those individual rights. Instead, the health and wellbeing of the community becomes paramount to the point where individual rights can often be sacrificed for the well being of the community. For example, an innocent family member can be punished for the crimes of his relative in order to give the community satisfaction. From this perspective of community importance, mediation within community justice does not only involve a dispute between two people. Community justice is not simply a process to which an individual is subjected, but requires the participation of the community. By removing the judge and lawyer structure, the community members are forced into direct mediation with each other as well as with their community members. In this system, community participation is not only encouraged, but necessary. Community members are expected to participate in community justice as a form of responsibility to the community (“Participación Ciudadana...” 2008, 5).

Different indigenous traditions use different structures of community justice in order to reflect community involvement within the system. For example, the Guaraní structure of justice uses a council of elders in order to represent members of the community. These members meet in order to hear both sides of any certain case, deliberate together, and then issue their sentence. With this system, every member of the community will eventually participate as they grow in age and social rank within the community, a process which often includes both genders. Therefore, the Guaraní town council is highly and intentionally reflective of the community structure of the village. While often the committee is directed by a leader, a “captain,” all members can deliberate and form the appropriate punishment for the community member on trial (Vargas 2011). These community members consist of those in fulfillment of their responsibilities underneath a construct of community citizenship, which will be discussed later in this thesis. In

other structures, election to the committee for communal justice is “passed” from member to member in the community—ensuring all members of the society will eventually contribute to the system and therefore to the community (Rivero 2011).

Punishments are also used to reflect the importance of a communal identity. Much of the controversy that surrounds community justice revolves around the use of violent punishments. However, community justice usually seeks to serve three purposes: “to punish, to resolve an issue quickly, and to return the community to peace” (Vargas 2011). A most rare and severe punishment attributed to the community justice system is to be removed from the community: a form of exile from the town. This punishment is usually reserved for severe violations of the community peace. Another nonviolent punishment is to be tied to a tree in the center of the village for several hours. This punishment utilizes community shame as the victim’s transgression is apparent to all members of community and the shame of disappointing the expectation of the community can provide enough castigation to ensure the individual does not repeat his actions (Vargas 2011). In these punishments, the public testimony of a violation of community responsibility creates a much more effective deterrent than any form of violence.

Additionally, the strength of community relationships allows for the functioning of the community justice system through communal education about the rights of community members. Because community justice relies on an unwritten system of law, members of a community must be “socialized” from birth to understand their rights and responsibilities within the system (Rivero 2011). Likewise, communal meetings are often used in order to educate the members of the community on new policies or rights granted from the government. For example, the Vice Ministry of Indigenous and Original Peoples Affairs (VAPIO), the state branch overseeing indigenous communities, often will send an educational delegation to a rural community meeting

after the passage of a new state policy. These meetings are often organized and supported by a team from the rural community, such as the ETZ, the technical team that assists the *capitán grande* in Guaraní lands, which often oversees such a meeting (Postero 2007, 123).

This socialization and education of community justice promotes the effectiveness of community justice in rural areas with small populations, because every individual can keep their neighbors and friend accountable to the system. However, it also leads to the impossibility or at least incredible difficulty of community justice to be adopted on a wide-scale or in an urban environment (Rivero 2011). Without the personal connections within a community, an unwritten system of law can be confusing or may be manipulated; therefore the system is restricted to rural areas and contributes to the distinct urban-rural divide in judicial jurisdictions (Vargas 2011). Even within small populations, issues of illiteracy or low education require creativity in communication. The government of Bolivia and the community councils use leaflets, oral presentations, and even cartoon depictions in order to educate the community and maintain clarity. This education in part describes to the rural populations their rights as Bolivian citizens and distinguishes the jurisdictional limitations of community justice (Postero 2007, 123).

While each rural indigenous community perpetuates the community identity that exists within their town, the separate indigenous nations have also created political bodies that often act to support indigenous desires on a national level. Organizations such as CIDOB, the Confederation of Indigenous Peoples of Lowland Bolivia or the Assembly of Guaraní peoples, APG, contribute to societal unity and identity within Bolivia. Often these national organizations reflect the traditional community structures that form that basis of community identity. The title of the organization CONAMAQ, the National Council of Ayllus and Markas of Qullasuya specifically represents the organizational device of Ayllus and Markas that often influence

communal society in indigenous lands (Albó 22). In this way, indigenous tradition manifests in local, regional, and national organizations.

Other Instances of Institutionalized Indigenous Tradition in Latin America

It is important to remember that community justice is not an exclusively Bolivian phenomenon and in fact has been explored across Latin America, creating a variety of legislation and policy to address the desire for indigenous expression of justice and tradition. The recent resurgence of indigenous claims to tradition garnered legitimacy from the 2007 United Nations Declaration for the Rights of Indigenous Peoples. While obviously a global declaration, many of the rights expressed within the UN document highlight key debates between Latin American governments on the rights of their indigenous communities. Among these rights are articles that provide legitimization for claims to a plural judicial system such as Article 34:

Indigenous peoples have the right to promote, develop, and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

The movement to address indigenous tradition has occurred in Latin America among a wide range of countries. Almost predictably, the movements have been strong in countries with high rural populations of indigenous peoples such as Nicaragua, Ecuador, and Bolivia; however the movement does not exclude less indigenous countries. Mexico, fifteen percent indigenous nationally, has implemented an experimental permission for Mexican “*usos y costumbres*” (a Spanish term for traditional practices) in the southern region of Oaxaca. This region contains a higher percentage of self-identifying indigenous people, 54%, than the nation as a whole. In Mexico, *usos y costumbres* are traditional methods for leadership election, not an example of community justice (Eisenstadt). Instead, Mexico continues with a singular system of justice and the use of these practices is constricted to times of election. *Usos y costumbres* encompass

traditions designed to elect community leaders that differ from the typical and official process. An example would be the use of public voting, where individuals must either verbally declare their vote for a candidate during a town hall style meeting or simply line up physically behind the banner of their candidate in order to be counted. These practices have been shunned in non-indigenous systems because of pressure presented by declaring a vote in a public forum. However, the emphasis on community participation within many indigenous traditions promotes a very public display of participation during an election.

Usos y costumbres provide a testament to the shaping of government practices to protect indigenous identity. The officials, mayors or councilmen for the towns in Oaxaca, are official state representatives, but are elected according to indigenous constituent custom, creating a dual legitimacy of being both state officials. This duality of roles is something encouraged by outside organizations such as the United Nations. According to Article 18 of the UN declaration on the Rights of Indigenous People:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures as well as to maintain and develop their own indigenous decision-making institutions.

Therefore, the recent attempt at allowing *usos y costumbres* in Mexico aligns with the stated goals of the declaration.

The overall effect, however, may have worked contrary to the movement to incorporate indigenous tradition into government practice. Critics challenged the implementation of *usos y costumbres* by stating that it disadvantaged another powerful movement in Latin America, the movement for women's rights. Critics "claimed it legalized the abuse of indigenous women by allowing communities to sanction 'bad' Indian traditions" (Mattiace 2003, 134). In some indigenous traditions, female roles do not traditionally appear within the power hierarchy of the

community. By allowing traditional roles to serve as a guideline, the government can inadvertently disadvantage women in the community who do not have the opportunity to fill traditionally male roles.

Likewise, *usos y costumbres* are criticized as being discriminatory towards minorities that live along the fringes of communities. Communal custom determines the selection of leadership within the community. Therefore, those who do not participate in the community but still fall within its geographic control are limited in their ability to select representation. Not only do these customs often disadvantage those not actively participating within the community and sometimes women who cannot hold certain roles because of traditional gender roles, but it can discourage skilled and trained youth from participating in their home communities. Critics argue that those who have left the community to pursue higher education may be hesitant to return to a system that does not reward their education, instead “they will spend up to one third their lives serving in generalist [positions]” or as errand runners “for semiliterate and illiterate mayors” (Eisenstadt).

This statement paints an image of a relatively mundane future for educated professionals should they return to their home communities. Likewise, the observations show that positions of leadership within the community are often held by community members with low education and a lack of skills. Although the lack of education is not enough to warrant the declaration that these leaders would be ineffective since the system encourages experience, it does cause suspicion about the merit of community leadership. These critiques together have added to the label of these traditions as “bad.”

The use of the term “bad Indian traditions” highlights one of the main arguments against the institutionalization of community justice and the acceptance of other indigenous traditions.

The book *To See with Two Eyes* by Shannon Mattiace examines this perspective in the light of the Mexican use of *usos y costumbres* and highlights the desire to separate indigenous traditions arbitrarily into ‘good’ and ‘bad’. Much of the fear of community justice and other movements for indigenous expression is based on the idea that blanket legalization for these rights will allow a mixed bag of both good and bad traditions to be accepted under law. Even the UN declaration of indigenous rights contained a limiting addendum, the final article which limited the grand declarations of indigenous rights to be in accordance with: “the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith.” (UN Declaration 46.3) These objections mirror the historical colonial “repugnancy clause” found within former African colonies of Britain during their colonization. Often customary law, such as community justice, was permitted by the colonial rulers as long as it was tempered by this clause—a restriction that allowed the British judges to reject any custom they deemed inappropriate or inhumane (Lee Van Cott 2000, 209). The urge to dub certain traditions “bad” and “good” falls within that desire to regulate the traditions of indigenous communities in order to make them more palatable to an outside audience. For example, the use of physical punishment (whipping, etc.) could be considered a “bad” tradition because of outside expectations for human rights standards. In dealing with community justice, there is fear that underneath the auspice of community justice, harmful traditions will be perpetuated and these fears foment calls for government regulation.

For outsiders, the broad acceptance of community justice or indigenous practices creates a perceived gray area. Since community justice is by definition shaped by the community that practices it, the procedure of justice can have many different manifestations. This ambiguity has led both to its critique and appreciation. On the one hand, skeptics ponder exactly what forms of

justice have been legalized or at least passively permitted by the state for the people. On the other hand, the flexibility of community justice has been applauded because it can reflect a myriad of individual cultures to maintain a sense of cultural authenticity.

Why Bolivia?

Community justice is not an exclusively Bolivian phenomenon. As described throughout this chapter, facets of community autonomy or traditional methods of community management are widespread throughout Latin America. However, when considering a study of the interaction between community justice and a political state, Bolivia becomes an ideal case study. There are clear advantages to studying the implications and functions of this system within Bolivia. In many ways, Bolivia is on the leading edge of the experiment with community justice and has most fully committed to including this process within its judicial system. As described previously other nations such as Mexico have only permitted limited and restricted implementations of communal traditions. According the Bolivian constitution, the system of community justice within Bolivia has been adopted as an equal system to the typical institutional justice system. Although some scholars contend that this characterization is not always accurate, the fact remains that Bolivian community justice carries the backing and legitimization of the national government, fully intertwining community justice and the state.

Also, Bolivia's population is roughly 60% indigenous according to the CIA World Factbook, which places the country as the highest indigenous population within Latin America. Because of this high percentage of indigenous people alongside the variety of indigenous traditions with thirty-six different indigenous groups within Bolivia, Bolivia can often be considered a standard for indigenous-state relations and a highly scrutinized model for indigenous traditions amidst Latin America. Because of the high indigenous population, the

indigenous traditions and identity behind community justice can be more readily studied in the Bolivian state than in other countries in Latin America. Not only is the indigenous identity and history overt and often proudly paraded by the Bolivian state, it offers thirty-six nations with thirty-six different cases of community justice and state interaction to examine. Finally Bolivia is often seen as a leader in the realm of indigenous state relations. Bolivia provides leadership with its recent institutionalization of community justice for the other states within Latin America and demonstrates a history of wrestling with representation for the indigenous majority (Hammond 2011, 650-651).

Chapter Two: Legislative Reform and State-Indigenous Relations

The adoption of community justice as a judicial alternative emanates from a history of political development and identity definition within Bolivia. The recent constitutional shift in favor of community justice is most often connected to the administration of Evo Morales. However, the process of growing representation for indigenous communities has been a continual struggle within the political development of Bolivia. Bolivia has always been a highly indigenous state from its independence in 1825, but this varied ethnic demography did not lead to equal heterogeneity in the government of the state. Instead, until recently, the leaders and policymakers within Bolivia have been derived from mestizo⁵ elite, despite active and passionate movements by indigenous organizations. Likewise, the indigenous population has often been antagonized by the state rather than represented by it.

During the Chaco war between Bolivia and Paraguay in 1932, Bolivian troops viewed the ethnic population of the Guaraní to be enemies of the state, which ultimately led to the execution of traditional leader of the Guaraní, the *mburuvicha*, by Bolivian soldiers. The earlier War of The Pacific in 1879 between Bolivia, Peru, and Chile led to changed state borders, which divided an area that was formerly cohesive Aymaran territory into a puzzle of state boundaries. Neither of these wars was specifically targeted against indigenous groups and was initiated over desire for resource rich land, but they do testify to the often oppositional relationship that existed in the past for the Bolivian state and the indigenous people encapsulated within its barriers. When wars were not weakening the position of indigenous peoples in Bolivia, the system of *caciques* and *haciendas* further eroded the traditionally indigenous lands (Albó 2004, 19).

First National Indigenous Congress

⁵ This term describes those of mixed indigenous and European racial heritage, usually of the higher class in Bolivia.

Indigenous groups would regain their voice in the 1945, when the military-nationalist government of Colonel Gualberto Villarroel created a representational body called the First National Indigenous Congress. A few months prior, a rural activist named Luis Ramos Queveda had led the Bolivian Indigenous Community in designing a program of indigenous demands to the press. Queveda emphasized indigenous rights to land and demanded for traditionally indigenous lands to be returned to their indigenous communities. However, Queveda was incarcerated for his activism and the Indigenous Congress became the primary mode of representation for indigenous peoples, although with an emphasis on rural education and development rather than land rights. Still, the Indigenous Congress marked the first official form of representation on a national level for indigenous peoples (Hylton and Thomson 73)

This congress also challenged the Bolivian landholding system. Before this point, many landholders operated under a system of *pongueaje* or *mitanaje* which utilized male and female indigenous bond slave labor, much resembling the ancient serf system in Europe. This system was challenged by the indigenous community, which led to conflict between the landholding elite and indigenous peoples, including the Chayante rebellion in 1947, the largest rural rebellion of the twentieth century in Bolivia. After much violence from both sides, Colonel Villarroel was lynched by an angry urban mob, and the rural insurgents encountered strong oppression by a new right wing government. However, this uprising in 1947 marked the beginning of the end for oppressive rural landholders and the birth of strong indigenous movements within Bolivia (Hylton and Thomson 74)

The 1952 Revolution

The next most important occurrence in Bolivian history in regards to Bolivian state-indigenous relations came in 1952 and the revolution that occurred under the encouragement of

the MNR, the National Revolutionary Movement. The MNR, a center-left political organization, had attempted for years prior to the 1952 revolution to change the political order in Bolivia through failed coups and political strategy. Finally, after the MNR won a majority in the governmental election which was then annulled by a military junta, the party mobilized its supports, mostly miners, and marched to La Paz. After 600 deaths, the military government surrendered to the MNR (Hylton and Thomson 77).

The most notable gains for indigenous communities from then revolution were increased suffrage and massive land reform (Postero 75). Previously, indigenous peasants had been barred from voting through either literacy or occupational requirements, which the MNR dissolved during their revolution. Nearly overnight, the voting base in Bolivia expanded from 200,000 to 1,000,000 (Hylton and Thomson 79). However, the overall changes from the 1952 revolution did not repair a society that remained prevalently racist nor resolve a system bent against poor indigenous workers (Postero 75). Likewise, although the MNR included indigenous laborers within its ranks, the overall ideology of the party called for *mestizaje* or the mixing of cultures to create a unified Bolivia (Hylton and Thomson 80), which would differ greatly from the pluricultural message of Morales years later. Likewise, although the MNR greatly expanded the role of indigenous people in Bolivia, through the decades the party became increasingly more conservative.

Eventually as the MNR fractured in ideological disputes, until a military coup unseated the MNR President Victor Paz Estenssoro and established a military leader. This period of dictatorship, sponsored by the United States as a buffer to Cuban ideological fervor, slowed the progress of indigenous rights in Bolivia. The dictator regime relied heavily on peasants while it consolidated its power. As the regime proved unfavorable to the indigenous labor force,

demonstrations arose in opposition. However, this pressure did not lead to the integrated resistance of the indigenous and the Bolivian working force. As dictators traded rather rapidly from the administration of René Barrientos to Hugo Banzer in 1971, changes for the indigenous population were less fluid and there were minimal advances for the indigenous population under these regimes (Hylton and Thomson 2007).

However, in 1973, indigenous forces mobilized once more as an indigenous group under the title of *kataristas* after the revolutionary leader Tupaj Katari. These indigenous advocates declared a series of grievances in the “Manifesto of Tiwanaku” and called for alignment of the indigenous rural peasants and the working class. They stated:

“The miners, factory workers, builders, transport workers, and the impoverished middle classes are all our brothers and sisters, victims in different ways of the same exploitation, descendents of the same race and united in solidarity for the same ideals of struggle and liberation. Only united can we achieve a great future for this country.” (Hylton and Thomson 2007, 87)

These calls to unite indigenous and the working class would be echoed in the later administration of Evo Morales. The *kataristas* sought to unite historically exploited classes in order to change the power dynamic within Bolivia.

However, despite these efforts to force the government into a more representational model through civil discord, the Bolivian government faced significant influence from the United States, which resisted the more leftist indigenous ideology. This perceived foreign “imperialism” only prompted further dissatisfaction within the Bolivian population. In 1986, Aymaran peasants organized into the Tupac Katari Guerrilla Army, another manifestation of the indigenously-based resistance to the state. The government quickly quashed this weak army. (Hylton and Thomson 2007).

The 1990s would bring new legislative developments and the arrival of Evo Morales to the Bolivian political scene. As head of the coca growers union, Morales became a rallying point for over 60,000 farmers. As a result of the US drug eradication program, these coca farmers were watching their crops destroyed and their profession attacked from an outside power. Therefore, the anti-imperialist sentiment ran high among this group and found a vibrant champion in Evo Morales. His charisma and anti-US voice propelled him to a close loss in the 2002 Presidential election and then success in 2006 (Hylton and Thomson 2007).

Election of Evo Morales

Evo Morales' election remains remarkable not simply because of his ethnic heritage but in the resounding support he received during the election. He received 54% of the vote, avoiding a run-off in congress, and his party won a majority (70 of 130 seats) in the lower house. This result differed from the previous tradition that no party had one an absolute majority in the first round of voting and often resorted to coalition parties in order to pool enough votes to elect a president. Morales' resounding win granted him more legitimacy than the former presidents of Bolivia and further cemented his party in Bolivian society (Crabtree and Whitehead 2008).

Morales' election was also steeped in symbolism. He was portrayed as a candidate of the people, emphasizing his humble origins as a *cocalero* (a coca leaf farmer) to connect him with the populace of indigenous workers. Morales supporters prompted widespread popular mobilization, and his campaign promises led to a great deal of hope and anticipation for the Bolivian public. Likewise, his connection and power over the Bolivian public led to speculation and downright opposition from the US officials within Bolivia. This resistance only goaded the image that Evo Morales represented a distinct change in Bolivian politics at the time (Crabtree

and Whitehead 2008). In office, Morales would continue to wield influence over popular movements.

Within his administration, Evo Morales has advanced indigenous representation through the appointment of indigenous cabinet members and his incorporation of indigenous traditional rituals or symbolism into official government affairs (Hammond 2011). Likewise, his rhetoric often includes appeals to a shared Indian identity prompting the nickname among his followers of “*el companero presidente*” (Hylton and Thomson 2007, 16). In his inaugural speech, Morales appealed to his followers as his “Indian brothers and sisters from America concentrated here in Bolivia” and referenced his election as part of the culmination of the struggle of Tupac Katari, a well-known Aymaran commander and martyr from Bolivian independence (Hylton and Thomson 2007, 16). However, the politics of Evo Morales, while appealing to Bolivian indigenous identity as a cohesive force, have not encouraged the integration of the various indigenous traditions into one standard Bolivian indigenaity.

Morales ran backed by the party MAS or Movimiento al Socialismo (Movement towards Socialism). This party had existed within Bolivia since the mid-1990s as an arm of indigenous peasant movements within Cochabamba and Chapare. MAS was anti-imperialist and anti-liberal in its beginnings, which drew support from *cocaleros*, coca farmers, who resented the influence and attack of the United States war on drugs within Bolivia. Since the coca plant can be processed into cocaine, coca growers faced pressure, opposition, and sometimes direct action from the United States and the Bolivian state when it cooperated with US interests (Postero 2007, 200).

The establishment of Morales as the leader of MNR came years before his candidacy for President. In 1998, the three primary indigenous leaders: Felipe Quispe, Alejo Veliz, and Evo

Morales fell into disagreement, prompting the establishment of three separate parties to support the three primary leaders. Morales' party, Political Instrument for the Sovereignty of the Peoples or the IPSP, according to its Spanish title, was formed. However, in 1999 municipal elections, the IPSP as a result of bureaucratic technicalities failed to register in time to be an official party and therefore adopted the name of MAS, which had ceased to function years prior but had maintained its official status. In 2000, MAS, now under the leadership of Morales, supported popular action during the Cochabamba Water War. Famously in 2001, Morales was expelled from congress and criticized by the U.S. Ambassador to Bolivia at the time for his participation in "*cocalero* street actions" (Webber 2011, 60-61). MAS embraced a rhetoric separating itself from other political parties to endear Bolivians who had become disillusioned with the political system. An anthropologist in 2001, Robert Albó described MAS:

"MAS legislators claim not to be politicians or political representatives. They are, rather, 'messengers' to congress, 'spokespeople' for a base-driven consensus, emergent from face-to-face, rank-and-file union meetings at which they are expected to report... This is what MAS militants mean with their talk of refounding the country based on an authentic participatory democracy' or of 'recuperating a democracy kidnapped by neoliberalism'" (qtd. in Webber 2011, 61).

In 2002, MAS changed its emphasis from rural and grass level mobilization through demonstrations to parliamentary strategies. This shift arose because of the unexpected success of Evo Morales in the presidential campaign and his second place finish with 20.9 percent of the popular vote. The party also began to moderate its anti-imperialist economic demands and courted middle class voters to join their ranks. Likewise, there was effort to woo urban intellectuals into a cross-regional and cross-class constituent movement. With this composition, the MAS approached the 2005 election with a winning, strong, and diverse portfolio of support (Webber 2011, 65).

Legislative Reform for the Indigenous Rights

Although Evo Morales is often presented as a beginning sign of indigenous participation in the Bolivian government, his election followed a series of steps for increased indigenous rights. Instead of causal, his election may have been symptomatic of the greater push for equal representation in Bolivia. However, whatever the significance at the moment of his election, his administration would push for a new national constitution that would incorporate and institutionalize indigenous rights, including the right to practice community justice in rural indigenous villages. The path to this constitutional reform, just as the indigenous movement, began before Morales' election with increments of judicial change.

The first Bolivian constitution had almost no reference to the high diversity of societies that existed within the borders that constituted Bolivia. The document instead crafted a rough state structure, including the modern tenants of separation of powers. In fact, the first constitution denied indigenous peoples political and civil rights (Tapia 2008). In fact, Bolivian liberal thought dictated “a formula of nationality without citizenship for the popular majority until an imaginary future point when the lower (Indian) castes would be prepared to share the rights and benefits of civilization” (Hylton and Sinclair 2007, 48). However, beginning in the 1930s, the role of the state began to reflect and grant societal rights, which would eventually lead to further representation for Bolivia's indigenous peoples (Tapia 2008).

In 1989, the International Labor Organization, a United Nations agency focusing on workers' rights, created Convention 169 on Indigenous and Tribal Peoples, which was ratified by Bolivia in 1991. Under the auspice of the United Nations, the ILO operated as a viable international platform to assert the rights of indigenous workers. This convention replaced the earlier agreement, Convention 107, approved in 1957. The earlier convention had attempted to promote indigenous community assimilation and integration, rather than protecting or preserving

indigenous culture (Hammond 2011). However, Convention 169 embraced the concept of preservation, asserting that indigenous peoples held rights to their own territory and their own culture. However, these rights were still restricted according to laws compatible to current legislation. Article 8.2 of the convention states:

“These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights...” (ILO Convention 169, Article 8.2)

This convention prompted attempts from indigenous groups to secure the ratification of a comprehensive law to grant authority to indigenous law. However, the government remained unresponsive to their demands, besides an almost negligible change to the penal code to include community justice as a vastly inferior and subordinated system (Hammond 2011, 663).

Community justice or indigenous law remained almost unacknowledged and always subordinate to the ordinary justice system. The only tangible change resulted from the addendum to the penal code that such a system existed. However, the range and jurisdiction of community justice was unspecified. Likewise, the communities were not given any express rights to use indigenous justice. Sometimes, the government discouraged community justice to the point of arresting community authorities for instances of community justice and traditional punishments (Inksater 2006)

During the administration of Gonzalo Sánchez de Lozada that existed from 1993 to 1997, the constitution would see a large scale of changes in the constitutional reform of 1994. These reforms were criticized as top-down reforms that often ignored indigenous tradition and communal land. For example, the Law of Popular Participation created jurisdictional divisions that followed archaic civil divisions that did not reflect accurately the distribution of indigenous communities, which led to arbitrarily divided indigenous groups (Hammond 2011, 664).

However, the early 1990s did begin to see the use of language such as describing Bolivia as “plurilingual” and “multicultural” that reinforced the incorporation of an indigenous identity within the Bolivian state. Also, the reforms introduced the idea of indigenous land, traditional communal land⁶, or TCOs (Tapia 2008, 164). Part of the constitutional reform addressed indigenous community management within these areas. Article 171.3 of the revised constitution stated:

“The natural authorities of the indigenous and peasant communities may exercise the functions of administration and application of their own norms as an alternative solution to conflicts, in conformity with their customs and procedures as long as they are not contrary to this constitution and laws...” (1994 Bolivian Constitutional Amendment, Article 171.3)

This amendment did little to resolve the characterization of indigenous law or community justice as subordinate to the ordinary system. However, the reforms did promote the authority of indigenous officials in their territory and introduced community justice as an “alternative solution to conflicts,” hinting at the possibility of considering community justice as a counterpart to the ordinary justice system.

In 1990, indigenous movements in the department of Beni in the northern part of the Bolivian Amazon created The Indigenous March for Territory and Dignity. This march introduced the idea of a Bolivian constituent assembly that would not see realization until 2006. On March 4, 2006, MAS, under the leadership of Evo Morales realized the dream of a Constituent Assembly with the Referendum Law for Departmental Autonomies (Webber 2011, 85). This was not the first attempt at a representational body for the indigenous people within Bolivia as described earlier; the National Indigenous Congress greatly predates the Constituent Assembly. However, the Bolivian Constituent Assembly would achieve great success in

⁶ Tierras comunitarias de origen

redrafting the Bolivian constitution in order to reflect indigenous demands, most notably the national institutionalization of community justice.

The Assembly began under contention. Although MAS had swept the elections with President Morales, they failed to achieve a two-thirds majority during the election of the representatives within the Constituent Assembly. In order to circumvent the requirement of a two-thirds majority to approve articles under the Bolivian constitution, the MAS delegation voted to accept Article 70, which declared the new assembly to be unbound by the previous constitution. With this article, MAS changed the debate around the constitution, allowing a simple majority for all but the final approved text, which would still require a two-thirds coalition. This action created a sea of contention against MAS from their competitors alongside accusations that MAS had become “antidemocratic.” However, others heralded the change and break from the previous constitution as a “revolutionary” event, a sign of the change brought by Morales (Postero 2007). As a result of this contention, opposition groups prevented the Assembly from functioning through marches, hunger strikes, and boycotts. Finally, MAS relented and agreed that each article of the new constitution would be approved by two-thirds of the commissions which had written it, then undergo review by the entire Assembly body, and finally undergo a public referendum. On January 25, 2009, the final constitution passed with sixty percent of the support of a referendum (67). Alongside other provisions, this new constitution changed the formal name of the state. The new formal name became the Plurinational of Bolivia, an attempt to demonstrate the government’s new commitment to maintaining the individual heritages of the “nations” underneath the umbrella of Bolivia. Community justice evinces just one of the ways in which the state preserves and elevates each indigenous “nation.”

The Constitution of 2009

The first draft of the constitution, the Constitution of 2006, did not attempt to outline the processes of community justice, an omission of design in order to allow individual communities to dictate the form and structure of community justice according to their own traditions. However, it does specify the “attributes” of community justice, declaring that it should be held equal to the ordinary justice system. Likewise, the writing states that indigenous groups can use “their own principles, cultural values, norms and procedures” to shape the version of community justice (Hammond 2011). Likewise, the original draft of the constitution specifies the creation of a Plurinational Constitutional Court which will create an overarching authority for both community and ordinary justice. This court would be the final point of appeal within the justice system of Bolivia (Hammond 2011).

However, despite the impressive gains dictated in the draft, the final approved version of the constitution drew back on the presumed advances. In order to gain widespread approval, the Constituent Assembly limited community justice explicitly to matters of indigenous communities. The final draft states: “Indigenous original peasant jurisdiction is based on a particular group of people who are members of the respective indigenous original nations or people” (Hammond 2011, 656). The constitution also promises to protect the rights of its citizens, preventing any judicial process that would violate their human rights. Likewise, the approved Constitution of 2009 contains an addendum to the right to a defense, a guarantee not always provided within community justice systems. Finally, the constitution refers to the Law of Jurisdictional Delimitation in order to define jurisdictional boundaries and limitations to community justice (Hammond 2011, 669).

Apart from the explicit inclusion of community justice within the Bolivian judicial system, the Constitution of 2006 also makes other attempts to better incorporate and represent

the indigenous peoples of Bolivia. Indigenous peoples were given rights to indigenous territory, bilingual education, and other rights of citizenship (Postero 2007).

Law of Jurisdictional Delimitation

Law number 073, or the Law of Jurisdictional Delimitation, passed on December 29, 2010, created the framework within which community justice could legally operate within Bolivia. This law also drastically restricted the system of community justice to the point that its stated claim to “equal hierarchy” with the ordinary system has been called into question. The law also attributed certain stated principles to the practice of community justice, stated within Article 4 of the law. The text states that community justice would maintain “respect of the unity and integrity of the plurinational state,” would acknowledge the unique relationship between indigenous peoples and the “Mother Earth” recognize cultural diversity, and maintain “equal hierarchy” with ordinary justice, amongst others (Bolivian Law 073, article 3-4).

Finally Chapter Two of the law establishes the rights of individuals undergoing community justice. Within this section, the rights of the participation of women are included as well as prohibition against any type of violence against children or women, and the prohibition of any form of lynching underneath the banner of community justice. Finally, the chapter forbids any use of capital punishment in community justice (Bolivian Law 073: 2.5, 2.6). This chapter which highlights the human rights protections to individuals under the process of community justice perhaps is the most contentious within scholarly literature. Although these protective clauses are included in the law, they are often excluded from actual community justice proceedings. However, the discussion of when the reality of community justice differs from the legally permissible processes of community justice will be discussed later.

Finally the law, as denoted by its name, establishes the jurisdiction for community justice and under which applications it can and cannot be implemented. Chapter 3, article 9 states:

“The subjects to the rural ordinary indigenous jurisdiction are the members of the respective nations or rural ordinary indigenous peoples⁷” (Law of Jurisdictional delimitation 3.9)

The article places only traditionally indigenous communities or community members underneath the authority of community justice. Likewise, Article 10 outlines a series of issues which were are not permitted to be tried underneath community justice. Article 10 states that community justice cannot be used to resolve issues related to national security, terrorism, corruption, the trade of people, arms or drug trafficking, crimes against children, rape, murder, or homicide. These issues are reserved specifically for the state-mandated ordinary justice system.

Regionalism

Part of the resistance encountered in the Bolivian legislative shift originates from the deep regional divides that have existed in Bolivia for decades. Bolivia has been defined since its independence by intense regionalism as a result of strong concentrations of indigenous populations among the highlands and the more *mestizo* lowlands. This regionalism is important in terms of indigenous-state relations because often Bolivia is criticized as a highly divided society- with the *mestizo* and indigenous in opposition. Bolivia has been described as:

“Fragmented into regions whose outlooks are one of constant complaint and criticism of the central government for its inability to steer the country toward progress and increased social well-being” (Barragan 2008, 65).

While seemingly counterintuitive, this regionalism has discouraged the formation of a centralized government for fear that the centralization would drastically favor a region or state such as Santa Cruz, which historically has been composed of a more *mestizo* and wealthier

⁷ “Están sujetos a la jurisdicción indígena originaria campesina los miembros de la respectativa nación o pueblo indígena originario campesino”

population. In place of centralization, efforts to convert regional areas or municipalities into autonomies have gained popularity. Likewise, early in the state development of Bolivia, individual states often sought self-determination for their own educational systems and resources (Barragan 2008).

In the wake this disunity, Bolivia has been described as a “weak state/ strong society” (Gray Molina 2008) that allows a great deal of autonomy within the regions of Bolivia in attempt to utilize regional autonomy as a mechanism of the state government. This model relies on the weakening of state structures in order to allow society to maintain responsibilities traditionally delegated to the government, such as the management of territorial justice or the maintenance of a judicial system. The institution of community justice would fall under this model, because the state has allowed indigenous communities to institute and maintain the rural judicial system in place of the traditional government structure. Scholars point to this model as the reason behind the “absence of widespread violence in a society marked by pronounced ethnic cleavages, social inequality, and regional imbalances” (109). However, other experts criticize this model as misleading and overly lauded, stating that “the state is neither as weak as many political analyses would suggest, nor is society as strong as many would like” (110). Although this system of weak government has maintained relative balance within Bolivian society, doubts exist as to whether the ‘hands-off’ approach of the government can handle expanding populations, urbanization, and natural resource management.

As an alternative, the recent United Nations Development Program has broached the theory of developing a Bolivian state “with holes” in order to encourage the development of a state in certain sectors and maintain the civil autonomy in others to create a stronger state while maintaining flexibility. This state with holes theory often can become associated with problems

of human rights. Human rights groups question whether these areas should or should not be directly controlled by the state and whether this deregulation opens doors for human rights abuses. Therefore, the concept of a state with holes will be further examined amidst the discussion of community justice, human rights, and lynching (UNDP 2007).

Although Bolivian society seems to favor and encourage a weaker state, the institutionalization of community justice into the Bolivian state still provides a valuable source of legitimacy for community justice. After a history of slow legislative reform, exclusive policies towards indigenous nations, and underrepresentation or discrimination in the political realm, Bolivia struggles with constructing legitimacy for new policies. A survey by the United Nation Develop Programs demonstrates the ambiguity about the law that exists for Bolivian citizens as shown in **Table 2.1**.

Table 2.1: Who enforces the rule of law most regularly?

	Always	Most of the Time	Regularly	Sometimes	Never
Politicians	2%	9%	23%	38%	27%
Judges	3%	16%	24%	35%	18%
Lawyers	3%	15%	23%	37%	20%
Civil Servants	2%	13%	23%	39%	34%
Police	3%	14%	20%	34%	29%

Source: UNDP (2007)

Instead of a resoundingly unified perception of the institutors of law, the survey shows a confused and disenchanted society that cannot identify nor rely on the officials responsible for maintaining law. For example, a higher percentage of Bolivians believe that judges never enforce the law than enforce it a majority of the time. Ultimately, this survey shows that Bolivia needs to

rebuild the legitimacy behind the rule of law. The recent institutionalization of community justice through the constitution contributes to the legitimacy behind community justice. Even the process of drafting and approving the constitution with a two-thirds majority vote reassures the populace that the laws carry weight and represent Bolivia (Gray Molina 2008).

The Bolivian legislative path has taken decades to culminate in the newly approved constitution. The steps of change, when not slow, were often unequal and the indigenous community suffered as they struggled for full and equal representation within Bolivian politics. The election of Evo Morales culminated with the development of an indigenous sympathetic state. As the first indigenous President of Bolivia, Morales can be seen as a symbol of the victories achieved by the indigenous movement throughout the years. His leadership spearheaded the development of the Bolivian Constituent Assembly which would institute the redrafting and approval of a constitution that made significant steps towards indigenous identity permeating the national state structure.

Although community justice has now been officially approved within the Bolivian state, it still causes internal and external debate concerning the state's role in Bolivian society and struggles to gain widespread legitimacy. Ultimately, community justice can be seen in the scheme of Bolivian history as a tool to approach indigenous communities and woo them back into trust of the Bolivian state as a legitimate arbiter of law. However these efforts to draw support face the hurdles of regional divides and a traditionally weak state. However they also create a ready platform for the experiment of community justice as a legitimate judicial system within the state.

Chapter Three: Lynching, Human Rights, and State Structures

In the midst of examining the role of community justice and the Bolivian state, a brief digression to the issue of lynching must be included. Cases of lynching are as symptomatic of the relationship between the Bolivian people and the state as community justice, although they function within an absence of legality and portray a very different relationship between the population and the state. Often, the separation between the two can become blurred through bad terminology or inaccurate reporting both within Bolivia and internationally. Even the United State Department of the State struggled to distinguish between the two. The 2010 Human Rights Report notes the government distinction between community justice and lynching, then continues to ignore the difference, stating:

“Mob violence, sometimes characterized by perpetrators as ‘indigenous justice’ or ‘community justice,’ led to some violent deaths. Although the constitution discusses the concept of ‘indigenous justice,’ the government rejected the interpretation that it permits mob violence, noting that the constitution specifically bans capital punishment. Many observers attributed such ‘community justice’ to the absence of effective police and judicial presence in many urban and rural areas. Killings committed in the name of community justice occurred during the year. While there were no official statistics for such crimes, the media reported approximately 15 cases of community justice that resulted in one or more deaths.” (2010 Human Rights Report)

Although the report notes that community justice refers to a separate institution, the continued use of the term to describe lynching aids to the confusion between what constitutes each institution.

Even in an academic article “Lynching and Political Conflict in the Andes” by Carlos Vilas, Vilas includes within a list of lynching offenses a short description a “community trial” that required the prosecuted individuals to offer public apologies or face physical punishment. Without further background information, this situation would be difficult to clearly categorize between the two categories. Likewise, cases of lynching often prompt headlines that point to the

act as an example of community justice when in reality, the processes are foils to each other in many aspects. Within academic literature, the appearance of lynching is often noted as the initial draw for a researcher towards the issue of community justice and therefore is often included within most discussions of community justice.

Lynching or *linchamientos* have been documented throughout many different nations in Latin America, and are prompted by a variety of differing motivations, but each contains one commonality: violence. Bolivia shows no exception to the prevalence of this act. In 2008, eleven cases of lynching occurred in Bolivia in the months of January and February alone. In 2007, fifty-seven distinct cases of lynching or attempted lynching were reported (Defensor del Pueblo 2008). Within Bolivia, the areas of Cochabamba and El Alto carry notoriety as centers of lynching violence. A national newspaper, *La Razón*, reported that fifteen people had been murdered as a result of lynching in the area of El Alto in the months of January to October of 2009 (*La Razon* 2009). In Cochabamba, the fourth largest city in Bolivia, thirty cases of lynching occurred between January and July of 2001 (Goldstein 2005, 30). The chilling “hanging dolls” of El Alto symbolize this existence of lynching within Bolivia.



Figure 3.1: A “lynched” Effigy in El Alto, Bolivia (Risor 2010)

Although community justice may have gained legitimacy within the new Bolivian constitution, external, and perhaps even internal, audiences often still associates the justice form with the image captured above. The doll or effigy is one of many scattered throughout the El Alto and function as chilling warnings towards potential thieves or criminals in the area. The message is simple, commit a crime in El Alto and face the fate portrayed by the effigy; in other words, a speedy lynching. The association between community justice and lynching is often strengthened by the press and even Bolivians themselves that often misclassify lynching as a manifestation of community justice. Even the “hanging dolls” themselves threaten passersby with signs warning of “communal justice,” a testimony to the muddled distinction between the two. This association has drawn concern from international human rights organizations, already skeptical of the supposed blank slate granted from the government that support for community justice encourages lynching and other unsanctioned violence.

Lynching often occurs in urban or peri-urban areas and especially in areas of poverty (Vilas 2008). These areas of suffer from a lack of development and the neglect of government

services, including law enforcement. For this reason, lynching is often described as occurring in areas where a state is “weak”. The act of lynching demonstrates a degree of disregard for the law and in its very action provides a reflection of the neglect of police or other governmental officials to provide security for the community. Despite the notable absence of state control in cases of lynching, demonstrated by the inability of the police to suppress lynching, scholars argue that “the state is always involved” in some way or another (Vilas 2008, 104). In some cases this state involvement occurs during the subsequent investigation of the lynching. In other more remarkable cases, the lynching involves violence against state officials, a marked clash between the community and state that will be discussed in more detail shortly. These cases often hinge on accusations of government corruption, a failure of the state official to justly serve the people. In other cases, the motivating factor can be a failure of the state to provide public services. The perceived “absence of the state” kindles frustration in the populace who grow weary with a government “unable to fulfill basic functions such as guaranteeing personal security, the peaceful resolution of conflicts, and the provision of basic social services (Vilas 2008, 104). In other words, the state becomes involved because the lynchings are interpreted as a message to the state from the people.

Although lynching has reached a high level of notoriety in Bolivia, authorities still attempt to fight against this violent public manifestation. However, while the police and other authorities publically discourage lynching, they are often at a loss as to preventing it from occurring. Because of the strong communal identity within Bolivia, police meet resistance in attempts to investigate lynching and are often prevented by the community from dispelling an active lynching. In effect, the community often becomes complicit to the act of lynching. Likewise, a general distrust of police, who are seen as “outsiders” to the community, encourages

a lack of cooperation in many investigations into a past case of lynching. Likewise, the rhetoric of lynching appeals to the community, portraying the act of lynching as a communal right to self-protection. In this case, the concept of self would indicate the community rather than an individual. This perspective of lynching as a right may be best exemplified by the Bolivian who stated during a lynching investigation: “If there are cases in which people are caught in the act, why can’t we take justice into our own hands?” (Reel 2008).

Lynching compounds on the previously discussed principles of Sian Lazar and the concept of a community identity. Often Bolivians refer to the lynch mob using the Spanish word *los vecinos* or neighbors. This terminology carries two significances. On the one side it maintains the anonymity that strengthens mob violence, and creates “...the neighbors as a legal ‘everybody and nobody,’ a faceless entity carrying out deadline violence” (Risor 2010, 467). This faceless mob protects the individuals involved with a lynching as well as empowers them. It creates the illusion that the enacted violence carries the will of the people and therefore acts for the benefit of the community. Not only does a lynching mob draw strength from anonymity, the faceless mob creates an alarming mirror image of the “anonymity of the state” (Risor 2010, 482). The lynch mob creates an alternative authority and an alternative justice to the formal state. In many ways, the sudden ebb and flow of violence mirrors citizens’ interactions with the state. In many peri-urban areas, the government only provides a real presence of police support intermittently and usually in response to a disturbance. In many ways, the “neighbors” take the place of the state, rising up to respond to an issue and then melting back into society and leaving the population without a visible presence of security enforcement.

On the other side, the description of the mob as “the neighbors” reinforces the power of the legitimacy of the lynching. The mob acts as a voice and protector for the community rather

than of the individual, symbolically freeing it from any selfish motivation or individual bias. Furthermore, the terminology creates the sense that lynching can be considered “private” affairs within the community sphere. Instead of relying on outsiders, the police, the community can rise in a single communal action to deal with grievances against the community (Risor 2010, 467). In this way, interference from perceived outsiders of the community, the police or national government, would be seen as an invasion of privacy and legitimize the resistance or lack of cooperation that follows a case of lynching.

The causes of lynching have been debated across academia. Scholars such as Daniel Goldstein point to the existence of a weak state in the regions where lynching often occurs. “When the institutions of order fail to provide proper arbitration of conflict, legitimate forms of revenge and security, private citizens are likely to act on their own” (Caldeira 2000, 209). This complements the idea that a lynch mob arising in areas with low state support and responds to issues often neglected or inadequately enforced by the formal police. While the quote demonstrates the necessity of a community to self police when it cannot rely on the support of the formal government, it does not explain why the actions undertaken by the community contain the extreme violence manifested in lynching. It would be tempting to sterilize the issue of lynching and speak as though community self-management copes for the absence of a state. However, this ignores the brutality of the issue of lynching, which leaves victims burned, mangled, or killed. A lynch mob cannot be reduced to urban community authority. The act of lynching is not only a response to an absence of government, but can be seen as a psychological buildup of community frustration. It is not simply that the government doesn’t provide the services, but that it *should*, and that the lack of services signifies neglect, and this neglect can be communicated by a hyperbolic response to crime.

“When they begin to find a voice, people who see themselves as disadvantaged often do so either by speaking back in the language of the law or by disrupting its means and ends. The crucial challenge we face...is to establish when and why some seek legal remedies for their sense of dispossession and disempowerment; when and why others resort to illegalities, to techniques of silent subversion or to carnivals of violence (Comaroff qtd. in Goldstein *Spectacular City* 179).

According to this citation, citizens communicate with the government either through legal means or illegal. However, in these areas of a ‘weak state’ or where there is a hole in the state umbrella, the community does not have the option to communicate legally. In his ethnography centered in Cochabamba, Bolivia, Daniel Goldstein coins the descriptive term “spectacular violence” to describe lynching (214). This term contributes to his theory that cases of lynching are actions undertaken by the community to communicate their frustration with perceived neglect by the government. He states: “the attempted lynching is a spectacular vehicle for the communication of demands and an instrument to attract the attention of an audience that has otherwise ignored them.” Instead, the frustration creates a “spectacle of violence”, a gruesome and shocking manifestation of the anger and neglect of the community. The victims of lynching become living or dead epistles to the government that the current neglect is unacceptable and often the anger is directed to government officials themselves.

One of the most vibrant examples of the collision between the state and lynching occurs when a lynching involves a governmental official. Even rarer cases juxtapose community justice, the state, and lynching. The town of Ayo Ayo provides such a case, Ayo Ayo is a town located in an Aymara community eighty kilometers south of La Paz. In May 2004, the residents of the town kidnapped the mayor, Benjamín Altamirano, as well as a local *mallku* (a traditional leader). For more than 12 hours, the kidnappers beat and interrogated the mayor with charges of corruption. After this treatment, he was burned to death. During this process, the police were rebuffed by the townspeople and unable to prevent the lynching. Via a radio station, the party responsible for the

lynching sent messages that any government envoys to the town would be held captive.

Eventually, after several negotiations with the party involved, the government reestablished control in the area (Vilas 2008, 107-108).

This case warrants discussion as it combines elements of governmental control, lynching, and even community justice. In Ayo Ayo, the *mallku* or traditional leader escaped the lynching ordeal unharmed. Although initially considered party to the government and therefore kidnapped in an attack against the mayor, the *mallku* did not represent the government enough to be included in the violent display of popular dissatisfaction. The collective rage expressed by the townspeople of Ayo Ayo fell entirely on the mayor and their accusation of corruption against this official can be extended up the governmental ladder. Not only did they kill this sole individual, the threats against any further government involvement as well as prevention of the police exhibits the real quarrel of this group against the government rather than against a sole individual.

In the case of Ayo Ayo, the people accused the mayor of corruption. The accusations cited instances of monetary mismanagement and a lawsuit had been filed against the mayor. In the eyes of the community, the mayor was guilty of robbing the community. Robbery has often been cited in community justice as one of the most grievous crimes tried by the system. Part of this gravity can be derived from the communal citizenship common in Bolivia. The mob that lynched the mayor believed he betrayed the community by stealing money and therefore lost the protection of citizenship to the community. Therefore, the mayor as an extension of the formal government had violated his responsibility the community. Furthermore, the pending lawsuit against the mayor demonstrates at least a cursory attempt to use traditional and official avenues to the settle the grievance against the mayor. As these avenues proved perhaps ineffective or

toothless, the people rose to the call of perceived justice as a lynch mob. In this case, two failures occurred before the wave of anger and the lynching in Ayo Ayo. First, the mayor failed in his duty to the people. He violated one of the more prominent moral codes within Bolivia by stealing from the community. Furthermore, the failure of the formal government extends beyond the mayor's theft to the Bolivian state, which failed to protect the people from a bad mayor and empowered an individual who allegedly abused the power to violate his responsibility to the community. Secondly, the traditional avenue of justice failed to provide a remedy to the perceived offense. Not only did the Bolivian state failed to protect the community from the mayor, it also failed to provide the community with a nonviolent and effective way to hold the man accountable for his actions, according to the community. With these two failures, the community took up the charge to exact their own justice and a violent confrontation ensued.

While the case of Ayo Ayo uniquely references the presence of community officials as well as governmental officials, many other cases of lynching only refer to violence against formal state officials. Other regions at the time of the Ayo Ayo case experienced attacks against their leaders, the burning of official property, public shame, and whipping (Vilas 2004, 108). These cases further enforce the idea that lynching occurs as an interchange between the government and a supposedly wronged community. The attack against the government officials sets communities in direct opposition to the state and fall outside the sanctioned realm of community justice. Likewise, the multiple attacks testify that lynching does not simply create an alternative structure to address crime and the lack of security; it directly interacts within the state and calls attention the marginalization of individuals within the community from the state (Goldstein 2012, 24). Likewise, the mass mobilization of indigenous *campesinos* have been involved not only in local opposition to the government, but had an important role in the

resignations of former Bolivian presidents Sanchez de Lozada in 2003 and Carlos Meza in 2005 and complement the idea that the citizens of Bolivia often actually resist against the formal national government (Vilas 2008, 113)

Although for the purposes of this study a look into the infamous connection between community justice and lynching could be considered a tangent, the issue permeates scholarly literature to the point that it must be addressed to discuss and differentiate community justice in Bolivia. Even apart from simply differentiating the two terms, an examination of lynching alone can be useful to the discussion of citizen-state relations. Cases of lynching can serve as an indicator of the Bolivian state and its relationship with the people. However, ultimately it is important to distinguish between community justice and lynching and to demonstrate the different motivations, environments, and outcomes inherent in each type of action.

One of the most important assumptions of this thesis is that community justice is an entirely separate entity from lynching. Within the Law of Jurisdictional Delineation, the law that determines the limits of each form of justice, a clear statement forbids any form of lynching in any jurisdiction, both traditional (“ordinary”) and community (Ley de Deslinde Jurisdiccional, Article V). Despite the mislabeling of lynching and other violent acts as community justice in public news sources, such as the notorious case of the murder of three police officers reported in *La Razón*⁸ (2008), the two processes are not synonymous and are arguably incompatible. In fact, Article 6 of the Law of Jurisdictional Delineation denies community justice the right to utilize capital punishment in the case of murder trials. In many cases, instances of severe crimes that could result in such a punishment are unable to be tried within a community are “exported” to

⁸ Although *La Razon* referred to the murders as “community justice” (with quotations) to express that it was being referred to by the perpetrators as this justice form, the case has been frequently referred to in multiple casual conversations as an example of community justice. The use of the term within the article, despite quotations, may be responsible for this continued association.

the ordinary justice system (Vargas 2011) However, upon occasion communities choose to mediate murder cases within the community justice system in order to prevent the disintegration of the family structure, which would leave two families without a provider. Even in these exemptions, corporal punishment does not enter into play. Instead of imprisoning the offender, the individual can be sentenced to provide for both his own family and the family of the murdered. These both punish the murderer and decrease societal damage by providing a structure of support for the victim's family. Lynching, either used as revenge or to begin this process, would destroy this system of community restoration as well as violate national law (Luis Vargas 2011). It is important to note in this instance that community justice does not have jurisdiction over murder according to the Bolivian constitution. However, throughout source material and within the interviews conducting in Bolivia, these murder mediation cases arise as notable points of departure between the official regulation regarding community justice and its practice. In this way, cases of murder as well as other departures from the official version of community justice offer a point of debate as to what community justice consists of underneath the constitution and whether that manifestation actually reflects the real processes occurring in the Bolivian countryside.

First and foremost, community justice draws inspiration from tradition. Casimira Rodriguez, a former Bolivian justice minister described community justice as “ancestral justice...a tradition that comes from the ancestors” (Goldstein 2012, 180). Therefore, the punishments utilized in community justice have origin in historical practices and the officials that implement them gain authority in traditional ceremonies. On the other hand, lynching likewise has existed in practice across time and continents. However, the instances of lynching have never been received by a community as traditional. While it can be safely assumed that

blood was spilt by the ancient people of Bolivia, the expressly communicated purpose of community justice has always been social reparation. Lynching provides vengeance against perceived offenders, but also leaves the communities fractured afterwards through the loss of a former member of the community (109).

The existence of a distinct hierarchy also differentiates community justice from lynching. In community justice, clearly distinguished traditional leaders appear as part of the traditional hierarchy of rule. These leaders derive legitimacy from tradition and the entire community recognizes them as leaders. They are often charged as mediators between two parties in conflict and utilize formal and informal methods to navigate conflict in their community. In lynching, as previously discussed, there are no specific actors or leaders. Instead, the community refers to the lynch mob vaguely as “the neighbors.” While a method of protection for the perpetrators, the purposeful ambiguity also dilutes any established leadership within the community. In many cases, this causes issues for individuals who are seeking a resolution to an issue in a community without these traditional leaders. As an example, noted anthropologist Daniel Goldstein details an encounter where a woman captured a thief and sought counsel on how to proceed. In this vignette, the woman had to seek out authorities because no one would take responsibility for the criminal for fear of blame should he be lynched (Goldstein 2012, 167). In community justice, these leaders are more easily distinguished and part of their responsibility as communal leaders is the management of conflicts in the community.

Finally, as referenced throughout this chapter, the motivations of community justice and lynching differ greatly. Community justice creates a stable and state-approved method of community regulation, while lynching reacts to perceived offenses with intense violence. Some scholars claim that lynching can be considered a “reactive recourse to cultural traditions in

response to contemporary challenges” (qtd. in Vilas 2008, 109). However, this characterization of lynching fails to receive real traction. There is no traditional basis for the process of a mob-style lynching, no implementation of traditional symbolism, and the traditional leaders in Bolivia do not recognize these occasions as the institution of traditional justice. While lynching may qualify as reactive, the community is not utilizing tradition to face modern marginalization. Instead, the violence could be seen as counter-traditional and most scholars rebuff this characterization while stressing the “conciliatory and reparative nature” of recorded indigenous traditions (Stavenhagen 1990).

Another important distinguishing factor between community justice and lynching is geographic. As already stated, lynching is an urban or peri-urban phenomena. It occurs in areas that should be receiving services from the bureaucratic government, but have usually experienced the neglect or absence of these services. However, legally community justice remains a rural phenomenon contained within ethnically homogenous communities. Community justice only finds legal legitimacy within an indigenous autonomy and gains effectiveness from the grouping of individuals with a shared cultural and historical identity. In these areas, community justice is fulfilling a role granted and encouraged by the state, a distinct difference from cases of lynching.

Aside from cases of lynching, there are other human rights concerns connected with the practice of indigenous justice. These concerns usually center on the use of physical punishment within community justice, such as whipping or confinement to stocks. Likewise, cases of inter-generational or familial punishment, moments in which a son receives punishment for the father or both are punished as a response to a perceived crime by the family, raise many concerns from international human rights groups. The Human Rights Foundation has made remarks to criticize

the lack of fair treatment for criminals involved within community justice trials (Human Rights Foundation 2008). These efforts have called for the intervention of the government in community justice to ensure human rights, a difficulty considering the high flexibility and blank slate given to community justice. However, there is protection built into the laws surrounding community justice which prohibit violence against women and children, protects to some degree the elderly or disabled, and bans the death penalty (Ley de Deslinde Jurisdiccional 073, Article 5). The struggle between maintaining both government protection from human rights violations and the flexibility of community justice institutions will be a continual balancing act by the Bolivian state.

In conclusion, lynching and community justice erupt seemingly from the same state void or failure and represent manifestations of community independence. They form two opposite poles of a spectrum. On the one side, lynching occurs nearly spontaneously, the unsanctioned and frustrated reaction of a population unsatisfied underneath an absence of state. The other, community justice, occurs methodically while being based on historical tradition and legitimized by community support. This side of the spectrum is encouraged and protected by the Bolivian government. Just as lynching, community justice provides self-management in the midst of a state-hole. However, this self-management preserves a sense of order and justice with founding principals in the importance of social reparation. It draws a thin state umbrella over the community through its government legitimization, creating an imaginary or arguably tenuous interaction between the Bolivian government and the indigenous government, even if only in the form a simple nod of state approval.

Chapter Four: Community Justice and Its Role in the Bolivian State

As I have discussed the characteristics of community justice, the history of Bolivian foreign policy towards the institution, and the contrasts between community justice and lynching, the framework has been set to discuss the specific role of community justice within the state structure. In many ways, community justice can be seen as both complementary and contradictory to the state. On the one hand, the availability and methods of community justice fall neatly into “state voids” and can serve to provide structure and order to the execution of justice and even to tie in the state with processes that are far from its control. On the other hand, community justice leaders and practices operate with very little state oversight and can therefore override the idea of a cohesive Bolivian nation.

In order to examine the role of community justice in the state, it is necessary to consider a wide array of information. Neither broad law theory nor raw statistics alone can evaluate the seam between the state and community justice. Instead, I will focus on a mixture of the two, complemented by analysis of the letter of the laws surrounding community justice and the opinions stated during several interviews of community justice experts. These interviews took place in 2010 in La Paz, Bolivia, during a summer research practicum. They were obtained with IRB approval and the participant consent. The men interviewed varied from professors, governmental employees, and non-profit staff members. Therefore, each man approached the topic of community justice from a different vantage point.

The Bolivian state has been critiqued as “neither as weak as many political analyses would suggest, nor as is society as strong as many would like” (Gray Molina 110). This combination of a weak/strong state was discussed in Chapter Two through the description of a state with holes. These holes provide opportunity for institutions such as community justice to

spring up and provide structure in the absence of the government. The new Bolivian state relies heavily on institutional pluralism, a dependence on these local institutions and local agents to support the overall state (112). However, conflicts occur, especially at the intersection between custom and law that community justice inhabits. In some cases, indigenous communities will choose to hold cases that are expressly placed outside of their jurisdiction, such as a murder. Likewise, there are documented instances of violence (whipping) enacted against women or youths (Vargas 2011). Because of the oral tradition of community justice and the lack of documentation, while these cases are passively acknowledged in most literature, there have not been any notable repercussions of these violations of the community justice mandate. In these instances, there arises the dilemma of what holds precedence: the Bolivian state or the indigenous tradition (Sierra 1993). In many ways this can be reduced to an issue of identity, first and foremost are the people Bolivian or indigenous? Following this spectrum of thought, some have considered the elevation of indigenous communities and community justice a form of neo-decolonization. In this case, the state is painted as a former colonial power, because of its formal control of the indigenous nations. The Bolivian state as a colonizer, rather than a mother nation only exacerbates the concerns that a unified Bolivian state is degrading and that community justice is only a manifestation of this degradation (Nina 2009).

When I was introduced to the concept of community justice through the Bolivian Ministry of Justice, I was told it was a new phase of democracy and an example of a truly representational state (Vargas 2011). This view was echoed in my interview with Dr. Ramiro Molina, the director the Museum of Ethnography and Folklore in La Paz, Bolivia, and a professor of plural judicial systems at the Catholic University of Bolivia, who believes that the legalization of community justice is a part of the Bolivian attempt to build a completely new and

fully representational national model. He stated that in the past, the nation has always reflected the state, conforming culture and language to an administrative framework. He used the case of France and Europe to demonstrate this progression from a network of interrelated communities into a cogent and coherent national identity. In the case of France, this resulted in the national adoption of Parisian French as the uniformly spoken language, effectively killing off hundreds to thousands of other dialects.

While this method of state control has proved effective when examining the relative stability and uniform national identity within many states of Europe, the result was the equivalent to cultural genocide. Molina believes that this new Bolivian model of accepting and supporting different cultures will avoid the cultural loss that resulted in Europe and maintain a universal Bolivian identity (Molina Rivero 2011). This method manifests in community justice, because it exemplifies a national effort to support and nurture a variety of different ethnic traditions instead of condensing them into one standard form. In the eyes of Dr. Molina, community justice work coincides with the state and facilitates efforts to draw a variety of people into a national community. The stated goal of the Bolivian state is to become a plurination, inciting the image of a conglomeration of nations united under the Bolivian flag. The juxtaposition of the various forms of indigenous justice gathered underneath the Bolivian constitution mirrors that desire.

While community justice may complement the Bolivian state ideologically according to Dr. Molina, it also provides a very practical use for the Bolivian state. It is important to consider the fact that community justice complements the state by filling a void of governmental services and oversight. In Bolivia, many rural areas lack access to justice officials. Although the constitution claims that all Bolivians have the right to equal and free justice, actual practice

varies. In reality, the cost in finding a lawyer and traveling to a legal center negate that right. The Bolivian organization, the Network of Participation and Justice⁹, publishes data on the availability of judicial system in the rural zones, such as the “map” displayed in **Table 4.1**:

Table 4.1: Percentage of Legal Services offered at the Municipal level and other Departmental representation by the State of Bolivia			
Actors	Justice Services	Presence of Judicial Services	Municipalities Covered
Justice System	Judges	180 of 325 municipalities	55%
	Prosecutors	76 of 326 municipalities	23%
	Public Defense (SENDAP)	11 of 326 municipalities	3%
National Police	Special Forces Against Crime	Departmental Offices: 9 bureaus. Regional Offices: 7 bureaus (8 offices) District Offices: 2 departments (4 offices)	
	Unidades de Conciliación Ciudadana y Flia (UCC)	A Total of 80 offices in 9 departments and 28 municipalities	9%
	Brigadas de Protección a la Familia (BPF)	Total of 80 offices in 9 departments and 31 municipalities	8.5%
Executive Branch	Justice Integration Centers	El Alto (6), Carnavi (1), Chimore (1), Santa Cruz (1)	
Municipal Government	Integrated Municipal Legal Services	114 of 326 municipalities	35%
	Ombudsmen for children and women	199 of 326 municipalities	61%
Civil Society	Popular Legal Clinics in Universities	Total of 30 offices in 5 departments	
	Centers of Conciliation	Total of 28 offices in 6 departments	
	NGOs	Total of 62 offices in 7 departments	
Mapa de Servicios de Justicia, 2005. La Red de Participación y Justicia.			

⁹ La Red de Participación y Justicia

This table demonstrates the lack of ability of the government to provide the services necessary to the indigenous community in order for them to utilize traditional judicial structures. The availability of judges is limited to only 55% of the municipalities of the country, leaving a little under half without direct availability to a judge. The availability of prosecutors is limited to almost a fifth of the regions, twenty-three percent, and public defenders are only located in three percent of the municipalities. This lack of provision of government services relates directly to the relationships between the communities and the government. Without an alternative method of justice, this government neglect could breed discontentment or alienation from the central government. In these conditions, community justice springs up as a viable alternative. With its inclusion in the government, suddenly the processes and availability of community justice can be seen as government service. Without any substantial structural change outside of renaming community justice as part of the state structure, the government converts areas of neglect into areas under community justice jurisdiction. Not only does this provide some added legitimacy to the role of the state within these rural communities, it does so with relatively little cost.

Community justice as a cost-effective option compliments the Bolivian state, which already has been noted for its low judicial budgets. Compared to other countries within Latin America, Bolivia stretches a thin budget to supply the judicial services currently offered in the country. A series of statistics supporting this characterization of weak financial support to the Bolivian judiciary appear in Appendix I of this thesis. However, for the purposes of this discussion, it is only important to realize that the Bolivian state historically does not spend its resources in the support of judicial services. This financial neglect perhaps contributed to the 1999 statistic from the Bolivian Ministry of Justice and Human Rights that only 44% of Bolivian citizens approved of the country's judicial system ("Memoria" 1999).

Adding to the ease and economy of community justice as a solution for areas of weak state services, the government does not need to educate these populations to rely on community justice. In fact, these communities have been self-regulating since Spanish colonization. According to Molina Rivero, a professor and community justice expert in La Paz, the modern Bolivian state's adoption of community justice only mirrors the early Spanish conquistadors. The Spanish largely maintained the community structures of their conquered populations, only removing the executive structures and replacing them with Spanish officials. Likewise, the modern Bolivian state can utilize these pre-existing indigenous structures and then add a thin umbrella of state legitimacy by tying community justice into the state constitution (Molina Rivero 2010). To the communities, the reliance on community justice occupies a normal spectrum of life. However, as the state adopts the institution within the constitution, the interaction between an individual and their community leaders evolves to represent the relationship between the individual and the state. The indigenous communities are encouraged to develop a relationship with the larger Bolivian state through local custom. Although community justice now forms the bridge between the individual and the state, the Bolivian state remains laissez-faire towards its regulation.

In fact, with the recent movements toward more regional and municipal autonomy, the national government seems to have established a norm of playing a very minimal background role for the majority of the communities underneath its umbrella. In a publication by the Ministry of Justice, which provided a table of the different judicial jurisdiction and the qualifications for the elections of certain judges, community justice was not even listed. This omission is partly because the government does not control the qualifications for authorities within community justice and may partly relate to the governmental neglect of community justice, because the

pamphlet could have included the system with the caveat that “qualifications vary” instead of openly omitting a legally authorized form of judicial jurisdiction (Velasquez Enrique 2011, 9). The omission reflects a lack of engagement between the Bolivian state and the controlling qualifications for community justice.

Even the Ministerio de Justicia Originaria Campesina, the governmental branch charged with the overseeing this new judicial system, seemed to show governmental neglect when I visited the office to inquire about the statistics and structures of community justice. As I observed the office, the furniture, and the staff, the space did not seem to claim the priority of the state government. The office was in a notably older part of the building and the computers operating at each desk were older models, which struggled to run an antiquated version of Windows as my gracious host walked me through a pre-prepared PowerPoint designed to explain the shift in judicial structures graphically. The main reception was split between two desks, both operated by women in traditional dress as receptionists. When I was escorted to talk with my contact, a man dressed in business casual clothing (the “indigenous” component was obviously limited to the secretarial staff), I entered a cramped office that struggled to support three sets of desks and chairs for three different employees. For a “new” division of the judicial system, it seemed the office was comprised of a hodgepodge of furniture and technology that had been discarded by other departments. The chairs, desks, and book cases clearly were all secondhand acquisitions, and the department did not have any statistics or library within the offices.

Admittedly, I did not examine other departments within the building, which could have easily been in the same state of disrepair. However, I could recognize that this department was not the highest priority of government expenditure or focus. Other visits to official Bolivian buildings had created in my mind a stark contrast between those readily important to the state,

with expensive furnishings, and the Vice-Ministry. The low expenditure on the office may have been linked to the low government oversight of community justice. Since the government did not desire to regulate these community systems, the office of the Vice-Ministry of Indigenous Peasant Justice was merely a symbolic of the acceptance of the government for these traditional judicial forms.

While the vice-ministry charged with the oversight of community justice seemed to lack prominence in the eyes of the government, the legal plurality formed by community justice has not. Some even argue that its inclusion forms a “pillar” of the modern Bolivian state. The description of community justice as a pillar would further support the assumption that community justice fills a complementary role to the Bolivian state. This perspective is presented by the academic writer Mark Goodale in his book *Dilemmas of Modernity: Bolivian Encounters with Law and Liberalism*. In his examination of the role of the law in Bolivia, he presents indigenous community organization as one of the three distinct public authorities. He presents the authority in Bolivia as being divided between the state, unions, and ayllu. As previously discussed, the *ayllu* forms a traditional community structure in which community justice often takes place. This pertinence to the modern Bolivian state is echoed by other writers who state that “legal pluralism is fundamental to the entire autonomy project” and therefore to the stated goals of MAS (Goldstein 2012, 183). The “autonomy project” within Bolivia has been the method through which community justice has been most formally recognized.

In order to be recognized by the Bolivian state as a territory within community justice jurisdiction, a municipal referendum must be held to identify the community as an Indigenous Autonomy or a *Autonomia Indigena Originaria Campesina* (AIOC). Likewise, the community can identify as a TCO or Tierra Comunitaria de Origen. These two concepts are similar and for

the purposes of this thesis will be considered equal. This referendum is important in part because it paints the transition to a traditional indigenous community as a decision of the people rather than a top down reform. Likewise, the referendum can be useful in discussions of where *indigenaity* truly lies within Bolivia. Much of the rationalizing thought behind community justice creates a geographic and spatial separation between what is considered indigenous and modern. The results of some of these municipal referendums are displayed below in **Table 4.2**:

Table 4.2: Municipalities that opted to be Indigenous Autonomies				
Municipality	Department	Population	Indigenous Population	Percentage of Affirmative Vote
Huacaya	Chuquisaca	2345	1182 (50.41%)	53.7%
Tarabuco	Chuquisaca	19554	19237 (98.38%)	90.8%
Mojocoya	Chuquisaca	7926	7525 (94.94%)	88.3%
Charazani	La Paz	9262	9133 (98.61%)	86.6%
Jesus de Machaca	La Paz	13247	8119 (95.73%)	56.1%
Pampa Aullagas	Oruro	2975	2445 (82.18%)	83.7%
San Pedro de Totoro	Oruro	4941	4734 (95.59%)	74.5%
Chipaya	Oruro	1814	1791 (98.73%)	91.9%
Salinas de Garci Mendoza	Oruro	8723	6984 (80.06%)	75.1%
Chayanta	Potosi	14165	131412 (96.80%)	60%
Charagua	Santa Cruz	24427	13536 (55.41%)	55.7%

(Ministerio de Autonomías / INE)

This data supports the assumption that the desire to create an autonomous region strengthens according to indigenous population. Reasonably, a more highly indigenous area would be more familiar and comfortable with the use of traditional communal practices of community management. However, the distribution of the vote creates a dilemma for the Bolivian state to determine what constitutes a ‘critical mass’ of indigenous peoples that would indicate a certain municipality should be considered an indigenous autonomy. In some cases, such as the municipality of Tarabuco with a 98.38% indigenous population in which 90.8% of the votes affirmed the establishment of Tarabuco as an indigenous autonomy, the issue seems irrelevant. However, in the same department, the municipality of Huacaya has a low indigenous population

and only 53.7% of the votes voted in the affirmative to become an indigenous autonomy. In this instance, the delineation between what is indigenous and what is not appears hazy. According to the law, Huacaya would qualify as an indigenous autonomy and therefore could practice community justice, a condition found unfavorable by around 46% of the population.

In my conversation with a representative with the Vice-Ministry of Indigenous Peasant Justice, community justice was described as a rural phenomenon. In the eyes of the Bolivian state, urban society does not support this practice. However the moving of this indicator of indigenaity to the margins misrepresents the actual composition of some of Bolivia's cities, most notably the highly indigenous capital of La Paz. In any case, the existence of TCOs¹⁰ demonstrates the federalization of Bolivian state power. These communities, formally marginalized and neglected by the Bolivian government, are now gaining new power and exercising a formally legitimized independence.

As the Bolivian state seeks to embrace autonomies and the further distribution of power, it is useful to approach the function of the state as an umbrella structure of indirect control. Many institutions fall underneath the purview of the state and therefore under this umbrella, however this does not necessarily mean they are direct manifestations of the state or even communicate with the state regularly. Another image of this distribution would be a ripple of circles. The Bolivian state would occupy the center, autonomies and community justice would be on further radiated circles. As the institutions moves farther from the central state, it gains higher flexibility and lower government oversight.

In this way, community justice's integration into the constitution exemplifies a new formation of the modern state. This may mean the disassociation of the Bolivian state from the Weberian model. No longer will the state occupy a monopoly of violence directly, but that

¹⁰ Traditional Communal Land (Tierras Comunitarias de Origin)

responsibility will be delegated across the community to smaller leaders and traditional means. Instead of the state as a central force radiating from La Paz, the state can be manifested in local *mallku* leaders or *capitans* practicing with mingled historical, traditional, and political legitimacy.

On the other hand, community justice can stand in contradiction to an overarching state structure. As previously discussed, community justice and the laissez-faire governmental approach to regulating indigenous communities can lead to the violation of traditional state-building principals and responsibilities. Likewise, these separate entities can corrode the state as an “imagined community.” The theory of an imagined community, presented by Benedict Anderson, evaluates states as groups of people who believe they are members of the same community manifested as the nation. Nationhood itself often rallies members around a common cultural or socio-linguistic background. The establishment of indigenous autonomies and indigenous justice create pockets of individuals self-governing through common cultural principles. In essence, these small communities become individual nations through different tools, including community justice. The proposed mission of the Bolivian state is to unite these tiny pockets into a cohesive structure, a prospect challenged by some.

According to Dr. Franco Gamboa, a professor at the Catholic University of Bolivia and an authority on Bolivian politics, the idea that the adoption and preservation of individual cultures will preserve a Bolivian national identity is hotly contested. Instead, Gamboa challenged this assumption by stating that indigenous community extremists often contest even the existence of an overarching Bolivian state. Instead, they desire territory to be returned to the boundaries that existed in the past, even as far as 500 years in the past (or usually at whatever point their *pueblo* controlled the most land and power), and they seek a dissolution of a Bolivian state.

Bolivian democracy is seen as a form of “neocolonialism” and this perception foments fragmentation and slows down the process of Bolivian democratic formation—such as the construction and ratification of a truly representational constitution (Gamboa Rocabado 2011). In his eyes, indigenous autonomies and the support for indigenous cultures, i.e. indigenous justice, could only add to the breakdown of support for a natural state. This can be evinced by the cases in which community justice is applied in situations contrary to the constitutional laws that surround it, such as in mediation of murder cases or punishments for family members of an offender. Since in these instances, community justice refuses to conform to the national standard or simply ignores them, it can be interpreted as an attack against the state’s authority to control rural populations.

While in Bolivia, I had the opportunity to interview Jose Luis Vargas, the Director of Programs for the Network of Participation and Justice.¹¹ This organization, a conglomeration of various civic organizations, monitors the role of justice systems in Bolivia and educations individuals on their rights and responsibilities in Bolivia. For this reason, the office and Vargas were a wealth of information about the real life impact and use of community justice. Where the official vice ministry often strayed from the concrete and offered vague generalities of community justice, Jose Luis Vargas possessed an almost encyclopedic knowledge of the variance between the many indigenous communities in Bolivia. In this interview, I was introduced to the contrast between the legalized idea behind community justice and its actual practice. In many cases, although expressly forbidden by the Law of Jurisdictional Delineation¹², indigenous justice tries individuals for murder as well as physically punishes women and children. Likewise there is often resistance on the part of the community to take cases to the

¹¹ La Red de Participacion y Justicia

¹² Ley de Deslinde Jurisdictional

formal justice system to perceived outsider control. In these cases, the support for individual community traditions does not bolster the state, but gives the opportunity to evade its regulation. Since indigenous justice does not receive government regulation, the few safeguards presented in the law are near negligible should the community choose to ignore them. Likewise, individuals living within community justice often develop distrust of the formal state-regulated judicial system. They often perceive these services as corrupt, further isolating the community from an overarching sense of belonging to the state.

A third interview and perspective could marry the idea of a separate community identities and a national state. The Director of Education of the National Electoral Court of Bolivia, Juan Carlos Eduardo Brañoz, referred to the combined interest and laws formed to protect indigenous as “community democracy” (Eduardo Brañoz 2011). Similar to Dr. Gamboa, he related the new forms of community empowerment to the control of land. Indigenous autonomies, cultures, and even community justice have strong ties to the care and maintenance of historically indigenous land. The movement for municipal autonomy and the idea of “communal territory” reflects his idea that the laws concerning indigenous communities reflected true democracy, a manifestation of the will and heritage of the people, because they allowed the shared control of land by indigenous communities according to historical tradition. However, similar to Dr. Molina, he believed these laws and rights could integrate indigenous communities into a national Bolivian identity. He believed that instruments such as “intercultural education” that respected the cultural traditions and languages of communities but also taught Spanish and national ideals could be utilized to balance the autonomy of indigenous communities with their connection to a national Bolivian identity. In this perspective, community justice could support democracy when combined with a program that consciously integrated the indigenous culture with state norms.

However, the integration of indigenous justice and indigenous culture within the Bolivian state violates the principle of the Bolivian plurination. The new structure heralds the endorsement support of each individual culture and draws them equally and individually under the umbrella of the state. Integration, on the other hand, would produce a multicultural state, an amalgam of the individual cultures condensed into one corporate identity. Each tradition would be incorporated in part and streamlined in the efforts to create one cohesive Bolivian state.

While some herald the use of community justice as an expression of the representational, others discuss its implementation and limitation through the Law of Jurisdictional Delineation,¹³ can also fall into a discussion of indigenous suppression. Some of the articles in the law intended for human rights protect can be painted as a way to enforce a legal hierarchy contrary to the constitution's stated objective. The inability to utilize indigenous justice in cases of murder, rape, corruption, human trafficking, and narcotics, among others declaws indigenous justice to some degree (Article 10). If community justice really fills an area of absence of the state, these communities are still exposed to a lack of government services should these crimes occur. Likewise, in cases of reoccurring crime in which a perpetrator continues to repeat his crime, such in the case of a wife beater, the formal police are often involved.

This image contradicts with the complete and equal hierarchy shared between the two systems drawn in the rhetoric of the Bolivian constitution. Either the indigenous justice in actuality falls beneath the authority of the traditional justice system, which could be indicated by its need to "export" more serious cases to areas where such a formal legal network exists (often a distant town or district) or the supposed equal hierarchy between the two systems is often violated. In the opinion of Jose Luis Vargas, Bolivian law ties the hand of community justice,

¹³ Ley de Deslinde Jurisdiccional

creating the necessity for the intervention of the formal judicial system. There even has been criticism that the terminology of community justice being based on “custom” encourages its denigration beneath the ordinary justice system (Mallol 2004, 74). Ultimately, while the government has made many steps to introduce community justice as a viable alternative to the inaccessible state system, the government continues to treat it as substandard justice and often leans towards past stereotypes of indigenous culture. Among those I interviewed and within academic journals, many believe the community justice is ready for the challenge of being a full-fledged justice system and counterpart to the formal state. However, resistance remains and skeptics continue to view this form of community management as potentially corrosive to the cohesive state machine.

Conclusion

The existence of community justice in Bolivia is not a new phenomenon. The communal management of rural populations according historical tradition has been occurring since colonization. For those living on the margins of Bolivian society, little has changed between the Spanish and Bolivian rule. However, the recent inclusion of community justice within the Bolivian constitution provides a telling institutional change. Instead of sweeping the indigenous population under the carpet, the Bolivian constitution uplifts them as representational of the state.

Community justice provides a viable vehicle for the discussion of the Bolivian state system. This alternative system of justice forms a pillar of Bolivian indigenous identity, a link between the traditional practices of indigenous groups and the modern necessity to protect and to secure a community. The philosophy of community justice places the restoration and protection of the community at the apex of importance and seeks to restore those who have violated their societal responsibilities back into harmony with the community. This philosophy, among other reasons, effectively excludes lynching from being covered under the umbrella of community justice. The use of justice as restorative can be derived from Andean tradition, just as community justice practices themselves. Like all principles, it serves as an ideal and reality can widely deviate from this ideal. However, the philosophy effectively separates community justice and lynching at a very basic level.

The ways in which community justice interacts with the Bolivian state testify to the type of relationship expressed between the people and the state in the government of Evo Morales. On the one hand, the idea that legitimacy and representation can extend down to the communal level seem promising for indigenous groups traditionally marginalized by the formal bureaucracy of

the government. On the other, there are possible implications such disassociation from a central identity can weaken the nation of Bolivia and arm separatists ideologies. Likewise, the implication of community justice and therefore indigenaity as a rural phenomenon further sharpens the rural-urban divide in Bolivia.

In the coming years, the impact of this new Bolivian state design will be more evident as the impacts trickle through society. However, community justice will continue to be an institution of controversy, partly because of the nature of having a highly varied system of justice and partly because of the institution of community justice serves as a viable symbol of discussion for the Bolivian state. The brevity of time since the institutionalization of community justice leaves the future open for its implications. For this reason, some of the primary debates surrounding community justice will remain unresolved.

One of these discussions is the implications for the lack of oversight for community justice. As discussed in this thesis, at times the expressed limits of community justice and its restorative philosophy diverge widely from the reality of practice. There are concerns this could lead to the abuse of power from community elites. For example, in a Chimani community where a captain institutes punishments could his individual bias lead to injustices committed against community members. If he decides, for example, to institute ten lashings for a crime that usually constitutes five, there issues in accountability for the leader. Can historical tradition curb his power or would he be open to subjectivity concerning cases? Likewise, the equality of community justice and justice alone can be called into question. Likewise, individual cultures practice different traditions and therefore different punishment. Could a thief in an Aymara land be punished more severely than one in Quechua territory? How can equality of treatment be maintained without express government oversight. In a way, the idea that different regions can

warrant different punishments occurs in other areas of the globe. However, each individual indigenous nation falls under the Bolivian state umbrella. This is not a question of different countries, but different traditions under one country. These are not new issues to community justice, but they are issues that have yet to be truly resolved.

Likewise, in my discussions with Dr. Molina, he emphasized the idea that in a way, this system of free reign for community justice has existed since colonial times. Only now, the constitution actually reflects the status of the state. In a way, little has changed except for the rhetoric of the state and the reinforced legitimacy of the community justice. If the contradictory situation was considered, the state rejection of community justice as a form of legitimate justice, the state would be required to compensate for a wide range of neglect. As previously shown through statistics, access to the traditional justice system remains unequal and inadequate. If the Bolivian government had decided that community justice should be barred, the efforts to correct this imbalance and grant equal access would have been costly and difficult. In this view, the decision of the state to accept community justice could be reduced to a simple cost-benefit analysis. The option would be either to continue with the established status quo of community justice in the rural areas or institute a country wide judicial reform. However, it would be erroneous to suggest that Bolivia does not support rural communities financially and these areas are still tied to the central state government. However, the idea of including community justice in the constitution for economic reasons rather than ideological and representational ideals pokes holes in some of the larger state rhetoric.

Community justice was a fascinating topic during my time in Bolivia and in my subsequent research. The subject has yet to exhaust avenues for potential future research. The implications and development of the new Bolivian constitution speak volumes about the

representational changes occurring under Evo Morales. Bolivia has been strengthening indigenous processes and utilizing them to produce a very unique national identity. Only time will tell how community justice will shape the political landscape in Bolivia and affect the individual or collective rights of Bolivian citizens.

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