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Indigenous People, Law, and Politics in Peru

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Introduction

Indigenous people and the law is a relatively new and fascinating topic in Andean studies. In the last fifteen years, an increasing number of investigators have begun to investigate the use of national law by indigenous people, and, more recently, interest in indigenous and peasant law has also increased. The results of this research by historians, anthropologists, and legal scholars have now provided sufficient information to permit the elaboration of a preliminary theoretical framework for understanding the use of legal mechanisms by indigenous people in the Andes. This paper proposes such a framework based on an historical structural analysis of modes of conflict resolution employed by indigenous communities and their members in Peru between 1821 and 1968.[1] It identifies the major variables that affected indigenous conflict resolution in this period and advances a series of hypotheses about the major interrelationships between these variables. Finally, given that research on these topics is still in its preliminary stages, a number of suggestions are made regarding fruitful avenues for future research.

Before the 1980s, the main of area of interest regarding Peruvian Andean peoples and the law was in colonial and Republican legislation. Basadre's (1937, 1988) history of Peruvian law dealt in detail with Inca and colonial law. Varallanos (1946, 1947) discussed colonial law and compiled Republican era legislation. In the 1920s, 30s, and 40s, some *Indigenistas*[2] investigated and proposed new legislation regarding Indians from widely divergent perspectives (e.g. Encinas 1919; Sivirichi 1946) while others denounced the mistreatment of indigenous people by the legal system and by lawyers (e.g. Castro Pozo 1979; González Prada 1976).[3] From the U.S., Davies (1974) reviewed Peruvian Indian legislation from 1900 to 1948 and its impact. In more modern studies, Ballón (1980) analyzed racist aspects of Peruvian penal law and Poole (1990) explored the racist and ethnocentric views of some *Indigenistas* and their impact on Indian criminology and penal law. Noéjovich (1991) concluded that state "paternalism" toward Indians in 19th century legislation was more ideological than real.[4]

The earliest empirical study on how Andean indigenous people actually used a national legal system was Forman's (1972) fine dissertation based on field research in an Ecuadoran indigenous community. It remains the only such book-length study done by an anthropologist. Nineteen eighty-two was a breakthrough year for historical studies of indigenous use of the law in the colonial and Republican periods. Three important works were published which included analysis and evidence on this topic: Hünefeldt (1982), Jacobsen (1982), and Stern (1982).[5] It quickly became evident that the rich legal records available in the Andes could provide substantial information not only on legal issues but also on other aspects of Andean politics. Interesting new research appeared on the colonial period (e.g. Lowry 1991; Stavig 1985, 1991; Walker 1991). The 19th and 20th centuries also received considerable attention. Several studies appeared devoted primarily to use of the law (e.g. Contreras 1991; Hünefeldt & Altamirano 1989; Urrutia, Araujo, & Joyo 1988) and numerous other studies included valuable information on this topic. The vast majority of works on the 19th and 20th centuries tended to concentrate on indigenous use of the law in land conflicts, and, to a lesser extent, on legal action to challenge elite abusers of Indians. There were some important exceptions, however. Aguirre & Walker (1990) and Poole (1988) explored the complicated relationship between banditry, culture, violence, local power, and the law in different areas and eras. Meanwhile, bandit and indigenous community leader Victoriano Tarapaki Astu provided fascinating insights on contemporary use of the law in his autobiography (Valderrama & Escalante 1992). For Colombia, Rappaport (1994, 1994a) analyzed the relationship between state law and indigenous culture and identity. Culture was also taken into account in Seligman's (1993) study of peasant relations to the law during the Peruvian agrarian reform and Harvey (1987) analyzed language and power in local level judicial practice.

Very interesting work has also come from Peruvian legal scholars[6] and, surprisingly, it is these scholars who have examined indigenous law in Peru in the greatest detail and have begun to explore the interrelationships between indigenous law and Peruvian law. Researchers at DESCO (1977a) produced the first empirical study of contemporary peasant attitudes toward the judicial system. In another important study, Pásara (1988) examined the Peruvian judicial system and peasants, including peasant attitudes toward the law. More recently Urquieta (1994) studied peasant use of the Agrarian Tribunal (*Fuero Agrario*) created in 1969 and the implications for peasant-state relations.

Legal pluralism[7] in Peru was first explored in DESCO (1977b) in an empirical study that focused on the use of customary law in the Andes and in poor neighborhoods in cities, the variables that influence peasant choices of formal or informal legal channels, and uses of indigenous law by state authorities. After a lapse of almost two decades, interest in customary and informal law among Peruvian legal scholars and students burgeoned. García-Sayán (1987) edited a volume on legal services for peasants and customary law in five Andean countries. Revilla and Price (1992) produced a study of the administration of justice by Peruvian peasant communities and neighborhood organizations in Lima as well as by rural justices of the peace. Indigenous customary law, which had never been directly addressed in anthropological studies, received detailed attention in several major studies by legal scholars which go a long way toward

advancing our understanding of indigenous law in Peru in all its permutations as well as the mutual influences between customary and Peruvian law (Brandt 1987[8]; Peña Jampa 1991a, 1991b; Tamayo Flores 1992). Some shorter studies also provide interesting information (e.g. Ambia 1989; de Trazegnies 1977, 1978; Vidal 1990; Yrigoyen Fajardo 1992). Several studies provide information about on informal law as applied by *rondas campesinas* (peasant self-defense patrols), a relatively new phenomenon in the Peruvian Andes (e.g. Brandt 1987; Revilla & Price 1992; Starn 1989; Yrigoyen Fajardo 1992, 1993).

All of these studies go a long way toward advancing our understanding of legal issues and indigenous people in the Andes but much more still needs to be done as will become clear in the following discussion. This study interprets this previous research and uses it to build a historical structural theoretical framework that can be used to guide future research. A series of variables are proposed which define how conflict resolution was undertaken by indigenous people using indigenous and national law in the period from 1821-1968. Important relationships between variables are also sketched based on the available evidence. The discussion starts with a general analysis of customary and indigenous law, including legal norms, jurisdictional levels, and the administration of justice. The Peruvian legal system is then introduced with attention to legal culture and administration of justice. The following section proposes several typologies of conflicts involving indigenous people that can be used as tools to understand how indigenous people chose to address conflict. All this information is then used to analyze indigenous use of Peruvian law. The variables that affected indigenous people's choices to use the legal system are examined as well as is the way they used this system. Finally, the conclusions evaluate the implications of the evidence and analysis presented in this study for questions of dominance, resistance, and hegemony.

Law in the Peruvian Andes: General Background

Law in the Andes, understood as a set of precepts governing behavior, a set of mechanisms for resolving conflicts, and a set of prescriptions for conflict resolution including sanctions, has two sources, indigenous law and state law. The term indigenous law is preferred over customary law since the latter is defined, among other things, as unwritten law. Indigenous law, as the term is used here, includes indigenous customary law, derivatives of customary law that have been codified by indigenous communities or in Peruvian law, and elements of Peruvian law that have been incorporated into the legal norms and practice of indigenous communities. On the local level in the Peruvian Andes, the two legal spheres - indigenous and state - have each had their own dynamic since the Conquest but have also constantly affected each other. Indigenous law, though some of its sources can be traced to before the Conquest, has been significantly influenced by Spanish colonial and then Peruvian law and has incorporated some of its features (Vidal 1990). Similarly, Peruvian law, especially in its local level applications, also has borrowed from customary law. In order to understand indigenous people and the law in Peru both legal systems as well as their interactions must be taken into account.

This section starts with a description of the general characteristics of customary law, an important and durable component of indigenous law. The discussion of indigenous law in Peru is divided into three parts: customary norms and codifications, jurisdictional levels, and conflict resolution and sanctions. Each part highlights changes in indigenous law and their sources.

Indigenous Law

General Characteristics of Customary Law

Customary law differs from formal law in a number of ways, including the fact that it is unwritten. Bourdieu describes the rules of customary law as

the product of a small batch of schemes enabling agents to generate an infinity of practices adapted to endlessly changing situations, without those schemes ever being constituted as explicit principles. (Bourdieu 1977:16)

...the precepts of custom...have nothing in common with the transcendent rules of juridical code: everyone is able, not so much to cite and recite them from memory, as to reproduce them (fairly accurately). It is because each agent has the means of acting as a judge of others and of himself that custom has a hold on him... (Bourdieu 1977:17)

This description highlights some important aspects of customary law. First, while it does consist of a set of rules, these rules are only evident in their application by particular individuals at particular times. At the same time as customary rules structure conflict resolution and help maintain law and order, since they are not codified or formulated in abstract terms they always retain considerable flexibility when applied to particular circumstances. Customary rules also respond to the particular needs and interests of a social group. When these change, customary rules also tend to change (Ambia 1989:69) though the way they change is influenced by the nature of the previous rules as well as by changes in the environment. The changes that affect customary law can come from many different realms: culture, demography, economics, ecology, or politics. They can come from within the social group or be a result of contact with other groups.

Customary law is an integral part of the social, political, and economic life of societies that employ them and cannot easily be separated out (Stavenhagen 1990:30-31). There is no separate legal sphere in societies that employ customary law. Customary law can prescribe behavior and conflict resolution mechanisms in everything from sexual morals to irrigation.

Customary rules and customary legal mechanisms are an integral part of the moral precepts of a society. Their internalized nature, pointed out above by Bourdieu, makes them part of the sense of right and wrong of the members of a social group. As a result customary law tends to have considerable legitimacy though, of course, there is always room for disagreement about particular legal outcomes. The fact that customary law is by

its nature flexible and amenable to change tends to ensure its continual legitimacy unless efforts are made artificially to stop it from changing.

Indigenous Legal Norms in the Andes

Andean customary law shared all these general characteristics of customary law described above. Customary laws in indigenous communities in the Republican period have been known by all community members (*comuneros*), if not always easily expressed in words (Brandt 1987:160; Tamayo Flores 1992:124-27). Andean customary rules govern all aspects of community life including: family relations and sexual honor; murder, quarrels, and theft; exchanges of goods; labor; land and other property; water; political responsibilities and "rights"[9] (Ambia 1989; Tamayo Flores 1992). Customary rules are based on Andean principles of reciprocity, duality, and equilibrium (Tamayo Flores 1992).

As in other parts of the world, Andean customary law is not a set of traditional and unchanging rules. It has constantly changed over time as indigenous people and other peasants responded to changing political and economic circumstances generated from both within and outside Andean political and cultural institutions. The norms of customary law were greatly affected by the conquests of the Incas and previous empires, as well as by the Spanish Conquest and the evolution of Peruvian legal and political institutions (Brandt 1987).

Unfortunately, there is no detailed empirical evidence on the evolution of customary laws in the Andes. Nevertheless, there is evidence on changes in some types of customary norms. Two examples will be discussed here: norms regarding landholding within communities and reciprocal norms. The examples chosen illustrate the different kinds of factors that brought about changes in customary law. It should be kept in mind that in the Republican period each indigenous community had its own dynamic and, while there were considerable similarities in the basic outlines of customary law throughout the Andes as well as in the types of changes that affected them, the rate and particularities of change were community specific.

Andean norms regarding landholding began to change with the introduction of European notions of property in the colonial period and the reorganization of land tenure in the Andes by the Spaniards (Spalding 1984:184). Traditionally, land within communities was enjoyed by *comuneros* as usufruct and was redistributed when they died. This practice was sanctioned through customary norms. The privatization of land within communities began in the colonial period and is as yet incomplete today.[10] A number of different factors appear to have influenced customary norms regarding landholding within communities. In some areas Peruvian laws had an important influence. For example, the 1828 law which permitted privatization of indigenous lands was used massively by *comuneros* in the region of Azangaro to privatize lands. On the other hand, in Cusco this law had little or no impact and privatization began much later (Jacobsen 1982:237-240).

Mayer (1988a) uncovered a very interesting and somewhat unusual case of variations in customary norms on property in community of Laraos in Yauyos that illustrates a variety of different factors affecting change as well as the role of individuals in changing custom. This community deliberately resisted privatization until about 1900. At this point, some of the wealthier community members who were in touch with outside world began to call themselves "free thinkers," adopting the liberal ideology of the period. At the same time, the expansion of the internal market provided greater economic opportunities for peasants. The "free thinkers" were able to convince Laraos *comuneros* to reorganize and privatize property within the community. This privatization led to the creation of some small *haciendas* on community lands. In this case, custom was changed from within the community under the influence of an ideology from the outside and economic changes. Apparently, however, neither previous customs nor their advantages for some community members were forgotten because in the 1930s the "free thinkers" were defeated and the community took advantage of the 1920 law which recognized communities and protected their lands and registered the community, later managing to reverse some of the privatizations. In this second change, older customs were re-interpreted and partially re-instated with the help of the Peruvian legal system according to the needs of some *comuneros*. While the particular dynamics of this case may be exceptional ("free thinkers" in communities were not a common phenomena), the customary law of other communities was also influenced by the same kinds of factors. Differentiation and economic opportunities tended to lead to privatization of some community lands and redefinition of norms of property. Peruvian laws were used to change or else re-establish or re-invent previously existing customs and norms.

Another example of constant changes and re-applications of customary rules lies in the area of reciprocity, one of the basic principles of Andean political thought. Reciprocity norms have governed social, political, and economic life in the Andes for centuries, if not millennia. These norms underwent substantial changes in the colonial period as a result of the imposition of Spanish rule, especially as regards reciprocal relationships between indigenous people and their leaders, the Andean lords, and between indigenous people and the colonial state (Spalding 1984). Changes in the Republican period were primarily a result of the individual dynamics of communities, affected by economic and cultural change. The variety of reciprocity norms and asymmetries documented in the very many anthropological studies of indigenous communities from the 1960s to today is ample evidence of this. Reciprocity norms, in fact, continue to find new expressions even in communities that are highly modernized and in city neighborhoods where people from the Andes and their descendants have migrated (Long & Roberts 1978; Isbell 1978:185).

There are some other types of changes regarding customary norms that are important. All have contributed to the creation of a body of informal law that here called indigenous law. First, we have already seen some ways that Peruvian law influenced the evolution of customary norms. There are two other such influences that are very important. To begin with, at various times in history, some customary norms were codified by the state legal system thereby altering their development. For example, according to Larson (1986) Spanish codification of some Andean norms had the effect of making them "rigid and precise" and interfering with their normal evolution. In another example, the 1920 law

that recognized communities specified the way that a community should be organized. Among other things, this law maintained the meeting of all heads of households, the assembly, as the highest decision-making entity. We shall look at the role of the assembly as a jurisdictional level later, but the point here is that what was custom before was now established (and thereby preserved) by Peruvian law. In addition to these codifications, communities also incorporated some elements Peruvian law into customary law and applied it in their own administration of justice (Vidal 1990). It is likely that this process accelerated in the 20th century and was closely linked to processes of modernization and increased knowledge of Peruvian law by peasants.

Another type of change in customary law was its partial codification by indigenous people themselves. As each indigenous community was officially recognized by the Peruvian government (a process that is still unfinished), it was required to keep written records of its decisions. When administering justice, some communities kept separate and secret books of their decisions based on customary law (García-Sayán Personal Communication). Secret or not, there was now a written record of legal procedures and decisions. Furthermore, community assemblies began to create their own laws which were also recorded (Brandt 1987:132,135-136). To overturn these laws, another act of the assembly was necessary. While Brandt (1987:132) suggests that these kinds of decisions could become customary law to the extent that they are internalized by *comuneros* and applied in daily life, the very fact that they were written down made them much less malleable than customary law.

Finally, we can conclude, with legal scholar Diego García-Sayán (1987b:37) that indigenous law in Peru,

is certainly much more than the mere frozen survival of traditional forms and contents. On the contrary, it has a strong and rich vitality which makes it one of the most dynamic realms of Peruvian law.

Jurisdictional Levels in Indigenous Law

While there has been considerable variety across time and space in terms of conflict resolution, in general virtually all communities have had three jurisdictional levels. On the first or lowest level are authoritative members of kinship groups. These may include elders of the nuclear family(s) of the parties in conflict, elders of the extended kin group, or persons to whom one or more parties in conflict are related through ritual kinship (Peña Jampa 1991a:10). This jurisdictional level is used in the case of conflicts that do not affect the welfare of the community as a whole (Peña Jampa 1991a). Other types conflicts and family conflicts that cannot be resolved through kinship groups are taken to the next jurisdictional level, community authorities. Over time there has been considerable variety in types of authorities that communities had (Drzewieniecki 1995b). For the purposes of this discussion, however, it is sufficient to identify three basic types.

First, there were "traditional" authorities. At independence all communities had these types of authorities and in most cases, they persisted well into the 20th century,

sometimes along side other types authorities. The traditional authority structure is made up of a set of hierarchically arranged offices called *cargos* that community males[11] take on usually for a year at a time starting with the lowest *cargo*. Unlike lower *cargos*, the upper level *cargos* go to the most esteemed *comuneros* and are generally elected in community assemblies. A community may have more than one set of traditional authorities if it is divided into segmentary parts. Each *cargo* is specialized in duties and several different *cargos* may include conflict resolution. For example, in communities where traditional authorities are strong those who occupy *cargos* specialized in irrigation and livestock are authorized to resolve conflicts in those areas (DESCO 1977b:173; Revilla & Price 1992:145). Within the traditional authority structure, the highest level authorities, most often called *varayoc* (Quechua) or *hilacata* (Aymara) have the greatest authority in resolving conflicts. Current and former *varayoc*/*hilacata* traditionally formed an informal council of elders to whom serious conflicts could also be taken (Doughty 1971:99).

The second type of authorities have their origin in the requirements of the 1920 law that officially recognized communities and other laws that amended it (Revilla & Price 1992). The highest authority in this system is the president of the community who is elected yearly. In some communities the *personero* (legal representative) is also very important. In communities which have both traditional and these official authorities patterns of conflict resolution vary. The general trend seems to be that where Andean culture continues strong and traditional authorities are respected, they play the most important role in resolving conflicts. Where the traditional authority structure has weakened and where there has been considerable cultural modernization, the official authorities will be turned to more often.

Whichever type of authority existed or predominated in communities, the highest jurisdictional level was always the community assembly.[12] The assembly's main responsibility is to deal with conflicts that affect the community as a whole, but *comuneros* also have the option of bringing other types of unresolved conflicts to assemblies. Conflicts may be presented to the assembly for resolution either by community authorities or, more rarely, by individual community members. If authorities introduce the conflict for discussion they usually also propose an appropriate solution or punishment.[13]

In addition to these communal jurisdictional levels, administration of justice may also be carried out by the lieutenant governor (*teniente gobernador)*. This is the lowest level government official in Peru and all indigenous communities have had one or more of these officials (depending into how main units the community was subdivided). Lieutenant governors were sometimes indigenous people and sometimes not. The allegiances of lieutenant governors varied considerably from community to community. At some times and in some communities, they were clearly representatives of the local power structure, while at other times and places, their allegiance clearly lay with the community. The actual responsibilities of these officials varied considerably from community to community though they usually helped to maintain the peace. Despite the fact that they represented the Peruvian government, in some communities they were

called upon to help to resolve internal conflicts based on the application of indigenous law (e.g. Brandt 1987:125; Revilla & Price 1992:164; Smith 1989:7). In addition, in some communities they were in charge of making sure that *comuneros* showed up for community *faenas* (work parties) and could sanction those who did not (DESCO 1977b:241).[14]

Conflict Resolution: Procedures and Goals

Conflict resolution in indigenous communities follows more or less standard procedures. Before any kind of meeting takes place between the parties involved and the person or persons chosen to deal with the case, the matter is discussed with everyone involved. In the case of personal conflicts between community members, this will include their respective kin groups. In the case of conflicts which affect the whole community a wider consultation will take place. It is only after this consultation takes place that there is a formal meeting between those involved and the person(s) asked to deal with the dispute (Peña Jampa 1991a; Sánchez-Parga 1986:154).

In the case of conflicts between *comuneros*, the goal of conflict resolution is to find a compromise or reconcile the parties involved rather than to seek than to seek equity or just distribution (Sánchez-Parga 1986:154). When a conflict exists, peasants say that something is "broken" (*malogrado*) and requires repair. The solution to the problem must "fix" what is "broken" and reinstate harmony or equilibrium (Peña Jampa 1991a:39). Equilibrium is a very important element in Andean political thought and the re-establishment of equilibrium is the goal and ideal in the resolution of all conflicts within the community.[15]

Community authorities or others asked to resolve conflicts usually act more as mediators than as judges who impose solutions. Forman explains how this mediation can work:

In those cases in which kinsmen and neighbors are the disputants, social pressure may influence the form of resolution. Overtly the nature of this pressure is simply discussion and argument, in which everyone who cares to is allowed to voice his views fully.... [The authority] is frequently involved in this kind of proceeding, also airing his opinions, solutions or "reasonable man" arguments. However, underneath the discussion and the attempt to reach consensus among the parties, there seems to be a threat that if voluntary compromise is not attained relationships of the parties may be disrupted or damaged. As kinsmen, especially, are aware of the degree of their interdependency, the threat of a break in normal peaceful relations is a factor to be carefully weighed against the value of "winning" a particular dispute. (1972:234)

In addition to illustrating how authorities help to resolve conflicts, this analysis also shows how the achievement of the ideological ideal of equilibrium is encouraged through social sanctions.

In addition to mediation, sanctions are also sometimes imposed. The purpose of punishments is also to re-establish equilibrium and re-incorporate the offending person as

a community member in good standing (Albo 1976:83). Punishments are also used as preventive and educational measures (Brandt 1987:163). Types of punishments range from fines (a very common measure[16]) to the death penalty.[17] The latter punishment, which could only be imposed by the assembly (Brandt 1987; de Trazegnies 1977, 1978), was only applied in exceptional cases in the Republican period and is now very rare.[18] Communities had to keep their imposition of the death penalty secret from government authorities. Apart from the death penalty, the harshest punishment that could be given to a *comunero* was ostracism from the community (Brandt 1987; Kapsoli 1989:75).

Legitimacy

Indigenous law had a high degree of legitimacy in Peru during the whole period under consideration. Despite changes in customary law, and most especially, despite all the outside influences, indigenous people and other peasants in Peru have consistently viewed customary law and community legal mechanisms as something distinct from the legal system of the dominant culture. Today, Quechua, Aymara and Spanish-speaking peasant community members refer to the Peruvian legal system as "*la otra justicia*" (the other justice) while their own customary law and legal mechanisms are referred to "*su derecho*" (their law), "*derecho campesino*[19]" (peasant law), and "*justicia campesina*" (peasant justice) (Brandt 1987:154; Vidal 1990:150). There are two sources of this legitimacy. The first has to do with customary norms. If we consider Bourdieu's description of customary rules cited above, we can see that the legitimacy of customary law comes from the internalization of its norms by its practitioners. And, it should be noted, from the moral source of these norms. So, as long as indigenous community members share common values, customary law remains legitimate. In some communities, of course, such values started to breakdown, and this also affected the legitimacy of customary law.

The second source of the legitimacy of customary law comes from the trust that *comuneros* have in the way the justice is administered in the community. Unlike the Peruvian legal system, which, as we shall see below, was exceedingly corrupt and often unfair, community legal mechanisms were seen as being fair. As everywhere, there were always cases when the end result was questioned or the impartiality of a particular authority was in doubt, but in general community justice was perceived as highly legitimate.

This legitimacy, however, did not necessarily always lead *comuneros* to use indigenous law rather than the Peruvian legal system. As we shall see, there were many different factors which influenced the choice of where to take conflicts and legitimacy was by no means the only factor that was taken into consideration. Before we take a look at these choices, we need to look at the major features of the Peruvian legal system.

The Peruvian Legal System

There are a number features of the Peruvian legal system that are of particular importance in understanding indigenous people and the law. First, several general characteristics

inherited from the Spanish legal system have played a fundamental role in shaping law and legal culture in Peru and many other Latin American countries. The literature on indigenous people and the law in the Andes usually does not take these characteristics into consideration. This is a mistake since these characteristics played a very important role in determining how indigenous people related to the legal system. Secondly, legal culture in the Andes had its own particular characteristics. The legal system was closely tied to the system of domination that prevailed to 1968, for example, and legal outcomes were highly dependent on personal relationships. Finally, local level administration of justice in the Andes differed considerably from what was specified in Peruvian law. For example, justice was often administered by authorities who had no legal right do so and legal decisions were based on both indigenous and Peruvian law.

General Characteristics of Latin American Legal Culture

The influence of Spanish legal culture[20] on the legal systems of Latin America cannot be underestimated. This Spanish legacy has played a very important role not only in shaping laws, the administration of justice, and legal behavior but also in shaping the state and its institutions as well as political policy and behavior. Karst and Rosenn (1975:57-66) summarize this legacy as follows:

1. **idealism**: Law should express ideals (rather than to be grounded in actual social practice). Citizens are entitled to make independent determinations of whether or not each law is actually in line with these ideals.

2. **paternalism**: Constitutions and laws are bestowed on the populace by elites "with little regard or awareness of the desires and capabilities of those governed."

3. **legalism**: "Society places great emphasis upon seeing that all social relations are regulated by comprehensive legislation." There is a faith that "almost any social or economic ill can be cured by legal prescription..."

4. **formalism**: The "exaggerated concern with legal formalities." "There is a marked tendency to presume that every citizen is lying unless one produces written, documentary proof that one is telling the truth."

All four of these characteristics persist in the Peruvian legal until today. In the last decades, there have been a few changes, including some modification in the idealism of laws, with more laws based on actual social needs and practice. Paternalism has diminished in some small degree with more groups having an input on the preparation of legislation. The notable exception, however, continues to be peasants and indigenous people.

In general, rarely have so few variables explained so much. The conception of law as an ideal together with paternalism has resulted in the drafting of legislation that is considerably abstracted from actual local level social, economic, and political conditions.[21] The notion that in the last instance citizens can determine the justice of a

law or its application has resulted in a socially-legitimized tradition of ignoring inconvenient laws, especially but not only by elites.[22] Legalism has resulted in a very large body of law regulating many different aspects of social relations. While some laws express ideals that society hopes to realize one day, others deal with minutiae and result in an enormous amount of regulation and bureaucracy. Formalism results in a "pronounced tendency to honor form over substance. Elaborate simulations to bypass particular legal provisions are fairly common and authorities frequently manifest remarkable tolerance of such maneuvers" (Karst & Rosenn 1975:64). In addition, there are a great many different papers to be filed, actions to be recorded, and other similar types of legal requirements to accomplish a great variety of different matters.

Taken together these features of the legal systems of Latin America, have resulted in a relatively low level of legitimacy of law among Latin Americans in general. In general, the link between the legal systems and morality is much more tenuous than, for example, in Scandinavia (to chose an area where states enjoy high legitimacy). While even in Scandinavia not all citizens may agree on the morality of any particular law or its application, in general there is a perception that there is an important link between law and morality. In Latin America this link is much more tenuous and legal systems are generally far less legitimate. In the discussion that follows, the reasons for these phenomena in Peru will be come clearer.

Peruvian Legal Culture in the Andes: General Features

The administration of justice in the small towns and villages of the Andes between 1821 and 1968 was highly localized, personalized, and costly. With the disappearance of the complex, centralized Spanish judicial system, all local authorities acquired considerable power and had little supervision or review from the outside (Guerrero 1989). Local justices of the peace until very recently received virtually no training and had practically no supervision from higher level judicial authorities. Higher level courts in the Andes were not much better. Those charged with law enforcement were equally untrained.

If personal contacts were very important in all Peruvian courts, on the local level they were paramount. One had a much better chance of winning in court if one had or could establish a personal relationship with judges, other court officials or law enforcement officers. Since those charged with the administration of justice and law enforcement were part of the local power structure, it was inevitably elites who had the greatest possibility of manipulating relations with them to their own benefit.

However, elites were never a united bloc and in fact, elite conflict in the Andes was endemic (e.g. Bourricaud 1967; Stern 1982; Walker 1992). This meant that in conflicts among themselves elites constantly had to work at maintaining their influence with judges and other officials. Monetary rewards and other favors were an important part of obtaining judicial favor for everyone who used the legal system. In fact, bribery was the rule through at least the 1980s (Pásara 1987:83).

The standard costs of using the judicial system were also high. There were charges for virtually every procedure. If written documents needed to prepared these had to be paid for. In cases that went to upper level courts, scriveners and clerks needed to be paid. Lawyers also demanded their fees. When litigants had to travel to other cities, there were also additional costs. In addition, cases tended to drag out for a long time, increasing their costs (DESCO 1976a). In general, costs were sufficiently high and procedures so long (sometimes going on for decades) that even landowners often eventually gave up and settled out of court (e.g. Jacobsen 1982:549).

In general, Jacobsen's conclusion about the late 19th and early 20th century holds true for the whole period under consideration,

...for the outcome of a suit often it was not necessarily decisive which party had the law on its side, but rather who could bring to bear more influence and power on the court.

(1982:548)

In addition to these problems with the judicial system, lawyers and lay defenders (*tinterillos*) also often played a less than savory role. Lawyers charged large fees, dragged out cases, and were not always dependable. The *tinterillos* who dealt mostly with peasants and poorer sectors of elites are infamous in historical, political, and literary works on the Andes for their dishonesty, avarice, and for fomenting conflict for their own benefit or on behalf of landowners (e.g. Pásara 1987:22; Rénique 1991:91; Sivirichi 1946).[23] The *tinterillos*' usefulness and power lay in the fact that unlike the vast majority of indigenous people in the period under consideration they were literate and spoke Spanish in addition to Quechua and/or Aymara.

This picture of the Peruvian legal system, which is faithful to the descriptions found in most of the literature on law in the Andes, is indeed bleak.[24] However, it does not tell the whole story. First of all, while the legal system was part of the system of domination, elite conflict sometimes left openings for peasants who, as we shall see, were able to take advantage of these to advance their interests. Secondly, the very corruptibility of officials meant that something could be accomplished through bribery. The individual moral character of judges, law enforcement officials, and others involved in the legal system could also make a difference in particular cases (Manrique 1988:151).

Lawyers and *tinterillos* deserve special attention. First, the very fact that lawyers took the cases of indigenous people made them a potential threat to landowners who needed indigenous labor and wanted to avoid too many conflicts (Bourricaud 1967:142). Secondly, since the colonial period there have always been some lawyers who sincerely worked on behalf of indigenous people (e.g. Craig 1967). The proportion of such lawyers increased markedly from the 1920s on with the *Indigenista* movement and the growth of left-of-center parties and the middle class (Rénique 1991). Some of these lawyers were inspired by a true concern for the Indian and a desire for political change while others represented a growing middle class in the Andes that was frustrated by the power of landowners who held a stranglehold on power and therefore allied with peasants to chip

away at the landowners power.[25] As for *tinterillos*, despite the many denunciations of their role in the legal system, empirical evidence on their role is actually quite thin. From what is known, it would appear they were independent operators some of whom wandered from one area to another looking for cases and sometimes stirring them up (Rénique 1991:39). While indubitably some exploited, cheated, and harmed indigenous people, they were also a thorn in the side of elites in as much as they worked on conflicts between peasants and landowners over abuses and land (Ibarra 1992:331; Rénique 1991:39). After the 1940s, returning migrants would sometimes return to their communities and become *tinterillos*, sometimes abusing peasants but at other times helping them in their struggles with elites (Evanan Poma Personal Communication; García Blásquez, Girón S., and Luna Ballón 1968:92).

Despite these factors which somewhat ameliorated the negative features of the Peruvian legal system, this system generally was viewed with considerable cynicism by all inhabitants of the Andes (Van den Berghe & Primov 1977:67). However, despite this cynicism, the legal system was used regularly and was the terrain for innumerable struggles between elites, between indigenous people, and between communities and elites. There were several reasons for this. The legacy of the colonial period of an elaborate judicial system established to handle conflicts on all levels of society persisted into the Republican period. Secondly, the legalism and formalism of this legal culture led to the need to process many matters judicially. The very quantity of conflicts which existed in the Andes was also a factor. In addition, since, as we have seen, everyone involved with the administration of justice stood to benefit financially from legal actions, they worked actively to encourage its use. In the case of indigenous people, some other factors were also important and they will be examined below.

Administration of Justice

Keeping in mind these general characteristics of the legal system and legal culture in Peru, we can now look at those officials and institutions that indigenous people dealt with when they used the legal system. The lowest jurisdictional level in Peru are the justices of the peace. During the period under consideration, every small village had one, while larger towns could have two or more. More important cases are taken to higher level judges in the capitals of provinces and then to courts in departmental capitals (the second and third highest level administrative divisions of Peru, respectively). The law enforcement structure, from the lowest level included the lieutenant governor, the governor, the subprefect, and the prefect who was in charge of departments. Until 1922, when the police force (*Guardia Civil*) was formed, small gendarmeries existed. The military was called in when major disturbances took place.

This discussion will concentrate on lower level authorities: justices of the peace, lieutenant governors and governors, and police. As in the previous discussion of customary law, the emphasis will be on how administration of justice took place. This will set the stage for an understanding of indigenous peoples' relations with these officials.

It serves no purpose to list the responsibilities of all these local level officials as assigned in Peruvian statutes. This is because during the whole period under consideration all of these officials exceeded or ignored their official responsibilities and took on duties which were not assigned to them (DESCO 1977b). There were several reasons for this. First of all, Peruvian law did not contemplate many of the problems which arise in a rural peasant society. Secondly, justices of the peace often were poorly informed about national law and their responsibilities. Further, Republican law took little cognizance of indigenous law but it was impossible to administer justice without considering this law in a rural society where indigenous norms had a high degree of legitimacy. Finally, the localized nature of administration of justice, i.e. the lack of supervision and control by higher level authorities, permitted local officials to do pretty much as they liked (DESCO 1977b).

The main officials to whom indigenous people took their disputes were justices of the peace.[26] These officials were unpaid. In the earliest years of the Republic, *alcaldes* (mayors) of communities and towns (which were sometimes coterminous) had the function of justices of the peace, following the earlier Spanish custom (Varallanos 1946:47-48). During this early period some *alcaldes* were indigenous *comuneros* (how many, is unknown).[27] When justices of the peace were introduced, they were at first elected by municipalities and then from 1900 through the 1960s they were named by Superior Courts from a list submitted by lower level judges (Martínez G. 1967). Local authorities and elites have always had considerable influence on who was chosen as justice of the peace.[28] Like other government officials, justices of the peace were part of the local power structure.[29] Generally speaking, they upheld the hacienda labor system, the system of indigenous labor exploitation, and landowners' desires to monopolize water supplies (Orlove 1977:340). Their attitude toward indigenous people was inevitably paternalistic.[30] Petty corruption was the rule. With the advent of ideological change from the 1920s both *Indigenistas* and indigenous people began vigorously to denounce the role of these judges in exploiting Indians (Reategui Chávez 1977:31; Sivirichi 1946:365).

Once again, all these negative characteristics of justices of the peace were quite real but this does not tell the whole story. First, as we have already seen, elite conflict could lead judges to favor peasants when this was convenient for one faction or another. Secondly, judges varied in their moral qualities and wisdom. In addition, many disputes among peasants that were brought to justices of the peace did not affect the power structure one way or another. In this case, judicial criteria, personal wisdom and sometimes bribes were the only factors taken into consideration. One example of a conflict brought to a justice of the peace illustrates this.

The good in dispute was a cow: two peasants claimed to own the same animal. Taking the dispute to the justice of the peace, each seemed to have powerful arguments in his favor and a group of "witnesses" to back them up. As is obvious, it was a cow without a "pedigree" and so it was absurd to pretend that its ownership could be proven by a contract or any other type of document.

There did not seem to be an easy way out of the dispute since any solution ran the risk of being unjust. Common sense, however, took the place of formalism: the judge ordered that the cow be set free and it calmly and without vacillation headed toward the small stable of one of the claimants. A detailed record of the proceedings was prepared by the judge. The dispute was resolved.[31] (García-Sayán 1987a:39-40) Translation mine.

This example very clearly brings home the type of everyday conflicts that justices of the peace had to deal with and why such conflicts normally had little relevance for local elites.

There is one final factor which mitigated some of the negative aspects of administration of justice on the local level and that is the question of legitimacy. Even though they were quite obviously representatives of the system of domination and part of their legitimacy rested on the fact that they had power, judges still had to please peasants to some extent if peasants were to continue to provide them with a source of income and if everyday levels of tension were to be kept within acceptable levels. When any authority was perceived as "too abusive," indigenous people had a long tradition of protest, ranging form legal complaints to armed action of which all local residents were quite aware. Indigenous people always found themselves in a situation of great disadvantage vis-a-vis local powers, but not totally powerless for all that.

Evidence from the 1970s, '80s, and '90s indicates that justices of the peace regularly employed indigenous law in their decisions (Brandt 1987; DESCO 1997b; Pásara 1987).[32] In addition to customary law, these judges also employed some of the rituals used in the administration of customary law. For example, alcohol and sometimes coca chewing was usually indulged in (Ambia 1989; Ramón C. et al 1969). Evidence from the communities' shamans based on divination was also accepted by justices of the peace in some areas (Gow, D. 1976:241). Evidence for the 19th century is much thinner. However, Guerrero (1989:342-43) indicates that in the early Republican period in Ecuador the use of customary law was common. There is every reason to think this was true in Peru as well, all the more so as the legacy of Spanish colonial law which had codified some customary law persisted for many years in the Andes. Indirect evidence also comes from the fact that labor and other relations between indigenous people and local elites in the Andes well into the 20th century were regulated by Andean norms, though of course, these were asymmetrically applied. Furthermore, in heavily indigenous areas, local power sectors, including landowners who lived on their lands, were themselves heavily imbued with Andean culture and thus likely to have internalized elements of customary law (Drzewieniecki forthcoming). Since justices of the peace were usually poor *mestizos*, the real cultural differences between them and *comuneros* were quite small, despite their decisive importance for placement in the power structure. The Peruvian legal system on the local level was thus heavily penetrated by indigenous law. This does mean, however, that local authorities applied indigenous law just as indigenous communities it would. If indigenous law was constantly evolving in communities, it also evolved and changed in its application by local level officials (Guerrero 1989:351). As Vidal (1990:149) notes, this in itself was part of the creation of "peasant law."

Justices of the peace were not the only ones to administer justice and resolve conflicts. Lieutenant governors, governors, and the police (since 1922) and occasionally other officials and priests also got into the act.[33] This could happen for a variety reasons. First, many of these officials were not aware of the limits of their official responsibilities. Secondly, the administration of justice was a lucrative source for goods, money or favors as well as power (DESCO 1977b; Revilla & Price 1992). In addition, the choices of indigenous people also made a difference. *Comuneros* chose authorities on the basis of criteria such as 1) who they had respect for, 2) who they had ritual kinship and other relations with, 3) who they thought would decide in their favor and who had sufficient coercive power, and 4) their legal culture, including the habit of going from one authority to another in search of a propitious solution (Brandt 1987; DESCO 1977b; Gutiérrez Galindo 1968:72)

In addition to these local level authorities, more serious matters were often taken to higher level judicial authorities in provincial and district capitals. Most cases regarding land tenure for instance, were handled by upper level courts. Without proof to the contrary, it can be assumed that the higher the court the less influence indigenous law had. Finally, in the 20th century a number of institutions were created by the Peruvian government that processed peasant complaints regarding land claims and local power abuses. In 1921 the *Sección de Asuntos Indígenas* (later called *Dirección de Asuntos Indígenas*) was created. In 1922, the government established the *Patronato de la Raza Indígena* which later was dissolved in the 1930s (Davies 1974:76-77). In addition, the various incarnations of the ministries of justice and labor also dealt with legal issues involving peasants and indigenous people. The work of all these 20th century institutions has never been studied in any detail. It is likely that they had considerable influence on patterns of indigenous use of the law and it is hoped that researchers will take up this topic in the future.

Sources of Conflicts in Andean Communities

Most of the historical literature on indigenous use of the law, and indeed, on indigenous politics in general, pays close attention to the conflicts between indigenous people and elites. Considerable investigation has also been done on the influence of economic change and political change on conflict within Andean communities. However, until very recently very little attention has been paid to the conflicts which originate in the political, social, and economic organization of indigenous communities. This section will explore this source of conflict, suggesting that it is an important variable in understanding indigenous use of the legal mechanisms. In addition, several ways of classifying conflicts originating within and without communities are proposed.

The high level of conflict in indigenous communities often has been noted. In the past, the most common explanations for these conflicts focused on a number of sources of conflict including[34]: 1) the system of domination as creating the conditions for conflict, 2) the actions of members of the elite in fomenting conflicts (see above), 3) increases in economic differentiation within communities, 4) economic changes in the Andes including changes in land tenure affecting communities, 5) demographic change leading

to conflicts over land and resources within and between communities, starting in the last half of the 19th century and intensifying in the 20th, 6) 20th century ideological change resulting in conflicts in communities with returning migrants and between the young and the old, and 7) deterioration of community cohesion in some communities. Most sources agree that these factors affected communities individually and differentially and that therefore there was considerable variation over time and space.

In this study, it is argued that to understand conflict in indigenous communities it is not enough to look at the impact of these social, economic, and political changes. While all such factors did indeed generate conflicts, a high level of conflict was already normal in indigenous communities. The sources of this conflict can be found in communities' culturally-sanctioned social, political, and economic organization. These types of conflicts within communities have been regulated by cultural norms and kept it in check, much as conflicts are in all small scale societies. Thus, an assessment of conflict in Andean societies must take into consideration the normal, internal sources of conflict in order to evaluate the extent to which social, cultural, and economic conflict augmented or changed the character of conflict. Furthermore, such an understanding is essential for the comprehension of how and when indigenous people used different conflict resolution mechanisms.

While various authors have hinted at the sources of conflict with Andean society, it is only with publication of José Sánchez-Parga's Faccionalismo, organización y proyecto étnico en los Andes (1989) that a well-elaborated structural explanation has been proposed for Andean conflict. According to Sánchez-Parga, in addition to the usual petty jealousies and animosities, there are two main sources of structural conflict in Andean communities. The first arises from communities' kinship structure and the other from the segmentary division of communities. In the following brief discussion of these factors, it will be shown how they lead to conflict and how this conflict is kept in check.

Andeans recognize several types of ties expressed in kinship terminology, including blood links, marriage alliances, affinity groups, ritual kinship (*compadrazgo*), and other reciprocal relationships, all referred to here for the sake of brevity as kinship ties. The first structural source of conflicts which results from kinship structure are the rivalries and competition that exist between the several extended families that make up each community. A part of this rivalry is also the desire for vengeance (Fonseca 1972:43-44). Another source of conflict arises from the fact, that *comuneros* constantly re-negotiate and revise other types of kinship relationships and strategies as a result of their changing economic and political needs and goals (Sánchez-Parga 1989:174). This negotiation and revision of relationships is always a potential source of conflicts. The reciprocal relationships established themselves have their competitive edge and are a source of rivalries (Mayer 1974a; Stern 1982:9).

However, at same time as the Andean kinship structure is a source of conflict, the interdependencies it creates and the constant need to form alliances also create strong incentives for rapid resolutions to conflicts. The need for community consensus building and the norm of widespread participation in communal decisions are additional

incentives. Various mechanisms that limit the consolidation of long-lasting power blocs and prevent winner-take-all situations also help hold conflict within bounds (Sánchez-Parga 1986, 1989). Finally, community ideology that sets up the community as a unit separate (and against) the rest of society whose interests in the last instance always overcome individual or group interests serve to keep conflict from destroying communities.

Segmentary divisions of communities are another structural source of conflict. Each community is divided into one or more parts between which there are always rivalries and structured competition and, in the past, even ritualized battles at regular intervals (Sánchez-Parga 1989:196-201). The fact that rivalries and conflicts are given regular, accepted ways in which they can be expressed stops the conflicts from getting out of hand and harming community unity. Even when segments of communities separate, the new communities tend to have their own segmentary parts and structured competition resumes. In addition to structured and ritualized conflict between segments of communities, there is also ritualized competition and battles between communities.

These structural features of Andean communities go a long way toward explaining the types of conflicts that have existed for centuries as well as how they were kept in check and why they have not destroyed Andean society. Future researchers on 19th and 20th Andean history would be advised to take these conflicts and conflict control mechanisms into consideration when evaluating the impact of the economic, social, and political sources of conflict listed above.

There are several other useful ways of classifying conflicts in Andean society. One of the young Peruvian legal scholars, Peña Jampa (1991a)[35], has suggested that there are two spheres of conflicts within communities: family conflicts and conflicts that may or may not have their origin in family conflicts but that affect the community as a whole. These two spheres affect how conflicts are classified, the jurisdictional levels where they are addressed, and the way conflicts are handled and resolved. Family conflicts can be said to affect the honor of the family while conflicts that affect the collective image the community has of itself. In the Aymara community that Peña Jampa studied, conflicts that were perceived to affect the community as a whole included damages inflicted on community property such as communal land or buildings that belonged to the whole community, interfamily conflicts which threatened to envelope the community as a whole, and "immoral acts" (e.g. adultery, abortion, or rape) that could bring the punishment of the gods on the community. In other communities the list might be somewhat different. While Peña Jampa deals only with internal community matters, it is important to note that in conflicts with outsiders there are also matters which have to do only with a particular family and other types of conflict that affect the community as a whole, such as conflicts over lands that the community claims or labor demands made on the community as a whole. As we shall see later, Peña Jampa's distinction is very useful in understanding indigenous use of the law.

Another typology that can be used for classifying conflicts in the Andean world is to examine who is involved in the conflict. Among other things, this sort of classification

can be very useful in understanding who is asked to resolve a particular conflict. A preliminary such classification divides conflicts by whether they are 1) conflicts between *comuneros* (which are inevitably conflicts between kin groups), 2) conflicts between *comuneros* (families) and outsiders, 3) conflicts between communities, or 4) conflicts between communities and others. Applying Peña Jampa's classification, we can see that some sets of conflicts involved only families while others involved the community as a whole. In addition, formal jurisdiction varied depending who the conflict involved. Most importantly, the indigenous legal system had no jurisdiction over people who were not community members.

Finally, another useful typology classifies conflicts according to the nature of the crime or other infringement involved. The most important type of conflicts to distinguish from others are conflicts over land. Much of the research on conflicts in the Andes and indigenous use of the legal system has to do with conflicts having to do with the land. Many of the conclusions on the nature of indigenous relationships with the legal system are based on these types of conflicts. However, despite the great importance of land conflicts, they were only one of the many conflicts that were brought to the legal system. To get a full picture, the way that other conflicts were handled must also be understood, among these banditry and theft, quarrels, assault, and murder, and conflicts regarding exploitation of indigenous labor and other type of elite abuses. Here again we can divide this classification according to matters that affected families and those that affected communities, and, once more, by the parties involved. In addition, non-land conflicts can also be classified according to whether they were covered by Peruvian legislation. Indigenous law dealt with some types of problems not discussed in Peruvian legislation. On the other hand, Peruvian legislation did deal with crimes such as livestock rustling or murder as well as with some kind of elite abuses of indigenous people.

These typologies will be employed in the analysis of indigenous people and the Peruvian legal system. Unfortunately, limitations of space and the substantial gaps in empirical evidence permit only a preliminary evaluation of their usefulness.

Indigenous Use of the Peruvian Legal System

The preceding discussion has provided us with some of the important variables necessary for an understanding of indigenous use of the law in the Andes. To begin with, we have seen that indigenous people had a complex legal system that was relatively responsive to economic, social, and political change and enjoyed considerable legitimacy. Peruvian legal culture was examined as was its impact on the way that conflicts in the Andes were handled. The cynicism this culture engendered was noted. It was also shown that local level administration of justice was influenced to a significant extent by indigenous law despite government officials' place in local structures of domination. The analysis of conflicts within indigenous communities showed that conflict was a normal, daily feature of community life at the same time as traditional mechanisms kept this conflict from getting out of hand and destroying communities. Several typologies of conflict that can be used to analyze indigenous use of a variety of legal mechanisms were also described.

Indigenous people have a long history of using state law that starts before the Conquest. With the imposition of colonial rule, use of the legal system became one of the most important political strategies of indigenous people in dealing with the colonizers (Stern 1982). It was also during the colonial period that indigenous people started to use the dominant legal system for internal conflicts (Celestino & Meyers 1981:161; Stavig 1991). In the Republican period, indigenous people continued to use the dominant societies' legal system for a variety of different purposes. In the discussion that follows, some of the major structural characteristics of indigenous use of this system are examined. Since the topic is very broad, several examples have been selected to illustrate various aspects of indigenous use of the Peruvian legal system and their attitudes toward it. The discussion is divided into two major sections dealing with 1) conflicts within communities and 2) conflicts between communities and members of the local power structure. Not covered for reasons of space here are conflicts between communities and conflicts between individual *comuneros* and individual members of elites.[36] The reader should be aware that there were a substantial number of such conflicts. Each major section is divided into two subsections. Under conflicts within communities the handling of low level, everyday conflicts and murders is discussed. The section on conflicts between communities and others analyzes protests against elite abuses and conflicts over land are analyzed. Each of the subsections, highlights different aspects of indigenous peoples' attitudes toward Peruvian administration of justice.

CONFLICTS WITHIN COMMUNITIES

Everyday Conflicts

In this section, two types of internal conflicts will be used to analyze some of the variables which played a role in determining indigenous peoples' decisions to use the Peruvian legal system to deal with conflicts. The first type of conflict to be examined will be everyday conflicts between *comuneros* of the type normally covered by civil law or minor infractions of penal law, excluding conflicts over land. The second example that will be used is murder, a crime punishable under Peruvian law and in which local elites were likely to take some interest.

There are no statistical data and very few legal records on the way that everyday conflicts were handled between 1821 and 1968. While the majority of such conflicts appears to have been handled within communities, historical studies indicate that in some areas and some time periods, many such disputes or crimes were taken to Peruvian authorities. In such cases, an attempt usually was made to solve the dispute within in the community and only if a satisfactory solution was not reached did *comuneros* sometimes take the conflict to the Peruvian legal systems. Much more rarely, one or both of the parties involved went to government immediately.[37] When *comuneros* went to the state to solve petty conflicts or crimes it was usually to achieve one the of the following: mediation of a dispute, a restraining order (*garantias*) when violent action was excepted, coercive action against the accused, or officialization of an agreement previously arrived at between the parties involved (Contreras 1991:208; DESCO 1977b). As discussed above, in the case of these kinds of conflicts *comuneros* could expect state authorities to

come up with a decision based on indigenous law or a combination of Peruvian and indigenous law. On the other hand, they could expect corruption and the interference of criteria based on elite interests if these were involved in the case at hand.

The first variable that affected how often *comuneros* used the Peruvian legal system in these and other types of internal conflicts was the degree of political independence of the community. During the period under consideration, the communities that were the most likely to handle most or all everyday conflicts within the community were those that had the greatest degree of political independence and thus broached little interference in their internal affairs. The relative independence of such communities could be the result of their remoteness, the weakness of local power sectors, a strong historical tradition of rebellion or independence (DESCO 1977b:110; Ossio & Fuenzalida 1983), or conjunctural factors that permitted greater independence. For example, at those times in Peruvian history when indigenous people managed to achieve considerable independence from the Peruvian political system, they immediately took over their own administration of justice. This happened under different circumstances in several different time periods. For example, in the 19th and early 20th centuries, when communities or groups of communities managed to achieve temporary independence through rebellion, they assumed a monopoly over all administration of justice (e.g. Mendez 1991:183). During and immediately after the War of the Pacific (1879-1883), when numerous communities in several parts of the Andes achieved virtual independence as a result of the disarray caused by the war and of their participation on the Peruvian side, they also became the sole administrators of justice (Manrique 1981). After the agrarian reform of 1968, some *comuneros* in communities that previously relied on the Peruvian judicial system started to administer their own justice in the case of everyday internal conflicts including in cases involving disputes with other communities (DESCO 1977b). The same thing happened when the Peruvian state weakened in the 1980s (Brandt 1987; Revilla & Price 1992). At the other extreme from these high levels of independence were those communities that included both *mestizos* (lower level members of elites) and Indians (Drzewieniecki 1995b).

There were some chronological patterns, as well. In general, in the 20th century to 1968, there appears to have been a link between levels of modernization, wealth, and education of individual *comuneros* and use of the legal system for a variety of purposes, with all three factors leading to greater use of the Peruvian system (e.g. DESCO 1977b:92). In general, use of the Peruvian legal system for everyday conflicts increased substantially in some communities in the 20th century as a result of increased integration into local and sometimes regional economic systems and as a result of the differentiation within communities. This tendency was subject to modification, however, in areas where the local power structure started to breakdown due to the massive rebellions that spread in several waves over the Andes through the 1960s or in those communities where *comuneros* became politically radicalized and developed new strategies to challenge local powers and state. In other words, during the process of modernization and social, political, and economic change some *comuneros* initially integrated themselves into the system as it was, though not without complaints and the achievement of some reforms, but as some communities rebelled or were affected by modern ideologies, communities

tended to take over more responsibilities for the administration of justice for everyday conflicts.

Another important variable affecting indigenous use of the law was the type of conflict involved. Conflicts covered only by indigenous law were more likely to be handled within the community. In addition, conflicts that affected the community as a whole were less likely to be taken to the Peruvian system than conflicts arising from family conflicts, feuds or rivalries (DESCO 1977b: 246). Forman (1972:247-248) suggests that personal feuds in which there was little incentive to compromise were most likely to be handled outside the community. Another observer (Housse 1946:280) suggests that taking such conflicts to judges could avoid the bloodshed that often resulted from the physical encounters between rival groups prescribed by Andean culture. Another reason is provided in DESCO (1977b:246), namely that some of these conflicts may have involved the kin group of community authorities and it was more convenient for these authorities to have this conflict resolved by outsiders. In general, these explanations fit well with Peña Jampa's (1991a) distinction between conflicts that affected only families and those that affected the community as a whole.

The decision as to how to handle a conflict could also be influenced by a number of personal perceptions of the parties involved. For example, the likelihood of a favorable judgment from a particular quarter could be taken into consideration. In the case of government officials, this was often dependent on the kind of ritual kinship relationships (*compadrazgo*) that existed between a *comunero* and a state authority or other member of local elites. Use of *compadrazgo* for legal and other purposes increased considerably in the 20th century as communities became more integrated into the national system (Gow, R. 1981:113; Mintz & Wolf 1977). At other times, the personal integrity and wisdom of a particular judge or other government authority could lead indigenous people to turn to him. Conversely, community authorities that were perceived as "bad" were less likely to be trusted.

The actions of non-Indians also played a role. We have already seen that it was in the interest of judges and other authorities to drum up "business" by encouraging peasants to turn to them and some even stirred up conflict.

Finally, there are issues of power. When *comuneros* turned to Peruvian authorities to officialize an agreement, ask for a restraining order, or because of their coercive power, they were recognizing the power of these authorities. At the same time they were also cognizant of the symbolic and ritual aspects of the legal system. This point deserves more detailed discussion since it also pertains to other ways that indigenous people used the law. In the previous discussion of Peruvian legal culture, we saw that all Peruvians attach considerable importance to written documents and to the officialization of transactions and judgments. Not surprisingly, indigenous people, whose culture tends toward a much more intense use of symbols and ritual, also gave considerable importance to the ritual aspects of both indigenous and Peruvian legal proceedings and attached symbolic importance to any resulting documents and pronouncements.[38] The recognition and investiture of symbolic and ritual meaning to legal proceedings was closely linked to

perceptions of the power inherent in these proceedings, of the power of those connected with the administration of justice, and of the power of any documents generated.

In areas where Andean culture was strongest, representatives of the Peruvian legal system, lawyers, other government authorities, and powerful sectors of the local elite were also sometimes considered *wamanis* (one kind of Andean god) (Ansión 1987:115-144; Earls 1969; Hosoya 1992). In general, andeans' attitudes towards *wamanis* were ambiguous. *Wamanis* could do good, but also a great deal of harm. They had to be watched out for and sometimes appeased (Ansión 1987; Earls 1969). This ambiguity in attitudes toward the powerful representatives of the Peruvian legal system and other authorities was also manifested in Andean dances. Such dances, which were like plays in dance form, often expressed shifting Andean views of power relationships (e.g. Wachtel 1977:33-60). Argüedas (1976:97-99) describes one such dance in which judges are ridiculized in a "sharp and vengeful" manner at the same time as their power in Andean society is recognized.

This ambiguity toward the legal system is also evident in some of the ways indigenous people behaved in front of judges or in court. While some peasants may have approached the legal system in an honest and open way, there is considerable evidence of attitudes and behavior that displayed considerable cynicism toward the system. In everyday conflicts and in other types of conflicts as well, lying was common and paying witnesses or getting the unconditional support of all kin members occurred frequently. Pleading poverty, stupidity, weakness, helplessness and playing the victim was also not unknown.[39] This behavior is a clear reflection of Peruvian legal culture (it would be a serious mistake to assume that only indigenous people resorted to such tactics) and of indigenous peoples reaction to the system of domination. It would be interesting to know how far this behavior varied from *comuneros*' behavior in indigenous legal forums and to understand better the mutual influence between the two legal cultures. There is no direct evidence on this subject, but we do know that one of the most important Andean moral commandments from before the Conquest until today is "don't lie"[40] (Brandt 1987:132).

Murder

In the everyday conflicts discussed above the decision about where to take a particular conflict was the result of decisions taken by an individual family or a broader kinship group. Murder was a different matter. Murders of a *comunero* by a *comunero* affected the community as a whole and were immediately a matter of concern for community authorities and the assembly. Murders were also different in that they were covered by Peruvian law and by their very seriousness could be of interest to Peruvian authorities.[41] So on one hand, the fact that murder affected the community as a whole was an incentive for communities to deal with the murder themselves; on the other hand, the interest of Peruvian authorities meant that communities had to be careful in how they handled this type of conflict. In the colonial period, Stavig (1991:152) concludes that community authorities in Quispicanchis and Canas and Canchis resolved these

contradictions by capturing murders (and thieves) and handing them over to colonial officials. Stavig concludes that

By controlling thieves and violent criminals, community officials served their people, enforced the community structure, and in the process also served the colonial state. In this aspect of Indian life, the functioning legal system helped reinforce the day-to-day relationship - the moral economy - between colonizer and colonized by legitimizing colonial justice. (1991:152-153)

Current evidence does not permit us to know whether this cooperation between community leaders and colonial law enforcement was the same throughout the Andes. In the Republican period, however, with the collapse of the Spanish judicial system, the way that community authorities handled murder varied considerably.

The evidence available indicates that communities always handled some murder cases themselves and in some cases imposed the death penalty.[42] As in the case of everyday conflicts above, the primary determinant of how a murder was handled was the degree of independence of the community from local power sectors (DESCO 1977b:247). In the case of murder, the remoteness of the community was particularly important since it diminished the possibility of local authorities finding out about a murder. But other types of communities could also attempt to hide murders from local authorities for differing reasons. García-Sayán (Personal Communication) describes a case in which a teacher had a love affair with a woman *comunera* and her husband found out about it and killed her. The community decided that it was not convenient to take this case to the Peruvian authorities since the father was needed to take care of his children. The president of the community went to the teacher and told him that if he talked he would be denounced for having the affair to the Ministry of Education. He then wrote to the Ministry of Education asking for the teacher to be removed. However, the police found out about the murder and took the guilty *comunero* to jail. Among other things, this example shows that community perceptions of the gravity of the murder and its effect on the community could be important in how the murder was treated and that the chances of re-incorporation of the *comunero* into the community were also important. It suggests that the handling of murders was case-specific. Such handling of murder cases brings into question as to whether a "moral economy" legitimized the Peruvian legal system as Stavig suggests for the colonial period. The Peruvian legal system had some legitimacy, but daily use of its mechanisms depended very much on case-specific calculations.

In that majority of cases when communities, through their authorities, took murder cases to state law enforcement officials, this was a result not only of a recognition that law enforcement would find out about the crime anyway, but because communities used the Peruvian legal system to deal with crimes that could pose difficulties when handled internally or because it gave them the opportunity to eject offending *comuneros* from the community by handing him over to others.

Community Conflicts With Local Elites

Indigenous people's long tradition of dealing with conflicts with elites through the legal system of the dominant society was carried over into the Republican period. The success which indigenous people in using this legal system over time and space varied considerably over time and space, though indigenous people always won some cases. But "success" in the use of the legal system must be measured by more than whether a particular case was won or not. Actions take through the national legal system also had indirect effects. Most importantly, the very fact that matters were taken to authorities could lead to the ameliorate of abuses of various sorts or prevent or limit further incidence of the action which had been protested. Other such indirect effects will be discussed below. One of the reasons that legal actions had some positive direct or indirect effects is that for indigenous people, use of the national legal system in conflicts with elites was always one of several strategies to achieve a particular set of goals. Indigenous use of the legal system cannot be adequately understood unless it is put in the context of other strategies. The particular mix of strategies to achieve goals vis a vis elites varied over time, but usually some legal strategies were included. This had as much to do with Peruvian legal culture and with the traditions of indigenous conflict resolution.

The two most common daily conflicts between communities and elites were over elite abuses and land. Information on these two topics is much more extensive than on use of the law for internal conflicts and treatment given below selectively concentrates on the main structural characteristics that governed the use of the law in these cases.

Elite Abuses

One of the greatest causes of the daily suffering of indigenous people were elite abuses, which could include demands for personal services, violation of informal and formal labor arrangements, personal humiliation, blackmail, beatings and other physical abuse, and rape. While indigenous people were always angered by the most flagrant abuses, their views on what constituted some types of abuse was subject to variation over time. The most prominent examples are labor arrangements. Landowners and others obtain indigenous labor through the use of reciprocal arrangements derived from Andean culture which were sometimes officialized through Peruvian law. These arrangements were asymmetrical with indigenous people receiving much less than they received. Nevertheless, given the situation that indigenous people found themselves in, they accepted these arrangements.[43] However, their conception of what was an acceptable reciprocal arrangement changed over time and in general the "limits to abuse" set by indigenous people varied considerably from time to time and were influenced by social, political, and economic change as well as by ideological changes (Drzewieniecki 1995b). It is this context that indigenous protests against elites abuses should be evaluated.

While protests against abuses were a constant in the period under consideration, there are some very clear chronological patterns. First, the early decades after Independence saw regular protests against local authorities which were taken to higher courts (Hünefeldt 1989; Urrutia, Adriano Araujo, & Joyo 1988). This period was one in which indigenous people often allied with various regional *caudillos* (Walker 1992). Hünefeldt (1989:393) suggests that the success of some of these complaints in actually removing authorities

had to do with such alliances. In the late 19th century and early 20th centuries, abuses against indigenous people appear to have increased considerably. This was primarily a result of the expansion of *haciendas* and capitalist penetration, especially the wool trade in the southern mountains (Blanchard 1982a:458-459; Glave 1992:58; Manrique 1991b:215). Conflicts between peasants and owners of the larger and more powerful *haciendas* did not take long to appear and indigenous people began to make their complaints heard through the ranks of the *hacienda* administration and sometimes outside. This was particularly true on livestock *haciendas*, where indigenous people sometimes controlled considerable livestock of their own and had considerably more bargaining power than peasants on agricultural *haciendas* (Maltby 1980; Martinez-Alier 1977). Outside *haciendas*, communities had many reasons to complain against local authorities and landowners, among other things for abuses in relation to labor agreements including personal service requirements. These complaints were based on custom, on changing perceptions of limits to abuse, or on Peruvian law. In the late 19th century and the early decades of the 20th century, such complaints were rarely successful when they were brought to state authorities. Those who filed protests were likely to be labeled as rebels and dangerous and were often sought out and punished (Burga 1986:475). When higher authorities did acknowledge the correctness of indigenous complaints, very often the ruling was never enforced by local authorities (Manrique 1988:125).

Nevertheless, changes in the 1920s described above, led to redefinitions of limits of abuse and to an increase in peasant allies, leading to a significant increase in complaints about abuses (Glave 1991:223, 1992:59; Mallon 1983:238). By the 1950s and 1960s, when peasant unions had developed considerably on *haciendas*, they began regularly to file complaints with authorities. Many of these were lodged with state institutions that dealt with indigenous people and labor issues and peasants began to have considerable success in having their complaints resolved (e.g. Handelman 1975). In these complaints, the old emphasis on reciprocal obligations began to disappear and was replaced by the modern language of law and rights.

When indigenous people decided that the limits to abuse had been reached and evidence indicates that this was a collective decision in which community leadership was important, they appear to have adopted an escalating set of strategies. The lowest level strategy was usually negotiation with the particular authority or *hacienda* administrator or owner to try to reach an acceptable agreement or solution. A higher level strategy that was sometimes used to back up requests were what Scott (1985) calls "everyday forms of resistance." For example, work slowdowns, rustling, stealing crops or petty sabotage (e.g. Gow, R. 1981:129). Formal protest to a higher authority, which as we have seen sometimes could be dangerous, was generally the next step. When these protests were unsuccessful and if the abuse was considered sufficiently serious, some kind of violent action or rebellion could be undertaken. R. Gow (1981:280-304) lists a large number of rebellions between the 1920s-1960s in which a number such actions preceded armed action to end abuses.

One particular response to complaints over abuses which were not resolved through negotiation or use of the Peruvian legal system deserves special attention. In extreme

cases, when the abusive practices of a lower level member of local elites (*mestizo*) reached what indigenous people considerable unbearable levels, the community on rare occasions could try the person in an assembly meeting and if found guilty, the death penalty was imposed and sometimes carried out. Anthropologist Juan Ossio (Personal Communication) tells of such an incident in an Andean community in the 1950s. A community complained over and over again to the police about an abusive *mestizo* to no effect. They therefore decided to carry out an "act of justice" (*acto de justicia*). The church bells were rung to call together all community members and they went, rope in hand, to the house of the abuser. The police arrived just in time and this time took action banning the *mestizo* from town for two years. The end result of the actions of *comuneros* was that they forced the police to do just what they had been asked to do over and over again. In dealing with abuses well planned and communally approved violent action (or, just as importantly, the threat of the same) could bring results.

Land Conflicts

There is virtually nothing more important to peasants everywhere than land. Land is not only a means of subsistence but helps define individual and ethnic identity. The landscape in which peasants live also has profound religious significance and is often populated by gods and demigods. Even when such religious connotations fade, the intimate and spiritual connection between the peasant or farmer and his land continues. It is no wonder therefore that indigenous people in the Andes used every possible means to hold on to their land, regain land, and acquire more land. Use of the Peruvian legal system of one important strategy that indigenous people employed in this struggle. The legal system could be used for all types of land struggles including those between *comuneros* and between communities,[44] in addition to the conflicts between communities and elites that will be looked at here.

To understand legal conflicts over land in the Andes some background information is necessary. First, land in the Andes has never been completely surveyed and mapped, and even now, a great many land titles are in dispute.[45] This situation was both a source of insecurity and provided the opportunity to try to win land through the legal system. It also sometimes led to suits lasting decades, or occasionally centuries (Brush 1974). Secondly, there was a certain amount of instability in land tenure. While there were some large *haciendas* that were kept together for centuries, many others passed through many hands, were dismantled and built up again, both by legal means and through the use of force. Thirdly, legal conflicts over land were not limited to indigenous communities. Both large and small landowners battled each other in the courts over land. Another very important factor was the correlation of forces in the Andes. Briefly summarized, the three most important factors that gave indigenous people a certain amount of maneuverability included, 1) landlords need for indigenous labor, inability fully to tie it down, and the resulting necessity to negotiate with indigenous people and accept some of their terms, 2) the endemic conflicts between elites that hampered their ability to control fully the state[46] and thus impose their collective will on indigenous people also gave indigenous people the opportunity to form temporary alliances to win land cases (Jacobsen 1982:549), and 3) indigenous peoples' continuous struggle for land by all means

available, while it was not able to stop all usurpation of land, had the effect of making the process much more difficult,[47] slowing it down and finally, after the several waves of 20th century rebellions, bringing it to a halt with the 1969 agrarian reform (until the beginning of its official dismantlement in 1995).

From 1821 to 1968 there were several factors which affected the patterns of suits over land brought by indigenous people. While legal conflict over land took place throughout the whole period under consideration,[48] several factors affected the number of suits and the way that indigenous people used the legal system. The first was demographic increase in the indigenous population. For example, population growth from the second half of the 19th century contributed to increased conflicts within and between communities over land (Contreras 1991:212). As the decades of the 20th centuries wore on, the impact of demographic pressures on the struggle for land between all sectors of the Andean population increased, though migration to the cities decreased pressure somewhat. Shifting patterns of land tenure also played a role. From the last decades of the 19th century through the beginning of the 1930s, the commercial possibilities for Andean agriculture increased resulting in a period of *hacienda* expansion and a prolonged struggle with indigenous people over land. Peruvian government legislation also affected patterns of land suits. The pro-Indian legislation and institutions created in the 1920s led to an increase in land suits in some areas and a diversification of legal strategies to regain land.[49] The legalization of communities, starting in the 1920s, helped strengthen community identities and put them in a better position to initiate and perhaps win legal suits (Glave 1991:223-224).[50] As in other cases discussed above, the spread of new ideologies and increased contact with political activists, resulted in a substantial increase in indigenous suits against landowners and complaints to state agencies for the next several decades as well as more complex legal strategies, at least in some areas.[51] The rise of peasant unions and federations beginning in the 1930s and growing strong in the 1950s led to the development of more sophisticated legal arguments and uses of legal instruments (e.g. Neira 1968; Smith & Cano 1978).

Communities had mixed results from their use of the law. They lost most of the suits that were actually concluded and many other of their cases languished in the courts. Landowners used any trick they could to keep communities from getting their land (e.g. Jacobsen 1982:528,560) and also initiated their own suits to obtain indigenous lands. Nevertheless, indigenous people did sometimes win.[52] When they did, it had as much to do with the elite conflicts and correlation of forces discussed above. Strategies also mattered and communities used a variety of these. In addition to finding elite allies, sometimes communities deliberately went after weaker targets. Urrutia, Adriano Araujo, and Joyo's (1988:444) survey shows that between 1824 and 1870 in the region of Huamanga the major part of communities' suits were against smaller and weaker haciendas, whose owners were less likely to have the resources for long court battles. In general, law suits and other legal measures applied through state institutions after the 1920s also had the purpose of creating problems for landowners, in effect softening them up in the hope that an out of court settlement might eventually be reached. Legal pressures could also hold back landowners from getting yet more land. In addition, as the *hacienda* system entered into decline from the late 1940s, indigenous people also more

and more often had the opportunity to buy some of the lands that were disputed in suits (Flores et al 1967; Whyte & Alberti 1976; Deere 1991). Finally, also important was the threat of violence implicit in many of these land conflicts. Many of the rebellions that swept through the Andes in the wake of the *hacienda* expansion and afterwards were preceded by the patient efforts by communities to use legal measures to achieve a just solution. The same was true of the land invasions of the 1950s and 1960s (e.g. Gow, R. 1981; Mayer, Er. 1990:195; Smith & Cano 1978). It should be kept in mind, of course, that there were many communities that only used legal remedies. The decision to engage in violent action was only taken after considerable thought and was also influenced by the particular leadership a community had at the time.

In general, communities stuck to their legal battles with landowners with remarkable tenacity. Considerable funds were spent on legal cases, all contributed by community members. Nevertheless, understanding of legal procedures and documents varied considerably among communities. Where Andean culture was strong, land titles were treated as icons (Rappaport 1992a:128) and everywhere they were considered among the communities' most important possessions. Other legal documents were also sometimes kept for centuries, even in those cases in which their exact meaning was not clear to *comuneros* (Bastien 1979). If documents had to be taken elsewhere, rituals could be performed to protect them on their way (Andean.. 1992:109). However, piety and symbolism were only part of the story. There were also cases where indigenous people were quite prepared to alter land titles, misrepresent them or even forge them (Glave 1992:69-70; Martinez-Alier 1977:51). Similarly, place names could be changed to help win a land case. In one case, even children were carefully trained to misname landmarks when a judge came to visit (Smith 1991:200).

Conclusions

One of the issues most frequently raised, explicitly or implicitly, in studies which deal with indigenous people and law in the Andes have to do with the implications of indigenous use of the Peruvian legal system for issues of power, resistance, domination, and hegemony. More concretely, did indigenous use of the legal system undermine indigenous people ability to resist domination by legitimizing the state and acting as an instrument for reinforcing elite hegemony? This study has a number of implications for these issues.

Some of the evidence presented here bolsters the argument for hegemonic penetration and political control. First, the Peruvian legal system, lawyers and *tinterillos* included, was used by elites on the local level with much success as an instrument of domination of indigenous people. In addition, the Peruvian state and the colonial state before it succeeded in establishing the legal system as a legitimate terrain for struggles not only between elites and indigenous people but also in some cases among indigenous people. Peruvian laws helped define the terms in which these struggles were carried out. Even the laws that were helpful to indigenous people, including such as those that legalized communities and limited permissible abuses of indigenous people, created institutions to deal with indigenous complaints, gave indigenous people ways to deal with conflicts

legally and under the control of the state. Furthermore, Peruvian laws and the regulations established by institutions protecting indigenous people had a considerable impact on how indigenous people framed their claims and finally also on how they thought about rights and obligations. Some of these concepts were also incorporated into indigenous law (Glave 1992; Rappaport 1994). Peruvian legal culture, while not always enhancing the legitimacy of the legal system, had an extremely important role in shaping and determining the behavior of everyone who used this system. The formalism and legalism of this culture was absorbed by indigenous people. Habits of corruption also rubbed of. Finally, however cognizant indigenous people were of all that was wrong with the Peruvian legal system, the hope that under the right circumstances, with the right changes, it could become a dispenser of justice never died out entirely. The idea that the state was a protector with responsibilities to protect the people was common in the Andes along with a hope that the injustice dispensed on the local level could be undone on the highest level, most specifically by the president (and before him the King of Spain and before him the Inca) (Glave 1992). With the spread of more modern ideologies and the appearance of allies from outside local areas, hopes that the legal system could be transformed and modernized began to be expressed more and more vociferously in demands, complaints, and even threats. When some of these demands were met, the legitimacy of the legal system began to increase somewhat.

On the other hand, this study points outs some very important limitations in the hegemonic and political control of the Peruvian legal system. Indigenous law was not wiped out by Peruvian law. On the contrary, it showed a remarkable vitality, adaptability, and legitimacy. The injustice of the Peruvian legal system only served to reinforce indigenous law. Furthermore, indigenous law had a considerable influence on local level administration of justice.[53]

The existence of indigenous law also prevented the state from having a monopoly over the administration of justice.[54] Furthermore, the victories that indigenous people achieved through a combination of strategies, including the use of the legal system, also played a role in "shaping and limiting" the authority of the Peruvian state and the power of local elites (Kellogg 1992:34).

In addition, the legitimacy of the Peruvian legal system was always limited by its inability to dispense justice. True, some indigenous people were frightened and cowed by the system, others were submissive, others simply resigned to using it, and still others benefitted from the relationships they established with local officials involved in the administration of justice. But most indigenous people were profoundly critical of the Peruvian legal system and harbored deep resentments and moral outrage which were expressed in many diverse ways, including rituals, cynicism, formal complaints, and demands for change.[55] The Peruvian legal system did not generate much loyalty to the system of domination.

Those who argue for the hegemonic character of both the Spanish and Peruvian legal system argue that in as much as indigenous people used these systems to try to achieve their ends, these legal systems weakened indigenous people's capacity for independent

resistance (e.g. Stern 1982:137). No support for this argument is provided here. First of all, the evidence provided above shows that use of the legal system was only one in a series of strategies that indigenous people used in their struggles with their oppressors. Taking care of things through the legal system was often the preferred option for indigenous people for the simple reason that it saved lives. After all, putting the lives of ones' family and friends on the line is always a very serious matter. Nevertheless, indigenous people showed over and over again that they were indeed willing to risk their lives to accomplish those goals that were important to them. In general, given the history of rebellion of Peruvian indigenous people, there is little evidence that the legal system played a significant role in diminishing their capacity for resistance. The obstacles to overthrowing "the system" must be searched for elsewhere.

In general, the information in this study supports the conclusions of other studies in legal pluralism.[56] At the same time as state law has "penetrated and restructured" indigenous law, indigenous law not only resisted and circumvented this penetration but itself penetrated the state legal system (Merry 1988:880-881). Relations between indigenous law and Peruvian law have been characterized by mutual resistance and adaptation (Tamayo Flores 1992:39). In general, in Peru, there has been and continues to a dialectic between state law and other normative orders manifesting itself in a multitude of different applications of Peruvian law in different parts of the country, and the use of indigenous, peasant, and other types of informal law in Andean rural areas, in the vast poor neighborhoods surrounding Peruvian cities, and among the various indigenous groups of the Peruvian jungle.

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