KENT LAW SCHOOL – UNIVERSITY OF KENT

Indigenizing International Law

Inverse Legal Anthropology in the Age of Jurisdictional Double Binds

Paulo Ilich Bacca

Thesis submitted for the degree of Doctor of Philosophy

Word count: 71,000

December 2018

ABSTRACT

This thesis explores the encounter between Western and Indigenous jurisdictions, paying particular attention to the way in which post-colonial rule always entails resistance, hybridity, and accommodation. By studying the emancipatory potential of indigenous thought as a basis for the transformation of international law, the thesis examines both the strategies used by international law to colonize indigenous jurisdictions, and the practices of resistance used by indigenous peoples to keep their own laws alive. In so doing, it explores the *double bind* that exists between silencing and listening to indigenous jurisprudences, drawing attention to the interaction between indigenous and non-indigenous worlds.

Taking into consideration indigenous cosmologies and social movements in the Andean region with a special emphasis on Aymara history during colonial times, Nasa history in the course of the twentieth century in Colombia, and the contemporary Colombian indigenous movement, I expose the ambiguous role of international law in recognizing indigenous rights and the need to think differently about indigenous legal thinking and practice.

Towards this goal, the thesis proposes the idea of *indigenizing international law* by considering indigenous law as law. It is by directing indigenous jurisprudences to the framework of international law and by recognizing the constitutive relationship between Western and indigenous accounts that the possibility of transforming international law becomes possible. This process through which 'we' can learn from indigenous jurisprudences in order to change 'our' laws is what I call in this thesis *inverse legal anthropology.* In *indigenizing international law* using an *inverse legal anthropology*, the thesis remarks the power of indigenous thinking to counteract international law's colonial legacies and indigenous peoples' ongoing genocide.

Three empirical cases, written in the ethnographic genre, illustrate the main concepts that underpin my analysis. The first case study, exemplifies the complexities of the *double bind* between colonial domination and indigenous resistance, having as a backdrop for discussion the work of Anarchist sociologist Silvia Rivera Cusicanqui. The second case study presents an archival exploration of what it means to perform an *inverse legal anthropology* based on the life and work of Manuel Quintín Lame—a Nasa indigenous leader who was an active user and creator of law. The third case study displays the *indigenization of international law* by narrating the history of the contemporary Colombian indigenous movement through the voices of Taita Víctor Jacanamijoy and Luis Evelis Andrade, former vice-president and president respectively of the National Indigenous Organization of Colombia, ONIC.

Table of Contents

FIGURES **1**

ACKNOWLEDGEMENTS **3**

LIST OF ABBREVIATIONS **5**

Introduction **7**

1.1 Indigenizing International Law: A Project *11*
1.1.1 International Law in Legal Anthropology 11
1.1.2 Indigenous Jurisprudence in Jurisdictional Thinking 15

1.2 Theoretical Resources and Bibliographical Gap *21*

1.3 Ethnographic Considerations *26*
1.3.1 Fieldwork Interactions 26
1.3.2 Ethical Protocols 30

1.4 Thesis Outline *32*

1.5 Conclusions *35*

From the Double Bind to An Inverse Legal Anthropology **38**

2.1 First Analytical Standpoint: Ch'ixi Epistemology—An Andean Double Bind *42*

2.2 Second Analytical Standpoint: Deconstruction from the South *47*

2.3 Third Analytical Standpoint: The Double Bind of the Indigenization of Legal Anthropology *53*

2.4 Fourth Analytical Standpoint: An Anthropological Double Bind—resistance-oriented ethnography *56*

2.5 Conclusions *60*

Indigenous Peoples in International Law **63**

3.1. International Law's Archive *66*

3.2. International Human Rights and/or Indigenous Jurisprudence *70*
3.2.1 The burdens of indigenous rights 70
3.2.2 Ongoing burdens 76

3.3. Prevention of Indigenous Genocide and/or Genocide of Indigenous Peoples *80*
3.3.1 The burdens of the prevention of indigenous genocide in international law 80
3.3.2 Ongoing burdens 85

3.4. Conclusions *89*

The Double Bind and the Reverse Side of Coloniality: Talking with Silvia Rivera Cusicanqui and *El Colectivo* **92**

4.1. Ritualizing the Memory: The Double-Bind-pä chuyma *95*

4.2. Conversations with Silvia Rivera Cusicanqui *99*

4.3. The Reverse Side of The Potosí Principle *104*
4.3.1 The Reverse Side of the Museum 104
4.3.2 Andean Sacred Economy 111
4.3.3 On Andean History and Temporality 115

4.4. Conclusions *118*

Inverse Legal Anthropology in Action: Manuel Quintín Lame—A Nasa Legal Cosmographer 121

5.1. Manuel Quintín Lame and Inverse Legal Anthropology in the Nasa world 124

5.2. Manuel Quintín Lame's History vis-à-vis Nasa History.. 130
5.2.1 Manuel Quintín Lame's First Years.. 130

5.3. Lame: The Modern Jurisprudent 138
5.3.1 Popayán: Between Landlords and Rebels 138
5.3.2 The National and the Local: Between the Elite and Indigenous Grassroots 142

5.4 Indigenous Rebellion in Cauca.. 145
5.4.1 The Takeover of Inzá 145
5.4.2 Law as Exile and Justice to Come 148

5.5 Conclusions.. 150

Towards Indigenizing International Law: The Fight of ONIC Against Indigenous Peoples Genocide and Indigenous Nationhood in Contemporary Colombia 153

6.1. Ethnic militancy as means of survival 157

6.2. Ethnic militancy in international law.. 170

6.3. Genocide by Ecological Means.. 178

6.4. Conclusions.. 182

Conclusion 185

7.1. Research Trajectory.. 186
7.1.1 Legal Pluralism and Anthropology.. 186

7.2. Main Argument and Interlocutors... 193

7.3. Future Endeavors 196

BIBLIOGRAPHY 199

FIGURES

Figure 1.1 Ex-Senator of AICO, Taita Efrén Tarapués Cuaical. 27

Figure 1.2 Community Meeting at El Colectivo Tambo. 29

Figure 1.3 Ex-Vicepresident of ONIC, Taita Víctor Jacanamijoy Jajoy. 30

Figure 2.1 *The Wasteland,* 1986. 45

Figure 2.2 *Sarita Iluminada,* 1992. 47

Figure 2.3 Yawar Fiesta, 2013. 52

Figure 2.4 *The Netherlandish Proverbs,* 1559. 58

Figure 2.5 *The Fight between Carnival and Lent,* 1559. 60

Figure 3.1 *Angelus Novus,* 1920. 64

Figure 3.2 *Incision linéaire de l'oeil,* 1871. 67

Figure 3.3 *Battleship Potemkin,*1925. 79

Figure 3.4 Indigenous peoples genocide, 1552. 81

Figure 4.1 Silvia Rivera Cusicanqui. 93

Figure 4.2 Basilica of San Francisco, La Paz, Bolivia. 98

Figure 4.3 Illimani Mountain, La Paz, Bolivia. 98

Figure 4.4 Tambo El Colectivo, visual essay. 103

Figure 4.5 *The Hell,* 1684. 108

Figure 4.6 *Entry of Viceroy Morcillo into Potosí*, 1716. 109

Figure 4.7 *Khipu* on wooden Bar. 110

Figure 4.8 Canuto *Khipu*. 110

Figure 5.1 Manuel Quintín Lame in his later years. 125

Figure 5.2 Manuel Quintín Lame's signature. 144

Figure 5.3 Manuel Quintín Lame at his 1916 arrest at San Isidro. 147

Figure 6.1 Tambo Sinchi Uaira, Taita Víctor Jacanamijoy Jajoy. 158

Figure 6.2 Luis Evelis Andrade, Ex-President of ONIC. 162

Figure 6.3 Trino Morales, First President of ONIC. 165

Figure 6.4 Antonio Navarro Wolff, ex-governor of Nariño, and Taita Ramiro Estacio, ex-Senator of AICO. 166

Figure 6.5 Lorenzo Muelas Hurtado and Francisco Rojas Birry, ex-representatives of the 1991 Colombian Constituent Assembly. 167

Figure 6.6 Kimy Pernía Domicó, Embera Katío leader. 175

ACKNOWLEDGEMENTS

This thesis was achieved thanks to the extraordinary commitment and support of the Kent Law School. I am particularly indebted to my advisory board comprised of Dr. Luis Eslava, Dr. Connal Parsley, Prof. Davina Cooper, and Prof. Amanda Perry-Kessaris. Luis, who knows my research project better than anyone, meaningfully contributed to the improvement and development of the main argument of the thesis, constantly giving me detailed feedback in form and substance. The conversations held with Connal were crucial in times of intellectual stagnation and his advice was key to structuring the final version of the text. Davina showed me the limitations of my arguments and the methodological importance of moving from ethnographic theory to action research. For her part, Amanda helped me how to connect the chapters in order to achieve internal coherence.

The Centre for Critical International Law (CeCIL) was the best academic setting to discuss my research progress. I must thank CeCIL co-directors, Sara Kendall, Emily Haslam, and Luis Eslava, for making me feel at home. CeCIL also gave me the opportunity to get involved with a number of projects, including international workshops and conferences, which were crucial during the writing journey. Such endeavours would have been impossible without the administrative assistance of Lynn Osborne, postgraduate officer manager at KLS, to whom I also extend my thanks.

I would like to express my gratitude to the postgraduate community at KLS. Special thanks to Maya Athanatou, Lucia Dominici, Michalis Zivanaris, Gian-Giacomo Fusco, Mark Charoenwong, Francesco Salvini (Pantxo Ramas), and Gabriele D'Adda. The art of living with contradictory instructions took flight by their side and this thesis, in different ways, responds to our comradeship. I must also mention the invaluable emotional support of the Canterburian bunch of friends, among them, Ioanna, Juan Luis, Kat, Orestis, Lefteris, Andri, Chrysi, César, and Alice.

A warm thanks to the Law School at Universidad del Rosario and the Law and Anthropology departments at Universidad Nacional de Colombia in Bogotá. Especially to Leopoldo Múnera, Oscar Mejía, Alfredo Gómez Muller, and Lina Céspedes. I am

forever in debt with both educational centres, their financial and academic support during the last year and a half, was essential to the conclusion of this project.

My parents, Anita and Negro, and my sister, Luisa Fernanda, introduced me to the Andean tradition early on in my life. By listening to their teachings, I have cherished the circular time of Borges and the large spiral galaxy of Juan Chiles.

My deepest gratitude goes to the following: to David Valencia and his creative restlessness; to Bruno Mazzoldi and his thinking of the radical decapitalization; to Silvia Rivera Cusicanqui and her *ch'ixi* world; to Quintín Lame and his oneiric guerrillas; to Jorge Garzón and his unlimited hospitality; to C.F. Black and her humus-law; to Taita Víctor Jacanamijoy and his libertarian spells; to Bartolomé Clavero and his paramount indigenist baroque; to Joanne Rappaport and her politics of the memory; to Juan Duchesne Winter and his anthropological wild side; to Luz María Sánchez and her indomitable spirit; to Oliver Velásquez and his Andean alchemy; to Naya Revelo and her ancestral wisdom; to Ginna Ortega and her cosmography of the image; to Boris Delgado and his poetry of the law of origin; to Milena Mazabel and her Coconuco mystical axis; to Luz Hincapié and her Anglo-Saxon prose; to Brett Todd and his gift of tongues; to Héctor Herrera and his temple of laughter; to Natalia Orduz and her alternative histories; to Fernando Guerrero and his journey between petroglyphs; and finally, to Holman Bonilla and his good vibes.

LIST OF ABBREVIATIONS

AICO	Movement of the Colombian Indigenous Authorities
ANUC	National Association for Peasants
CCC	Colombian Constitutional Court
CPPCG	Convention on the Prevention and Punishment of the Crime of Genocide
CRIC	Regional Indigenous Council of Cauca
CSCJ	Colombian Supreme Court of Justice
DAI	Colombian Division of Indigenous Affairs
ICC	Statute Rome Statute of the International Criminal Court
ICJ	International Court of Justice
ILO	International Labour Organization
INCORA	Colombian Institute for Agrarian Reform
ONIC	National Indigenous Organization of Colombia
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNPFII	United Nations Permanent Forum on Indigenous Issues
UNHCR	United Nations Refuge Agency

What does to profess *mean in sum? And what stakes are still hidden in this question as concern* travail*, work, career, trade, craft (whether professional, professorial, or not), for the university of tomorrow and, within it, for the Humanities? [...] To profess is to make a pledge while committing one's responsibility. 'To make profession of' is to declare out loud what one is, what one believes, what one wants to be, while asking another to take one's word and believe this declaration [...] It is neither necessarily to be this or that nor even to be a competent expert; it is to promise to be, to pledge oneself to be that on one's word.* Philosophiam profiteri *is to profess philosophy: not simply to be a philosopher, to practice or to teach philosophy in some pertinent fashion, but to pledge oneself, with a public promise, to devote oneself publicly, to give oneself over to philosophy, to bear witness, or even to fight for it.*

Jacques Derrida, 'The Future of the Profession or the University Without Condition (Thanks to the "Humanities," what could take place tomorrow)', in Tom Cohen, ed., *Jacques Derrida and the Humanities: A Critical Reader* (Cambridge University Press, 2002), 35-36.

1

Introduction

This thesis is an exploration of the encounter between Western and Indigenous jurisdictions in the context of colonial meetings and across imperial networks. I pay particular attention to the way in which colonial rule is constantly the object of resistance, hybridity, and accommodation.[1] Taking the emancipatory potential of indigenous thought as the basis for transforming the narratives about international law, the thesis examines both the strategies used by international law to colonize indigenous jurisdictions, as well as indigenous peoples' practices of resistance to preserve their own laws. In so doing, it explores the *double bind* that exists between constant attempts at silencing indigenous jurisdictional speech and the importance of listening to indigenous jurisprudences as law.

Paying close attention to indigenous thinking and jurisprudence in the Andean region, my objective is to explain two seemingly inherent paradoxes within the current framework of recognition which is central to international legal thinking about indigenous peoples today: firstly, the ambiguous role of international law in the current phase of decolonization of indigenous rights; and secondly and more generally, the complexity of the relationship between colonial domination and indigenous resistance. In other words, on the one hand, the complicity of official international law norms and history in rejecting and obliterating indigenous knowledge while still claiming the recognition of indigenous peoples; and on the other, the indigenous appropriation and re-appropriation of international law into their ever-changing future.

Among the many lessons I have learnt from indigenous peoples and organizations around the world, I would like to begin by pointing out one of special relevance in the framework of this thesis. Whether during fieldwork or in workplace meetings with indigenous organisations, I have always been impressed by indigenous peoples' expertise in the discourse and practice of rights, and their acute awareness of the

[1] Shaunnagh Dorset and John McLaren, 'Laws, Engagements and Legacies. The Legal Histories of the British Empire: An Introduction', in Dorset and McLaren, *Legal Histories of the British Empire: Laws, Engagements, and Legacies* (Routledge, 2014), 1.

associated responsibilities. Briefly put, indigenous peoples take international law seriously. The task of this thesis is, in fact, a very simple one, to take indigenous jurisprudence seriously, which in the context of my analysis means unveiling the epistemological richness of indigenous legal theory and, consequently, the significance of ancient narratives in productively addressing the colonial role played by the Western legal tradition in dismantling indigenous systems of justice. In this regard, it would not be a matter of adjusting indigenous jurisprudences into the terms of the Western Rule of Law but rather an attempt to fully acknowledge indigenous peoples' ontological self-determination. Dr Christine Black,[2] a Kombumerri/Munaljahlai jurisprudent, explains it this way:

> There is a dearth of books and articles on Indigenous jurisprudence and a glut of texts on Indigenous peoples and Western jurisprudence. The existing definitions surrounding Indigenous jurisprudence therefore have been influenced by the way in which Indigenous peoples have been assimilated under the Rule of Law. This assimilation process has taught […] to regard Indigenous Law as something of a 'collective' version of Western law.[3]

Specifically, this thesis aims to reassess the epistemological trajectory by which Western jurisprudence in general, and international law in particular, have shaped legal doctrines and jurisprudential concepts in relation to indigenous rights, assigning to indigenous laws, and to the very existence of indigenous peoples, an apparent Western essence and appearance in order for them to be worthy of 'recognition'—a process that results in an obliteration of those very people and their knowledge. Although this enterprise is enormous, that is in the attempt to examine and understand more than five centuries of colonialism, the particular endeavour of my work here is modest. My objective lies in valuing the possibility of looking at indigenous laws as an affirmative possibility of the *double bind* between Western and indigenous jurisprudence, which is to say, the reaffirmation to maintain indigenous jurisprudences and their modern reappropriations alive, instead of recognizing only state-centric laws.

---

[2] I am particularly indebted to Dr. Christine Black for sharing with me the knowledge of her clan as well as inspiring texts of her current research on Land as Healer, and her involvement in the Convention on Biodiversity in 2003.

[3] C.F. Black, *The Land is the Source of the Law. A Dialogic Encounter with Indigenous Jurisprudence* (Routledge, 2011), 9.

Towards this end, I follow an epistemological trend that, not only values the chance of training 'the imagination to reimagine a specific situation', but which also considers that the 'basic principle for social action is the ability to see another's position as potentially substitutable for one's own in the script of life'.[4] In that sense, my reading of a variety of *double-sided* interactions between colonial domination and indigenous resistance enables seeing indigenous law as law in this thesis, allowing at the same time, the possibility of *indigenizing international law.*

The *indigenization of international law* operates in different ways across the chapters that make up this thesis. It operates firstly by emphasizing the importance of allowing 'ourselves' to be seduced by indigenous thinking in order to change our own imagination. This anthropological turn inherent to this thesis and its methodological program, which appears in Chapter 2, will allow me to transform the framework of international law using indigenous cosmologies. Secondly, it functions by considering both the hegemonic and counter-hegemonic dimensions of international law and understands that indigenous peoples and organizations use international law standards to claim their human rights, as developed in Chapter 3. International human rights standards, however, are in their view, both part of the problem and the solution to their self-determination and ongoing genocide. Thirdly, the concept operates by showing that indigenous peoples have found strategies to continue enhancing their jurisdictions since colonial and republican times either by enacting their own laws or through the interpretation of state-centric laws based on indigenous cosmologies. This is exemplified in Chapters 4 and 5, where I engage in dialogue with Aymara history and Nasa cosmology respectively. And, finally, it also takes shape by narrating the way in which indigenous organizations and their allies transform both conventional histories on nationhood and mainstream interpretations of international law regarding indigenous rights. This emerges in Chapter 6 of this thesis, where I explore the way in which the Colombian indigenous movement has been transforming narrations of nationhood and interpretations of international law by situating the ongoing genocide of indigenous peoples in the geological age of the Anthropocene.

---

[4] I am drawing on Butt's interpretation of Spivak's work on an aesthetic education for all. See Danny Butt, 'Double-Bound: Gayatri Chakravorty Spivak's An Aesthetic Education in the Era of Globalization' (2015) Working Paper 1, *Research Unit in Public Cultures – The University of Melbourne,* 7.

In this regard, connecting Black's perspective on indigenous jurisprudence with the work advanced by jurisprudents such as Shaun McVeigh, Shaunnagh Dorsett, Genevieve Painter, and Olivia Barr,[5] among others, I trace the meeting between Western and indigenous jurisprudences as a jurisdictional arrangement 'in terms of the crafting of repertoires of lawful conduct—or of ways of belonging to law'.[6] It is an encounter in which the living laws of indigenous peoples call into question 'the representation of everywhereness' of the place of the Western rule of law, which 'amounts to a form of spatial and legal enclosure'.[7] According to this perspective, jurisdiction operates as a legal technology and as such interacts with 'the way in which relations of law are shaped through forms of conduct'[8] such as the activities of daily life in which the power to speak the law is inscribed.[9] By considering the epistemological potential of indigenous textual systems, I contend that the writing technologies of the indigenous world, which are encapsulated in both narrative and non-narrative forms that can simultaneously interact, such as dance and pilgrimage, are true legal archives.[10] According to Mawani these archives act 'not solely as a repository of sources through which to retrieve and/or assemble the past but as an uneven effect of power and a set of contested truth claims through which history itself has been a site of struggle'.[11]

By interacting with indigenous writing technologies, this thesis aims to contribute to the making of a legal anthropology able to transform the classical and critical history of the international legal order by directing indigenous thought and cosmologies at the heart of the international law apparatus. It implies, first, to fully acknowledge the legal, political, and ontological self-determination of indigenous nations and, consequently, of their jurisdictions; second, to remark the epistemological potential of indigenous cosmologies as true sources of law and, in this regard, their inherent value as heuristic tools to

---

[5] See especially Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (Routledge, 2012); Shaun McVeigh (ed), *Jurisprudence of Jurisdiction* (Routledge-Cavendish, 2007); Genevieve Painter, *Partial Histories: Constituting a Conflict between Women's Equality Rights and Indigenous Sovereignty in Canada* (PhD Dissertation, University of California, Berkley, 2015); Olivia Barr, *A Jurisprudence of Movement: Common Law, Walking, Unsettling Place (Space, Materiality and the Normative)*.

[6] Shaun McVeigh, 'Law As (More or Less) Itself: On Some Not Very Reflective Elements of Law', (2014) 4 *UC Irvine Law Review,* 477.

[7] Olivia Barr, 'Walking with Empire', (2013), 38 *The Australian Feminist Law Journal,* 61.

[8] Ibid.

[9] See especially Peter Rush 'An Altered Jurisdiction: Corporeal Traces of Law', (1997) *6 Griffith Law Review,* 149-150.

[10] See Chapter 5, in which I analyse how Nasa people, from southwestern Colombia, use non-narrative legal forms as sources of indigenous jurisprudence.

[11] Renisa Mawani, 'Law's Archive' (2012) *Annual Review of Law and Social Science,* 337.

transform international law discourses; and, third, the power of indigenous thinking to change 'our' legal imagination and, therefore, its unquestionable condition as a key ally in the decolonization of international law and in the invigoration of the counter-hegemonic dimensions of international law. Thus, the following sections seek to anchor a theoretical framework for projecting the *indigenization of international law*.

1.1 Indigenizing International Law: A Project

1.1.1 International Law in Legal Anthropology

My interest in indigenous jurisprudence vis-à-vis indigenous peoples in western jurisprudence emanates from my field visits and pedagogic meetings with indigenous peoples in Colombia, Ecuador, Perú, Bolivia, the United States, and Australia. In these places, I have seen first-hand the history of a progressively destructive global order marked by the annihilation not only of the biosphere, the biological matrix of life, but also of the *ethnosphere,* 'a term perhaps best defined as the sum total of thoughts and intuitions, myths and beliefs, ideas and inspirations brought into being by the human imagination since the dawn of consciousness'.[12] However, my visits to indigenous territories over the last decade have allowed me to witness not only a humanitarian drama. They have also allowed me to see the power of hope. On the one hand, the desolate present of indigenous peoples facing high risk of genocide due to armed conflicts, forced displacement, and the imposition of a predatory economic model;[13] and, on the other, the strength of indigenous peoples' communal bonds, the philosophical complexity of their systems of thought, and the sophistication of their systems of justice.[14]

---

[12] Wade Davis, *The Wayfinders. Why Ancient Wisdom Matters in the Modern World* (Anansi Press, 2009), 2.

[13] In the year 2013, the Governing Council of the National Indigenous Organization of Colombia ONIC, under the chairmanship of the indigenous senator Luis Evelis Andrade appointed me as Analyst of Human Rights and International Humanitarian Law. My participation as a report writer in the ONIC campaign *Sweet Words, Air of Life* (Palabra Dulce, Aire de Vida), in support of indigenous peoples at risk of genocide, brought me to the most remote locations of the Colombian geography. I witnessed what I called in the report an 'ongoing genocide of indigenous peoples'. See, Paulo Ilich Bacca, *Estudio sobre Genocidio y Crímenes de Lesa Humanidad en Curso: El Caso de los Pueblos Indígenas de Colombia* (ONIC, 2014). For my analysis of the genocide of indigenous peoples see Chapters 3 and 6.

[14] For a pioneering work on indigenous cultures and indigenous peoples' rights see the unparalleled work of Harvard social anthropologist David Maybury-Lewis, *The Politics of Ethnicity: Indigenous Peoples in Latin American States* (Harvard University Press, 2002); *Indigenous Peoples Ethnic Groups, and the*

By following Luis Eslava's theory of the daily life operation of international law, the study of the legal and cultural tensions posed by the interaction between indigenous jurisprudence, domestic legal orders, and international law is key for the discussion advanced in this thesis.[15] As mentioned above, it is imperative to trace these tensions over a network of practices of post-colonial domination and indigenous resistance. In this thesis, I offer a *double-sided* setting of appropriations and reappropriations of Western law by indigenous peoples from colonial times to today. First, using the framework of international law, I follow Sundhya Pahuja's analysis of the dual quality of this apparatus, according to which international law has both an imperial and a counter-imperial dimension.[16] Pahuja highlights 'the idea that many critics from both North and South maintain a strong faith in international law, despite firmly comprehending its complicities with powerful actors, both historical and current.'[17] By following this path, I address the encounter between Western jurisprudence and indigenous jurisprudence in terms of a permanent confrontation rather than apply the legal pluralism logic in which state-centric sources are *official-law* and indigenous jurisprudences are *unofficial-laws*.[18] I understand the form of interiority and exteriority of this encounter, namely, indigenous peoples' rights from a Western perspective and indigenous jurisprudences in their own terms, as Deleuze and Guattari have conceived the overlapping process of appropriations and reappropriations across the history of the relationship between 'minorities, which continue to affirm the rights of segmentary societies in opposition to the organs of State power' [the so-called war machine in their terms], and the State-form. This confrontational meeting should not be understood in

---

State (Allyn and Bacon, 1997); *The Savage and the Innocent* (Beacon Press, 2000); *Millennium: Tribal Wisdom and the Modern World* (Viking, 1992).

[15] Studying the intertwined operations between international and domestic legal orders vis-à-vis international law, see especially Luis Eslava, *Local Space, Global Life. The Everyday Operation of International Law and Development* (Cambridge University Press, 2015).

[16] The overlapped relationship between the hegemonic and counter-hegemonic dimensions of international law has been extensively studied from different approaches. On the case of indigenous peoples, see Luis Rodríguez-Piñero, *Indigenous Peoples, Postcolonialism and International Law. The ILO Regime (1919 – 1989)* (Oxford University Press, 2006). On the case of legal pluralism, the projection of legal orders, and their symbolization, see Boaventura de Sousa Santos, 'Law: A Map of Misreading; Toward a Postmodern Conception of Law', (1987) 14 *Journal Law & Society,* 279-302. On the case of social movements, see Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press, 2003).

[17] Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011), 1.

[18] The first stage of my involvement with indigenous issues in Colombia was strongly influenced by the legal pluralism movement. Indeed, my idea of indigenizing international law can be read as a critique of legal pluralism because if 'we' listen to indigenous law as law, it ceases to be an unofficial law and becomes a true legal source. I address this issue in detail in Chapter 7 where I will talk about my intellectual background.

terms of independence, 'but of coexistence and competition *in a perpetual field of interaction*'.[19] Certainly, this meeting is a long way from being a jurisprudential synthesis. On the contrary, it has resulted in a confrontation between rival jurisdictions and '[t]he struggle, although real, is being waged against the backdrop of the course of history, in which traditional ways of life are dying out in the face of the spread of modernity and in the shadow of the inevitable goal of national economic development'.[20]

Second, I undertake a reading of international law with the dictum of *indigenizing* its roots. It is an attempt that considers the battleground of the meeting between indigenous laws and Western jurisprudence. I subscribe to Black's argument according to which indigenous peoples 'should turn to their ancient narratives rather than taking a D'Artagnan-like musketeer approach of intellectually duelling with the Rule of Law'.[21] In Chapters 4, 5, and 6 of the thesis, however, I will appeal to examples in which indigenous peoples from the Andean region have used different sources of Western jurisprudence as a key tactic for revitalising their own ways of thinking. In this way, the argument in which Black has emphasized her critique of the Western Rule of Law tradition, namely, 'that this approach has actually "grown up" a whole generation of people who have neglected their own Law stories and succumbed to the "Rule" stories of legal dualism',[22] becomes more complex. Here the *double bind* allows me to show the constant interaction between colonial impositions (the imposition of the Western legal tradition and the differentiation between *official-law/unofficial-laws*), and indigenous reappropriations of Western jurisprudence (the way in which indigenous organizations and social movements make 'use' of the Western legal tradition in order to maintain their own law stories). As Silvia Rivera Cusicanqui points out:

> Although it is true that modern history meant slavery for the indigenous peoples […] it was simultaneously an arena of resistance and conflict, a site for the development of sweeping counterhegemonic strategies, and a space for the creation of new indigenous languages and projects of modernity.[23]

---

[19] Gilles Deleuze and Félix Guattari, *A Thousand Plateaus* (Bloomsbury, 2014), 420.
[20] Pahuja, 'Laws of Encounter', 64-65.
[21] Black, *The Land is the Source of the Law*, 9.
[22] Ibid.
[23] Silvia Rivera Cusicanqui, 'Ch'ixinakax Utxiwa: A Reflection on the Practices and Discourses of Decolonization', (2012) 111 (1) *The South Atlantic Quarterly,* 95.

Thus, in Rivera's view, the contemporaneity of indigenous thinking resides precisely in its potential to transform state-centric narratives and logic through indigenous peoples' histories of survival and resistance. First, it is a memory that has been able to interact with the reappearance of the colonial legacies in our postcolonial present. In this regard, Riveras' reading on Andean memory links present, past, and future, which resonates with Benjamin's philosophy of history where the colonial past returns to the present—what I call *spectral history* in Chapter 3. Second, it is a memory that has resisted in a creative way by staining the capitalist market, turning it into a colourful Andean modernity. Indeed, as Rivera remarks,

> The condition of possibility for an indigenous hegemony is located in the territory of the modern nation—inserted into the contemporary world—and is once again able to take up the long memory of the internal colonial market, of the long distance circulation of goods, of networks of productive communities (waged or unwaged), and of the multicultural and multicoloured [abigarrados] urban centres.[24]

This *double-side* situation that I have been describing forces us to place the conversation about indigenous law, or even better indigenous jurisprudence and international law, in terms of anthropology as I will do in detail in chapter 2. This is because the designation of the ground rules of what 'indigenous law' means has been enunciated according to the 'anthropological game'. This mainly discursive game differentiates unambiguously between the discourse of the 'legal anthropologist' and the discourse of the 'native'.[25] Although they are equal *de facto* in the sense that the anthropological idea of culture locates the anthropologist and the native subject in the same footing, 'inasmuch as it implies that the anthropologist knowledge of other cultures is itself culturally mediated', [what happens *de jure* is that the] anthropologist tends to have an epistemological advantage over the native [...] While the anthropologist's capacity to produce meaning does depend on the meanings produced by the native, the prerogative to determine what those native meanings mean remains with the anthropologist'.[26] As a result, I propose *indigenizing international law* by refuting the 'anthropological game' through the recognition of indigenous peoples'

[24] Ibid.
[25] Eduardo Viveiros de Castro, *The Relative Native. Essays on Indigenous Conceptual Worlds* (HAU Books, 2015), 5.
[26] Ibid.

ontological self-determination to characterize the legal anthropological meanings embodied in their jurisprudences.[27]

1.1.2 Indigenous Jurisprudence in Jurisdictional Thinking

During the last decade, thanks to the development of a vigorous corpus of research devoted to the exploration 'of questions of jurisdiction as a central concern of jurisprudence',[28] the narrow understanding of the concept of sovereignty in public international law, principally those that position jurisdiction only as an appendix of sovereignty, has been reassessed.[29] '[J]urisdiction is typically related both to the exercise of sovereignty as an attribute of the state and to the fact of the exercise of authority over a (physical) territory or land'.[30] While sovereign control is a precondition of the crafting of the state, jurisdiction, for its part, drives the procedures to determine the rightfulness of the exercise of authority.[31] At the national level, the jurisdictional exercise takes the form of the administration of authority over a territory and population. However, and this is key for what I have been stating in relation to indigenous jurisprudence, 'giving priority to jurisdiction as a practice of authorization of lawful relations allows for the consideration of the way in which relations of law are shaped through forms of conduct'.[32] This approach, which is at the centre of jurisdictional thinking's endeavours, opens the doors to the multiplicity of jurisdictional cartographies (traditions) and 'the practical knowledge of how to do things with law'.[33]

---

[27] I will refute such 'anthropological game' in chapters 2 and 5 by the practice of what I call in this thesis *inverse legal anthropology*.

[28] Olivia Barr, 'Walking with Empire', (2013), 38 *The Australian Feminist Law Journal,* 62. See especially Shaun McVeigh (ed.), *Jurisprudence of Jurisdiction* (Routledge, 2007) 33-60

[29] See especially on jurisdictional thinking related to indigenous jurisprudence Christine Morris [now Black], 'Constitutional Dreaming' in Charles Sampford and Tom Round (eds.), *Beyond the Republic: Meeting Global Challenges to Constitutionalism* (The Federation Press, 2001); Shaunnagh Dorsett and Ian Hunter (eds.), *Law and Politics in British Colonial Thought: Transpositions of Empire* (Palgrave Macmillan, 2010). See also Peter Goodrich, 'Visive Powers: Colours, Trees and Genres of Jurisdiction', (2008) 2 (2) *Law and Humanities,* 213; Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Routdledge, 2015).

[30] Shaun McVeigh, 'Law As (More or Less) Itself: On Some Not Very Reflective Elements of Law', (2014) 4 *UC Irvine Law Review,* 477.

[31] Ibid.

[32] Ibid.

[33] Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (Routledge, 2012), 4.

In this sense, jurisdictional thinking enables the possibility of disseminating the junction between shaping everyday life through law, and the legal imaginary that allows for the crafting of law. Thus, as Barr has pointed out, 'in a jurisprudence concerned more with questions of "how" than "why", jurisdiction is both technical in that it is how things can be done with law, and practical in that jurisdiction is productive; crafting law'.[34] This connection recognises different technologies of jurisdiction as well as a multiplicity of jurisprudences; indeed, '[l]awful relations in this respect are shaped by the technologies of jurisdiction [that for its part] can be seen as a craft or a prudence'.[35]

According to Dorsett and McVeigh, the question then is what is a craft or a prudence and how are they associated with the concept of technology. In order to engage with this problem, the authors stress the polysemous character of the notion of technology, for in fact, 'it connotes not only technique, but also encompasses the idea of devices and organizational strategies'.[36] Therefore, technologies of jurisdiction allow us to capture the knowledge comprised in the manufacturing of lawful relations. This practical knowledge of the law locates technology in its classical meaning of craft,[37] and the placement of a technology of jurisdiction as a craft enables the acknowledgment of multiple forms of jurisprudences (narrative and non-narrative) as law. In this thesis, in particular, it supposes the recognition of the legal status of indigenous peoples' knowledge, with special focus on their cosmologies, in order to stress their law as law and as creator of jurisdictional relations.[38]

Thus, I am interested in reassessing jurisdiction as a central concern of indigenous jurisprudence in order to question the representation of an 'everywhereness' of the Western Rule of Law. If the Western Rule of Law is everywhere, 'no space remains for the existence, practice and exercise of other forms of law, including indigenous forms of law'.[39] The use of a state-centric law supposes, in this way, not only the denial of an open repertoire of jurisdictions but also the imposition of a single jurisprudential texture, which is an inherent feature of the history of the sovereign state and

[34] Barr, 'Walking with Empire', 62.
[35] Dorsett and McVeigh, *Jurisdiction,* 55.
[36] Ibid.
[37] Barr, 'Walking with Empire', 62.
[38] See McVeigh, 'Law As (More or Less) Itself', 473.
[39] Barr, 'Walking with Empire', 61.

international law.[40] That is why Deleuze and Guattari's fifth proposition in their *Treatise on Nomadology* is crucial, stating that '[o]ne of the fundamental tasks of the State is to striate the space over which it reigns, or to utilize smooth spaces as a means of communication in the service of striated space. It is a vital concern of every State not only to vanquish nomadism but to control migrations and, more generally, to establish a zone of rights over an entire "exterior", over all of the flows traversing the ecumenon'.[41] Under such logic then, any reminiscence of legal scales both in terms of manifold jurisprudences or intermittent jurisdictions must be vanquished.[42]

Localizing a craft or prudence of law as technology means, in consequence, that the making and shaping of lawful relations question state-centric law. First, on the grounds that the representation of lawful affairs has plural forms and different ways to speak the law; and second, on the basis of an exploration of 'material forms of technology in order to find out how they work'.[43] This point is crucial in the framework of jurisdictional thinking because it enables the possibility of a plurality of jurisprudential shapes.[44] I locate this endeavour in line with Derrida's and Spivak's understanding of the concept of 'text'.[45] Text, in their view, is a kind of interlacing of voice and writing and, in that regard, it 'can be viewed as a technique of weaving a narrative that is inscribed and patterned in images, designs, paintings, and musical notations'.[46] In his *Biodegradables—Seven Diary Fragments,* Derrida has clarified the misunderstanding of his affirmation according to which 'there is no outside-the text'.[47] Although, many

[40] 'Yet each of the trio of governmentality, the sovereign state and international law assumes an operative coherence even as its assumption of a singular, positive presence remains impossible or incoherent. Perhaps then, such an assumption comes operatively from a presence negatively generated. That proposition signals a wider argument about the formation of an occidental modernism by way of a negative universal reference, but international law itself evokes a commensurate history of reference.' Peter Fitzpatrick, 'Ultimate Plurality: International Law and the Possibility of Resistance' (2016) 1 (1) *Inter Gentes,* 12.
[41] Gilles Deleuze and Félix Guattari, *A Thousand Plateaus* (Bloomsbury, 2014), 449.
[42] Deleuze and Guattari's proposition is based on the power of the polis (police) to prevent the motion flow of people, animals, and goods. See Paul Virilio, *Speed and Politics* (Semiotext[e], 1986).
[43] Dorsett and McVeigh, *Jurisdiction,* 57.
[44] Ibid.
[45] This epistemological thesis will have a methodological development in chapter 2 where I raise the existence of a plurality of philosophical languages.
[46] Arkotong Longkumer, 'The Gaidinliu Notebooks as Language, Prophecy, and Textuality', (2016) 6 (2) *Journal of Ethnographic Theory,* 125.
[47] I am grateful to Bruno Mazzoldi for drawing my attention to the complexities of the *text* in connection to Derrida.

critics have translated this phrase, as 'there is no outside-the verbal', it is exactly the contrary.[48] As Derrida has pointed out:

> [T]here is no outside-the text signifies that one never accedes to a text without some relation to its contextual opening and that a context is not made up of only what is so trivially called a text, that is, the words of a book or the more or less biodegradable paper document in a library.[49]

Spivak, for her part, has highlighted the political agency of such an interpretation in a seminal work in the field of postcolonial studies. The colonial agency that silences the subaltern's voice according to most of the commentators of *Can the Subaltern Speak?* has overlooked the powerful dimension of resistance embodied in the essay, according to which, there are many ways to speak. Indeed, as the Indian literary theorist has recently stated, the interpretations that remark the loss of voice of the subaltern as a result of colonial impositions, have shifted the question into the 'form' of *Can the Subaltern Talk?* In what is to me the more sensitive as well as emotionally stronger passage of the piece, Spivak encapsulates her feminist project by returning to a time when female suicide in India was associated with illicit pregnancy. Bhuvaneswary Bhaduri, a young woman who hanged herself in Calcuta in 1926 and who was the inspiration for Spivak's essay, expanded the possibilities of the *text* to the most dramatic margins of political agency.[50] As a matter of fact:

> The suicide was a puzzle since, as Bhuvaneswari was menstruating at the time, it was clearly not a case of illicit pregnancy. Nearly a decade later, it was discovered that she was a member of one of the many groups involved in the armed struggle for Indian independence. She had finally been entrusted with a political assassination. Unable to confront the task and yet aware of the practical need for trust, she killed herself.[51]

---

[48] The misunderstanding has also invaded the field of socio-legal studies. See for example Pauline Rosenau, *Post-modernism and the Social Sciences* (Princeton University Press, 1992); Joel Handler, 'Postmodernism, Protest, and the New Social Movements', (1992) 26 (4) *Law and Society Review,* 697-731.

[49] Jacques Derrida, 'On J. Derrida's "Paul de Man's War" VII Biodegradables Seven Diary Fragments', (1989) 15 *Critical Inquiry,* 841. See also *Writing and Difference* (Chicago University Press, 1978), 34. For a remarkable reading on this crucial issue see Bruno Mazzoldi, *A Veces Derrida. Derrida desde las Indias – Antropología y Desconstrucción – El Silencio de los Dátiles – Bordes de la Plegaria – Golosa* (Universidad Externado de Colombia, 2013), 50.

[50] I am grateful to Donatella Alessandrini for allowing me to explore the different epistemological dimensions of Spivak's work.

[51] Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in C. Nelson and L. Grossberg eds. *Marxism and the Interpretation of Culture* (Macmillan Education, 1988), 103. See also 'Translator's Preface' in Jacques Derrida, *Of Grammatology* (Johns Hopkins University Press, 2016).

In this case, Bhuvaneswari was able to speak first against the patriarchal interpretation according to which female suicide is a symptom of illegal pregnancy and, second, against the act of killing for political reasons; she spoke with her blood and her life. This understanding of the concept of the *text* is strongly connected to the claim of jurisdictional thought according to which there are different ways to speak the law. Thus, I understand the jurisprudential landscapes of different cultural traditions in the framework of jurisdictional arrangements of the 'manufacture' of lawful relations—or of modes of belonging to law.[52] State-centric laws have been dismissing indigenous jurisdictions by positioning them in line with the Western Rule of Law principles, which is tantamount to dismissing indigenous jurisdictions.[53] This underage status of indigenous jurisdictions produced by the overrepresentation of state-centric law does not occur in a legal vacuum; in this meeting of laws, the representation of Other jurisdictions by national and international courts, among other bodies, silence the jurisdictional speech of indigenous peoples.[54] As has been pointed out by Edward Mussawir, this matter is at the core of theories of legal power in modern jurisprudence. While the Western Rule of Law raises its head to talk about the origins of State authority, an archaeology of jurisdictional arrangements, for its part, redirects the problem of sovereignty in terms of how a jurisprudential *text* is represented.[55] Therefore, '[t]he concept of jurisdiction implies a certain relation between expression and representation in jurisprudence',[56] which offers the possibility of opening up the imagination to dialogue with different jurisdictional landscapes 'without higher values (values superior to one's jurisdiction)'.[57]

Connal Parsley has set out the political agenda of such an enactment also using a Derridean approach. According to Parsley, the aim of this agenda, which pivots on the silencing of indigenous voices vis-à-vis the impossibility of achieving a 'fair dialogue', presupposes not only the imposition of the tone of Western voice but also 'a remark

---

[52] See Shaun McVeigh, 'Law As (More or Less) Itself: On Some Not Very Reflective Elements of Law', (2014) 4 *UC Irvine Law Review,* 477.
[53] See Olivia Barr, 'Walking with Empire', (2013), 38 *The Australian Feminist Law Journal,* 61.
[54] Genevieve Renard Painter, 'A Letter from Haudenosaunee Confederacy to King George V: Writing and Reading Jurisdictions in International Legal History', (2017) 5 (1) *London Review of International Law*, 7-48.
[55] Edward Mussawir, *Jurisdiction in Deleuze. The Expression and Representation of Law* (Routledge, 2011), 2.
[56] Ibid.
[57] Ibid., 3.

about, and a re-marking of, the being of sovereignty':[58] on the one hand, an 'unequal communicative environment' based on the language of the state (its laws and international treaties); on the other, a translation mediated by 'Western metaphysical rules of being',[59] namely, a hierarchy marked by the priorities of sovereignty and the disregard of indigenous ontologies. In such a legal landscape, there are no clear traces of justice in law and; in that regard, the relationship between justice and silence becomes especially intriguing.[60] Parsley's eloquent formulation shows that the aforementioned connection is resting in the being of sovereignty. Indeed, in his view:

> Sovereignty then *accrues from* the order of priorities of the form; and the form is to sovereign language and sovereign Being what the 'ordinary' pronoun is to Being in general; which is to say that sovereignty is an extreme discourse of Being in which all the ontotheological priorities and illusions of truth which are the subject of investigation by Western philosophy, are concentrated or made literal for being *enforceable.*[61]

The performative strength of state-centric law is based precisely then on the possibility of imposing on indigenous jurisdictions its language and ontological backdrop. Thus, the Western Rule of Law 'suggests' by means of violence what is the 'accurate' mode of speech and legal discourse and, consequently, the act of silencing is, at the same time, the incapability of listening to the other languages in which indigenous *texts* are inscribed. Such ethnocentrism, directly linked to a certain coloniality of the ways of speaking, entails an economy of signification, which by imposing its monolingual understanding of being, suppresses the traces of other jurisdictional speeches. This is why, following in the footsteps of Derrida's *Of Grammatology,* Parsley lays the fallacy of the so-called 'natural writing' because there are also non-narrative ways to express lawful relations. Noting, first, the connection of the being of sovereignty with a striking logocentrism that uncovered under the pretension of naturalness, divineness, and

---

[58] Parsley's insightful piece is inscribed in the context of a judgement on the case of the 'stolen generation' of indigenous Australians (*Cubillo and Anor v. Commonwealth*). See Connal Parsley, 'Seasons in the Abyss: Reading the Void in *Cubillo*', in Anne Orford, ed., *International Law and Its Others* (Cambridge University Press, 2006), 105.

[59] Ibid., 106-125.

[60] As Constable states, '[t]he practices of law are changing, such that modern law often seems silent as to justice. One wonders whether a figure of justice still keeps us open to unpredictable possibilities in the saying of modern law'. See Marianne Constable, *Just Silences. The Limits and Possibilities of Modern Law* (Princeton University Press, 2005), 7.

[61] Parsley, 'Seasons in the Abyss', 118.

meaning's fullness, ends up denying the ontological singularity of other cultures;[62] and, second, remarking the ethnocentrism of such a 'sovereign project' in which only the languages, discourses, and texts of the colonial masters are acknowledged. Indeed, '[a]s is well known, this is only a starting point for Derrida's working through of metaphysics as grammatology, in fact of logocentrism […] (that is, in relation to the hierarchies of presence that it endangers) in its status as an "original and powerful ethnocentrism"'.[63] In this thesis, consequently, the tensions derived from the relationship between sovereignty and jurisdiction is resolved by challenging the existence of a single state-centric law by remarking instead the presence of a plurality of jurisprudential landscapes.[64]

1.2 Theoretical Resources and Bibliographical Gap

Bringing together ethnographic theory, indigenous literature, deconstructive interventions, and international law scholarship broadly conceived, this thesis searches for an 'in-between-culture' position able to consider indigeneity in a world that is indigenous and non-indigenous at the same time. In this setting, the overlapping relationship between colonial domination and indigenous resistance is analysed through the rearticulation (re-readings) of international law from the point of view of indigenous peoples. This ethnographic approach connects the perspective of indigenous peoples, and my own perceptions of it, with a plural exchange of ideas between indigenous and Western scholars.[65] By responding to the proposal of Luis Eslava to anthropologically address the scope and 'operative layers' of international law, wherever they perform or wherever they reach,[66] this thesis progresses in three different levels.

---

[62] 'The relation between word and being is, in this natural language, unsullied by the arbitrary signifier. And Derrida establishes this kind of writing's opposite: not natural, divine, full and perfect meaning, but a fallen, human, technological, finite, exteriorized writing'. Ibid.,124.

[63] Ibid.

[64] This deconstructive epistemological endeavour is connected with the methodological framework presented in chapter 2, whereby, following in the footsteps of Derrida and Mazzoldi, I state the existence of a plurality of philosophical languages.

[65] See especially chapters 4, 5, and 6 of this thesis, where I sustain a dialogue with indigenous interlocutors of the Andean region. The notion of a scholar in the indigenous world does not necessarily correspond to the idea of an intellectual doing academic work but to somebody who masters indigenous *texts*. Thus, for example, an indigenous leader who is an expert at delimiting ancestral territory.

[66] Eslava, *Local Space, Global Life,* 24.

At a disciplinary level, tracing different chronicles in which the tensions among indigenous, national, and international jurisdictional entanglements interact, this thesis positions itself within the ethnographic exploration of international law. From this perspective the international legal order has the shape of a Deleuzian *rhizomatic system,* '[t]here are no points or positions in a rhizome, such as those found in a structure, tree, or root. There are only lines'.[67] This interplay of pure activity across multiple jurisdictional landscapes encompasses the material and discursive practices of international law and, consequently, its multiple manifestation in the contours of everyday life.[68] In Chapters 3 and 6 of this thesis, where I analyse the way in which international law has recognized indigenous peoples rights—with special emphasis on indigenous peoples struggle against their ongoing genocide and in favour of their self-determination—the reader can find the kind of jurisdictional entanglements I am highlighting here: First, the tensions between hegemonic and counter-hegemonic dimensions of international law; second, the tensions and synergies between the international legal order and local jurisdictions; and, third, the ways in which indigenous organizations are indigenizing international law in everyday life.

At a second level and, drawing on the mandatory work of Balakrishnan Rajagopal, this thesis approaches indigenous localized realities under the analytical category of resistance. The frictions among indigenous, international, and local jurisdictions, such as those produced by the incorporation of human rights standards in national courts, form part of a complex process of tensions and resonances between rival jurisdictions. In this context, the definitive separation between resistance and hegemony is problematized, reaffirming at the same time, that there are multiple ways of imagining the world and, therefore, to crystallise resistance practices. This approach 'rejects the dogma that to be legitimate resistance must either work within existing theories of human liberation or formulate an entirely new "universal" paradigm that is applicable across time and space'.[69] In Chapters 4 and 5 of this thesis, I show different practices of indigenous resistance to both the international legal order at the beginning of the sixteenth century in Bolivia and to Colombian agrarian laws in the first half of the twentieth century.

---

[67] Deleuze and Guattari, *A Thousand Plateaus*, 420.
[68] Eslava, *Local Space, Global Life,* 28-29.
[69] Rajagopal, *International Law From Below*, 11.

In this conjecture, my work adds a third level of analysis, one that departs from the imperative need to challenge traditional accounts of international law with new vocabularies, and pays attention to the silencing of indigenous voices by international law. In this setting, I claim that the right to ontological self-determination is a constitutive form of indigenous peoples' resistance. I locate the epistemological and methodological endeavor of listening to indigenous law as law within the Western intellectual tradition, after all, as Viveiros has taught us, a Western anthropologist or a Western legal ethnographer hasn't got another way of thinking about another system of thought, but through the means of her own. In that sense, I propose recreating the craft of indigenous jurisprudences using our terms vis-à-vis indigenous conventions: '[i]f anthropology, as the saying goes, is an activity of translation; and if translation, as has been said, means betraying […!] the whole issue is to choose who will be betrayed'.[70] This aporia, in which indigenous and non-indigenous worlds coincide in belligerent ways intersecting all the interstices between hegemony and resistance, operates in my view as a *double bind.* This third level of analysis appears throughout this thesis; however, the methodological proposal to betray 'our' thinking by taking indigenous imagination seriously is underscored in Chapter 2.

The exploration of the *double bind* between indigenous and non-indigenous worlds is based on the work of Silvia Rivera Cusicanqui. According to Rivera, the process of mestizaje that resulted from the conquest of the Americas has been read from a colonial perspective. This has been the case because mainstream colonial history tends to privilege the non-indigenous side of the *double bind*, with little attention given to the power of indigenous peoples to resist colonial impositions.[71] Indeed, indigenous resistance has operated not only by means of uprisings and social mobilizations but also through indigenous peoples' inherent ability to *indigenize* and work with colonial burdens. For me as a learner and listener, these ways of indigenizing imply, on the one hand, supporting indigenous struggles by using legal arguments and, on the other, immersing myself in indigenous cosmologies and languages in order to imagine jurisprudential landscapes where indigenous jurisdictions prevail over local and international legal orders.

---

[70] Eduardo Viveiros de Castro, *La Mirada del Jaguar. Introducción al Perspectivismo Amerindio. Entrevistas* (Tinta Limón Ediciones, 2013), 86.

[71] See especially Silvia Rivera Cusicanqui, *Sociología de la Imagen. Miradas Ch'ixi Desde la Historia Andina* (Tinta Limón Ediciones, 2015).

The mediation between ethnographic theory and indigenous *texts* takes place by putting into action different deconstructive strategies:[72] First, by proposing a dialogue of different cultural traditions based on a level playing field and the recognition of a *plurality of philosophical languages* as can be seen in Chapter 2;[73] second, through a historiographical reading of indigenous peoples in international law that analyses the burdens of the past in the present and future of indigenous rights, analysing at the same time the ongoing genocide of indigenous peoples as it appears in Chapters 3 and 6; [74] and third, through the acknowledgement of 'indigenous textualities and living archives' as true sources of law as I do in Chapters 4, 5, and 6.[75] These deconstructive strategies betray (appropriate and reappropriate) the very language of international law by repopulating its framework through the *texts* and views of indigenous peoples. In Chapter 3, this thesis first explores the field of indigenous peoples in international law tracing the intricacies of the incorporation of indigenous claims into international human rights law as well as international law's hegemonic and counter-hegemonic dimensions as can be seen in the classical works of James Anaya and Luis Rodríguez-Piñero.[76]

In my analysis, however, I expand the conception of rights by considering that in indigenous worlds this notion covers other living beings like plants and animals.[77] The

[72] Appealing to Derrida's profession of faith, I am talking about 'the right to deconstruction as an unconditional right to ask critical questions not only to the history of the concept of man, but to the history even of the notion of critique, to the form and the authority of the question, to the interrogative form of thought. For this implies the right to do it performatively, that is, by producing events, for example by writing, and giving rise to singular *oeuvres* (which up until now has been the purview of neither the classical nor the modern humanities)'. Jacques Derrida, 'The Future of the Profession or the University Without Condition (Thanks to the 'Humanities,' what could take place tomorrow)', in Tom Cohen, ed., *Jacques Derrida and the Humanities: A Critical Reader* (Cambridge University Press, 2002), 26.

[73] See especially chapter 2.

[74] Although the past of such a history is well known and documented, I will sustain that the past is not past; indeed, '[i]n the Europeans' conquest and colonization of the American Indian, law and legal discourse most often served to redeem the West's genocidal imposition of its superior civilization in the New World'. Robert Williams, *The American Indian in Western Legal Thought. The Discourses of Conquest* (Oxford University Press, 1992), 7. See especially chapter 3.

[75] See especially chapters 4, 5, and 6.

[76] See James Anaya, *Indigenous Peoples in International Law* (Oxford University Press, 2004); and Luis Rodríguez-Piñero, *Indigenous Peoples, Postcolonialism and International Law. The ILO Regime (1919 – 1989)* (Oxford University Press, 2006).

[77] I inscribe this claim within the *double bind* between indigenous and non-indigenous worlds, across the length and breadth of the projection of an 'in-between-culture' that like democracy is always to come. From the side of indigenous worlds, I call upon indigenous cosmologies and languages. From the side of non-indigenous worlds, I appeal to a new trend in the humanities that 'would treat the history of man, the idea, the figure, and the notion of "what is proper to man" (and a non-finite series of oppositions by

result of this is the analysis of the ongoing genocide of indigenous peoples in Colombia, placing the case study in the geological age of the Anthropocene, as can be corroborated in Chapter 6. Second, considering critical historiographical accounts that identify law as the most respected and cherished instrument to manage imperial and civilizing enterprises, as Robert Williams states.[78] Nevertheless, the political undertaking of my argument enables a more complex analysis in which indigenous practices of resistance more than ever underline that the interaction between imperial and counter-imperial relations is far from over. Finally, inspired by the teachings of Bartolomé Clavero, this project bases its historiography on constitutionalism and international law by taking indigenous jurisdictions seriously. Clavero, has indeed underlined not only the material preexistence of indigenous jurisdictions before the history of colonial states but also the importance of reaffirming their political self-determination in terms of international law.[79] Being interested in the anthropological scopes of such history, and claiming, again and again the ontological self-determination of non-Western cultures, I attempt to contribute to the making of an anthropology of international law.

Such an appraisal takes into consideration the path led by Liliana Obregón and Arnulf Becker in their methodological attempt at tracking the so-called *creole legal consciousness* by seeking the recognition of a history of international law that takes the voices of the global South seriously;[80] as well as, the footprints of a *mestizo international law* able to narrate a global history of the international legal order in which non-Western states and their lawyers reappropriate European discourse in the second register.[81] My objective, however, is neither a socio-legal analysis of international law standards nor the historiography of the incorporation of 'voices' from the global south into the classical history of international law. My objective is instead to advance an anthropology of international law able to recognise the intellectual potential

---

which man is determined, in particular the traditional opposition of the life form called human and of the life form called animal'. Derrida, 'The Future of the Profession or the University Without Condition', 50-51.

[78] Williams, *The American Indian in Western Legal Thought*, 6.

[79] See Bartolomé Clavero, *El Orden de los Poderes. Historias Constituyentes de la Trinidad Constitucional* (Trotta, 2007); *Derecho Global: Por una Historia Verosímil de los Derechos Humanos* (Trotta, 2014).

[80] See Liliana Obregón, 'Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America', in Anne Orford, ed., *International Law and Its Others* (Cambridge University Press, 2006), 247-264.

[81] See Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842-1933* (Cambridge University Press, 2015).

of indigenous thinking and, as such, the unquestionable epistemological value of indigenous cosmologies to reflect on the counter-hegemonic dimensions of international law.

By considering this rich epistemological tapestry of cultures, languages and diverse nations, I raise the following methodological and theoretical questions: Can international law be indigenized through an inverse legal anthropology? How can one trace the *double bind* between post-colonial domination and indigenous resistance? How do the cosmologies of indigenous peoples differ from western imaginaries? How to understand the silencing of the ongoing indigenous genocide?

1.3 Ethnographic Considerations

1.3.1 Fieldwork Interactions

The interviews and participant-observation component of this thesis took place in various Colombian urban and rural areas (Departments of Cauca and Nariño, and in Bogotá), and in La Paz (Bolivia). I conducted individual face-to-face audio-recorded interviews, which were based on questions and open discussions. In the course of these interactions, I collected testimonies regarding the Colombian and Bolivian indigenous movements aiming to explore the *double bind* between colonial and postcolonial domination and indigenous resistance: in particular, the appropriation made by state-centric and international law of indigenous territories and resources with the current re-appropriation by indigenous social movements and grassroots in Latin America. In this sense, my ethnographic data enabled me to explore ways in which indigenous peoples are made and remade by the international legal order, and how they, at the same time, endeavor to make and remake it in their everyday life.

I began my fieldwork in the Colombian province of Nariño where I interviewed indigenous leaders attending a national meeting. This meeting took place on 19 June 2015, two days before the *Inti Raymi*, a celebration to commemorate the New Year in the Andean indigenous peoples' calendar. I have learned from my previous experiences working with indigenous communities in Colombia that both the meeting and the

celebration of the New Year are strategic spaces to interact with indigenous leaders. In this first part of my fieldwork, I talked to former indigenous senators Efrén Tarapués and Ramiro Estacio from the Pasto nation about the way in which Andean indigenous cosmologies collide and interact with the discourses of indigenous peoples' rights. I also focused my interaction with them on the ethnic militancy of Manuel Quintín Lame, a legendary Nasa rebel from the southwestern department of Cauca, and the subject of Chapter 5. Although I do not make direct references to these interactions in the thesis because my analysis of Lame is conducted through an archive-based approach, my conversations with Taita[82] Efrén have been key in understanding the way in which Andean indigenous peoples continue to use the tools developed by Lame during the course of his legal activism at the beginning of the twentieth century (see Figure 1.1).

Figure 1.1 Ex-Senator of the Movement of the Colombian Indigenous Authorities, Taita Efrén Tarapués Cuaical, at his home in Cumbal southern Colombia.
P.Bacca, 2015.

The second part of my fieldwork took place in La Paz (Bolivia) between July and August 2016. I spent this time with *El Colectivo*, a self-organized group of cultural action and critique, headed by Bolivian feminist sociologist Silvia Rivera Cusicanqui. The work of Rivera is key for both the methodological and empirical component of this

[82] Hereinafter I use the word 'Taita' following the Andean roots of the term. The literal meaning of the word 'Taita' or 'Tayta' is 'father'. However, the term covers a much wider range of meanings, which are related to friendliness, respect, observance, adherence, deference, and admiration. It is also used to refer to someone who serves in the indigenous public service. See Domingo Tandioy, Stephen H. Levinsohn, and Alonso Maffla, *Diccionario Inga del Valle de Sibundoy* (Townsend, 1982), 269.

thesis (Chapters 2 and 4 respectively). The interaction with Rivera allowed me to better understand the complexities of an Andean world that operates through the *double bind* of being indigenous and non-indigenous at the same time; while on the other, it enabled me to test out the academic tradition that depicts history, in particular the history of the international legal order, in a linear and progressive trajectory. With this approximation at hand, I analyze the relationship between past, present, and future within the social life of indigenous communities.

The interactions during this part of my fieldwork combined face-to-face conversations with Rivera as well as everyday exchanges with *El Colectivo*, particularly, with Ruth Bautista and Iván Gordillo, who convened the Winter School on the Sociology of the Image led by Rivera and in which I participated as a student. At a second stage, I had the opportunity to meet Álvaro Pinaya, who is a co-founder of *El Colectivo* and an expert on Rivera's intellectual trajectory. My aim with these conversations and observations was to learn first hand the way in which *El Colectivo* has been carrying out its analysis on colonial times through the use of films and paintings, in order to understand the current social dynamics of the indigenous movement in Bolivia (see Figure 1.2). Since then, I have benefited greatly from epistolary dialogues and Skype meetings with Rivera, Bautista, and Pinaya, who have been very generous in terms of sharing their experiences and work.

In September 2016, after my return from Bolivia, I worked with the two major Colombian indigenous organizations. First, I had meetings with indigenous leaders of the Regional Indigenous Council of Cauca (CRIC). The interviews from this cycle were held with experienced leaders and the conversations were very rich in terms of historical and political references. I had the opportunity to talk to Aída Quilcué, a leading political figure of the Nasa indigenous people, and with Milena Mazabel, a lawyer and literature major from the Coconuco indigenous people. Once again, the emphasis of my questions was placed in the contemporaneity of Lame's thinking. Although I had been talking with Mazabel for five years, I have only recorded one of our conversations. I did not use the references of these interactions directly, given that the conversation with Quilcué took a course beyond the undertakings of my reading on Lame, and because my friendship with Mazabel, has been outside the ethnographic setting. I rarely mentioned

my hypothesis regarding Lame to Mazabel but our interactions have been central to the understanding of the complexities of Lame's thinking.

Figure 1.2 Community Meeting at El Colectivo Tambo.
Courtesy of Sandra Nicosia (On file with author, hereinafter P.Bacca)

During a second stage, I had meetings with the political leadership of the National Indigenous Organization of Colombia (ONIC) in order to evaluate the Colombian and Latin American indigenous agenda. These gatherings were a follow-up of my previous involvement with ONIC, having had different positions as a lawyer in the organization. The interviews from this cycle included direct questions and I requested opinions about the role of the academy within the indigenous movement today. My aim with these interviews was to understand international law as social constructed field vis-à-vis indigenous peoples' jurisprudences and the use by indigenous organisations of international law. The main interlocutor in ONIC was Taita Víctor Jacanamijoy (see Figure 1.3) who is a renowned healer and former vice-president of ONIC. Walking hand-in-hand with Taita Víctor, I have learnt more about indigenous laws than in all my years of academic training. In Taita Víctor's home '*El Tambo Sinchi Huairra'* located in Bogotá, I found the marvellous opportunity to talk face-to-face with an accomplished indigenous leader. His voice reflected the experience and maturity of an indigenous authority.

Figure 1.3 Ex-Vicepresident of the National Indigenous Organization of Colombia, Taita Víctor Jacanamijoy Jajoy, serving as Inga healer in a ceremony of indigenous harmonization.
Courtesy of Víctor Jacanamijoy (P.Bacca)

1.3.2 Ethical Protocols

During the course of my fieldwork interactions, I faced two different cultural issues that became central to the way in which I developed the arguments presented here. First, the fact of working with a different culture, in my particular case, Andean indigenous peoples, supposed an intercultural exercise in which a variety of social and epistemological potential clashes emerged. Having worked with indigenous organizations and communities over the last fifteen years, I approached this issue through a careful attention to the act of translation. In this way, I assumed the commitment of corroborating my assumptions directly with indigenous organizations and communities, particularly with indigenous leaders who are comfortable negotiating between the life of their communities and national and international indigenous organizations.

Second, the history of colonization as well as the history of the social sciences entails a complex legacy of racial separation, inequality, and resistance. In the particular case of the Andean region, indigenous peoples have experienced those colonial legacies in terms of official discriminatory public policies. Thus, for example, in access to education and employment and in the contempt of indigenous sources of knowledge. In this regard, indigenous organizations have developed a series of social mechanisms to decide on the advisability of supporting projects and initiatives within and outside their

communities. Because of this, I have always conducted my fieldwork exercises with the permission of the indigenous representative bodies. Consequently, before starting any interaction with communities, I shared my proposal with the indigenous authorities and began the interviewing process only with their authorization. At the same time, I followed the protocols of the Research Ethics Advisory Group of Kent Law School, which granted me the ethical approval for conducting my fieldwork.

My interaction with indigenous organizations and communities has been extensive in terms of sharing communal spaces and ideas since 2001, which was crucial in encouraging me to forge ahead this project. I have had the opportunity to be resident ethnographer in the Colombian departments of Nariño, Putumayo, Chocó, Risaralda, and Valle del Cauca where I interacted with indigenous communities of the Pasto, Awá, Kamentsá, Inga, and Emberá indigenous nations. I have also interacted with Aymara and Quechua communities of the Titicaca Lake and the Mantaro Valley in Bolivia and Perú respectively. In the framework of official meetings of the United Nations system and the Interamerican system of human rights, I have met indigenous peoples of the Americas in New York and Washington D.C. Finally, I have conducted face-to-face interviews to Australian aboriginal leaders in Sidney and Melbourne.

Nevertheless, for this thesis, I only interviewed a selection of indigenous leaders face-to-face, having as criteria both my previous knowledge of the communities and organizations' internal dynamics, and the epistemological and methodological structure of the thesis. Thus, my interviewees are leaders who have played an important role as indigenous authorities and have gained public recognition within the indigenous movement. The epistemological foundation of such an approach follows the intellectual trajectory of Joanne Rappaport, who, in her last public intervention, insisted on the importance of moving the ethnographic engagements from data collection to an interlocution with indigenous leaders and intellectuals. More than embarking on a dialogue about the concerns of my own research, the idea of my exchange with indigenous authorities was, therefore, to permeate and transform my thinking through indigenous points of view. Following this, the thesis articulates the relation between my ethnographic method and my understanding of international law in Chapters 1, 2, and 3, and then I link this reading with what indigenous voices can say about colonial, republican, and contemporary history of indigenous rights in Chapters 4, 5, and 6.

In all matters related to the crime of genocide of indigenous peoples, following the advice of Taita Víctor Jacanamijoy, I decided to use the sources of official indigenous organizations in order to avoid putting particular indigenous subjects at risk. I also used my legal expertise to decide whether it would be convenient disclose a specific statement or not to, even with my interviewee's express consent. My protocol for achieving consent was based on Andean traditions and roots. Most of the indigenous peoples of the Andean region prefer oral forms of communication to written forms of communication. In this regard, especially in the rural areas, where native languages and their own ways of living are deep rooted, the most ethical way of achieving the consent of participants is verbally and recorded. Although, in the case of the national indigenous organizations there may be more flexibility to bring a consent form, my interlocutors also favour the oral consent. In any event, at the beginning of the interviewing process, I mentioned the proposed uses of the material generated, emphasising that the material can be used in a non-attributable way if the participant wishes it so.

At the completion of this project, I plan to write an article in Spanish intended for indigenous participants in order to inform them of the way in which I quote the indigenous peoples' voices. In due course, I will analyse the possibility of making a documentary to share the conclusions of my research in a non-academic format for the benefit of grass-roots communities and organizations.

1.4 Thesis Outline

This thesis has seven chapters organized in the following way. Chapter 2 presents the four methodological cornerstones that underpin my proposal to 'build' an *inverse legal anthropology* through the political and philosophical exploration of the *double bind*. There are first, analysis of the methodological tool of the *double bind* from an Andean indigenous perspective in the context of what Rivera Cusicanqui has termed *Ch'ixi epistemology*; second, proposal of a deconstructive methodology that may produce the interlocution of different philosophical traditions as equals; third, 'structuring' an ethnographic reading able to radically problematize the so-called 'human right of interlocution' within the participant observation process that results from the legal anthropological exercise; and fourth, recognizing the emancipatory potential of

indigenous thought as a basis for understanding their interaction with international law and our own thinking about its history. This evaluation sets the grounds for a methodological approach that understands the elliptical shuttling between two subject positions that can simultaneously oppose yet construct one another. The *double bind* explained in the chapter—oscillates between indigenous peoples in Western jurisprudence and indigenous jurisprudence—is always relational and criticises the tendency to assume the Western background as the dominant end of the aporia. The chapter affirms instead, the possibility of undertaking the reverse process, that is, the projection of indigenous jurisprudences in the framework of the Western Rule of Law in general and international law in particular in order to transform their conceptual framing. This is what I call in the thesis *inverse legal anthropology.*

Having furthered a theoretical and methodological framework to perform the *indigenization of international law* from an *inverse legal anthropology*, Chapter 3 shows the tensions between the colonial legacies of international law and indigenous peoples' strategies to enhance their self-determination inside and outside of the international law apparatus. In so doing, it advances a reading of indigenous peoples in the 'archive of international law' showing the inherent paradoxes of the structures of the international legal order when it approaches indigenous peoples. Tracing the expansion of international law as a field of social practice, I stress the 'domestication' of indigenous jurisdictions through their translation into Western law, and point out how the effectiveness of international law regarding indigenous peoples' rights depends on the functionality of a system that has not only underpinned the silencing of indigenous jurisdictions speech, but also the genocide of indigenous peoples. Using international human rights standards as a backdrop for my discussion, the chapter reveals that what are apparently sets of abstract principles without frictions and tensions (for example, the tendency to exclude indigenous peoples as protected groups from the legal qualification of genocide) end up being benchmarks loaded with political and economic assumptions. In this sense, the chapter notes the relevance of the idea of taking indigenous jurisprudences seriously in order to counteract the ongoing colonial role of international law.

Chapters 4, 5, and 6 comprise the empirical part of the thesis, which explores the concepts of *double bind*, *inverse legal anthropology* and *indigenizing international law*

through two participant observation exercises and an archival examination, all done through the ethnographic genre. As can be seen in these chapters, the *double bind* is a well-established concept in the literature that I am adapting to develop my concepts of *inverse legal anthropology* and *indigenizing international law* as follows.

Chapter 4 analyses the complexities of the *double bind* between colonial domination and indigenous resistance in conversation with Aymara sociologist Silvia Rivera Cusicanqui. The 'functioning' of the *double bind* appears in the chapter at three levels: First, by taking into consideration Rivera's invitation to explore the *double bind* through Andean rituals and cosmologies; second, by analysing the way in which Rivera develops an epistemological program based on daily life practices; and, third, by showing one example in which Rivera develops a *double bind* epistemological framework in order to read the colonial encounter between Western and indigenous jurisdictions in the Americas in the sixteenth century.

Chapter 5 is an archival exploration of what it means to perform an *inverse legal anthropology* based on the life and work of Manuel Quintín Lame (1880 - 1967), a radical Nasa leader and an active user and creator of laws, who lived during the first half of the twentieth-century. Through his activism and work Lame was able to transform Colombian state-centric laws, and the position of indigenous peoples towards the international legal order, using indigenous cosmologies. The chapter examines the concept of justice directed by Lame's thinking, and how he promoted the use of legal speech and rights in the Colombian indigenous movement. Lame proclaimed equity and reciprocity among States and indigenous nations, and consequently the legally binding nature of agreements made between them, which is tantamount to a key principle in the framework of indigenous peoples in contemporary international law.

Chapter 6 displays the idea of *indigenization of international law* by narrating the history of the contemporary Colombian indigenous movement through the voices of Taita Víctor Jacanamijoy and indigenous senator Luis Evelis Andrade, former ONIC vice-president and president, respectively. By drawing on the *double bind and the inverse legal anthropological* turn proposed in the thesis, the chapter embraces the possibility of recognizing indigenous law as law, presenting a case in which the voice of indigenous peoples transforms (appropriates and reappropriates) official narratives of

nationhood through a process of ethnic militancy against the ongoing genocide of indigenous peoples in Colombia through the use of international law in the geological age of the Anthropocene. Finally, Chapter 7 comprises the general conclusions of the thesis.

1.5 Conclusions

This thesis is intended to contribute to the development of a legal anthropology capable of listening to indigenous law as law in order to transform mainstream international law narratives through the teachings of indigenous narratives and cosmologies. In pursuing this objective, the thesis emphasizes the full consequences of indigenous peoples' right to self-determination, which entails jurisdictional autonomy, recognition of indigenous legal sources, and the value of indigenous epistemologies to decolonize international law.

By following the aforementioned objective, this chapter has operated both as a general introduction and as a setting for exploring the theoretical sources and the bibliographical gap which I am dealing with in the task of *indigenizing international law*. This undertaking involves an ethnographic endeavor that, at its basis, pays attention to what indigenous voices can say about lawful relations, rather than departing from what *Western Rule of Law* says or does not say about indigenous peoples. This (international legal) anthropological approach attempts to move beyond what 'our society' can say about social relations, to emphasize instead the way in which indigenous jurisdictions function in order to resist, diversify, and adjust their bodies of knowledge, such as their jurisprudences and anthropologies, within the everyday operation of international law.

The overlapping relationship between colonial domination and indigenous resistance is key to better understanding the field of struggle in which indigenous peoples have 'negotiated' their own laws with the national states and the international legal order. In this way, the chapter has highlighted the way in which indigenous peoples and organizations, being aware of the hegemonic and counter-hegemonic dimensions of international law, are proactively using its framework in order to build effective

strategies in the face of their ongoing genocide and survival. That is to say that the political endeavors of international law are part of the problem and also part of the solution of indigenous self-determination, past and present.

In order to foster an approach in which indigenous practices of resistance emerge victorious over colonial domination, the chapter pays attention to jurisdictional thinking to point out that the crafting of indigenous jurisprudences should not be overdetermined by the representation of the Western Rule of Law. Quite the contrary, indigenous jurisprudential *texts* operate in relation to nation-state jurisdictions and the international legal order, these two now being the only entities able to grant authorization for producing lawful relations. In this regard, the chapter raises the possibility of conceiving a legal contemporaneity characterized by being at once indigenous and non-indigenous. This search, that is always to come and in which the idea of *indigenizing international law* has taken root, projects to transform the very language of international law through the use of indigenous thinking—or more precisely of my interpretation of it. This turn that departs from the *double-bound* tensions surrounding the relationship between resistance and domination is what I call in the next chapter *inverse legal anthropology.*

The waterfalls of Peru, like those of San Miguel, where water slides down into abysses hundreds of feet deep, dropping almost perpendicularly and irrigating terraces where food plants flower, will comfort my eyes moments before dying. They portray the word for those of us who know how to sing in Quechua; we could go on listening to them forever; they exist because of those sheer mountains, capriciously arranged into gorges deep as death and more fiercely alive than ever; wild mountain slopes where with his fingers and his brains man has contrived fields to till, has sown crops, and has planted trees that stretch skyward from the cliffs, stretching transparently. Useful trees, as barbarically full of life as that jumble of abysses in which men are powerful, very handsome worms, somewhat scorned by the skilful murderers who govern us today.

José María Arguedas, *The Fox from Up Above and the Fox from Down Bellow* (University of Pittsburgh Press, 2000), 11.

2

From the Double Bind to An Inverse Legal Anthropology

This chapter explores the methodological framework to advance my proposal of *indigenizing international law* presented in chapter 1, which was based on the idea of demanding respect for indigenous peoples' own jurisdictions and rights. To do so, I placed indigenous peoples' rights in the daily life operations of international law in order to remark on the *double bind* between indigenous resistance and post-colonial domination, as well as the *double bind* between the imperial and counter-imperial endeavours of international law in the course of indigenous struggles for political and ontological self-determination.

Being a non-indigenous scholar, the idea of *indigenizing international law* put forward in this thesis rests on the possibility of being seduced by indigenous jurisprudence in order to direct its point of view to the framework of international law. The foundations of this methodology are based on two complementary sources. On the one hand, my method follows a dialogue with indigenous and non-indigenous scholars who have been studying the collision of different cultural traditions during the course of colonial encounters.[1] On the other hand, my approach resonates with an anthropological trend that experiments with the possibility of changing Western imaginaries through the point of view of indigenous cultures.[2] The work of the Peruvian writer, ethnologist, and musician José María Arguedas (1911-1969) is one the finest examples of how these methodological tools come together to produce an analysis of the colonial encounter between Andean indigenous peoples and Europeans in the sixteenth century. Consequently, his work is one of the main inspirations for this chapter.

In one of the greatest speeches ever made in the Latin American literature tradition, Arguedas—a white boy who grew up surrounded by Andean people because of his

[1] The conversations with Bruno Mazzoldi and Silvia Rivera Cusicanqui have been decisive to articulate a methodological framework that resonates with their work in conjunction with their dialogue with Derrida and Spivak respectively.

[2] On this subject, I am indebted to Juan Duchesne Winter, who has shown me several sides of this anthropological approach, with a subtle anthropological imagination.

stepmother's neglect—pointed out the contentious character of any colonial encounter. Contrary to what common sense may indicate, the meaning of 'encounter' is far from an agreement between peoples. Indeed, the etymological root of the English term for *encounter* encapsulates confrontation and struggle (in Middle English it meant 'to meet as an adversary' and 'a meeting of adversaries', based on Latin *in-* 'in' plus *contra* 'against').[3] Effectively, Arguedas himself experienced the colonial meeting from inside the two worlds:[4] the Quechua world from which he inherited his mother tongue; and the world of the oppressors from which he inherited Spanish, the language that he used to express himself as a writer and orator. To give a clear sense of the contentious nature of colonial relations according to Arguedas, I highlight his own words:

> [A] Quechua speaker all my life, a joyful visitor of great foreign cities, I attempted to transform into written language what I was as an individual: a strong living link, capable of being universalized, between the great, walled-in nation and the generous, humane side of the oppressors. The link was able to universalize and extend himself, proving to be a real live, functioning example. The encircling wall could have and should have been destroyed; the copious streams [of wisdom and art] from the two nations could have and should have been united. And there was no reason why the route followed had to be, nor was it possible that it should solely be, the one imperiously demanded by the plundering conquerors, that is: that the conquered nation should renounce its soul (even if only formally appearing to do so) and take on the soul of the conquerors, that is to say, that it should become acculturated. I am not an acculturated man; I am a Peruvian who, like a cheerful demon, proudly speaks in Christian and in Indian, in Spanish and in Quechua.[5]

Taking as a starting point these different confrontations and encounters between the plundering conquerors and the conquered indigenous nations as described by Arguedas, this thesis also examines another set of *double-sided* equations; those experienced in the course of the meeting of colonial and indigenous laws and jurisdictions. In prioritizing a critical analysis of the clash between the laws of indigenous peoples and state-centric laws, I reveal here the conflictive nature of different practices of authorization and, as

---

[3] *Oxford English Dictionary* (Oxford University Press, 2016).

[4] '[T]wo things were sadly driven into my nature from the time I learned to speak: (I) the tenderness and limitless love of the Indians, the love they feel for each other and also for nature, the highlands, rivers, and birds; and (2) the hatred they felt for those who, almost as if unaware and seeming to follow and order from on high, made them suffer. My childhood went by, singed between fire and love.' José María Arguedas, 'Opening remarks made by the Peruvian author before reading some of his work at a public gathering of fiction writers in Arequipa on June 14, 1965.' John V. Murra, 'Introduction' in Arguedas, *Deep Rivers* (Waveland Press, 2002), ix-x.

[5] José María Arguedas, 'I Am Not an Acculturated Man…' José María Arguedas's words upon accepting the Inca Garcilaso de la Vega Prize' (Lima, October, 1968), in *The Fox from Up Above and the Fox from Down Bellow* (University of Pittsburgh Press, 2000), 269.

pointed out in Chapter 1, the significance of listening to indigenous law as law.[6] Following a series of calls made by legal anthropologists and historians such us Bartolomé Clavero, Peter Fitzpatrick, Sally Engle Merry, Luis Eslava, Christopher Tomlins, and John Comaroff, among others, I am accepting the 'methodological invitation' to participate in 'the constitution of a field of inquiry dedicated to the study of the anthropological dimensions of international law'.[7]

Considering the shared concern across the range of methodological questions on the trajectory of international law, I will consider, first, international law manoeuvres to exclude indigenous peoples from international recognition or to include them in international human rights standards without their consent; second, indigenous peoples' practices of resistance against the international legal order; third, the way in which international law works in practice vis-à-vis the course of everyday operations; and, fourth, the process of discerning international law's commonplaces, for example, where it 'should be located' and 'related' to other things[8]—I contend here that the dialogue-encounter between indigenous jurisprudence and international law should be positioned in terms of anthropology. I understand this turn as a quest to reveal the multiple laws, ontologies, cosmologies, and historical traditions, that international law encounters, or clashes with, in its unfolding in the world.

In so doing, I suggest here an exploration of international law in daily life based on an ethnographic rearrangement of the participant observation process inherent to any kind of fieldwork. The first element of this rearrangement is 'a reaction to the analytical challenges posed by the way in which international normative frames speak about and

[6] I am following in the footsteps of the work of Shaun McVeigh and Sundhya Pahuja, 'Rival Jurisdictions: The Promise and loss of Sovereignty' in Charles Barbour and George Pavlich eds., *After Sovereignty: On the Question of Political Beginnings* (Routledge, 2010), 97-114; and Sundhya Pahuja, 'Laws of Encounter: A Jurisdictional Account of International Law', (2013) 1 (1) *London Review of International Law,* 63-98.

[7] Luis Eslava, 'Istanbul Vignettes: Observing the Everyday Operation of International Law' (2014) 2 (1) *London Review of International Law*, 43-44.

[8] See Bartolomé Clavero, *El Orden de los Poderes. Historias Constituyentes de la Trinidad Constitucional* (Trotta, 2007); Peter Fitzpatrick, 'Ultimate Plurality: International Law and the Possibility of Resistance' (2016) 1 (1) *Inter Gentes,* 5-17; Sally Engle Merry, 'Anthropology and International Law', (2006) 35 *Annual Review of Anthropology,* 111; Luis Eslava, *Local Space, Global Life. The Everyday Operation of International Law and Development* (Cambridge University Press, 2015); Christopher Tomlins and John Comaroff, 'Law As… Theory and Practice in Legal History', 1 (3) *UC Irvine Law Review,* 1041.

shape the world at large'.[9] The second element is a recognition, at the same time, of the emancipatory potential of indigenous thought as the basis to understand their interaction with international law and post-colonial narratives. My proposal to *indigenize international law,* and, in this way, to *indigenize legal anthropology*, asserts thus that the intended process of discerning indigenous thought should not only concentrate on the study of international law on its own terms but also what it silences, for example, indigenous thought and jurisprudence. At the same time, I argue that in paying attention to indigenous jurisprudence the main preoccupation of ethnographic theory is not and should not be to unpack indigenous thought. On the contrary, a serious ethnographic gaze should imagine the representations of indigenous thinking directed at us, which would imply the possibility of transforming mainstream international law storylines on the basis of indigenous perspectives. This practice is what I term in this thesis, following the footsteps of Eduardo Viveiros de Castro, Roy Wagner, and Tim Ingold, *inverse legal anthropology.*[10]

In foregrounding the need to *indigenize legal anthropology* this thesis is constantly involved in a *double bind* position. For Spivak the *double bind* is a way to understand the elliptical shuttling between two subject positions that are entwined in a multi-tier social structure in which they can simultaneously oppose yet construct one another.[11] By following this twin-track approach, Aymara sociologist Silvia Rivera Cusicanqui, has *indigenized* this crucial reflection. Rivera has translated the Spivakian term *double bind* using the Aymara word *pä chuyma,*[12] which means to have the soul divided into two mandates impossible to fulfil.[13] Rivera has termed this *double bind* situation *ch'ixi epistemology*—a recognition of this fold and the capacity to live it creatively.[14] Consequently, *indigenizing* the *double bind,* the soul of this thesis—divided between indigenous jurisprudence and indigenous peoples in Western jurisprudence—is always

---

[9] Eslava, *Local Space, Global Life*, 25.

[10] Roy Wagner has founded a *reverse anthropology* in which 'the symbolization processes that generate the construction of meaning in culture are the same as those that anthropologist use to "invent" the cultures they study.' See Roy Wagner, *The Invention of Culture* (University of Chicago Press, 1981).

[11] Rahul K. Gairola, 'Occupy Education: An Interview with Gayatri Chakravorty Spivak' (8 January 2012), *Politics and Culture,* http://politicsandculture.org/2012/09/25/occupy-education-an-interview-with-gayatri-chakravorty-spivak/.

[12] *Pä Chuyma* is literally a double core. See Silvia Rivera Cusicanqui, *Sociología de la Imagen. Miradas Ch'ixi Desde la Historia Andina* (Tinta Limón Ediciones, 2015), 326. For all the details about this issue see chapter 4 where I have a conversation with Rivera about this crucial translation, 99-104.

[13] 'Contra el Colonialismo Interno: An interview with Silvia Rivera Cusicanqui' (March 2016), *Anfibia, Universidad Nacional de San Martín,* www.revistaanfibia.com/ensayo/contra-el-colonialismo-interno/

[14] Rivera Cusicanqui, *Sociología de la Imagen*, 326.

relational.[15]

Considering these preliminary notes as a starting point to develop an account of my method, my *double bind pä chuyma,* I turn to the main four methodological standpoints that underpin my proposal to 'build' and *inverse legal anthropology.* These four standpoints are as follows: First, an analysis of an Andean *double bind*; second, my reading of a deconstructive critique anchored in the Andean world; third, an ethnographic approach able to promote a dialogue between equals during the course of participant-observation engagements; and, fourth, an ethnographic practice to change our point of view about international law through indigenous peoples' imagination.

2.1 First Analytical Standpoint: Ch'ixi Epistemology—An Andean Double Bind

As mentioned above, the *ch'ixi epistemology* has the conversation between Spivak and Rivera as a backdrop for discussion; both have been exploring the concept of *double bind*, a philosophical and political practice where 'paradox' is the law,[16] which means that speaking of *double binds* constrains us to take into consideration both extremes or conflictive imperatives of the aporia. If we cannot ignore the imperatives in tension, the decision to be taken is not logical but experiential, and this is why the fieldwork practice has a philosophical dimension in itself. According to Spivak:

> When we find ourselves in the subject position of two determinate decisions, both right (or both wrongs), one of which cancels the other, we are in an aporia which by definition cannot be crossed, or a double bind. Yet it is not possible to remain in an aporia or a double bind. It is not a logical or philosophical problem like a contradiction, a dilemma, a paradox, an antinomy. It can only be described as an experience. It discloses itself in being crossed. For, as we know everyday, even by supposedly not deciding, one of those two right or wrong decisions gets taken, and the aporia or double bind remains. Again, it must be insisted that this *is* the condition of possibility of deciding.[17]

Rivera analyses the aporia present in the official *mestizaje* ideology in the Andean world. The term *mestizo* reminds us of the hybridization of ethnic groups that took place

[15] As seen in chapter 1, both indigenous jurisprudence and indigenous peoples in Western jurisprudence have their own legal *texts*, which complement and contradict each other at the same time.
[16] Geoffrey Bennington, *Jacques Derrida* (University of Chicago Press, 1993), 12.
[17] Spivak, *An Aesthetic Education,* 104.

throughout the conquest and colonization of the so-called 'new world' through the mix between European and indigenous peoples. Being mixed with the blood of a European progenitor and an indigenous mother, the subject position is determined by questions of identity and belonging. From a point of cultural scrutiny, it is a powerful symptom of colonial domination of the mother's indigenous people, who knows better than most, the damages suffered by the world of her ancestors. In this context, '[t]he rejection of the mixed child by the European father only increases the eagerness and determination of the *mestizo* to master and plant into new solid paternal Western tradition'.[18]

According to Rivera, it is a Manichean operation in which the nature of the mixture is bypassed in order to assume the European background as dominant, that is, a process of 'whitening' that denies the possibility of undertaking the reverse process.[19] Indeed, the logic of a *mestizo international law* and the *creole legal consciousness*, that take into consideration the voices of the lawyers of the global south that narrate the historical record of the international legal order presented in chapter 1,[20] follows the same process of 'whitening' of what Rivera is criticizing. This narrative fully reflects that developments of the international legal theory are not only European; nevertheless, more of their terminology belongs to the *Western Rule of Law* tradition. In this way, an *inverse legal anthropology* seeks to *indigenize international law* by considering indigenous vocabularies, as well as approaching international law in anthropological terms.

The *ch'ixi epistemology* has appeared in the mature work of Rivera, when she ascertained what Derrida has characterized as a *théorie distraite*; namely, the discovery of a common epistemological motif in a compendium of articles collected in one of his books.[21] A distracted theory is a '(poor but accurate translation of the double bind). Following the rule of "In literary criticism, when you look for something, you find it"',[22] and as a matter of fact, Rivera found her epistemology when she did not yet know

[18] Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842-1933* (Cambridge University Press, 2015), 22-23.
[19] Silvia Rivera Cusicanqui, *Un Mundo Ch'ixi es Posible. Ensayos desde un Presente en Crisis* (Tinta Limón Ediciones, 2018), 70.
[20] See chapter 1, 25-26.
[21] Jacques Derrida, *Psyché* (Galilée, 1987), 9.
[22] Spivak, *An Aesthetic Education,* ix.

the name of her discovery, i.e., when she used to say 'that rare mixture that we are'.[23] Thus, this epistemology, conceived as a political, philosophical, and aesthetic proposal to decolonise the official *mestizaje* policies, which in this particular setting, implies the problematization of the idea of synthesising either the best or the worse of the conflictive poles in order to remark that such colonial contradiction has not been resolved. Consequently, methodologically speaking, an *inverse anthropological process* values the option to look at the indigenous subject as an affirmative possibility of the *double bind pä chuyma,* which is to say, the reaffirmation of the desire to be most indigenous instead of the *mestizo* eagerness to embrace the 'European dream'.

The Aymara word *ch'ixi* has a polysemous character. It designates a grey tonality, a colour which by the effect of the distance looks grey, but when approached, we also realize that it is comprised of pure and agonic dots of colour interspersed with white and black spots.[24] 'The notion of *ch'ixi,* like many others (*allqa, ayni*), reflects the Aymara idea of something that is and is not at the same time. It is the logic of the included third. A *ch'ixi* colour grey is white but is not white at the same time; it is both white and its opposite, black'.[25] The trajectory of the *double bind*, in this context, has at one of its ends the *pä chuyma culture* of the *whitening mestizo*. Theoretically speaking, this extreme rests on the concept of hybridity, which is an inherited incarnation of infertility.[26] Even though, the process of hybridization envisages the 'procreation' of an entirely new being, 'a third race or social group with the capacity to merge the features of its ancestors in a harmonic and as yet unknown blend'.[27]

The *whitening mestizo* pole of the *double bind pä chuyma* does not offer the possibility of reconciliation as does Spivak's radical alterity. In fact, here the contradiction cannot be resolved. It coincides, in this way, with the dark atmosphere projected in the exhibition *Double Bind & Around*, which displays the work of the Spanish artist Juan Muñoz, based on the creation of a sense of disorientation in the viewer. Curated in 2001

[23] Rivera Cusicanqui, *Un Mundo Ch'ixi es Posible,* 58. See also 'La Pérdida del Alma Colectiva', (2012) 2 (5) *El Colectivo*; 'Pensando desde el Nayrapacha: Una Reflexión sobre los Lenguajes Simbólicos como Práctica Teórica' (2010) 9, *Pensares y Quehaceres.*
[24] Ibid., 59.
[25] Silvia Rivera Cusicanqui, 'Ch'ixinakax Utxiwa: A Reflection on the Practices and Discourses of Decolonization', (2012) 111 (1) *The South Atlantic Quarterly,* 105.
[26] See Néstor García Canclini, *Hybrid Cultures: Strategies for Entering and Leaving Modernity* (University of Minnesota Press, 1995).
[27] Rivera Cusicanqui, 'Ch'ixinakax Utxiwa', 98-105.

for the Turbine Hall in Tate Modern, London, by Vicente Todolí, the exposition reflects Muñoz's engagement with the work of T.S. Eliot[28] and his exploration of the psychological tensions of the modern world. In his installation *The Wasteland* (see Figure 2.1), a ventriloquist's dummy takes the place of a 'human figure' in order to recreate the *double bind* between reality and illusion that is crucial in the exhibition. As occurs in *mestizo culture,* a double-poled being unable to speak 'a language with a homeland,' as Rivera used to say remembering the memory of Gamaliel Churata,[29] is depicted in the setting following the agency of an alienating condition:

> Muñoz plays with spatial coordinates and illusory expedients to induce consideration of the exhibition space, the presence of the viewer and the distance between the viewer and the dummy, thereby creating a psychological tension between the two. Whereas on the one hand the viewer is attracted by the optical design of the floor, on the other the presence of the figure creates an alienating condition that emphasizes the distance between the viewer and the object.[30]

Figure 2.1 *The Wasteland,* Juan Muñoz (1986). Bronze, linoleum and steel; variable dimensions.
Photo by Peter Cox. Juan Muñoz, *Double Bind & Around* (Hangar Bicocca, 2015).

The *ch'ixi epistemology* was born precisely to tackle the negativity of the *mestizo culture* by working towards the contradiction. In that sense, it is not looking for a cultural synthesis but for an 'in-between-culture' that is indigenous but is not *mestizo* at the same time; it is both mestizo and its opposite, indigenous. It is a conception that resonates with the reverberating energy of the so-called *baroque mestizo,* a trend in the humanities seeking for a world of their own founded on the capacity to creatively resist

[28] See especially T.S. Eliot, *The Waste Land and Other Poems* (A Signet Classic, 1998).
[29] See Gamaliel Churata, *El Pez de Oro* (Editorial Canata, 1957), 14.
[30] Juan Muñoz, *Double Bind & Around* (Hangar Bicocca, 2015), 18.

and reappropriate colonial impositions, which is present in the sociology of René Zavaleta,[31] the philosophical work of Bolívar Echeverría,[32] the literary trajectory of José Lezama Lima,[33] and the artistic creation of Gustavo Buntinx. 'The notion of *ch'ixi,* amounts to [a] 'motley' [abigarrada] society and expresses the parallel coexistence of multiple cultural differences that do not extinguish but instead antagonize and complement each other. Each one reproduces itself from the depths of the past and relates to others in a contentious way'.[34]

This 'in-between-culture' is located in Aymara thought in various forms of an intermediate space that open political and aesthetic possibilities to overcome the *whitening mestizo* pole of the aporia. The Aymara word *taypi* meaning 'contact zone', brings the possibility of thinking the *double bind* in terms of energising the opposites; nevertheless, as follows from what I am saying, it is not a romantic balancing but a contentious and belligerent relationship,[35] a *pharmakon,* which is cure and poison at the same time.[36] These contact-zones spread evenly through the length and breadth of the Andean world, where older and newer expressions of the *baroque mestizo* account for a motley society. The Peruvian art historian, critic, and curator Gustavo Buntinx has explored how this 'variegation' expresses itself in Andean popular culture, a social setting that allows the crafting of knowledge through mythologies, performance, and rituality as portrayed in the advertising poster of the recital conference that accompanied the exhibition *Micro-Museum: The Impure and the Contaminated* (see Figure 2.2).

This isn't only the colourful environment of the *ch'ixi world* but also the pattern of an *inverse legal anthropology* that takes indigenous knowledge seriously. And it does so by unveiling the epistemological richness of indigenous legal theory and, consequently, the significance of aboriginal narratives to address the colonial role played by Western legal tradition in dismantling indigenous jurisdictions; moreover, by working with Western and indigenous sources based on a relationship of epistemological parity; and, finally, by remarking on the contentious character of colonial encounters and the

[31] See René Zavaleta Mercado, *Obra Completa,* in Mauricio Souza Crespo ed. (Plural Editores, 2013).
[32] See Bolívar Echeverría, *La Modernidad de lo Barroco* (Era, 2000).
[33] See José Lezama Lima, *La Expresión Americana* (Alianza Editorial, 1969).
[34] Rivera Cusicanqui, 'Ch'ixinakax Utxiwa', 105.
[35] Rivera Cusicanqui, *Un Mundo Ch'ixi es Posible,* 39.
[36] See Jacques Derrida, *Dissemination* (Bloomsbury, 2013).

political dimension of resistance that has been displayed by indigenous subjects, communities, and nations throughout their history.

Figure 2.2 *Sarita Iluminada,* Gustavo Buntinx and Susana Torres (1992). Screen-print on paper. Printing by Feliciano Mallqui.
Gustavo Buntinx, *Micro-museum: The Impure and the Contaminated* (Al fondo hay sitio, 1992).

2.2 Second Analytical Standpoint: Deconstruction from the South

In order to propose a dialogue that may produce the interlocution of different philosophical traditions as equals, this thesis claims that the world is populated by a *plurality of philosophical languages.* In so doing, I take the work of Bruno Mazzoldi—Italian thinker who consolidated his work in Nariño (an Andean department in the Colombian south) and Derrida's translator into Spanish—as a starting point in that direction. Mazzoldi has directly responded to the question of whether there is a Latin American philosophy echoing in indigenous peoples' languages: 'Not only one but many. Here and anywhere, more than a philosophy it is worth talking about a *plurality of philosophical languages*'. [37] Using such a perspective, Mazzoldi mentions that in Andean Quichua, a language that belongs to the Quechua family and which was the South American lingua franca before the Spanish conquest of the Inca world, a 'philosopher' is a *huakaki*—while *huaka* means the 'unusual/beautiful/sacred', the

[37] Bruno Mazzoldi, 'La Prueba del Culo: ¿Existe una Filosofía Latinoamericana?', *Henciclopedia,* http://www.henciclopedia.org.uy/autores/Mazzoldi/PruebaCulo.htm

‘cavern’, the ‘burial’, the ‘sepulchre’ and the ‘monstrosity’, the ‘thief’, the ‘madman’. [38] This attempt at philosophical translation reminds us of the example of Babel which so fascinated Derrida. [39] The book of Genesis relates the story of the tribe of the Shem who ‘wanted to make a name for itself by building a tower and imposing its language alone on all the peoples of the earth’. [40] To punish the ambition of the Shem people, Yahweh destroyed the tower and imposed linguistic differentiation on earth. It turned out in the end to be a valuable gift, which supposed ‘both the necessity and the impossibility of translation’.[41]

Since then, tribes and languages have been dispersed and confused. Nevertheless, as Mazzoldi’s example shows, ‘[a]s absolute confusion is unthinkable, just as is absolute understanding, the text is by definition “situated” in this milieu, and thus every text calls for a translation which will never be finished’. [42] In this sense, Mazzoldi points out that the negation of indigenous philosophers and *texts*,[43] in this particular case, those *huakikuna* of Quichua-speaking regions, can be as abusive as denying the value of indigenous concepts. It also restricts the possibility of having a one-on-one dialogue between different philosophical traditions. There is probably no better way to translate the word deconstruction than to do so as a *plurality of philosophical languages* following Mazzoldi’s endeavour, or by means of *more than one language* according to Derrida himself. Thus, the activity of the philosopher as well as the work of the *huakakikuna* would be neither totally untranslatable nor fully translatable: ‘condemned not to total incomprehension, but to a work of translation which will never be accomplished’. [44]

[38] Mazzoldi’s attempt is guided by Glauco Torres’ translation of the Spanish term philosopher (filósofo) into Quichua. See, Glauco Torres Fernandez de Córdoba, *Diccionario Kichua – Castellano, Yurakshimi – Runashimi* (Casa de la Cultura Ecuatoriana, 1982).

[39] See especially, Jacques Derrida, *Acts of Literature,* in Derek Attridge ed (Routledge, 1992), 268; *The Ear of the Other. Otobiography, Transference, Translation,* ed. Christie V. McDonald (Schocken Books, 1985), 98-110; *Derrida and Joyce. Texts and Contexts,* eds. Andrew J. Mitchell and Sam Slote (State University of New York Press, 2013), 22-40.

[40] Bennington, *Jacques Derrida,* 175.

[41] Ibid.

[42] Ibid.

[43] See chapter 1, 17-25.

[44] Bennington, *Jacques Derrida,* 175.

Mazzoldi, who has held a friendly dialogue with Derrida since the seventies,[45] and one of his most assiduous readers in Latin America, has developed an insightful reading of the Franco-Algerian philosopher located in the time and space of the Andean and Amazonian regions.[46] Remarkably, he has found resonances between the thought of Derrida and indigenous thinkers such as Quintín Lame—a Colombian radical indigenous leader of the first half of the twenty-century, whose life and work will be analyzed in chapter 5 of this thesis. During his residence in southern Colombia, Mazzoldi found inspiration in the Andean world to promote a deconstructive agenda based on popular traditions. Furthermore, Mazzoldi, as *huakaki*, has incorporated Quichua, an indigenous language that continues to be spoken in Colombia and Ecuador, within his writings, as well as the voices of the indigenous leaders he has encountered.

Connecting indigenous philosophical conceptions of the world with some of the most suggestive ideas of deconstructive practices, Mazzoldi proposes reading Derrida vis-à-vis indigenous knowledge.[47] From his reading of Derrida, there are at least three philosophical and anthropological endeavors encapsulated in his extensive work that are crucial to connect the *inverse legal anthropology* with which the indigenous world is able to transform the *mestizo culture* (following in the footsteps of the *ch'ixi epistemology*) with the proposal that leads to the *indigenization* of the Western Rule of Law that is crucial for this thesis. First, the capability of understanding indigenous knowledge as knowledge, challenging Eurocentric thought that continues to label indigenous cosmologies and systems of justice as 'folklore'.[48] Yet, the possibility of overcoming the violence of this unjust judgment by those who do not understand 'our language,' rests on the recognition of the singularity of the idioms. According to Derrida:

---

[45] See especially Bruno Mazzoldi and Freddy Tellez, *La Entrevista de Bolsillo. Jacques Derrida responde a Bruno Mazzoldi y Freddy Téllez* (Siglo del Hombre Editores, 2005); or its abridged version 'The Pocket-Size Interview with Jacques Derrida', (2007) 33 (2) *Critical Inquiry,* 362-388; Mazzoldi, *Jackie Derrida. Retrato de Memoría* (Siglo del Hombre Editores, 2007).

[46] In the same way see the remarkable work of Juan Duchesne Winter, 'Derrida y el Pensamiento Amazónico (La Bestia y el Soberano/El Jaguar y el Chamán) in Javier Tobar ed., *Derrida desde el Sur. La Universidad del Monte o el Pensamiento sin Claustro* (Universidad del Cauca), 33-51.

[47] See Bruno Mazzoldi, *A Veces Derrida. Derrida desde las Indias – Antropología y Desconstrucción – El Silencio de los Dátiles – Bordes de la Plegaria – Golosa* (Universidad Externado de Colombia, 2013).

[48] See especially Bruno Mazzoldi, 'Fractio Libri: Una Introducción a la Lectura Mágica', in Tobar ed., *Derrida desde el Sur*, 99-126.

> The violence of this injustice that consists of judging those who do not understand the idiom in which one claims, as one says in French, that '*justice est faite,'* ('justice is done,' 'made') is not just any violence, any injustice. This injustice supposes that the other, the victim of the language's injustice is capable of a language in general, is a man as a speaking animal, in the sense that we, men, give to this word, language. Moreover, there was a time, not long ago and not yet over, in which 'we, men' meant 'we adult white male Europeans, carnivorous and capable of sacrifice.[49]

Second, Mazzoldi has related the existence of a plurality of philosophical languages to the possibility of inventing new concepts through interaction between Western and indigenous languages. The reading of Derrida vis-à-vis José María Arguedas has made this endeavor possible.[50] Indeed, Arguedas invented a language for his novels in which the Quechua[51] syntax joined the Spanish: 'He succeeded in instilling into his Spanish the sentence structure, the rhythm, and even some vocabulary of the Andean people'. [52] In so doing, Arguedas has *indigenized* the Spanish he used showing the fertility of indigenous concepts. It was precisely by following in Arguedas' footsteps that I came up with the idea of conducting an *inverse legal anthropology* aiming to decompile the trajectory by which Western jurisprudence have 'crafted' legal doctrines and jurisprudential concepts in relation to indigenous rights, assigning to indigenous laws, and to the very existence of indigenous peoples, an apparent Western essence and look.[53]

Specifically, the inspiration comes from the image projected by the novel *Yawar Fiesta* that is also the name of a complex bullfighting ceremony in which the bull, introduced by the Spanish conquistadors, dies 'into the hands' of a condor, a sacred Andean animal (see Figure 2.3).[54] The tying of a condor to the back of the bull connotes the violence of colonization as well as the struggle and victory of indigenous peoples. The party comes when the condor, epitomizing the resistance of indigenous communities, triumphs over

[49] Jacques Derrida, 'Force of Law: The 'Mystical Foundation of Authority', (1989-1990) 11 *Cardozo Law Review,* 951.
[50] Mazzoldi, *A Veces Derrida.*
[51] 'Quechua is [an indigenous language] spoken by millions of people in the five countries located in the Andes. There are al least as many Quechua speakers in the world as there are people speaking Swedish.' John V. Murra, 'Introduction' in José María Arguedas, *Deep Rivers* (Waveland Press, 2002), x.
[52] Frances Horning Barraclough, 'Translator's Note' in Arguedas, Ibid.
[53] For my proposal to indigenize international law see chapter 1.
[54] Although the image of the ceremony as such does not appear in the novel, it is key to analysing the Indian and Spanish heritage and the complexity of their relationship. See especially José María Arguedas, *Yawar Fiesta* (Waveland Press, 1985).

the bull, embodying the colonizer and plunderer.[55] In this thesis, the tension between indigenous laws and the 'everywhereness' embedded in the laws of the colonizer is a permanent struggle between indigenous resistance and post-colonial domination. However, as is the case in the *Yawar Fiesta,* the living laws of indigenous peoples will be able to *indigenize* state-centric and international laws.

Finally, drawing on Andean and Amazonian ontologies where indigenous peoples interact with other animal and plant species as human persons, Mazzoldi critiques the most dominant philosophical traditions where animals have been treated as spiritually dead objects. In Andean and Amazonian ontologies, the only difference between animal and plants species and human 'humans' lies in their bodies. 'In effect, nonhumans regard themselves as humans, and view both human 'humans' and other non-humans as animals, either predator or prey, since predation is the basic mode of relation.'[56] Outstandingly, the ontological trend by which indigenous peoples at large conceive the relationship between humanity—animality appears throughout Derrida's work.[57] In various passages of *Force of Law*—sadly forgotten by most commentators—Derrida has criticized the anthropocentrism that has been at the core of the reflections on the just and unjust within Western philosophy: 'In the space in which I am situating these remarks or reconstituting this discourse one would not speak of injustice or violence toward an animal, even less toward a vegetable or a stone. An animal can be made to suffer, but we will never say, in a sense considered proper, that it is a wronged subject […].'[58]

[55] Here, I must declare that I am antitaurine and, in that sense, the *Yawar Fiesta* image is essentially pedagogic.
[56] Eduardo Viveiros de Castro, *Cannibal Metaphysics* (University of Minnesota Press, Univocal, 2014), 12.
[57] Derrida himself has offered the genealogy of this epistemological path '[…] Rather than developing that fabulous bestiary, I gave myself a horde of animals, within the forest of my own signs and the memoirs of my memory. I was no doubt always thinking about such a company, well before the visitation of the innumerable critters that now overpopulate my texts […]' See the lineage in Jacques Derrida, *The Animal that Therefore I am* (Fordham University Press, 2008), 37-38.
[58] Derrida, 'Force of Law', 951.

Figure 2.3 'A condor was paraded through Coyllurqui, Perú, during the Yawar Fiesta.' (10 August 2013).
Courtesy of The New York Times. Photo by Tomas Manita.

By the same token, *The Animal that Therefore I am,* collects key philosophical cogitations ranging from Bentham's decisive question about animals: 'Can they suffer?' to Kafka's vast zoopoetics; and of course, the well known episode when Montaigne makes fun of 'man's impudence' regarding his capacity to allocate or refuse specific faculties to the 'beasts'.[59] In this context, Mazzoldi points out that in indigenous cosmologies the experience of being goes far beyond the human world. This is the same criticism that Derrida has posed to Heidegger[60] with a singular intense echo:

> 'avoid' the word 'spirit,' at the very least place it in quotations marks, then cross through all the names referring to the world whenever one is speaking of something which, like the animal, has no *Dasein,* and therefore no or only a little world, then place the world 'Being' everywhere under a cross, and finally cross through without a cross all the questions of language, i.e., indirectly, or everything, etc.[61]

[59] Derrida, *The Animal that Therefore I am,* 6.
[60] This criticism has been at the heart of Derrida's intellectual trajectory. See, among others, Jacques Derrida, 'Heidegger's Hand (*Geschlecht* II)' in John Sallis ed., *Deconstruction and Philosophy: The Texts of Jacques Derrida* (University of Chicago Press, 1987), 161-196; *Of Spirit: Heidegger and the Question* (University of Chicago Press, 1989); 'Heidegger's Hear: Philopolemology (*Geschlecht* IV) in John Sallis ed., *Reading Heidegger* (Indiana University Press, 1993), 163-218.
[61] Derrida, *The Animal that Therefore I am,* 38-39.

These reflections are essential in the topic of indigenous jurisdictions where, as in the Amazonian and Andean cases, among others, humans and non-humans share collections of material and behavioural properties interacting as living beings in everyday life. I turn now to the way in which I tackle the *double bind* of the *indigenization* of legal anthropology.

2.3 Third Analytical Standpoint: The Double Bind of the Indigenization of Legal Anthropology

By appropriating and reappropriating the idea of *indigenizing* the *whitening mestizo* culture as well as promoting a dialogue with indigenous philosophical traditions in a world populated with a plurality of philosophical languages, my focus in this thesis is essentially ethnographic. Ethnographic meaning according to what I have said here to radically problematize the so-called 'human right of interlocution' within the participant observation process that results from the legal anthropological exercise. It is not a matter of condemning the 'anthropological game' as a result of the reification of the native's subjectivity—'the litany is well known'.[62] It is very much the opposite to the extent that the ethnographic procedures depart from the very beginning recognizing the native's condition as a 'subject', the ethnographer has usually failed to see the native 'as an other subject, as a figure of Another who, prior to being a subject or object, is the expression of a possible world'.[63] Indeed, *de facto* equality is here the bedrock in which *de jure* advantage rests. The legal ethnographer is too familiar with the laws of the native before the game even starts, she is the architect of the native's legal theory and the geographer that projects the kaleidoscope of their systems of justice. In order to grasp what ethnography means in this context it is important to stress the understanding of a serious anthropological cogitation, as Viveiros would say:

> The authentic animist is the anthropologist, and participant observation is the true (meaning false) primitive participation. Consequently the problem does not reside in seeing the native as an object, nor does the solution reside in casting him as a subject. That the native is a subject is beyond doubt; but what the native forces the anthropologist to cast into doubt is precisely what a subject could be—such is the properly anthropological 'cogitation.' It alone allows anthropology to assume the virtual presence of Another as its condition, indeed precondition, and which determines the derivative and vicarious position of subject and object.[64]

---

[62] Eduardo Viveiros de Castro, *The Relative Native. Essays on Indigenous Conceptual Worlds* (HAU Books, 2015), 46.
[63] Ibid., 47.
[64] Ibid.

Responding to an inquiry commissioned by the Economic and Social Research Council (UK) into future opportunities for the social sciences in our century, professor Tim Ingold, chair in social anthropology at the University of Aberdeen, elaborated four theses to explore 'how anthropology is *likely* to move' as well as how he would *like* it to move beyond this typical ethnographic approach.[65] The importance of looking at the humanities and the natural sciences as complementary fields of inquiry supported in the first two theses[66] was followed by two ethnographic theses that are fundamental for the problematization of the participant observation process which we have been discussing here. According to thesis 3, *anthropology deals, in the first place, not with entities and events, but with relations and processes*. In that regard, the intended holistic aspirations of anthropology should be taken beyond the 'approach that focuses on "wholes"—conceived as total societies or cultures—as opposed to their parts or members, individual human beings'.[67] This ethnographic procedure represents relations and processes outside of the real world where people experience their daily life. For its part, thesis 4 sustains that *anthropology is not the study by Westerners of the non-Western 'other'. For in anthropology we study ourselves.* Ingold's point here is to expand the Western conceptual borders of the question of who 'we' are into a radical diversification of a global 'we'. In fieldwork, we are disciples and interlocutors of people who, through their practical experience and knowledge, 'can help us to reach a deeper and richer understanding of the human predicament'.[68] This predicament has been the object of philosophical speculation for centuries; nevertheless, philosophers rarely solicit the help of ordinary people to advance in their appraisal. In this thesis, following Ingold's definition, 'anthropology is a kind of philosophy too, but is not so exclusive. There are, of course, as many definitions of anthropology as there are anthropologists, but my own is as follows: *Anthropology is philosophy with people in*'.[69]

[65] See Tim Ingold, 'Editorial', (1992) 27 (4) *Man, New Series,* 693.

[66] 'Thesis 1. The task of anthropology is to help dismantle the intellectual barriers that currently separate the humanities from natural science.' 'Thesis 2. Social/cultural anthropology, biological anthropology and archaeology form a necessary unity.' Ibid., 693-694.

[67] Ibid., 695.

[68] Ibid., 695-696.

[69] Ibid.

To be precise, the point of view defended in this thesis and exemplified in Viveiros' work[70] seeks to problematize the relationship between the points of view of indigenous peoples and of legal anthropologists. The issue is, in fact, one of *double dislocation*: when the question of whether the object of legal anthropology ought to be the indigenous point of view, the response must be both 'yes' and 'no'. As Viveiros put it:

> "Yes" (certainly!) because my problem [is related to]… what concept of point of view do [indigenous] cultures enunciate—what is the native point of view on the point of view? The answer is "no," on the other hand, because the native concept of a point of view does not coincide with the concept of the "native's of point of view." After all, my point of view cannot be the native's own, but only that of my relation with it. This involves an essentially *fictional* dimension, since it implies making two entirely heterogeneous points of view resonate with each other.[71]

Considering that my ethnographic exercise for this thesis has implied interlocution between different indigenous communities of the Andean region, as we shall see in detail in chapters 4 to 6, the *fictional* dimension mentioned by Viveiros here referring to 'a manner of experiencing for oneself an other's form of thought'[72] is controlled by the experience of conducting a fieldwork exercise. The 'thought experiment' is no longer the ethnographic idea 'to think oneself into another form of experience […] It is not a matter of imagining a form of experience, if you like, but of experiencing a form of imagination'.[73] Again, this feature is very much consonant with the experimentation of Viveiros' work in which it is possible to find a practice of anthropological fiction rigorously connected in any case with the production of non-fictional anthropology.[74] This is the third methodological standpoint of this thesis, which chooses to view indigenous peoples in international law through the anthropological dilemma of learning how to learn from below. The *double bind* here is an elliptical shuttling between international law and indigenous jurisprudence.[75] Yet, as Viveiros has argued, '[t]he only rightful claim to originality belongs to the indigenous point of view itself, and not to my commentary on it'.[76]

---

[70] See especially, Eduardo Viveiros de Castro, 'Cosmological Deixis and Amerindian Perspectivism', (1998) 4 (3) *Journal of the Royal Anthropological Institute,* 469-488.
[71] Viveiros, *The Relative Native,* 16.
[72] Ibid., 17.
[73] Ibid.
[74] See Viveiros de Castro, *Cannibal Metaphysics*.
[75] 'Thus the invention of cultures, and of culture in general, often begins with the invention of one particular culture, and this, by the process of invention, both is and is not the inventor's own.' Wagner, *The Invention of Culture*, 9.
[76] Viveiros, *The Relative Native,* 16.

2.4 Fourth Analytical Standpoint: An Anthropological Double Bind—resistance-oriented ethnography

As mentioned in chapter 1, a major aspect of my argument is acknowledging the power of indigenous thinking to transform the way in which 'we' understand the discourses of indigenous peoples in international law. In so doing, I follow the ethnographic theory of culture proposed by Roy Wagner in his monumental study *The Invention of Culture.* The theory of the Melanesianist is radical since it leads to the kind of *inverse legal anthropology* that I describe here. Rather than assigning to anthropology the task of discerning indigenous thought, an anthropologically oriented study should envision indigenous thinking directed at us.[77] As explained in the first part of this chapter, in line with my idea of *indigenizing international law*, it would entail the challenge of varying conventional international law narratives by approaching them through the lenses of indigenous jurisprudences. By crafting an *inverse anthropological trope*, the ghost of the *double bind* always haunts me: I am antagonizing the relativity of my own culture and my engagement with Western international law through my engagement with indigenous cosmologies in order to recognize and establish the contours of another type of law.[78]

Culture 'in this sense draws an invisible equal sign between the knower (who comes to know himself) and the known (who are a community of knowers)'.[79] It is only by coming into contact with the 'Other' that the fieldworker becomes aware of her culture, as prior to such 'initiation' the subject's culture is hidden and implausible. 'Our culture' is common sense. It is only in the theatrical dream of creating another culture through which the ethnographer reinvents the notion of culture itself. In this sense, the classic

[77] See Eduardo Viveiros de Castro, *La Mirada del Jaguar. Introducción al Perspectivismo Amerindio. Entrevistas* (Tinta Limón Ediciones, 2013), 271.
[78] As can be seen in chapters 5 and 6, by following the work of Juan Duchesne Winter, the *inverse legal anthropology* I'm talking about has two main characteristics. First, it implies the possibility to allow 'ourselves' to be attracted by the laws of other cultures. And, second, it is gradual, which means that it is not an attempt to turn international legal standards into indigenous cosmologies but mainly an effort to shorten the gap between international law and indigenous jurisprudence by listening indigenous law as law.
[79] Wagner, *The Invention of Culture,* 4.

form of the principle of 'going native' is not only unprofitable but also unimaginative as it closes the doors of a telling relation (and imaginative) of cultures. As Wagner puts it:

> It is naive to suggest that going native is the only way to really 'learn' another culture, since this would necessitate giving up one's own. Thus, since every effort to know another culture must at least begin with an act of invention, the would-be native could only enter a world of his own creation, like a schizophrenic or that apocryphal Chinese painter who, pursued by creditors, painted a goose on the wall, mounted it, and flew away![80]

Wagner has explained the representation of another culture making an analogy between fieldwork and painting through a stunning presentation of the work of the Flemish painter Peter Bruegel the Elder (c.1525 – 1569). In both cases, there is an attempt to project the subject in the limelight, however, this performance is not self-conscious; indeed, the capability of full manipulation 'excludes that kind of extension or self-transformation that we call "learning" or "expression."'[81] The formulation, which is key for the methodological program proposed in this thesis, is the following: the subjects of study in the arts and social sciences 'can be seen as "controls" on the creation of our culture'.[82] That is to say, that it is people who shape their culture and not the other way around; indeed, the meanings of the symbolic world are constantly changed by the conventions of daily life. The oeuvre of Bruegel, fully engaged with the man and his life styles, can be considered a truly *double-sided* ethnographic work. Drawing on the uncanny control over the 'look' and 'feel' of familiar objects in the works of the early masters of the Flemish school (Jan van Eyck, Rogier van der Weyden and Hans Memlinc), Bruegel aimed to retain the force of the allegory of early realism but tempered the details with caricature. 'Much more than [Hieronymus] Bosch, who generally relied on the fantastic, the caricature and symbolic irony of Bruegel's works is achieved through the detailed portrayal of Flemish peasants and their folkways',[83] such is the case of *the Netherlandish Proverbs* (see Figure 2.4.) and *The Fight between Carnival and Lent (*see Figure 2.5).

[80] Ibid., 9.
[81] Ibid., 11.
[82] Ibid., 12.
[83] Ibid., 13.

Figure 2.4 *The Netherlandish Proverbs,* Peter Bruegel the Elder (1559). Gemäldegalerie, Berlin. Courtesy of Wikimedia Commons

In these types of works, Bruegel a true 'anthropologist', is not only performing the practice of long observation but also orienting the creation of culture in terms of the manufacture of concepts through practices of learning. Bruegel was captivated by the peasants' daily life and was thus able to narrate a sophisticated history of sixteenth century life. Moreover, Bruegel was obsessed with proverb and allegory—a symptom of his artistic penetration of the folkways. Indeed, his 'ethnographic work' circulates between the powerful metaphors of proverbs (certainly a core part of the folk wisdom of the peasantry) and the creation of an everyday culture portrayed throughout the humanization of customs and traditions of simple people. 'Allegory came to be the form in which the meaning of Bruegel's pictures was imparted, and intended. Like the anthropologist, his invention of familiar ideas and themes in an exotic medium produced an automatic analogic extension of his world'.[84]

Likewise, with this methodological standpoint I am proposing a *legal anthropology of inverse translation*,[85] what Viveiros calls *perspectivism*, which is indeed an

[84] Ibid., 14.

[85] 'Translator, traitor, as the Italian saying goes; but what happens if the translator decides to betray her own language? What would ensue if, dissatisfied with the mere passive or the *de facto* equality between the subjects involved, we were to claim an active or *de jure* equality between the discourses themselves?' Viveiros, *The Relative Native,* 44-45.

anthropological recognition of the plurality of philosophical languages that populate the world. *Perspectivism*, in this way, is different from translation because it changes the notion that translation is forever associated with betraying a language: 'I should betray Spanish to be able to translate it into English'. As a matter of fact, it is possible to think the opposite way: To translate Spanish properly, I should betray English because through its modification it would receive those characteristics that only Spanish has.[86] The same applies to Bruegel's work where the thrust of interpretation exceeds the 'mere translation'; indeed, allegory is in everyday life in the same way that everyday life is an allegory. Bruegel's anthropological concepts are completely relational as well as relative. They are not the incarnation of the peasants' culture ('the positivist dream'), nor a misleading prognosis of the painter's culture ('the constructionist nightmare'). Ethnography in this way, is an introspective exercise aiming at setting up 'its own operations and capabilities; it would develop the relationship between technique and subject matter into a means of drawing self-knowledge from the understanding of others, and vice versa'.[87] Thus, the use of methodologies and heuristic tools of our own culture should not be seen as an impediment to approach other thoughts and categorizations; on the contrary, 'good ethnographers' extend their knowledge to seek out new territories.

If we continue to move in a perspectivist approach, allegory and everyday similar to my viewpoint and the perspective of my interlocutors in the field are always relative. According to Viveiros:

> [A] certain relation of intelligibility *between* two cultures; a relation that produces the two cultures in question by back projection, so to speak, as the 'motivation' of the anthropological concepts. As such, anthropological concepts perform a double dislocation: they are vectors that always point in the other direction, transcontextual interfaces that function to represent, in the diplomatic sense of the term, the other in one's own terms (that is, in the other's own terms)—both ways.[88]

[86] I borrow the idea from Viveiros, *La Mirada del Jaguar,* 273.
[87] Wagner, *The Invention of Culture,* 16.
[88] Viveiros, *The Relative Native,* 20.

Figure 2.5 *The Fight between Carnival and Lent,* Peter Bruegel the Elder (1559). Kunsthistorisches Museum, Vienna.
Courtesy of Wikimedia Commons

This methodological standpoint, following an *inverse legal anthropological* logic, prompts the following questions.[89] What would happen if the legal ethnographer 'loses the strategic advantage of explaining and interpreting, translating and introducing, textualizing and contextualizing, justifying and signifying' the meaning of indigenous jurisprudence? What if indigenous jurisprudences were to function within the framework of indigenous peoples in international law in a way that produced an interaction of knowledge between them? And most importantly, what might occur if the indigenous legal systems were to be allowed to modify the legal systems of nation states and those that configured the international legal order by *indigenizing international law* from an *inverse legal anthropology*?

2.5 Conclusions

In this chapter I have presented the four main methodological standpoints that underpin my proposal to 'build' an *inverse legal anthropology* through the political and philosophical exploration of the *double bind*. The *double bind*—organised around the interaction between indigenous and non-indigenous imaginaries—is always relational

[89] Using the expression by Viveiros to redirect quotes and paragraphs coming from his readings, I should say that I have *cannibalized* his questions. Ibid., 6 – 20-21.

and criticises the tendency to assume the Western background as dominant. Instead, the chapter opened the door to the possibility of undertaking a *reverse anthropological process*, that is, the idea of *indigenizing* the roots of the Western Rule of Law in general, and of international law in particular.

In undertaking this *inverse process*, I suggested a dialogue that may produce the interlocution of different schools of thought based on an epistemological parity. To begin with, from a philosophical point of view and drawing on Derrida and Mazzoldi, I claimed that the world is populated by a multiplicity of philosophies and that, consequently, the best way to translate the word *deconstruction* is by means of a *plurality of philosophical languages*. At a second stage, from an anthropological point of view, my focus was ethnographic. In this regard, I emphasised the need to fully acknowledge that the ethnographer has usually placed herself above the 'natives', ignoring not only their personhood but also their philosophical and legal imagination.

In this context and following a series of calls made by a range of legal ethnographers, I accepted the 'methodological invitation' to participate in the establishment of a field of research devoted to the study of the anthropological dimensions of international law. In so doing, I emphasise that when dealing with indigenous issues, the ethnographic process should not just focus on mainstream international law narratives but mainly on what indigenous peoples can say about them. In that sense, I claimed that in studying indigenous legal systems the main concern of ethnographic theory is not to make an 'interpretation' of indigenous thought. By contrast, a 'thoughtful' ethnographic gaze should potentiate changes in our own perception with the help of indigenous thinking. This practice is what I have termed in this chapter, *inverse legal anthropology*, indeed, the methodology that underpins my proposal to *indigenize international law.*

A Klee painting named 'Angelus Novus' shows an angel looking as though he is about to move away from something he is fixedly contemplating. His eyes are staring, his mouth is open, his wings are spread. This is how one pictures the angel of history. His face is turned toward the past. Where we perceive a chain of events, he sees one single catastrophe which keeps piling wreckage and hurls it in front of his feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing in from Paradise; it has got caught in his wings with such a violence that the angel can no longer close them. The storm irresistibly propels him into the future to which his back is turned, while the pile of debris before him grows skyward. This storm is what we call progress.

Walter Benjamin, 'Theses on the Philosophy of History', *Illuminations* (Schocken, 1969), 257-258.

3

Indigenous Peoples in International Law

After having presented my approach to *indigenize international law* using an *inverse legal anthropology*, in this chapter I offer a reading of indigenous peoples in international law that questions the chronological focus with which the history of international law has usually been narrated,[1] mainly, one that is grounded on an assumingly comprehensive historical narrative in which past, present, and future are entirely disconnected—an 'understanding of history as origin (and the present as the teleological fruit of the origin)'.[2] Thus, by engaging the history of indigenous peoples' rights in the framework of international law, this chapter elucidates the exclusion of indigenous peoples and their laws from the canon of international law. As a result, the hegemonic dimension of international law, supported by national-states and transnational corporations, has dismissed indigenous cosmologies as sources of international law. Meanwhile indigenous organizations and social movements continue working to enhance the counter-hegemonic dimension of international law, precisely the one that has allowed the inclusion of the right of indigenous peoples' self-determination in the international standards of human rights.

My point of departure is Benjamin's ninth thesis on the philosophy of history, the canonical thesis in which the *Angelus Novus*, the mysterious angel drawn by Paul Klee and owned by Benjamin, plays the role of messenger of history (see Figure 3.1). Benjamin's messenger, safeguarding history's immeasurable enigmas, portrays it as a catastrophic 'continuous' process. Following this interpretation, I stress the permanent interaction between past, present, and future times through Derrida's conception of the seminal figure of the *specter*.[3] Drawing from what the Franco-Algerian philosopher has termed *hauntology* (science of the ghosts or specters),[4] a provocative interpretation

[1]See Walter Benjamin, 'Theses on the Philosophy of History,' in Hannah Arendt ed., *Illuminations* (Schocken, 1969) 253-264; Jacques Derrida, *Specters of Marx: The State of the Debt, and the Work of the Mourning, and the New International* (Routledge, 1994).
[2] Wendy Brown, *Politics Out of History* (Princeton University Press, 2001), 149.
[3] See Derrida, *Specters of Marx.*
[4] My reading has been inspired by Bruno Mazzoldi from whom I have heard the finest interpretation on *hauntology.*

based on a philosophy of history in which the *specter* reverses the typical analysis of history as origin, I take the crucial role played by the *specter* in the 'configuration of history' and in 'history making'.[5] In this regard, the 'specter begins by coming back, by repeating itself, by recurring in the present'.[6] This is what I call *spectral history* in this chapter, that is to say, a historiographical move in which the colonial past returns to the present of international law.

Figure 3.1 *Angelus Novus,* Paul Klee (1920). Monoprint, Israel Museum, Jerusalem. Courtesy of Wikimedia Commons

Using international human rights standards as a backdrop for my discussion, the chapter reveals that what is apparently a set of abstract principles without frictions and tensions (for example, the tendency to exclude indigenous peoples as protected groups from the legal qualification of genocide) ends up being benchmarks loaded with political and economic assumptions. The end result is that legal principles have become devices laden with history. This discourse, far from being a mere doctrinal tool, is putting

---

[5] See Brown, *Politics Out of History*, 149.
[6] Ibid., 150.

indigenous peoples' survival at risk. Therefore, the complexities arising from the operation of international law have practical consequences in the concerned parties' everyday lives,[7] and that is why I read the history of indigenous rights vis-à-vis the history of the crime of genocide of indigenous peoples. In so doing, this thesis in general and this chapter in particular, follows the work of the Spanish jurist and historian Bartolomé Clavero[8] in order to trace the definition of indigenous peoples and indigenous genocide in international law, that is, the way in which different parts of the colonial past are allocated in our present.

The first part of the chapter considers the possibility of analysing the framework of international law as a material archive by exploring its everyday practices rather than concentrating simply on its institutional dimensions. In the second part, I examine the colonial and postcolonial scopes of international law in relation to indigenous peoples' rights by critically evaluating the factors with which indigenous peoples have been defined as legal subjects as well as the doctrinal development of the right of self-determination. The third part is devoted to evaluating the genocide of indigenous peoples by pointing out the continuity between the crimes of the past and the present, and the genealogy that frames the criminal classification in international criminal law.

---

[7] See especially Luis Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge University Press, 2015); 'Istanbul Vignettes: Observing the Everyday Operation of International Law' (2014) 2 (1) *London Review of International Law*, 3-47.

[8] I am grateful to Bartolomé Clavero for the hospitable academic interlocution on the issues discussed in this chapter which has taken place throughout the last decade: First, during his triennial period as a member and Vicepresident of the United Nations Permanent Forum on Indigenous Issues (2008-2010) on the basis of a long epistolary interchange on the Colombian case; Second, on the basis of a stimulating dialogue that can be seen everywhere. See, among others, Bartolomé Clavero, *¿Hay Genocidios Cotidianos? Y Otras Perplejidades sobre América Indígena* (IWGIA, 2011), 197-204; 'Consulta Indígena: Colombia (Y España) Entre Derecho Constitucional y Derechos Humanos' in Deborah Drupat ed., *Convenção 169 da OIT e os Estados Nacionais* (ESMPU, 2015), 11-51; 'Nación y Naciones en Colombia entre Constitución, Concordato y un Convenio 1810 – 2010' (2011) 41 *Revista de Historia del Derecho,* 79-137; Paulo Ilich Bacca, 'Las Contranarrativas Constitucionales en el Seguimiento Jurisprudencial de la Jurisdicción Especial Indígena' (2008) 22 *Revista Pensamiento Jurídico*, *Antropología, derecho y política*, 193-232; 'Tiempo y Espacio de las Reparaciones Colectivas para los Pueblos Indígenas Víctimas de la Violencia', in Rodrigo Uprimny ed., *Reparaciones en Colombia: Análisis y Propuestas* (Universidad Nacional de Colombia, 2009); *La Doctrina Defensorial y los Derechos Indígenas en el Derecho de los Derechos Humanos: Técnicas de Análisis y Recomendaciones* (GIZ and Defensoría del Pueblo, 2010).

3.1. International Law's Archive

The option of approaching international law as an archive permits the interaction with its contents in a temporal simultaneity of past and present. Certainly, its records ensure an account of the memories of the past, however, they are significant in so far as they are documenting the present: 'This is only the ordinary metaphysics of history. But it is even more perplexing in the case of international law, which has spent its brief (disciplinary) life announcing that the past is behind us once and for all'.[9] Indeed, this storm that Benjamin calls progress[10] (intrinsic to the framework of international law) serves the potential role of reinforcing the 'mandatory memories' to approach the present with the lenses from the past, making only some particular recollections visible, audible, and recallable. It is the sort of surgical procedure represented in *Incision linéaire de l'oeil*, an image that captivated Benjamin's attention because of its potential to show how the new media has revolutionised human faculties, particularly, the gaze.[11] In this scientific photography, the senses, encapsulated in the eye,[12] are conducted in one direction in order to produce a particular point of view (see Figure 3.2). Taking up the invitation to approach international law as an archive, I follow the work of international legal ethnographer Luis Eslava, who has been implementing a large project to examine the history of international law, namely its archive, considering the ebb and flow of its material dimensions. In that sense, in lieu of centralizing this corpus in line with its ideological, normative, and institutional imaginaries, he has extended a request to explore the trajectories in which the plasticity[13] of international law artefacts creates our world, that is to say, our everyday lives.[14]

---

[9] See Madeleine Chiam, Luis Eslava, Genevieve Painter, Rose Parfitt, and Charlotte Peevers, 'The First World War Interrupted: Artefacts as International Law's Archive (Part 1)', http://criticallegalthinking.com/2014/12/15/first-world-war-interrupted-artefacts-international-laws-archive/

[10] Benjamin, 'Theses on the Philosophy of History'.

[11] *Atlas Walter Benjamin Constelaciones* (Circulo de Bellas Artes, 2010), 40.

[12] I am thinking of the seminal work of George Bataille, *Story of the Eye* (Penguin Modern Classics, 2001).

[13] The multiple faces of Lévi-Strauss' indigenous masks, beautifully described at the beginning of one of Catherine Malabou's masterpieces in order to deploy her understanding of plasticity, are connatural to the soul of international law. See Catherine Malabou, *Plasticity at the Dusk of Writing. Dialectic, Destruction, Deconstruction* (Columbia University Press, 2009).

[14] See Eslava, *Local Space, Global Life*; 'Istanbul Vignettes'; 'The Materiality of International Law: Violence, History and Joe Sacco's *The Great War*', (2017) 5 (1) *London Review of International Law*, 49-86.

Figure 3.2 *Incision linéaire de l'oeil,* Dr A de Montmeja (1871). Scientific photography. Courtesy of Flickr.

If the apparatus of international law displaces its mainstream descriptors, 'such as global summits, international interventions, or the latest international criminal tribunal',[15] towards an ethnographic landscape where most of its daily expressions are located, a field of possibilities to interact with the material world of the international legal order open up.[16] In this setting, paying attention to the way in which ethnography has been used as a framework to analyse international law, Eslava has proposed the expansion of anthropological study—ranging from the analysis of the narrow margins of the 'institutional discourse' of international law developed by legal anthropologists such as Sally Engle Merry[17] to the multiplicity of everyday operations in which the very body of the international legal order appears. In Eslava's words:

> [T]he decision to embrace ethnography as my method was almost an inevitable response to the multiplicity of geographical places, levels of governance and the plethora of norms, administrative mechanisms, mundane things and subjective formations that confronted me in my attempt to understand the current international attention to local jurisdictions.[18]

---

[15] Eslava, 'Istanbul Vignettes', 5.
[16] Eslava, 'Joe Sacco's *The Great War*'.
[17] See Sally Engle Merry, 'Anthropology of International Law', (2006) *35 Annual Review of Anthropology*, 99.
[18] Eslava, *Local Space, Global Life,* 24.

As well as permitting a painstaking analysis of the international legal infrastructure's commonplace, this approach enables the possibility of interrogating the 'supplement'. I approach this question through the conversation between Derrida and Mazzoldi in which the first remarks the importance of restoring the traces of the supplement 'which has something to do with the remains […] with something that exceeds, something that therefore lacks'.[19] This attempt, however, does not take the rest as a simple residue, 'the rest or the remains have to be taken into account, but not in a form of a substance'.[20] This is precisely one of the main characteristics of a *spectral history*, being as it is an 'insubstantial reality' that is making the everyday operation of the history itself. In this thesis, the *spectral history* is a political way of bringing back indigenous living laws and archives. That is why Mazzoldi emphasises, '[a]nd this *restance* is also a resistance […] I mean, there is belligerence there'.[21]

The first epistemological turn questions the authority of encapsulating international law within the framework of its technicalities, evading in this way, not only the ordinary environment surrounding its practices but also the *everyday operation of international law*,[22] which means that 'most international norms and institutional activities aim to shape people's everyday lives and their local geographies'.[23] The later for its part, challenges the inner logic of the conventional archive of international law by analysing its records through the material world of its artefacts, objects, and things.[24] This artifactuality of international law is inherent to the history of anthropology, a social field that has consistently shown why matter matters.[25] Eslava cites Malinowsky to underscore this idea:

---

[19] Bruno Mazzoldi and Freddy Tellez, 'The Pocket-Size Interview with Jacques Derrida', (2007) 33 (2) *Critical Inquiry,* 380.
[20] Ibid., 381.
[21] Ibid., 382.
[22] Eslava, *Local Space, Global Life.*
[23] Eslava, 'Istanbul Vignettes', 6.
[24] The Historical and Anthropological Approaches to International Law Group has promoted this project through the analysis of five artefacts: 'the ANZAC Memorial to the Desert Mounted Corps; Joe Sacco's The Great War; a 1917 petition by the Six Nations to their ally, King Edward V; Giacomo Balla's Anti-neutral Suit; and a 1916 International Workers of the World anti-conscription poster from Australia.' See Chiam, Eslava, Painter, Parfitt, and Peevers, 'The First World War Interrupted: Artefacts as International Law's Archive (Part 2)', http://criticallegalthinking.com/2014/12/16/interruption-five-artefacts-international-law/
[25] For a contemporary reading see especially Jane Bennet, *Vibrant Matter: A Political Ecology of Things* (Duke University Press, 2010); Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Duke University Press, 2007).

> Interestingly, this attention to the materiality or what we can call the artifactuality of international law, is not something new or even something necessarily radical. Branislaw Malinowski had already invited us to approach law and international law in this way in his classic study of the Kula exchange in the Trobriand Islands. In the *Argonauts of the Western Pacific,* first published in 1922, Malinowsky convincingly advanced a reading of social (international) relations in which material objects were the repositories and the channels of particular distributions of power, identity and wealth.[26]

For the purpose of my analysis, I depart from the assumption that international law is a field of social practice. As social practice, the promises of international law are inscribed in particular political discourses and material trends, in this way defining the imaginaries and conceptual apparatus that supports its institutional structure and that it transmits in its operation. Paying attention to colonial history is important, in this context, not only because of the relation that exists between colonialism and the emergence and evolution of the international legal order, but it is also crucial because the colonial enterprise shaped—and continues to shape—the space and the time of indigenous populations: the architecture of their surrounding (legal) language, their imaginaries, and their memory. Colonialism and its imposition of legal forms in America, Africa, Asia and Oceania, 'gave origin to a long process that culminated in the eighteenth and nineteenth centuries and in which, for the first time, the totality of the space and the time—all cultures, peoples and territories of the planet, past and present—was organized in a great universal narrative'.[27] The identity of the multicultural international law of today, however, depends on the uniqueness of the rights of indigenous peoples. To the extent that indigenous peoples requested human rights protection, international law acquired a responsibility in relation to them. This responsibility, however, must be exercised recognizing the 'peculiarity' of these new kinds of rights. That is to say, the right to control their jurisprudential cartography—and therefore the future of the generations to come—by choosing the theories of justice they want to practice.

As Rose Parfitt has pointed out in her powerful piece *The Spectre of Sources*,[28] the study of the history of international law, in the particular case of indigenous peoples,

[26] Eslava, 'Joe Sacco's *The Great War*', 82.
[27] Eduardo Lander, 'Ciencias sociales: saberes coloniales y eurocéntricos' in Eduardo Lander (ed.), *La Colonialidad del Saber: Eurocentrismo y Ciencias Sociales. Perspectivas Latinoamericanas* (Clacso, 2005), 16.
[28] Rose Parfitt, 'The Spectre of Sources', (2014), 25 (1), *The European Journal of International Law*.

requires different levels of intellectual commitment. First, there is a need to reconsider the tradition that depicts six centuries of international law as an exclusively European contribution and,[29] consequently, the capacity of acknowledging the relationship between the colonial appropriation made by international law of indigenous rights with the reappropriation by indigenous peoples of international law. Second, there is a need to critically assess both the 'perpetual peace' imagined by liberal and conservatives within intra-European boundaries, and the legitimacy of 'perpetual war' with the 'uncivilized cultures' who were 'considered objects rather than subjects of international law'.[30] Third, there is a demand to approach the legal past and its resonances within the legal present.[31] In the case of indigenous peoples, there is an ethical responsibility to link the ongoing genocides with the inflicted violence of the past. Likewise, there must be a political engagement to recognize 'the consent of entities which are *not* states, and of entities *before* they became or were incorporated into states […] both as lawful and as itself a source of international law which must be respected'.[32]

3.2. International Human Rights and/or Indigenous Jurisprudence

3.2.1 The burdens of indigenous rights

Within the social relations in which international law appears as a threshold for discussion, in this section, I turn to the question of how international law in general, and United Nations law in particular, have been framing the rights of indigenous peoples. 'Frames are perspectives that highlight parts of reality over others,'[33] and in that sense, *the everyday operation of international law* has not only been delimited by localised activities but it has also been demarcated by 'the manner in which international law contributes to the shaping of people's spaces and sense of themselves'.[34] International

[29] Ibid., 301.
[30] Ibid.
[31] 'Because the European Union or the respective European states do not recognize their shared responsibilities and instead adopt unconcerned positions or a calculated ambiguity, the colonial Maafa does not disappear from history in the matter of Europe's shame and liability'. Bartolomé Clavero, *Genocide or Ethnocide, 1933-2007. How to Make, Unmake, and Remake Law with Words* (Giuffre Editore, 2008), 61.
[32] Parfitt, 'The Spectre of Sources', 306.
[33] André Nollkaemper, 'Framing Elephant Extinction', (2014) 3 (6) *European Society of International Law,* 1.
[34] Eslava, 'Istanbul Vignettes', 35.

law as framing, as Eslava has declared, manifests itself through the authority to define its subjects and realities. The case of indigenous peoples is not an exception; quite the contrary, international law's recognition of indigenous rights has supposed the construction of an indigenous subjectivity, one that in many respects has continued to refuse indigenous peoples' living laws and archives. It is important, therefore, to analyse these standards in light of the incarnation of the colonial enterprise in the backbone of our ongoing postcoloniality.

According to Sally Engle Merry, '[t]he United Nations declaration on human rights of 1948 and declarations on self-determination and decolonization have substantially shaped the discourse and the politics of indigenous groups'.[35] As is well known, however, in the framework of its discussion and promulgation, the 'colonial past' has become the 'colonial present'. Thus, to cite a couple of examples that affected ethnic minorities inside and outside Europe, Article 4 of the UN's 1948 Universal Declaration concerning slavery does not explicitly mention the proscription of forced labour, a social phenomenon that particularly affect immigrants.[36] For its part, the beginning of the UN's commitment to human rights was carried out in conjunction with 'the war time decision to abandon the interwar system of an international regime for the protection of minority rights'.[37] Thus, the configuration of the contemporary age of the human rights' regime has had the colonial experience and the burden of its legacy as a prelude.

Indeed, the UN's standards of the fifties and sixties vividly illustrate the acute tension among colonial powers and between the UN and anti-colonial movements led by indigenous global constituencies. One of the distinguishing features of these standards was the denial of the indigenous ways of social organization and their previous existence to any form of political organization subsequent to the European colonization. The first international convention regarding indigenous peoples' rights, the International Labour Organization Convention 107 on Indigenous and Tribal Populations adopted in

---

[35] Sally Engle Merry, 'Anthropology, Law, and Transnational Processes', (1992) 21 *Annual Review of Anthropology,* 368.

[36] See especially, Bartolomé Clavero, *Derecho Global*, 34-38. See also, Jean Allain, *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention* (Martinus Nijhoff, 2008).

[37] Mark Mazower, 'The Strange Triumph of Human Rights, 1933–1950', (2004) 47 (2) *The Historical Journal,* 379.

1957 (ILO Convention 107) embodied the most problematic characteristics of such a program.[38] During the process of adoption of the ILO Convention 107 there were no indigenous delegates and the protection of indigenous rights was instituted through the projection of a political philosophy that assimilated their cultures by including them within the prevailing political orders and cultural traditions. As Bartolomé Clavero has contended, the first convention with respect to indigenous issues 'does not contain indigenous peoples' rights but only transitory measures directed to those communities and persons that were not fully assimilated into the predominant population of the concerned nation state'.[39]

The adverse and paternalist philosophy embedded in the aforementioned features of the ILO Convention 107 raised a debate in the framework of contemporary international law that propelled an ILO Meeting of Experts in 1986, in this context, indigenous and aboriginal farming peoples' organizations underlined the urgency of fundamentally reviewing the convention.[40] That same year, the *Study of the Problem against Indigenous Populations* by José Martinez Cobo, an influential Ecuadorian jurist, was published.[41] The most broadly cited definition of the term 'indigenous peoples' during the twentieth century sprang up from this study. As Martinez Cobo puts it:

---

[38] 'While the mandate system, and protection of minorities, suggested a path for possible modification of international law, they lost much of their significance in the 1930s due to the crisis of the international system caused by Japanese militarism in Asia, extreme nationalism in the heart of Europe and Stalinist Communism in the Soviet Union. Moreover, international law continued its failure to address indigenous peoples residing in existing sovereign states. Indigenous peoples had no status under international law, and no mechanism or procedure was established by which they could address the international community.' Indeed, the only exception was one endorsed with the colonial legacy, namely, the aforementioned ILO Convention 107. See Asbjorn Eide, 'The Indigenous Peoples, the Working Groupon Indigenous Populations and the Adoption of the UN Declaration on the Rights of Indigenous Peoples', in Claire Charters and Rodolfo Stavenhagen (eds), *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (IWGIA, 2009), 33.

[39] Bartolomé Clavero, 'Instrumentos internacionales sobre los derechos de los pueblos indígenas: Declaración de Naciones Unidas y Convenio de la Organización Internacional del Trabajo', (2010) 13 (20) *Revista de Debate Social y Jurídico Primero – Derechos Humanos de los Pueblos Indígenas y Nueva Constitución Boliviana,* 116.

[40] Joshua Cooper, '25 years of ILO Convention 169', (2014) Cultural Survival, https://www.culturalsurvival.org/publications/cultural-survival-quarterly/25-years-ilo-convention-169.

[41] See José Martinez Cobo, *Study of the Problem against Indigenous Populations,* vol. v, *Conclusions, Proposals and Recommendations,* UN Doc E/CN 4/ Sub 2 1986/7. Martinez Cobo was also the writer of the fundamental *Study on the Problem of Discrimination Against Indigenous Populations* (1983), and the rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (the Sub-Commission). Furthermore, his efforts contributed to the establishment of the Working Group on Indigenous Populations (WGIP). See, Willemsen-Diaz, 'How Indigenous Peoples' Rights Reached the UN'.

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.[42]

In his definition of 'indigenous peoples', Martinez Cobo famously aims for a legal and political reconceptualization of the ILO Convention 107 paradigm. He rethinks international law's well-known colonial legacy in terms of 'four key inter-related factors common to most definitions of indigenous peoples'.[43] Paul Keal has presented Martinez Cobo's definition which encompasses: first, 'subjection to colonial settlement; second, historical continuity with pre-invasion or pre-colonial societies; third, an identity that is distinct from the dominant society in which they are encased and; fourth, a concern with the preservation and replication of culture'.[44] The *colonial settlement* is a factor that exemplifies the relations of power that has placed the colonial 'customary law' upon the living laws of indigenous peoples. In this respect, the first factor not only presents 'indigeneity' as a unified concept to represent the oppressed but also as a condition of self-identification. The way in which Keal introduces this first element seems to be a symptom of 'our postcolonial condescension' towards indigenous jurisprudence: '[i]ndigenous peoples *define themselves* and are defined by others in terms of a common experience of subjection to colonial settlement […] *The issues that most concern indigenous populations are perceived to be ones that have resulted from a collective history of colonization*'[45] (Emphasis added).

In this respect, as across the length and breadth of this thesis, the paradoxes are multiple and overlapping. On the one hand, while it is true that this definition was coined in the middle of the UN deliberations on decolonization, the 'failure to distinguish between different peoples contained within the boundaries of new states established by formal decolonization meant that for many indigenous peoples one set of oppressors had been

[42] Martinez Cobo, *Study of the Problem against Indigenous Populations,* Add 4, para. 379-381.
[43] Paul Keal, *European Conquest and the Rights of Indigenous Peoples. The Moral Backwardness of International Society* (Cambridge University Press, 2003) 7.
[44] Ibid.
[45] Ibid., 8.

replaced by another'.[46] On the other, it is nonetheless true that the very idea of linking the definition of indigenous peoples to colonization deletes their intellectual landscape, suppresses the meaning of their words, and denies their ontological self-determination. To put it clearly, the importance of unveiling the continuity of the colonial project to support the struggle of 'oppressed' people is not questioned here. In fact, in this thesis I employ different postcolonial heuristic tools to build my historiographical reading of international law. Nevertheless, I maintain a critical distance of the paternalist way in which some circles have tackled the problem of the 'invention of the other', where the West and its sordid interests are the company directors of a perverse theatre of representation of the 'indigenous'.[47] In these academic settings, the definition of indigenous peoples is a cleverly portrayed fiction of the Western imagination and the indigenous communities, peoples, and nations, of course, are lacking a speaking part. Viveiros de Castro describes the issue at stake in this manner:

> Doubling this subjective phantasmagoria with the familiar appeal to the dialectic of the objective production of the Other by the colonial system simply piles insult upon injury, by proceeding as is every 'European' discourse on peoples of non-European tradition(s) serves only to illumine our 'representations of the other,' and even thereby making a certain theoretical postcolonialism the ultimate stage of ethnocentrism. By always seeing the Same in the Other, by thinking that under the mask of the other it is always just 'us' contemplating ourselves, we end up complacently accepting a shortcut and an interest only in what is 'of interest to us'—ourselves.[48]

The second factor of the definition of indigenous peoples is their *historical continuity.* 'For the Cree scholar Sharon Venne the answer to the question 'Who are indigenous peoples?' is straightforward. 'They are the descendants of the peoples occupying a territory when the colonizer arrived'.[49] Significantly, UN bodies have once again emphasized the link between indigenous peoples and colonial settlers to delimitate indigenous peoples' historical continuity, such is the case for example, of the Office of

---

[46] Ibid.

[47] For the finest discussion on this matter see the critique by Aymara sociologist Silvia Rivera Cusicanqui to certain streams of decolonial thinking disconnected from the peoples and territories they are talking about. Silvia Rivera Cusicanqui, 'The Potosí Principle: Another View of Totality', (2014) 11 (1), *E-MISFÉRICA*. See also the no less challenging debate between Eduardo Viveiros de Castro and David Graeber. Eduardo Viveiros de Castro, 'Who's afraid of the ontological wolf?', (2015) *Marilyn Strathern lecture*; and David Graeber, *Radical Alterity is Just Another Way of Saying 'Reality'. A Reply to Eduardo Viveiros de Castro,* (2015) 5 (2), *HAU Journal of Ethnographic Theory,* 1-41.

[48] Eduardo Viveiros de Castro, *Cannibal Metaphysics* (University of Minnesota Press, Univocal, 2014), 40-41.

[49] Cited by Keal *European Conquest and the Rights of Indigenous Peoples,* 9.

the High Commissioner for Human Rights.[50] The consequence of this perspective is that the emphasis on 'genetic authenticity', relations of domination, and loss of sovereignty, ends up denying the fundamental role played by cultural identity. In the same vein, it is important to mention the conceptual and political inappropriateness of defining indigenous peoples as 'original' inhabitants. Even if this is the case of many indigenous peoples, there are a number of cases in which they are not the first inhabitants, but they are the 'traditional' occupants. It is not a minor problem if we take into consideration that '[d]efining indigenous peoples in term of who came first is one reason why India and China insist that the concept does not apply within their borders'.[51] Indeed, as Gray and Keal have pointed out, the concept of 'prior' instead of 'original' offers the possibility of avoiding 'speculative history' and focuses on the current political reality of particular indigenous communities and nations.[52]

The third and fourth factors of the definition of indigenous peoples are the *rights to self-determination and self-identification*. 'Indigenous peoples around the world are united by a common concern with control of land, preventing the exploitation of natural resources to the detriment of indigenous rights and ways of life and cultural survival or preservation; all of which cohere in the overarching theme of self-determination'.[53] Therefore, self-determination is the defining matrix of indigenous peoples' rights. Self-identification, for its part, is an expression of self-determination in the sense that it empowers subjects and communities to identify as indigenous. In that regard, the only rightful claim to indigeneity belongs to the indigenous point of view itself and not to the states or UN bodies—there are as many different definitions of indigenous peoples as there are first nations who inhabit the world.

---

[50] Office of the High Commissioner for Human Rights, Fact Sheet No. 9 (Rev.1), The Rights of Indigenous Peoples, http://www.ohchr.org/Documents/Publications/FactSheet9rev.1en.pdf, Cited by Keal, 9.

[51] Keal, *European Conquest and the Rights of Indigenous Peoples,* 10.

[52] Ibid., Andrew Gray, 'The Indigenous Movement in Asia', in R.H. Barnes, A. Gray and B. Kingsbury (eds.), *Indigenous Peoples of Asia* (Association for Asian Studies, 1995), 35-58.

[53] Keal, *European Conquest and the Rights of Indigenous Peoples,* 11.

3.2.2 Ongoing burdens

The *Study of the Problem against Indigenous Populations* was important in encouraging a change of perspective, which resulted in the ILO Convention 169 on Indigenous and Tribal Peoples, adopted in 1989 (ILO Convention 169).[54] ILO Convention 169 is symbolic in a double manner. From a legal perspective, the change of the name between one covenant and the other is not a trivial matter; by moving from indigenous populations to indigenous peoples, ILO Convention 169 challenged the UN's dominant perspective according to which there were only indigenous populations destined to be integrated into the predominant people within the nation state. Nonetheless, this is overshadowed by the second symbolic point: Article 1 of ILO Convention 169 stipulates that '[t]he use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law'. This standard not only undermines the aforementioned conceptual change, it also denies the right of self-determination.

In this way, the new paradigm comes again loaded with paradoxes: first, it is international law's answer to indigenous demands as well as the foundation of a legal tradition to guarantee the validity of indigenous rights in Western jurisprudence. Second, it is a renewed sample of the political reconfiguration of the colonial states within the UN. At the two ends of the chain, the voice of indigenous social movements stressed the need to put an end to the integrationist character of the ILO Convention 107 as well as the negation of the right of self-determination. The symbolism is again double: 'Convention No. 169 can be seen as a manifestation of the movement toward responsiveness to indigenous peoples demands through international law and, at the same time, the tension inherent in that movement'.[55] Indeed, it is spectrally weighted by the preceding UN standards of the fifties and sixties and reinforces the historical tendency to turn indigenous self-determination into a dead letter.

Between the two paradigms that flourished within the International Labour Organization, a new archetype was born. On 13 September 2007, the United Nations General Assembly adopted the text of the UN Declaration on the Rights of Indigenous

[54] Eide, 'The Indigenous Peoples, the Working Group on Indigenous Populations and the Adoption of the UN Declaration on the Rights of Indigenous Peoples', 37.
[55] James Anaya, *Indigenous Peoples in International Law* (Oxford University Press, 2004), 48.

Peoples. 'In a first for international law, the rights bearers, indigenous peoples, played a pivotal role in the negotiations of its content'.[56] Moreover, the Declaration is the first international instrument that recognizes the indigenous peoples' right to self-determination (Article 3. Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development). As explicitly stipulated in Article 35 of ILO Convention 169 under which '[t]he application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements', the refusal of indigenous peoples' right to self-determination has been automatically cancelled.

This international recognition that, theoretically speaking, should be the beginning of a relationship in which international law takes indigenous jurisprudence seriously is still far from listening the voices of indigenous jurisdictions. This becomes more problematic when it is confirmed that even within the framework of international law, there is a lack of political will on the part of the states to implement the Declaration. Indeed, it is obvious that the gap between the Declaration principles and the model of 'selective endorsement' prompted by the states is still too large. The architecture of 'selective endorsement' is intended to maintain the states' legal and policy status quo, either by responding to the requirements of instrumental rationality or by supporting the Declaration without an intention of being responsible for its implementation.[57] In the first instance, the states 'strategically and selectively endorse only those norms that align with their interests',[58] whereas in the second instance, states seek to portray a liberal democratic identity. In either case, selective endorsement is far from being a simple act of legal ratification: 'States strategically, collectively and unilaterally write down international norms so that those rewritten norms align with state interests as well as the legal and institutional status quo, all the while securing their standing in the

[56] Claire Charters and Rodolfo Stavenhagen, 'The UN Declaration on the Rights of Indigenous Peoples: How It Came to Be and What It Heralds', in Charters and Stavenhagen (eds), *Making the Declaration Work*, 10.
[57] Sheryl R. Lightfoot, 'Selective Endorsement Without Intent to Implement: Indigenous Rights and the Anglosphere (2012) 16 (1) *The International Journal of Human Rights,*116-119.
[58] Ibid., 116.

community of states that support the norms, without any intent of moving toward further implementation'.[59]

In addition, the technologies of framing with which the international legal order has shaped the regime of indigenous peoples in international law, can often prove the *double bind* of its machinery. Mostly, it is a matter of the well-known idea developed by Martti Koskenniemi[60] and restructured in a historiographic way by Rose Parfitt, according to which, 'the discipline is perpetually and inevitably caught between concrete (tending towards apologism) and normative (tending towards the utopian) modes of justification and is incapable of providing'[61] a comprehensible justification for resolving the clashes between different jurisdictions in a normative way. In this regard, the probabilities of 'manufacturing' the sort of unbiased decisions proclaimed by international law as a fundamental defence of its very existence are not only failing attempts of impartial adjudication but also the new breeding grounds for the 'domestication' of indigenous jurisdictions. Here, the mechanisms of montage of the international legal order, following the terminology of Sergei Ezeinshtein (1898-1948),[62] produces a conscious calculation aimed at enhancing the 'Westernization' of indigenous jurisprudences. As the Soviet filmmaker and film theorist has taught us, the mechanisms of montage, enable a careful staging to combine precision and aggressiveness in order to frame a particular point of view (see Figure 3.3). In this case, it is a perspective that contextualizes indigenous jurisdictions in terms of state-centric laws.

These set of 'recognitions', reaffirm the poignant signifier of Benjamin's angel: '[w]ithout vision of a strong sense of agency, we are blown backward into the future as debris piles up in the single catastrophe that is history beyond and outside of human invention or intervention, a history of both dramatic and subtle unfreedom'.[63] Furthermore, the inability to 'close our wings against the storm' seems to be confirmed by the tendency to integrate indigenous peoples within the homo-hegemony of the international legal order. As I have shown, it openly happened in ILO Convention 107

[59] Ibid., 119.
[60] Martti Koskenniemi, *From Apology to Utopia* (Cambridge University Press, 1995).
[61] Parfitt, *International Personality on the Periphery*, 24.
[62] See Sergei Ezeinshtein, *El Montaje de Atracciones en el Sentido del Cine* (Siglo XXI, 1999).
[63] Brown, *Politics Out of History*, 139.

and covertly in Convention 169. Although the UN Declaration on the Rights of Indigenous Peoples has opened doors to proclaim the right of self-determination condemning the crime of genocide, the willingness of UN member states to take up their associated responsibilities is still weak. I sustain here, that the darker side of the 'storm' is the history of the crime of genocide of indigenous peoples in international law and beyond. Likewise, the spectral way in which the persistent denying of indigenous peoples' political and ontological self-determination is connected with their ongoing genocide, and the silencing of indigenous jurisdictions speech is underpinned under the functionality of a system that is putting indigenous peoples' survival at risk.

Figure 3.3 *Battleship Potemkin,* Sergei Ezeinshtein (1925). Act IV: The Odessa Steps. Courtesy of Cristina Tartás Ruiz and Rafael Guridi Garcia

Thus in the following sections, I trace the burdens of the crime of genocide in international criminal law that continue to be weighed down by the past while facing the challenges of the present by following the same methodological structure and historical period. To do so, I focus my attention on the need to tackle the crime of genocide in its physical, cultural, and biological dimensions. Likewise, I show the inappropriateness of using categories such as ethnocide and indigenocide if we take international criminal law standards seriously.

3.3. Prevention of Indigenous Genocide and/or Genocide of Indigenous Peoples

3.3.1 The burdens of the prevention of indigenous genocide in international law

In 1557, the collection entitled *Cortes de Casto Amor y Cortes de la Muerte* (The Court of Chaste love and the Court of Death) was printed in Toledo, which contains *Cenas* (Dinners), a theatrical piece in which a character called *Cacique* (Chief) and his companion identified as *Otro Indio* (Other Indian) appeared before a Court chaired by *Death*, and composed by *St Augustine, St Francis, St Dominic, Satan, Flesh* and *the World.* The claim of the characters—entitled *evils, grievances, and angers*—states, without reticence, that the conversion of their communities to Christianity led to the destruction of their territories and the systematic plundering of the *West Indies.* In the judgment of the Court, however, the blame for those facts falls on the culture of the victims. Therefore, according to the judges, the inhabitants of the *West Indies* are responsible for the afflictions, sins, brawls and misadventures of Europe.[64] The stage on which the performance is acted out seems ideal to represent a fictional issue of the past. Nevertheless, the physical and cultural extermination of indigenous peoples in the Americas can be uninterruptedly traced from the early debates on natural law regarding the human nature of the 'newly discovered' Amerindians[65] depicted by Theodor De Bry (1528-1598), the renowned engraver and publisher from Liège (see Figure 3.4), to the coining of the definition of the crime of genocide in international criminal law.[66]

During the last six decades of the legal development of the crime of genocide, it has become clear that it is the most pondered crime within the framework of international law. After 1948, with the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), and after 1998, with the Rome Statute of the International Criminal Court (ICC Statute), it has been confirmed 'that this is the most serious of the crimes

---

[64] See Micael de Carvajal, ca. 1576, Carlos A. Jauregui and Mark I. Smith-Soto, *The Conquest on Trial: Carvajal's Complaint of the Indians in the Court of Death* (Pennsylvania State University Press, 2008).

[65] For the history of the colonial encounter between indigenous peoples of the Americas and Europeans in terms of international law see Antony Angie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005); Luis Eslava, Liliana Obregón and René Ureña, 'Imperialismo(s) y Derecho(s) Internacionale(s): Ayer y Hoy' in Eslava, Obregon and Ureña eds., *Imperialismo y Derecho Internacional* (Siglo del Hombre Editores, 2016) 13-94; Anthony Pagden ed., *The language of Political Theory in Early-Modern Europe* (Cambridge University Press, 1987); André A. Alvez and José M. Moreira, *The Salamanca School* (Bloomsbury, 2010), 86-102.

[66] For a compelling account between past and present see Bartolomé Clavero, *Genocidio y Justicia. La Destrucción de las Indias, Ayer y Hoy* (Marcial Pons, 2002).

within its jurisdiction. It places *Genocide* first, followed by *Crimes against Humanity, War Crimes* and the *Crime of Aggression*'.[67] It is precisely in this interregnum that the definition of genocide under international criminal law appears. First, within the CPPCG and then it was repeated by Article 6 of the ICC Statute. According to this definition, genocide is any of the following committed with the intention to destroy a national, ethnical, racial or religious group in whole or in part:

> (a) Killing members of the group
> (b) Causing serious bodily or mental harm to members of the group
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
> (d) Imposing measures intended to prevent births within the group
> (e) Forcibly transferring children of the group to another group

Figure 3.4 *Christopher Columbus' Soldiers Chops the Hands Off of Arawak Indians who Failed to Meet the Mining Quota,* Theodor De Bry. Included in later editions of *Brevísima Relación de la Destrucción de las Indias*, 1552 by Bartolomé de las Casas
Courtesy of Wikimedia Commons

In 1947, the Secretary General of the United Nations submitted a draft of the CPPCG that expressly included that the intention and action of bringing about the disappearance of human groups 'can be undertaken and committed, separately or concurrently, in many different ways'.[68] Indeed, the draft instrument was more careful when defining the scope of the crime. On the one hand, the level of detail with which the draft tackles the meaning of destruction and physical harm is accurate. On the other, it repeats the

[67] Bartolomé Clavero, 'Genocide and Indigenous Peoples in International Law', (2009) Paper presented at the Indigenous Peoples' Rights Lecture Series, Columbia University, 1.
[68] Clavero, 'Genocide and Indigenous Peoples in International Law', 2.

terms destruction and destroy; however, their legal scope goes beyond the allusion to the elimination of human life.[69] The acts qualified as genocide in the official draft include physical, biological, and cultural genocide.[70]

Indigenous peoples were undoubtedly included in the official draft of the CPPCG 'since the draft referred to potential attacks on the culture of groups which corresponded objectively to habitual State policy towards these peoples'.[71] However, Brazil objected arguing that this condition would diminish any possibility of creating states because the inclusion of those minorities would go against the values needed to establish the equality of a States' citizens. According to Brazil, 'this would allow "minorities" to oppose policies necessary to State-building and to the equality of a State's citizens. New Zealand, South Africa and Canada agreed with Brazil. The American States and the European States that were current or former colonial powers, such as Great Britain, France and Belgium, also supported Brazil's position'.[72]

Formally, beyond the aforementioned virtual disappearance and in compliance with its qualification, the CPPCG protects the right to life of indigenous peoples; nevertheless, both doctrine[73] and jurisprudence[74] have tended to minimize the legal and semantic scope (framing) of the crime of genocide, which has ultimately contributed to the genocide of indigenous peoples and the silencing of their jurisdictions. This has occurred to the extent that the perception that equates genocide with physical elimination is the prevailing approach. This 'doctrinal' perspective can be traced back to the transition between the official draft and the final CPPCG in which the definition of genocide was abridged, and some components erased, among them, the removal of *political groups* as well as '[a]ll reference to the perpetration of genocide by destroying

[69] Ibid.
[70] Ibid., the complete draft can be seen on the website of *Prevent Genocide International* available at http://www.preventgenocide.org/law/convention/drafts/
[71] UNPFII, 'Study on International Criminal Law and the Judicial Defense of Indigenous Peoples' Rights', submitted by the Especial Rapporteur Bartolomé Clavero Salvador, UN Doc. E/C.19/2011/4 (2011), para. 5.
[72] Ibid.
[73] See, William Shabas, 'Cultural Genocide and the Protection of the Rights of Existence of Aboriginal and Indigenous Groups', in J. Castellino & N. Walsh eds., *International Law and Indigenous Peoples* (Martinus Nijhoff, 2005), 117-132; Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies* (Yale University Press, 1990), 23.
[74] It is the case of the more recent jurisprudence of the International Court of Justice. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Croatia v. Serbia), Jurisdiction and Admissibility, Judgement of 3 February 2015.

or harming a group's cultural heritage'. However, nowadays the CPPCG and the ICC Statute consider both *physical* and *mental* harm and, this last-mentioned injury, may be perpetrated by 'policies that are destructive of—or harmful to—language and cultural heritage'.[75] In this terrain, there is also a need to think responsibly about policies intended at seizing the land and stealing the natural resources of indigenous communities and peoples; especially, if we consider the troubled history of the UN War Crimes Commission. Indeed, Mark Mazower has argued that 'its vicissitudes provided an earlier indication that the great powers sponsoring the new peacetime United Nations Organization had strong doubts about making international criminal law a prominent part of the new world order'.[76]

As might be expected, what happened was that the enormously restricted definition of 'genocide in the case of indigenous peoples was applied in theory, but rarely in practice'.[77] Moreover, when the CPPCG entered into force in 1951, new practical constraints emerged. The United States delayed its ratification because a civil rights group 'immediately submitted to the United Nations the case of the intentional partial destruction of the African-American group in the United States, but received no response whatsoever'.[78] On one side, questions pertaining to what criminal responsibility means in the context of racial violence emerged; on the other, it was symptomatic that this case did not find a response by the United Nations. Additionally, the CPPCG's provisions stipulated 'that only states were entitled to submit complaints of genocide against other States to the United Nations, and particularly to the International Court of Justice as the international court with jurisdiction under the convention (arts. 8 and 9)'.[79]

In the end, the so-called colonial clause advocated by Brazil, New Zealand, South Africa, Canada, Great Britain, France, and Belgium remained: the CPPCG did not protect the indigenous peoples affected, given that its validity was restricted to the territory of the ratifying States, and only by express communication to the Secretary-

---

[75] 'Genocide and Indigenous Peoples in International Law', 2.
[76] Mark Mazower, *No Enchanted Palace. The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press, 2009), 127.
[77] UNPFII, 'Study on International Criminal Law', para.7.
[78] Ibid.
[79] Ibid.

General of the United Nations would the territories under their 'responsibility' be included.[80] Indeed, according to article 12 '[a]ny Contracting Party may at any time, by notification addressed to the Secretary General of the United Nations, extend the application of the […] Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible'. Yet again, the spectre of colonial history is repeating itself by recurring in the present: indigenous peoples should integrate within the state, and, nevertheless, have different rights of citizenship. From a criminal law point of view, the states—with Brazil at the top—achieved the exclusion of what was later called cultural genocide, a concept that, according to orthodox criminal lawyers, represented a new category different from genocide. At this point, it is important to remember that 'genocide and ethnocide were originally synonyms',[81] as a matter of fact, the Polish-Jewish international legal scholar Raphael Lemkin coined the terms as equivalents in order to build a concept able to link both physical and cultural genocide.[82] Nevertheless, as Mazower has argued, 'the Genocide Convention itself only passed once a clause that made "cultural genocide" a crime—the clause that Lemkin himself described as the "soul of the Convention"—was dropped […]. The voting down of the cultural genocide clause revealed the deep misgivings many states had at allowing their own actions to be brought before an international court'.[83] Therefore, the practical consequence of the colonial clause was not only the virtual exclusion of indigenous peoples from the final CPPCG but also 'the subsequent establishment of a separate form of genocide: cultural genocide'.[84]

As a spectral force, the history of the criminal classification of genocide in the case of indigenous peoples seems to be the repetition of the genocide of the Americas before

[80] Paradoxically, in 1951 the ICJ suggested that the Genocide Convention's fundamentals 'are principles which are recognized by civilized nations as binding on States, even without any conventional obligation'. See, 'Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion' (ICJ Reports 15, 1951), 23.
[81] 'Genocide and Indigenous Peoples in International Law', 6.
[82] According to Lemkim, '[g]enerally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aimed at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.' Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace, 1944), 79.
[83] Mazower, *No Enchanted Palace,* 130-132.
[84] UNPFII, 'Study on International Criminal Law', para.5.

the Court of Death—the phantasmagorical transfusion of the past into the present. The Genocide Convention, established in the framework of treaty law, did not extent the States' international commitments to the colonies.[85] The United Nations Permanent Forum on Indigenous Issues (UNPFII) noted in its *Study on International Criminal Law and the Judicial Defense of Indigenous Peoples' Rights*, drafted by Bartolomé Clavero,[86] that '[t]his significant exclusion of colonies from the Genocide Convention was not applicable to indigenous peoples living within the borders of a State, [nevertheless, the decision about whether or not those peoples belong to a specific territory was placed on the states themselves which] made the Convention even less effective in respect of all indigenous peoples'.[87] But this was not the only matter at stake: in practical terms, Brazil's 'diplomatic triumph' connoted the exclusion of indigenous peoples from the arena of international law as subjects of Genocide and, with this, the expansion of many troubling cases of partial physical destruction of these peoples. In fact, those events were not pondered as acts of genocide within the United Nations' agencies and, consequently, no State has been in a position to hand such cases to the ICJ. According to the UNPFII, '[i]n any event, the procedural issue was not the only one. Since the overtly colonial era and even today, at least in regions such as the Americas, genocide against indigenous peoples has been literally invisible'.[88]

3.3.2 Ongoing burdens

In this post-colonial context, the concept of ethnocide was reappropriated in the light of social sciences, to a great extent as a response to the legal ineffectiveness of the so-called cultural genocide and the policies that fostered the systematic extermination of these peoples.[89] Thus, the concept of ethnocide was intended to overcome the unpunishable character inherent in cultural genocide; nonetheless, it only made matters

[85] Ibid., para. 8.
[86] This study is the first United Nations official document that takes indigenous genocide seriously. The study reinforces the historic and doctrinal work conducted by the Spanish intellectual to put in evidence the shortcomings of the tendency among commentators of international criminal law to view killing as the only method of committing genocide.
[87] Ibid., para. 9.
[88] Ibid.
[89] See Norman E. Whitten Jr., *Ecuadorian Ethnocide and Indigenous Ethnogenesis: Amazonian Resurgence Amidst Andean Colonialism* (IWGIA, 1976).

worse,[90] once again reducing the criminal nature of such atrocity to physical genocide. As the UNPFII has stated, '[t]his has created a new problem without resolving any of the old ones'.[91] Despite the good intentions of social theorists, the concept of ethnocide does not have binding value to defend the rights of indigenous peoples. The CPPCG itself gives genocide a broader scope than physical genocide; as a consequence, the ethnocide category may have harmful impacts both in terms of legal protection for indigenous peoples' rights and their very survival as peoples. The same applies also for the recent proposal to create a particular type of *indigenocide,* 'yet another category that is totally ineffective under international criminal law'.[92] To avoid the risk of cloaking impunity, it is more convenient to call a spade a spade.

After forty years of ineffectiveness of the CPPCG, the legal interpretation of the crime of genocide in the current development of international criminal law is still problematic. The CPPCG did not have 'practical value internationally in relation to the genocides that occurred up until the 1990s. The reasons for this failure offer some explanation as to why genocide ended up being so narrowly conceived'.[93] First, the responsibility for genocide at the head of the states has been dramatically overshadowed as shown by the first case before the ICJ (Bosnia-Herzegovina v. the Former Republic of Yugoslavia—Serbia and Montenegro at that time). In this case, the ICJ rejected the charge of genocide based on the failure to demonstrate the genocidal intent, in fact, the current state policy of physical extermination, which consequently links the crime of genocide with mass murder.

The doctrinal development underpinned by the ICC Statute is causing new practical difficulties. Firstly, the drafters of the Statute opted to repeat the history while keeping the criminal definition of genocide in the process, neglecting the opportunity to include the definition of the original draft of the CPPCG. And secondly, omitting the possibility 'to better identify protected groups, such as indigenous peoples, or protected rights,

[90] 'The reinvention of ethnocide was aimed at denouncing destructive policies but the term, once independent, may allow otherwise', Clavero, *Genocide or Ethnocide*, 125.
[91] UNPFII, 'Study on International Criminal Law', para.10.
[92] Ibid., para.11.
[93] Clavero, 'Genocide and Indigenous Peoples in International Law', 4.

such as their right to exist as peoples, the right to their own culture or the right to their own land and its vital resources'.[94]

From a practical standpoint, '[t]he difficulty lies in the restricted concept of genocide, which is not the concept as given in the CPPCG but the one that has ended up being prevalent and widely accepted, as if it were given in it, within current political and international circles'.[95] In the political context of the appointment of the Special Advisor on the Prevention on Genocide in 2004 and recalling the original definition of genocide coined by Lemkin and welcomed by the draft of the CPPCG, David Luban has indicated the difficulties of reinforcing the tendency to assimilate genocide to the systematic annihilation of different human groups during the Holocaust. This interpretation, in which nothing is innocent, has separated genocide from genocidal policies, reducing the word-meaning of the crime both in the CPPCG and in the ICC Statute to intentionally organised mass murder. Understood in this way, the Holocaust carries Nazi criminality back to the present. Thus, the current legal interpretation guarantees the progression of other genocides; among them, the ongoing genocide of indigenous peoples.[96]

In the particular case of indigenous peoples, the international criminal panorama would not be complete without mentioning the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The draft of the UNDRIP completed in 1994 by a handful of expert negotiators, including indigenous leaders, encompassed the criminal type of 'cultural ethnocide or genocide'. However, following the counterproductive boomerang effect that this chapter is examining in historiographic perspective, 'this still encountered strong opposition from the non-indigenous parties involved, starting with the chair of the group itself, the Greek jurist Erika-Irene Daes. The reference was removed before it reached the final phase, between the Human Rights Council and the UN General Assembly in 2006 and 2007'.[97]

[94] UNPFII, 'Study on International Criminal Law', para.14.
[95] Clavero, 'Genocide and Indigenous Peoples in International Law', 11.
[96] David Luban, 'Calling Genocide by its Rightful Name: Lemkin's Word, Darfur, and the UN Report' (2006) 7 (1) *Chicago Journal of International Law*, 308.
[97] Clavero, 'Genocide and Indigenous Peoples in International Law', 12.

Importantly, however, the UNDRIP preserved the right to indigenous peoples way of life without change. It is a vital step affirming that '[i]ndigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence…' (Article 7.2); and 'the right not to be subjected to forced assimilation or destruction of their culture' (Article 8.1). It is important to mention that even if the predominant doctrine wants to argue that this collective right is not protected under the category of genocide, it will be covered within crimes against humanity, an addition to the ICC Statute. It is equally important to note that under the effects of international human rights law and international criminal law, both the UNDRIP and the ICC Statute should be interpreted complementarily.

Clavero's *Study on International Criminal Law and the Judicial Defence of Indigenous Peoples' Rights* rightly points out that '[n]o norm should be interpreted in isolation from the set of legislation of which it is a part or into which it has been incorporated […] Under the Statue of the International Criminal Court, the Declaration cannot be understood as excluding or reducing international criminal protection of the fundamental rights of indigenous peoples against policies or actions that might lead to genocide or to any crime against humanity'.[98] This complementary interpretation means that the UNDRIP has reinforced the criminal protection of the rights of indigenous peoples under international law. Nowadays, in the framework of criminal offences related to indigenous peoples, 'genocide can be defined as any attack on political, economic, social or cultural self-determination with the intent to destroy a people, in whole or in part'.[99] However, that is easy enough to say but not easy to do. Especially, in the context of the United Nations bodies where only the UNPFII has taken different forms of indigenous genocide seriously, including those assimilationist policies that lead to the extinction of indigenous languages.[100]

[98] UNPFII, 'Study on International Criminal Law' para.24.
[99] Clavero, 'Genocide and Indigenous Peoples in International Law', 13.
[100] Ibid.

3.4. Conclusions

In this chapter, I have advocated a reading of indigenous peoples in the 'archive of international law' showing the inherent paradoxes of the structures of the international legal order. Taking the work of Walter Benjamin and Jacques Derrida as a starting point for discussion, the chapter questioned the 'conventional' understanding of history in order to stress the permanent interaction between past, present and future times. Following in the footsteps of what Derrida has termed *hauntology* (science of the ghosts or spectres), I have explored the ghostly apparition of the colonial burdens of indigenous rights vis-à-vis the burdens of the genocide of indigenous peoples among past, present, and future. I have done it in two ways: First, by remarking on the characteristics of a *spectral history*—a historiographical move in which the colonial past periodically reappears in the present of international law, and, second, by showing different traces in which international law is silencing indigenous laws, which is tantamount to denying indigenous peoples sovereignty.

Within the framework of the burdens of indigenous rights, I have analysed how international law in general, and United Nations law in particular, have been framing the rights of indigenous peoples. With this aim in mind, I studied how the definition of indigenous peoples and the configuration of their rights in international law are connected to colonial and postcolonial legacies. In this context, I paid particular attention to the crime of genocide of indigenous peoples as well as to the genealogical way in which international criminal law standards have been established. I argued that the tendency to exclude indigenous peoples as protected groups from the legal qualification of genocide is motivated by political reasons directly connected with the colonial enterprise.

I conclude that there is an interconnection between the institutional apparatus that produces the framework of international law, and the models of power used by the states both to control human life and safeguard the status quo. The ongoing genocide of indigenous peoples is a clear example of this relationship. Although in the era of international human rights law, responsibility for genocide is imprescriptible, a passage on the victorious enemy by philosopher Walter Benjamin is far from losing validity: 'Even the dead will not be safe from the enemy if he wins. And this enemy has not

ceased to be victorious'.[101] Indeed, my analysis in this chapter has demonstrated that the enemy has put much energy in denying indigenous peoples self-determination and that is why it is crucial that international legal scholars and lawyers listen to indigenous law as law.

[101] Benjamin, 'Theses on the Philosophy of History'.

The ancient philosophers called camasca amauta runa *[wise Indians healers] interpreted the stars, comets, eclipses of the sun, storms, winds, animals and birds. They saw signs and foretold what would come to pass, the death of great kings of Castile and other nations of the world, uprisings, hunger, thirst, death by pestilence, war, a good year or a bad year. Thus they found out about Castile, and for this reason they called the Indians of ancient times Viracocha because they knew that these people were descendants of Viracocha of the first people of their father Adam and the lineage of Noah of the Flood. The same was written about knowing the seasons of the year for planting by the philosophers Pompey, Julius Caesar, Marcus Aurelius, Claudius, Aristotle, Marcus Tullius Cicero and the Greeks, Flemish, Gallicians as well as the poets. If these Indians knew how to read, record and write their ideas, ingenuity and skills, it was by using quipos, cords and signs, an Indian expertise.*

Felipe Guaman Poma de Ayala, *The First New Chronicle and Good Government. On the History of the World and the Incas Up to 1615* (University of Texas Press, 2002), 53.

4

The Double Bind and the Reverse Side of Coloniality: Talking with Silvia Rivera Cusicanqui and *El Colectivo*

This chapter is the beginning of the empirical part of the thesis, which, inspired by the work of Silvia Rivera Cusicanqui and Gayatri Chakravorty Spivak, explores a twin-track anthropological approach characterized by the methodological possibility of interacting between worlds that are both contradictory and complementary. The exploration of the epistemological and heuristic potential of the *double bind* takes place when there are two demands in conflict—neither of which can be ignored. Thus, this *encounter* supposes an insoluble dilemma: whenever the subject position chooses one of the imperatives of the aporia it cancels, in fact, the possibility of fulfilling the other one.[1] And that is why the subject position is always interacting between the two-aporetical poles.

I illustrate the potentialities of this twin-track anthropological approach in a conversation with Silvia Rivera Cusicanqui and *El Colectivo*, a self-organized group of cultural action and critique, based in La Paz, Bolivia. Rivera, a sociologist and public intellectual of Aymara descent, is a leading scholar of Andean and subaltern studies and an exemplary thinker of the *double bind* (see Figure 4.1). Indeed, in her political and academic interventions, Rivera has been 'learning to live with contradictory instructions'.[2] *El Colectivo,* founded in 2008 by a group of students of the Universidad Mayor de San Andrés together with Rivera, according to what Álvaro Pinaya (co-founding member) has told me, was born as an initiative to continue strengthening Andean roots of thinking. Specifically, Pinaya together with Juan Vaca, Eduardo Schwartzberg, Mercedes Bernabé and Marco Arnéz, wanted to encourage Rivera to promote something similar to what the Oral History Workshop (Taller de Historia Oral Andina, THOA) did in the 1980s. Rivera also co-founded this workshop; a worldwide icon of Andean history, 'which explored the communitarian and anarchist current of struggles, which was circulated in pamphlets and radio dramas and had repercussions in

[1] See especially Gayatri Chakravorty Spivak, *An Aesthetic Education in the Era of Globalization* (Harvard University Press, 2012).
[2] Ibid., 3.

the popular movements in the following years, especially in the organization of the *ayllus* of western Bolivia, the CONAMAQ'.[3]

Figure 4.1 Tambo El Colectivo with Silvia Rivera Cusicanqui commenting on her course on the sociology of the image.
Courtesy of Sandra Nicosia (P.Bacca)

The 'functioning' of the *double bind* appears in the chapter, as in the thesis, at three parts. To begin with, Spivak and Rivera have invited their students to participate in the exploration of *double-bound* readings and experiences of life. In this sense, Spivak has actively promoted an analysis of English literature through non-Western languages and histories. In this *double bind* between Western and non-Western sources, the subaltern speaks by transforming and invigorating the Western canon. Rivera, for her part, has considered the epistemological use of rituals and indigenous cosmologies as a way to envision different narrative possibilities beyond mainstream sources of knowledge. In this *double bind* between canonical histories and alternative histories, indigenous epistemologies are able to critically assess official historical accounts. It was by accepting their invitation that I have suggested the existence of a plurality of

[3] Verónica Gago, 'Silvia Rivera Cusicanqui: Against Internal Colonialism' (October 2016), *Viewpoint Magazine,* https://www.viewpointmag.com/2016/10/25/silvia-rivera-cusicanqui-against-internal-colonialism/

philosophical languages in the first part of the thesis.[4] And it is precisely by engaging Rivera's methodology that, in the first part of this chapter, I ritualize our conversation through a performative act.

In the second part, I show how Rivera is experimenting with the *double bind* by 'transferring' the personal into the epistemological. In so doing, I have a conversation with Rivera about her work, intellectual trajectory, and political activism during the last four decades as a way to unveil the *double bind* of her indigeneity. In this turn, the *double bind* operates within the indigenous world depicted by Rivera in our conversations as plural, diverse, and contradictory; indeed, a world where indigenous identity is torn between the simultaneity of being indigenous and non-indigenous at once. As Métis scholar Zoe Todd sustains in the following, this *double bind* is inherent to indigenous identity nowadays:

> There was a part of me that suddenly stepped into the 'explicitness of my category,' as an Indigenous woman, as an outsider. [Then] I realized I *could* make things, that I *could* insert my indigenous self into white spaces without apology or shame. Ever conscious of my complex position as a white-passing Métis woman and scholar, I insert here a note about the ways that my identity is contradictory, and acknowledge that the very act of occupying white spaces as someone who *looks white* courts the simultaneous familiarity and distance that comes with 'passing' in non-Indigenous contexts.[5]

In the third part, I show one example in which Rivera and *El Colectivo* have contributed to the development of a *double bind* epistemological framework in order to engage with the colonial encounter between Western and Indigenous jurisdictions in the Americas from an Andean perspective or in 'indigenous terms'. As a backdrop for discussion, I use the dissident component of the curatorial project *The Potosí Principle. How Can We Sing the Song of the Lord in a Foreign Land?* carried out by *El Colectivo* as a response to the approach of the 'official' German curatorship. Taking into consideration the emancipatory potential of indigenous thought as the basis for transforming the first narratives of the encounter between European and indigenous jurisdictions in the

[4] And I did so by taking into consideration the dialogue between Mazzoldi and Derrida, which is in fact based on traces of the *double bind*: 'This may be the moment to suggest that the pervasive presence of the acknowledgement of the double bind in Derrida's work can allow us to think of deconstruction as a philosophy of (praxis as) the double bind'. Spivak, *An Aesthetic Education*, 588. See Chapter 2, 47-57.

[5] Zoe Todd, 'Indigenizing the Anthropocene', in Heather Davis and Etienne Turpin, ed., *Art in the Anthropocene. Encounters Among Aesthetics, Politics, Environments and Epistemologies* (Open Humanities Press, 2015), 243.

Americas, this part examines the strategies used by the colonizers to subdue first-nation jurisdictions as well as the practices of resistance of indigenous peoples to keep their own laws alive. In so doing, it explores the *double bind* that exists between colonial domination and indigenous resistance.

4.1. Ritualizing the Memory: The Double-Bind-pä chuyma

It is a lively Tuesday in the second week of August 2016 in the city of La Paz, Bolivia, as I listen to the song *Aylluman Kutiripuna* (Let us return to the community) by Luzmila Carpio, a Quechua singer who upon facing the *double bind* of singing in Quechua, her mother tongue, or in Spanish, the 'prevalent' language under the trend of Bolivia's modernization, decided to use the language of her ancestors. In such tension, the prioritization of the indigenous side of this *double bind* is not unidirectional. Indeed, the *indigenization* turn that I am attempting to remark also results in the need to colour the Western tradition with the indigenous syntax, which is precisely what Carpio's artistic trajectory embodies. By strengthening the melodic ways of the Andes, she has projected her music as a political expression of rebellion against the overuniform model of cultural progress over first nations' own thinking in two complementary ways. Initially, Carpio composed children's music in Quechua as a way to keep alive the ancient Andean world, training the mind of new generations for the future. Subsequently, she started to croon bilingual songs in order to remark on the potentialities of a heterogeneous society in which the indigenous legacy can bring about a 'creative adjustment' to the world inherited from colonialism.[6]

While listening to music, I make the final preparations to interview Rivera. After spending one month and a half in La Paz interacting with Rivera and *El Colectivo,* she has agreed to converse with me about her work, intellectual trajectory, and political

[6] This is the case, for example, of the song *Yanapariway Takiriyta* from the *Yuyay Jap'Ina Tapes* album (Almost Music, 1990), in which Carpio calls for historical justice for Andean indigenous peoples, singing in Quechua and Spanish. 'Once the Bolivian ambassador to France, Luzmila Carpio is arguably South America's most prolific indigenous artist. Originally recorded in 1990, the *Yuyay Jap'Ina Tapes*— translated to "reclaim our knowledge"—began as a collaborative effort with UNICEF to preserve the indigenous Quechua language through song. Excavated and released this year by French label Almost Music, each song is characterized by brisk, tightly wound rhythms, procured not by drums, but by an ensemble of bells, birds, woodwinds and Andean lutes, or *charangos*'. '10 best Latin Albums of the Year' (December 2015), Rolling Stone, https://www.rollingstone.com/music/lists/10-best-latin-albums-of-the-year-20151230

activism during the last four decades. As a prelude, the interview uses Rivera's course on sociology of the image, an epistemological proposal based on *double-bound* readings of Andean history. In this appraisal, the *double bind* between the memory of indigenous peoples and the records of official history is resolved in favour of what Rivera calls indigenous *visualization*. The 'heuristic tool' of *visualization* is a sort of memory able to condense other senses beyond sight. Thus, while official history has been over determined by the visual, being anchored in both language mediation and data interpretation, *visualization,* by recovering senses of touch, smell, taste, hearing and movement, is able to decolonize memory, allowing not only for the expression of indigenous sources of knowledge themselves, but also the expansion of mainstream narratives. According to Rivera, it is an attempt to project her own Aymara mode of thinking, termed *ch'ixi* epistemology,[7] understood as an articulating agency of contradictions in which those histories that have been hidden, diminished, or forgotten come to the surface as a way to potentiate a dynamic dialogue between the contradictory forces.[8]

Recalling Rivera's teachings, I had decided to ritualize our conversation with the help of Argentinian photographer Sandra Nicosia, who has kindly accepted to share her photographic memories for this chapter. Rivera usually performs a ritual before starting a new project—to ascertain her social and political responsibility with what will emerge from her writings or artistic interventions. I choose Luzmila Carpio's melodies to create a previous harmonizing effect because her work, as well as Rivera's, has been inspired by the inherent contradictions of the *double bind* between colonial impositions and indigenous resistance. In fact, as Spivak has sustained, Western tradition has prescribed the 'proper terms' for conducting social interventions: '[i]t seemed that there was always an issue of controlling the other through knowledge production on our own terms, and ignoring, therefore, of the double bind between Europe as objective and subjective ground, judge and defendant'.[9] However, as Rivera and Carpio have shown in their work, the appropriations and reappropriations of the indigenous world to turn such impositions into something else are also unquestionable. Or, as Spivak has said, all

[7] See chapter 2, 42-47.
[8] See Silvia Rivera Cusicanqui, *Sociología de la Imagen. Miradas Ch'ixi Desde la Historia Andina* (Tinta Limón Ediciones, 2015), 30.
[9] Spivak, *An Aesthetic Education*, 467.

philosophical traditions should resonate with each other as equals, just as all languages are equally able to prepare a child for life.[10]

This harmonizing effect is accompanied by the reading of the poem *Tu Calavera* (Your Skull) by renowned Bolivian experimental poet Jaime Sáenz (1921-1986), who dedicated the piece to Rivera.[11] In this poem, Sáenz refers to an old dream in which Rivera's skull appears. It is a reference to a pre-Incan cranium that Rivera considers her adoptive ancestor since a period of illness in which an indigenous healer (*yatirí*) announced an antidote to the disease: Rivera would have to return the skull to its place of origin or welcome it as a member of her family.[12] Rivera took the second option and named it Jáquima after the finding of a set of documents of her maternal family in the United States during the seventies. Rivera managed to recover these papers from her uncle's house, being made aware not only of her family genealogy but also the traces of a deep colonial history. Indeed, those documents tell the story of the Indian who first declared that he witnessed the arrival of the Spaniards to Cuzco, the Inca capital. He returned to Pacajes, a province in the central Bolivian highlands, and was executed by indigenous fellows, who considered him a traitor. The descendant of this legendary character, related to the Cusicanqui family, was an indigenous woman named Jáquima and thus Rivera's use of this name.[13]

Finally, leaving my hotel in downtown La Paz, I decide to take a walk echoing one of the main sources of indigenous knowledge, which is intertwined with ancestral territories as a way of remembering indigenous cosmologies and laws: I go to the Basilica of San Francisco set in the historic heart of La Paz and built over an ancient sacred place where indigenous peoples render cult to their divinities (*wak'a*), and where, even now, indigenous social movements routinely meet after their mobilizations (see Figure 4.2). Then, I walk through the Mariscal Santa Cruz Avenue, a central street

[10] Ibid.
[11] See Jaime Sáenz, *Poesía Reunida* (Plural Editores, 2016).
[12] In Andean cosmological traditions, death is not understood as a tragic event but as the continuation of a new cycle of life. In Bolivia, Aymara and Quechua peoples celebrate the Day of the Dead on November 1, building altars with the skulls of relatives with offerings of various kinds. Rivera's relationship with her skull is inscribed in this pre-Hispanic tradition that is today syncretized with Christian elements, although, the Catholic Church considers it a pagan tradition.
[13] See the documentary 'Silvia Rivera Cusicanqui: Premio Nacional de Ciencias Sociales y Humanas (Trayectoria Intelectual y Aporte al Pensamiento Boliviano)', https://www.youtube.com/watch?v=UxN-39WL3zA

that leads to a corner from which it is possible to see the Illimani, the highest mountain in the Cordillera Real and one of the main geographical and cosmological referents of the Aymaras—the people to which Rivera belongs (see Figure 4.3). Thus, I feel that I can be closer to Rivera's work, always enriched by the *double bind* between her own indigenous sources and Western epistemological frameworks.

Figure 4.2 Basilica of San Francisco, La Paz, Bolivia.
Courtesy of Sandra Nicosia (P.Bacca)

Figure 4.3 Illimani, seen from La Paz, Bolivia.
Courtesy of Sandra Nicosia (P.Bacca)

4.2. Conversations with Silvia Rivera Cusicanqui

Evoking the work and life of Gamaliel Churata (1897-1969), a Peruvian novelist and philosopher who skilfully mastered the *double bind* between European avant-garde (taking seriously the foundations of critical Western philosophy) and Latin American indigenism (assessing the contribution of Andean cosmologies with particular emphasis in the conceptual richness of the Quechua and Aymara languages),[14] my conversation with Rivera began by exploring the *double bind* between indigenous and non-indigenous identity.[15]

Talking about *indigeneity* with Rivera is to speak of a world that is indigenous and non-indigenous at the same time. She recounted growing up in an environment where the understanding of Aymara language is a spontaneous experience: 'I grew up in La Paz and there were two women who took care of the home. They spoke Aymara all the time and one of them took care of me and while holding me in her *aguayo* (multicoloured woollen cloth) would tell me stories. Somehow, I was bilingual by means of my sense of hearing—I could not speak but I was very familiar with the sounds of Aymara (there was a lot of onomatopoeia). I was eight-years-old when she passed away and I have felt an orphan since then; indeed, my mother was never able to "replace" this woman'.

According to Rivera, her instinctive appreciation of the Aymara world was the legacy she received during that moment of her childhood. She related that period with a lot of affection since it shaped her temperament and determined her vocation for Andean cosmologies as well as her spiritual connection with Aymara mythical beings such as the fox and the condor. However, Rivera noted that this 'learning curve' has always been an unfinished process, indeed, a practice of life that is always to come: she was around sixteen when she began taking Aymara lessons, but feels that she does not speak the language well and is in an unending process of learning. Interestingly, her

[14] See especially Gamaliel Churata, *La Resurrección de los Muertos* (Universidad Nacional del Altiplano, 2010).

[15] In addition to the interactions developed over the course of my stay in La Paz and subsequent epistolary dialogues, I conducted two complementary interviews with Rivera. The first took place in La Paz and was recorded by Bolivian filmmaker Alejandra Zorrilla, and the second was carried out via Skype. La Paz, *Bolivia* (Aug. 9, 2016), Bogotá, *Colombia* (March 3, 2018).

conclusions regarding this route are inextricably connected with the possibility of developing the social sciences using a *double bind* logic.

In Rivera's view, behind the physical elimination of Aymara *Amawt'as* (philosophers) and *Yatiris* (healers) during the sixteenth century Spanish conquest of the Americas, lies the 'spiritual' annihilation of the philosophical uses of the Aymara language. Thus, she considers it necessary almost to reinvent the words' philosophical meaning by taking into consideration their metaphorical senses in daily life. And this is precisely what Rivera has done in her unparalleled work: departing from the pragmatic use of Aymara words, she has been 'scratching' their allegorical connotation in order to project a philosophical reflection based on indigenous sources of knowledge. In so doing, Rivera is working with an Aymara idiosyncratic translation of what Spivak has termed concept-metaphors,[16] that is to say, the possibility of unveiling the deep philosophical roots of expressions that tend to remain unnoticed for most anthropologists and ethnographers although they are fundamental in day-to-day indigenous activities.

The metaphorization of daily-life concepts is inherent to the polysemous character of Aymara language and, it is by using this polyphony that Rivera has been working with the contradiction (located at the very heart of *double bind* logics) as an epistemological tool to explain indigenous social realities. One of Rivera's key concept-metaphors is encapsulated in the Aymara concept of the *ch'ixi*. Rivera told me:

> I have reinvented the practicality of this concept by exploring its allegorical and epistemological power. Pragmatically, *ch'ixi* is the stained sheep, the spotted toad, the smudged snake. It is a descriptor, a keyword; however, its most abstract and philosophical dimension has not been developed and this is because after the assassination of the *amawt'as* and *yatiris* in colonial times, the language has been impoverished by the translations conducted by priests such as Ludovico Bertonio (1557-1625) and Domingo de Santo Tomás (1499-1570), who have expurgated

[16] Spivak has been exploring the potentialities of a radical alterity through the use of concept-metaphors: 'in order to think the other one must be able to imagine oneself as other […] Spivak seeks not to merely describe this possibility but to demonstrate it. She finds her most useful way to think radical alterity in the Muslim concept-metaphor of the haq, "the birthright of being able to take care of other people". Without the grounding of haq-like responsibility, and thus to the precomprehension of an instituting culture to the political, the subaltern other remains buried under the "repetitive negotiations" of neocolonial benevolence. "The subjunctive can move to an imperative only in terms of that responsibility-as-right fixed by a truth-in-alterity collective structure that happened to have been conceptualized as haq"'. Danny Butt, 'Double-Bound: Gayatri Chakravorty Spivak's An Aesthetic Education in the Era of Globalization' (2015) Working Paper 1, *Research Unit in Public Cultures – The University of Melbourne,* 11-12. Butt's internal quotations corresponds to Spivak's work, see Spivak, *An Aesthetic Education*, 294-345.

> Aymara concepts and ideas that were incomprehensible to them, subsequently removing the philosophical potential of indigenous languages.

In an interview given to Francisco Pazzareli, Rivera explained that the *ch'ixi* as a concept-metaphor, embodies the quintessence of an Aymara *double bind*, namely, an Andean gesture to work with the contradiction as a way of moving between opposite worlds. Thus, for instance, the snake is not only *ch'ixi* for being spotted but also for being an Aymara mythical animal who is undetermined in cosmological terms: it belongs to both the world above and the world below, it is both masculine and feminine, it is both rain and a vein of metal, it is symbolized both as lightning striking from a great height and as a subterranean force. And this is precisely the way in which Rivera traces the epistemological signs of Aymara cosmologies within the contemporaneity of a modern Bolivia that is torn between the (post)colonial legacies and the political force of the indigenous movement.

By challenging the official discourse, according to which the colonization of the Americas supposed the harmonious *mestizo* fusion of European and indigenous cultures (in which Western imaginaries overlay indigenous cosmologies), Rivera projects a reverse process of analysis in which Aymara cosmologies are capable of turning *mestizo* imaginaries in something else—something with indigenous soul. In so doing, Aymara cosmologies endow Western narratives with a new throbbing immediacy by taking the threads of indigenous laws and weaving them in their own modern way. This does not occur following the *mestizo* logic of fusion but by making reference to paradoxical structures as the inspiration of a *double-bound* reasoning. When I asked Rivera if she is indigenous and non-indigenous at the same time, her response was categorical: 'of course, being indigenous is a becoming. It is not an identity, it is a search'.

Rivera's reflections range from the personal to the methodological and from the epistemological to the collective. She, once described herself, during our interactions, as an 'abajista'—a Spanish term that she uses in opposition of the 'arriviste spirit' that characterizes the Bolivian upper middle class. Indeed, belonging to an upper middle class family, Rivera never expected to join the 'elite' but rather to become an urban Aymara woman.

According to the Argentinian intellectual Verónica Gago, Rivera refers to herself as a 'non-identified ethnic object', and has also reclaimed the label *sochologist* (fusing the word sociologist with *chola*, Bolivian term for an urbanized Aymara woman), a term once used to discredit her. She similarly plays with the term *birchola* (combining *chola* with *birlocha,* a name for women whose dress indicates upper class aspirations), and were among the social categories that Rivera investigated in El Alto, the indigenous-dominated city above La Paz. Gago sees these amusing word plays as simultaneously a merciless critique against the essentialization of the indigenous. She quotes from a conference address by Rivera: 'We are all Indians as colonized peoples. Decolonizing one's self is to stop being Indian and to become people. People is an interesting word because it is said in very different ways in different languages'.[17]

The idiosyncratic way of displaying an indigenous becoming is not only an asset for Rivera but also an indigenous performative act that can be seen in different practices of the Aymara mind-set. A central Aymara principle that passed from her personal experiences to her methodological endeavours is captured in the possibility of reading Western sources using Aymara rationalities. Thus, for instance, her work clearly demonstrates the principle of selectivity with which Andean communities transform Western properties such as Spanish grammar/syntax and classical European ways of dressing, as well as the epistemological parity demanded in indigenous social struggles (see Figure 4.4).

> I read in a fragmentary and selective way, from my point of view, you have to put what is lacking in an author […] and furthermore the different philosophical traditions should be placed on an equal footing […] that is to say that the words of an indigenous sage are connected with an inherited collective knowledge—they have an intellectual genealogy and you do not have to put them as ethnographical data separated from theory. Rather, I believe we have to engage in a dialogue between philosophical and theoretical conceptions of the world.

In this way, not only are indigenous epistemological tools capable of nurturing collective experiences, as is indeed the case with Aymara cosmologies, but also Western epistemological apparatuses can resonate in a homological way with indigenous cosmological frameworks. This synergy vividly appeared in the course of a face-to-face interaction between Rivera and Spivak, in the context of Rivera's

[17] Gago, 'Silvia Rivera Cusicanqui: Against Internal Colonialism'.

simultaneous translation of a conference presented by her Indian comrade in La Paz. Gago recounts that in so doing Rivera showcased the undiscipline of the text and of linear translation. Finding no Spanish translation for Spivak's term *double bind*, Rivera instead came up with an exact equivalent in Aymara: 'pä chuyma, which means having the soul divided by two mandates that are impossible to fulfil'. Rivera says that these translation exercises reveal that all words are being questioned today: 'This is a sign of Pachakutik, of a time of change'.[18]

Figure 4.4 Tambo El Colectivo, visual essay presented by Sandra Nicosia during the course of sociology of the image: classical European ways of dressing are transformed into a fashion with an indigenous Andean soul.
Courtesy of Sandra Nicosia (P.Bacca)

Talking with Rivera spontaneously about this event, she told me that most people in the audience were Aymara speakers, which alerted her to the convenience of translating the idea of the *double bind* to Aymara rather than Spanish. On the spur of the moment and without any kind of previous preparation, she began to talk about the *pä chuyma* in Aymara, explaining to the public what Spivak had said. Spivak, *double-bind-thinker* par excellence, immediately incorporated the Aymara *double-bind-pä chuyma* in her own

[18] Ibid.

English speech, which according to Rivera was a very sympathetic gesture: 'Spivak once told me that she makes theory with the guts, so she fully understood' (we laugh). Rivera continued explaining to me that the Aymara have a three-way logic: something can be and not be at the same time, which is tantamount to the possibility of having an included third. 'I think that is what makes possible such a compatibility with Gayatri. She also thinks that one needs to live with the *pä chuyma,* that it is necessary to coexist with the contradiction, and that the contradiction must be converted into a purposeful referent rather than an obstacle to the subject's integrity. For Bateson, the contradictory subject is schizophrenic because is imprisoned by two conflicting demands that deny each other's right of communication and it is a collective schizophrenia that produces a sort of paralysis. Instead, for Spivak, the contradictory subject embodies an incomparable creative power', Rivera added.

It is precisely by taking advantage of the epistemological power of Aymara logic that Rivera together with her group *El Colectivo* has been developing idiosyncratic and motley readings of Andean historiographical accounts based on the contradictory forces present in the *double-bind-pä chuyma* and the *ch'ixi* epistemology. And it is by exploring one of their experiences that I will narrate in the next sections the configuration of the international legal order in the fifteenth century from an Aymara perspective.

4.3. The Reverse Side of The Potosí Principle

4.3.1 The Reverse Side of the Museum

Between May 2010 and April 2011, a team of curating artist-researchers and contemporary artists from La Paz, Beijing, Moscow, St. Petersburg, Barcelona, Buenos Aires, Madrid, Berlin, Huelva, Seville, and London presented an ambitious project called *The Potosí Principle. How Can We Sing the Song of the Lord in a Foreign Land?*[19] The project consisted of a series of exhibitions in which about 20 paintings from the Potosí painting school from the seventeenth and eighteenth centuries were

[19] See Alice Creischer, Max Jorge Hinderer and Andreas Siekmann (ed.), *Principio Potosí ¿Cómo Podemos Cantar el Canto del Señor en Tierra Ajena? La Economía Global y la Producción Colonial de Imágenes* (Museo Nacional Centro de Arte Reina Sofía, 2010).

contrasted with different contemporary artistic trends and proposals. In so doing, the project sought to transfuse the history of the city of Potosí at the onset of the seventeenth century onto local and global political experiences in the twenty-first century. Located in the Bolivian tin belt, 'Potosí was one of the largest cities in the world—comparable to London or Paris',[20] and its Cerro Rico (Rich Mountain) is the world's largest silver deposit and has been mined since the sixteenth century: 'Potosí was the equivalent of today's Abu Dhabi or some Chinese cities, sources of exploitation and wealth for the global capitalist world'.[21] While the Potosí silver mines led to the flourishing of the Spanish crown—securing its fiscal sustainability and funding its wars across Europe, the use of indigenous labour in the mines and their precarious working conditions can be considered a starting point for the global economy and an international legal order. As a result of the large amount of gold and silver shipped to Europe a new era of accumulation began: '[i]t is said that all the silver mined there would be enough to build a bridge from the Andes over the Atlantic Ocean that reached Cadiz—the harbour in Spain where the silver arrived'.[22]

The Potosí Principle was presented as an exhibition and a series of talks in and around the Reina Sofía Museum in Madrid, House of the Cultures of the World in Berlin, and National Museum of Art in La Paz. *El Colectivo,* critically responded to the 'official' German curatorial team by making a book-catalogue, which operates as the exhibition's dissident component.[23] Indeed, an epistemological proposal dealing with aesthetics and art theory as well as the history of ideas was headed by Rivera.[24] *El Colectivo* promoted this dissident component as a result of differences in interpretation with the 'official' curatorship mainly in terms of both the historiographical reading of the Andean world and its baroque paintings and the conceptualization of the museum and cultural heritage.

---

[20] See Museo Nacional Centro de Arte Reina Sofía, http://www.museoreinasofia.es/en/multimedia/reverse-side-potosi-principle-silvia-rivera-cusicanqui.

[21] Ricardo Arcos-Palma, 'The Potosí Principle. How Can We Sing the Song of the Lord in a Foreign Land?', (2011) 80 (126) *ArtNexus*, http://certificacion.artnexus.net/Notice_View.aspx?DocumentID=22805.

[22] See European Institute for Progressive Cultural Policies, 'How Can We Sing the Song of the Lord in an Alien Land? / The Potosí Principle', http://eipcp.net/calendar/1272304058.

[23] See Silvia Rivera Cusicanqui (ed.), *Principio Potosí Reverso,* (Museo Nacional Centro de Arte Reina Sofía, 2010).

[24] Museo Nacional Centro de Arte Reina Sofía, Ibid.

Álvaro Pinaya, from *El Colectivo,* told me that the group's foundation in La Paz, at the end of 2008, coincides in a way with the beginning of the German curatorial project: 'Silvia had travelled abroad, and we had periodical meetings in her house. Upon her return home, she arrived with the news that the German curatorial team asked her to participate in the project as curator of the exhibition *Reverse Modernity*, the original exposition's title'.[25] This was changed to *The Potosí Principle* due to the influence of *El Colectivo,* which understood the contentious meeting between Western and indigenous jurisdictions from an Andean perspective anchored in the history of the Potosí mines. The historiographical record of this encounter has been interpreted by *El Colectivo* taking into consideration the cosmo-spatial referents of the Andean world that, not only survived the colonial invasion, but were also rearranged around the new places of worship imposed by the Catholic Church. These new shrines were established upon Andean sacred places that have continued to be key strategic points in political and administrative terms until now.

The Spanish process of colonization of the Andean world supposed, in this way, an immeasurable rupture of indigenous political structures, which are based on cosmological referents. However, it was not a linear process of colonial impositions but also a complex route of indigenous practices of resistance; indeed, as Rivera has explained in her work, a process that operates in a *double bind* logic. In this context, there are some facts that help us to better understand the differences between the work advanced by the German curators and *El Colectivo.* On the one hand, the German team was interested in analysing European modernity in connection to the colonial enterprise, two large-scale social trends that are related in time and space. On the other, they sought to display a political reading of the Andean baroque art in order to unveil the indoctrination techniques used by the Catholic Church vis-à-vis indigenous interpretations and the configuration of a global capitalist system which prompted the annihilation of indigenous peoples.[26]

[25] I am grateful to Álvaro Pinaya and Ruth Bautista Durán from *El Colectivo* for their willingness to talk and share their experiences with me. The interview with Pinaya was very detailed because we used a written format: Epistolary dialogue from Bogotá to La Paz, (March 20, 2018).

[26] 'Tandeter and Bakewell both stress that the working conditions in Potosí were comparable to those obtaining in other South American mines: blatant disregard of stipulated working hours, retention of wages, debt bondage, arbitrary regulation, ill treatment by overseers, malnutrition, and disease'. Alice Creischer, 'Primitive Accumulation, as Exemplified in Potosí' in *Principio Potosí,* 237.

The work of Rivera presents resonances with the aforementioned approach and, one could infer, that is why she was invited as a curator of the exhibition. Nonetheless, once *El Colectivo* began to get involved in the project, it became clear that the theoretical approach of the 'official' curatorship was disconnected from indigenous peoples' thinking and territories. *El Colectivo,* for its part, was not only interested in displaying a critical reading of the indoctrination process advanced by the Catholic Church in Andean territories, but also in providing an interpretation able to demystify the *mestizo culture,* in which indigenous cosmological referents ended up being integrated to capitalist and Catholic symbols. This analysis, not only explores the colonial past but mainly the way in which indigenous communities reappropriate those imperialistic symbols in the present, particularly their current relationship with religious paintings and the *indigenization* of the feasts of Catholic Saints.

Pinaya told me that the German team's priority was to show the impact of the capitalist system on indigenous communities; mostly, how the global economy has plunged them into poverty. In this context, indigenous festivities were seen as a 'colonial-capitalist aftertaste' and it was, under this circumstance, that *El Colectivo* also noted the German team's sharp folklorist vision of the Andean indigenous world. In Pinaya's account:

> For example, they understood the issue of time in a very different way. They didn't quite understand how colonial paintings could be current in the context of indigenous festivities and why indigenous peoples were interacting so actively with those colonial 'impositions' in the present. It was there that we became aware of their strong folklorist vision of indigenous peoples. For them, these festivities seemed to be the image of the decline of a culture that could be headed toward extinction. For us instead, these festivities, in which a lot of money is spent, are not only a space to confirm the devotion towards a saint or a virgin but mainly spaces of resistance and resignification.

Indeed, in such a space, there is a *double bind* between capitalist and religious symbols and indigenous political resistance and cultural reappropriations. Thus, for instance, an eighteenth-century painting of hell by José López de los Ríos, located at the Church of Carabuco near La Paz, portrays with precision both the miseries of capitalist-religious indoctrination and the power of Andean indigenous cosmologies that keep indigenous thinking alive (see Figure 4.5). Caquiaviri, one of the places where the Spanish colonial regime recruited miners for Potosí, plays the symbolic role of hell. The demons have a *double bind* spirit since, as it is true that they torture worldly people, it is equally true

that they represent the beings of the Andean underworld in proper indigenous manner. In this way, Andean indigenous peoples did not see and did not represent those demons as evil forces but as key allied deities, who resonate with their own cosmological beings. In such a context, the indigenous world not only made the birth of an international legal order based on a global economy driven by the silver obtained from Potosí possible,[27] but also adjusted such an order to its own geographical space, where the Incas had formed a powerful confederation, able to resist colonial impositions openly through indigenous uprisings and covertly through Andean cosmologies.

Figure 4.5 *The Hell of the Series 'The Aftermath',* José López de los Ríos (1684). Carabuco Church, La Paz.
Courtesy of Wikimedia Commons

The differences in interpretation were not minor. In fact, what turned *El Colectivo's* readings into folklore rather than epistemology, following the mainstream curatorship approach, was precisely their idea of reading colonial history through current indigenous cosmologies—mostly represented by an Andean *indigenization* of popular Catholic culture. But regardless of this, there were strong reasons to corroborate the subordinate role that the 'natives' (*El Colectivo* and the indigenous communities involved) began to acquire in the project. First, the Museum of the Americas refused to move the Melchor Pérez de Holguin painting of the 1716 *Entry of Viceroy Morcillo into*

[27] In the eighteenth century, such silver allowed Spain to pay its debts in Europe, purchase slaves from African slave traders, and buy silk and porcelain from China. See Bernd M. Scherer, 'Prólogos' in *Principio Potosí,* 4.

Potosí from Madrid to La Paz (see Figure 4.6). This painting is crucial to understand the eighteenth century colonial microcosms, which surrounded the Potosí imperial village.

Figure 4.6 *Entry of Viceroy Morcillo into Potosí*, Melchor Pérez de Holguín (1716). Museum of the Americas, Madrid.
Courtesy of Wikimedia Commons

Afterwards, the Ethnological Museum of Berlin denied the loan of four *khipus* requested by *El Colectivo* (see Figures 4.7 and 4.8). The khipus were record-keeping devices used during the Inca period to register different services, obligations and products, and, according to the hypothesis of *El Colectivo*, they could be considered a cornerstone technology to trace the system of administration of the Incan state and the role played by silver as mediator and catalyst between the economic, social and religious system.[28] The museums have taken these Andean devices out of context: on the one hand, by enclosing them in glass cabinets, without investing any learning effort into connecting them with the indigenous territories to which they still belong; and on the other, by minimizing their conceptual scope to a 'primitive calculator', when they embody a complex writing system associated with a sacred Andean economy. As a matter of fact, during Incan times, both silver and gold were offered at the places of worship to the deities (*waka's*) at key particular times within Andean solar and lunar calendars.

[28] Eduardo Schwartzberg, 'Cultura, Patrimonio y Arte. Eufemismos de la Cadena Colonial', in *Principio Potosí Reverso*, 49.

Figure 4.7 *Khipu* on wooden Bar.
Ethnological Museum of Berlin
Courtesy of Harvard Khipu Database Project

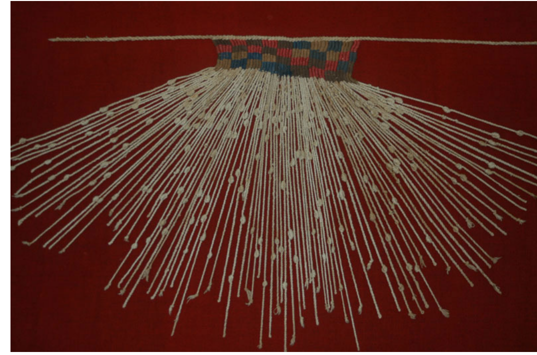

Figure 4.8 Canuto *Khipu*.
University of San Martín de Porres, Lima, Perú
Courtesy of Harvard Khipu Database Project

The first event opened up discussions about the importance of respecting the decision of the indigenous communities who did not want to lend their communal art for the exhibition, which is an ethical and political commitment that 'challenged key aspects of the colonization process, like the state and ecclesiastical control in decisions dealing with the destiny and location of the paintings'.[29] It was corroborated by the second event, because the German Gallery's refusal was selective; they accepted lending the *khipus* to Madrid and Berlin but not to Bolivia. According to Eduardo Schwartzberg, member of *El Colectivo*, this reveals the paranoia and distrust of European institutions, which have expropriated sacred objects and indigenous art for centuries.[30] There is a double paradoxical effect in this fact: First, the paradox of the guilt of accumulating material objects as a product of a systematic process of colonial plundering; and second, the paradox of the double morality which surrounds the 'cultural transaction'.

Within the context of the project, there was an implicit colonial logic insofar as it was necessary that the Bolivian museums remain silent about the position adopted by their European 'partners'; nevertheless, the European museums exerted symbolic and economic pressure to compel the indigenous communities to accept the loan. In a previous work, Rivera employed the powerful metaphor of *indio permitido* (tolerated Indian) in order to highlight the World Bank's strategy to present the indigenous

[29] Ibid.
[30] Ibid

population as an acculturated sector within the market.[31] Using a pure banking logic, the Ethnological Museum of Berlin has accumulated approximately 400 archaeological *khipus,* ignoring their cultural context and philosophical meaning. In both cases, '[t]he strategy of the *indio permitido* enshrines a reified, postcard image of the indigenous culture while preserving the unquestioned cultural hegemony of the elites in the daily fabric of social life'.[32]

4.3.2 Andean Sacred Economy

In the midst of this context, the political and epistemological differences between the German curators and *El Colectivo* became more evident. Emphasizing the secondary role they had begun to play and the fact that in practical terms they had ceased being co-curators and had become a group of 'indigenous informants', *El Colectivo* decided to turn away from the project. Nonetheless, being unconvinced with the 'mainstream curatorship', Manuel Borja-Villel, director of the Reina Sofía Museum, decided to travel to Bolivia in order to offer *El Colectivo* an alternative exhibition room. After internal discussions and in order to avoid being the second option at the possibility of the exhibition's failure, *El Colectivo* decided to create a manuscript proposal, which subsequently became the book-catalogue *Principio Potosí Reverso* (The Reverse Side of The Potosí Principle).[33] This work is no doubt a canonical contribution within the bibliography that seeks to provide a better understanding of the way society thinks in modernity.

I would describe the book-catalogue as a historical source enriched with anthropological and economic analysis, and for its aesthetic conception, as a work of art in itself. Among its multiple contributions, Andean perception of the new international legal order, which becomes real with the colonization of the Americas and its relation to the past and present of indigenous peoples is a key element. First of all, the book contests

[31] Silvia Rivera Cusicanqui, 'Colonialism and Ethnic Resistance in Bolivia: A View from the Coca Markets', in Fred Rosen (ed.), *Empire and Dissent: The United States and Latin America* (Duke University Press, 2008), 141-143.
[32] Ibid.
[33] Silvia Rivera Cusicanqui, '¿Es Posible Descolonizar y Desmercantilizar la Modernidad?' Paper presented at the Decolonizing the Modernity Lecture Series, México DF, Universidad Nacional Autónoma de México UNAM, 2014.

the academic tradition that depicts history in a linear and progressive trajectory, which can be seen in at least two different ways. On the one hand, making a remarkable propaedeutic effort, *El Colectivo* has woven the book's thread within Aymara temporality. In the Andean world, the spatial-temporal coordinates differ from chronological time, especially because there is a permanent interaction between past, present and future and thus, through this temporality, the reader of this book is asked to change the sequential path of the reading.

Thus, the book is divided into three parts to be read as follows: beginning from the centre of the book (*taypy*), the reading continues to the right side (*kupy*) to the back cover of the book, and lastly, the reader comes back to the centre of the book in order to read its left side (*ch'iqa*), turning the pages the other way around. 'Upon finishing the reading (which would appear to be the beginning of the book, as if you were reading in a conventional way) a Glossary of the Aymara and Qhichwa terms will appear, as a means of highlighting the linguistic turn and epistemological options of those responsible for its elaboration'.[34] In other words, readers are invited to challenge their temporal experience for a while: starting from the middle zone of the book (the present), a space of daily struggle, continuing to the right side (the past), when the wisdom of ancestors is recreated, and, finally, ending where one usually begins to read book, as a way of envisioning the future.

Rivera has shown the permanent correlation between past, present, and future within the social life of indigenous communities all along her work. By exploring different techniques from sociology of the image, she has been studying 'the relationship between looking, representation and power in relation to the construction of indigeneity within the framework of colonial domination'.[35] The connection between European colonialism and Western economic development is not in question in the particular case of the extractive process commanded by the Spanish Empire in the Andean region—of which the silver mining in Potosí is a prime example. This is precisely one of the central facts that the *Potosí Principle* project made clear by exploring what the Andean baroque art could say about 'the cruelties of colonial and postcolonial economic activity—both

[34] Silvia Rivera Cusicanqui, 'Presentation', in Rivera Cusicanqui, supra n 5 at 130.
[35] Silvia Rivera Cusicanqui, 'Sociology of the Image: Orality, Performance, and the Gaze in the Andes', (Syllabus presented as Andrés Bello Chair in Latin American Literature & Culture, New York, New York University, 2014), http://clacs.as.nyu.edu/docs/IO/32040/GA_1014_cusicanqui.pdf .

as their symptom and their witness'.[36] However, this fact, which set up the beginning of a new international legal order on the threshold of the fifteenth century, also rests on a *double bind* arrangement between colonial fiscal domination and indigenous economic resistance.

In this sense, *The Reverse Side of the Potosí Principle* is able to transform, on the one hand, the course of the dominant trend in Andean colonial history, which has depicted indigenous economies as strongholds of primitive epochs. And, on the other, the critical historiographical readings that link the economic growth of Europe with the colonization of the Americas, highlighting the impoverishment and decline of the indigenous world. In reference to the first approach, Rivera has shown how the sophisticated Incan economic system was rearranged in the course of the colonization process. Indeed, the Incan economy was based on the circulation of goods around a confederation comprised of different indigenous communities, where Andean holy places (mainly mountains, volcanoes, and lakes) were key points of fiscal interchange and focal regions to leave offerings for the gods. It was a 'monetary system' in which goods and services were cherished in relation to their ritual value. Thus, in reference to the second approach, Rivera and *El Colectivo* have shown, not only the undeniable process of colonial looting that enriched a handful of European nations and impoverished millions of indigenous peoples, but also the exuberance of indigenous local markets organized around Andean holy places from their rearrangement in the fifteenth century until their splendour during the nineteenth century and beyond.

The double facet that the exchange of goods acquired in the daily life of the Incan empire is key to understanding the political economy after the arrival of the colonizers. The symbolic dimension of the places of worship of the deities (*waka's*) is profoundly imbricated with the public service in community-driven projects (*mit'a*). Thus, it is possible to establish an interconnection between the mercantile paths of the Inca state with the *waka's* situated across the empire. Rivera's epistemological conception unveils a 'sacrificial economy' to the extent that the offerings placed in the holy places were the most precious assets both in Andean economic and cosmological terms. In this sense, the work rotation of the *mit'a* invigorates a circulatory displacement of living energy

[36] Creischer, 'Primitive Accumulation', 235.

with an unquestionably political and corporative face. Some examples of this movement are, first, the circulation of goods for daily or sumptuary consumption that 'sustained public works for irrigation, the construction of temples, bridges, roads, and fortresses as well as military incursions into hostile territories'.[37] And, second, the 'production of highly valued sumptuary or symbolic goods: textiles, beverages, entheogenic preparations, all of which were offered to the *wak'as* or to the mummies of local ancestors as well as to the lineages of ancient lords and Inka kings'.[38]

The forgetting of deep Incan roots has produced a liberal history, one which depicts an Andean nineteenth century 'of depression, economic crisis and enslavement of Indian populations, only overcome with the growth of the export economy by the end of the century'.[39] Nonetheless, as Rivera has explained by interpreting the pictorial work of Melchor María Mercado—the *Album de Paisajes y Tipos Humanos de Bolivia (1841-1869)* (Album of Landscapes and Human Types of Bolivia)—the Incan economy continued to show stability and strength in both its practical and cosmological domains. Thus, Mercado sketched a lively indigenous economy with established economic routes enriched by the use of symbolic exchanges, 'in which both men and women engage actively, taking entrepreneurial roles as dealers of maize beer, staple crops and other rural-urban trade items'.[40] Following the model of the first century of colonial rule, the nineteenth century was characterized by the constitution of an economic system organized around the mining centres of La Paz and Potosí. These centres are not only extractive marketplace forces but also Andean places of sacrificial economies in which the capitalist soul is tinged with Andean sacral temporalities. As Rivera has pointed out:

> In depicting the idea of these "centres" [Mercado] actually draws inspiration from the ideas of centrality, power and sacredness present in the indigenous Andean world: La Paz and Potosí are shown as economic forces governed by the centrality of mountains (mount Illimani in La Paz and Sumaq Urqu in Potosí) as in the indigenous worldview, these are conceived as sacred sites of power, and one can hardly recognize La Paz and Potosí as cities, but rather, the paintings depict them as sorts of natural sanctuaries, where mountains organize the space and the social

[37] Silvia Rivera Cusicanqui 'The Potosí Principle: Another View of Totality' (2014) 11 (1) *E-MISFÉRICA*, http://hemisphericinstitute.org/hemi/en/emisferica-111-decolonial-gesture/e111-essay-the-potosi-principle-another-view-of-totality.

[38] Ibid.

[39] Silvia Rivera Cusicanqui, *Invisible Realities: Internal Markets and Subaltern Identities in Contemporary Bolivia* (SEPHIS - SEASREP, 2005), 13.

[40] Ibid.

life of the inhabitants in the centre of the commercial routes to which the motley traveling crews are headed.[41]

In the next and last section of this chapter, I illustrate the meeting between Andean and European temporalities using the notion of church/*wak'a*. In so doing, I provide some cues about a historiographic reading that is able to consider both colonial domination and indigenous resistance—as *El Colectivo* did in *The Reverse Side of the Potosí Principle*— by displaying indigenous peoples' manoeuvres in the interpretation of the daily life of Andean baroque.

4.3.3 On Andean History and Temporality

The meeting of rival jurisdictions during the course of the colonization of the Americas in the fifteenth century led to the birth of a new trend in Andean indigenous history. This historiographic turn was characterized by the conflict between Andean and European temporalities and, subsequently, by an overlapped practice of colonial domination and indigenous resistance. The process of Christian evangelization is a key element of this conundrum. First, because the colonization of the Americas was justified in religious terms,[42] and, second, because the production of Catholic images eloquently embodies the superposition of Andean and Western temporalities. The ideological function of images played a central role in the conflict between the Reformation and Catholicism in the sixteenth century.[43] It can be traced through the Council of Trent (1545-1563), which 'issued a decree detailing how the new pictures of the Counter-

[41] Ibid., 14.

[42] In 1550, Charles V, ruler of the Spanish Empire, in conjunction with the Council of the of the Indies, convened a summit meeting in order to determine, among other questions, whether or not the 'newly discovered' Amerindians had a soul, and thus to be able to decide the political treatment that the natives should receive within Spain's colonization and conquest of the Americas. The gathering of jurists, theologians, and philosophers took place in the School of San Gregorio in the city of Valladolid, where the *disputatio* occurred between Juan Ginés de Sepúlveda (1490-1573) and the Dominican friar Bartolomé de Las Casas (1474-1566). See Oscar Guardiola-Rivera, *What if Latin America Ruled the World, How the South will take the North into the 22nd Century* (Bloomsbury, 2010), 43. For a description of the Valladolid Debates and the Salamanca School history, see André A. Alvez and José M. Moreira, *The Salamanca School* (Bloomsbury, 2010), 86-102.

[43] The Protestant Reformation came into being as a schism in Western Christianity during the sixteenth century. It was repressed by the Catholic Church through the establishment of an ecumenical council known as the Council of Trent, whose principles were tailored in the Andean region with the creation of the Third Council of Lima (1582), which was in charge of the eradication of indigenous idolatries. See Pablo de Arriaga, *Extirpación de Idolatría del Pirú: 1621* (Facsímil, 1910).

Reformation should be painted'.[44] In this sense, it is no coincidence that the policy of eradication of indigenous idolatry was applied under the guidance of this council at the beginning of the seventeenth century, nor the fact that one of the main measures of the policy consisted in the construction of churches on top of Amerindian *wak'as.* This age, in which the administrative power of the Inca state was moved from Cusco to Potosí and the symbolic power of Catholicism translated its ideology into the images and architecture of the baroque, founded a new historical temporality in the Americas.

The borderland spaces, where the meeting of Andean and European temporal coordinates took place, can be represented by the notion of church*/wak'a*. According to Rivera, the *wak'as* embodied the old Andean world whereas the Catholic churches depict the world that came from Europe. Considering that in Andean spatial-temporal coordinates the historical past of the *wak'as* is still alive in daily life recreation of indigenous cosmologies and laws, the past is always a time that will come or the time that future generations are waiting for. Thus, Rivera's reading emphasizes a dimension of indigenous resistance: on the one hand, by remarking on the rearranging of Andean cosmologies within the colonial regime, and, as a matter of fact, the beginning of an international legal order that would be strengthened in the course of the eighteenth and nineteenth centuries with the colonization of Oceania and Africa; on the other hand, by raising the inherent paradoxes of the colonization of a territory that was in an economic and cultural boom—as was the case of the Inca Empire in the Andes.[45] The implications resulting from this epistemological framework turned the Potosí principle into its reverse.

Both the German curatorial nucleus and its *Potosí Principle* as well as the dissident component of the exhibition and its *Reverse Side* agreed on the relevance of challenging the idea of a full European modernity. In the case of Rivera and *El Colectivo,* this issue is not only about the use of pictorial languages to locate historical references, but mainly about the way in which indigenous peoples experience time and history in their everyday life: 'the subversions and subalternities of colonial painting in its relationship with the communities it belongs to, and their rites, their structures of relationship and

[44] See 'Early Modern History Lessons: The Potosí Principle', http://post.thing.net/node/3181.
[45] See Rivera, *Sociología de la Imagen*, 175-279.

knowledge which break away from Euro-centril categories'.[46] Borja-Villel, director of the Reina Sofía Museum, has raised some key questions, which resonate in both projects regarding this particular issue:

> What would happen if we substituted for Descartes' 'ego cogito' Hernan Cortes' 'ego conquiro', or Kant's concept of pure reason for what Marx termed the principle of primitive accumulation? What if, instead of starting our account of the modern age in the England of the Industrial Revolution or the France of Napoleon III, we started it in vice-royal South America?[47]

In the case of *El Colectivo,* however, history is not only a technology of knowledge and power, but also a matter of multiple appropriations and reappropriations in which indigenous peoples are able to transform present and future through the histories of the past. It supposes a constant calibration and re-calibration of the self and the Other—of the church and the *wak'a.* If, on the one hand, 'the world of ritual pilgrimages and the work turns of the *mit'a* in the mines or the maize fields of the Inka were transformed into a painful procession to the new colonial *wak'a*—the Rich Mountain of Potosí';[48] on the other, the church/*wak'a* encounter amalgamated a complex relationship between colonial domination and indigenous resistance. '[T]he syntax and the interpretive code that emerged from this *taypi* became the tool that enabled the confrontation and translation of the other, his symbols, mores, and the manners in which he exchanges both messages and commodities', Rivera adds.[49]

In *The Reverse Side of The Potosí Principle,* Rivera has continued to strengthen her analysis on colonial times through the use of films and paintings, in order to reveal the official history's political determination in the rejection and obliteration of indigenous knowledge. This reading, however, not only considers the potential of the Andean baroque's painting to understand the history of modernity. At the same time, Rivera points out the difference between a history hanging on an empty space, and a historic present full of the past and the future in which 'the paintings are re-inscribed in the context of the community of devotees who worship them and dance in their honour'.[50] In the first space, 'the capitalist circuits of art and the state's appropriation of the

---

[46] Museo Nacional Centro de Arte Reina Sofía, Ibid.
[47] Arcos-Palma, 'The Potosí Principle'.
[48] Rivera Cusicanqui, Supra n 13.
[49] Ibid.
[50] Ibid.

communal patrimonies are nurtured by the fissures of the republican states'; while in the second one, the communities 'insert themselves in the networks of signification that connect them to their dead ancestors, with the cycles of water, with the *apachetas*[51] and the celestial phenomena'.[52] Rivera has drawn attention to the proliferation of postcolonial studies as a new intellectual fashion, many of them, produced in the global north and entirely unconnected from the territories they say they are looking at. 'Fashions come and go but colonialism remains', Rivera has said.

4.4. Conclusions

This chapter opened the empirical part of the thesis by presenting the trajectory with which Aymara sociologist Silvia Rivera Cusicanqui, in conversation with Spivak, has been experiencing the epistemological and methodological possibilities of the *double bind.* The *double bind*, together with my proposal of *indigenizing international law* through an *inverse legal anthropology*, constitutes the central analytical framework that opens the possibility of interaction with social domains that are contradictory and complementary at the same time. Thus, the chapter interacts with the contradictions and resonances produced in the course of three *double-bound* experiences.

In the first part, by examining the *double bind* between mainstream and indigenous historical sources through a performative act in which my conversation with Rivera was ritualized by introducing elements of Andean indigenous cosmologies as a way of remarking on the epistemological power of dissenting historical narratives. In the second part, by having a conversation with Rivera about her indigeneity, I explored the *double bind* of a cultural identity that moves between the possibility of being simultaneously indigenous and non-indigenous. Lastly, in the third part, I illustrated the way in which Rivera and *El Colectivo* have transfused their daily life experience (particularly their critical involvement in the curatorial project *The Potosí Principle. How Can We Sing the Song of the Lord in a Foreign Land?*) into an Andean *double bind* reading of the configuration of the international legal order.

[51] 'Apachetas is the Hispanicization of apachita, the place where ritual ceremonies take place, located in the highest point of the hills or the paths. There, some walkers place small stones as a sign that they have left their exhaustion'. Rivera (ed.), *Principio Potosí Reverso,* 153.
[52] Ibid.

It is ultimately the *double bind* between colonial domination and indigenous resistance where the core of the chapter rests: On the one hand, by showing the darkest side of the colonial enterprise, and, on the other, the creativity with which Andean indigenous peoples succeeded in resisting the colonizers renewed impositions by turning the *mestizo* culture (characterized by the supremacy of the European mind-set) into a new socio-cultural trend. This becomes possible when the indigenous ethos tinges alien culture with its spirit. It is by considering this performative act that, in the next chapter, I will allow myself to be seduced by the Andean Nasa mind-set in order to think about Colombian indigenous laws at the beginning of the twentieth century by recognizing the value of indigenous law as law.

The same Supreme Judge pronounced sentence for the second time, on the earth, in the garden which he had planted and where he had planted and where he had placed a guardian or steward together with a woman, whose dresser was a lake that was in the garden, and the steward or farmer had joy in contemplating the beauty of the flowers and the fruits. The place where the second sin was committed, which many historians say that it was the serpent which offered an apple, etc., which is not true because it was the laws of human nature which ordered the strict fulfilment of its laws; because the animal kingdom reveals to us such fulfilment with understandable precision that philosophers call logic and psychology, because they claim to have studied; but I say it because I have interpreted it by observing diverse living creatures.

Manuel Quintín Lame, *The Thoughts of the Indian Educated In the Colombian Forests*, in Gonzalo Castillo, *Theology and the Indian Struggle for Survival in the Colombian Andes: A Study of Manuel Quintín Lame's Los Pensamientos* (Columbia University, 1984), 371.

5

Inverse Legal Anthropology in Action: Manuel Quintín Lame—A Nasa Legal Cosmographer

This chapter is an archival exploration of what it means to perform an *inverse legal anthropology* based on the life and work of Manuel Quintín Lame (1880 - 1967)—a radical indigenous leader and an active user and creator of laws, who lived during the first half of the twentieth-century. Born in Cauca, a department in the southwest Andean region, and a member of the Nasa people, one of the eight indigenous nations in this territory, Lame has become a cornerstone of the Colombian indigenous ethos. His legal work and interpretations follow the path of his ancestor, Don Juan Tama, a legendary chief (*cacique*), who juxtaposed Nasa cosmology and oral tradition with the Spanish written world back in the seventeenth century. By using colonial titles to claim Nasa sovereignty over territories in Cauca, the contents of these titles came into force once they were transmitted orally 'during the formal walk around boundaries [of the indigenous territories] that preceded approval of the title'.[1] It was an idiosyncratic ceremony that included both the indigenous ritual of walking ancestral territories and the Spanish legal tradition that recognised the existence of these lands through colonial titles.

In this way, the legal knowledge embodied in the titles was arranged, according to Joanne Rappaport, 'in topographic space and ritual time, strengthening the impact of the geographic medium for transmitting and interpreting history'.[2] The titles stand out for their ambiguity, precisely because they move between Spanish historical tradition and indigenous legal experimentation and thus, 'the lack of clarity of oral accounts is dispelled by explanatory material present in other, non-narrative forms, such as dance and pilgrimage, both related to space'.[3] In line with Rappaport, I understand the cosmological framework of the Nasa people as the politics of their memory: On the one hand, Nasa cosmology as memory embodies the jurisdiction in which indigenous communities enact their living laws and, on the other, it contains the historical accounts

[1] Joanne Rappaport, *The Politics of Memory. Native Historical Interpretations in the Colombian Andes* (Duke University Press, 1998), 83.
[2] Ibid.
[3] Ibid., 84.

with which Nasa people give meaning to their own existence and everyday life.

Both Nasa jurisprudence and history rest on the memory of an ancient tradition, and the legal landscape derived therefrom is linked to a pre-Columbian indigenous jurisdiction with a complex historical trajectory. It ranges from large self-ruled territories governed by *caciques* (*cacicazgos*) in the pre-Conquest era to their virtual disappearance during the nineteenth century. The *cacicazgos* were transformed into colonial reservations (*resguardos*), which are indigenous territories managed by their *caciques* and recognized by the colonial power in the sixteenth century. The system of *caciques* without *cacicazgos* that profoundly altered the nature of the relationship between community and state was born in the nineteenth-century; 'indigenous communities found themselves confronting a new political system that denied them autonomy'.[4] Since the nineteenth century until today, Nasa indigenous peoples have continued in their struggle to keep their *resguardos* alive and to recover their ancestral territory. In this fight, Nasa communities have used both social mobilization and legal advocacy. Significantly, Nasa historical memory, Rappaport adds, 'is not professional history written by full-time historians, but popular history produced by individuals who do not submit to disciplinary standards'.[5] This does not mean that Nasa history lacks epistemological weight, rather the contrary, it stands out for the representation of a sophisticated non-chronological temporal process, that uses the memory of the past in order to invigorate the political struggles of the present.

Bearing in mind the methodological considerations put forward in chapter 2, according to which a 'serious' ethnographic gaze should imagine the representations of indigenous thinking directed at us, this chapter reflects on the potential to grasp and approach indigenous law as law. According to Juan Duchesne Winter, the first step to underpin the aforementioned 'serious' ethnographic gaze is not only the recognition of the ontological parity between cultures, but also the invigoration of an anthropological turn that, without seeking to speak from indigenous peoples' cosmologies, allows itself to be seduced by them and, in this way, enables a 'dialogue' in order to think together using

[4] Ibid., 87.
[5] Ibid., 14.

indigenous perspectives.[6] This is what I call in this chapter *inverse legal anthropology.*

The legal arguments used by Lame drew on the premise that indigenous peoples are the original owners of the Colombian territory, and in so doing, Lame linked the cosmologies of his people with an indigenous interpretation of Colombian mainstream laws. Lame proclaimed equity and reciprocity among states and indigenous nations and, consequently, the legally binding nature of agreements made between them, which is tantamount to a key principle in the framework of indigenous peoples in international law nowadays.[7] According to this premise and his understanding of state-centric law, Lame argued that, as constituent subjects, indigenous peoples must abide by a 'special law' whose main objective should be to prevent the dissolution of their territory, specifically, their *resguardos*.

In 2008, by exploring the primary sources of the General Archive of the Colombian Nation (Bogotá) and the José María Arboleda Historical Archive (Popayán), I had the opportunity, together with Julieta Lemaitre and Karla Escobar, of engaging in the archival reconstruction of Lame's letters to the Colombian government, legal briefs, and newspaper interviews.[8] In 2013, I also meditated on Lame's work under the mentorship of Joanne Rappaport. In this context, I began to understand that Lame's legal theory was underpinned by an Andean historiographical perspective—one in which Nasa historical truth was transformed into a legal document. As Rappaport has stressed:

> Nasa intellectuals from southern Colombia exert a counterhegemonic force over the written word, transforming a culturally specific historical vision into legal document in their struggle to maintain themselves as an autonomous people in the face of the homogenizing schemes of the state.[9]

Under the coordinates of this legal anthropological setting, the first part of this chapter describes the most outstanding elements of Lame's thinking as a way of presenting him as a Nasa legal cosmographer, one who was able to interpreted Colombian state-centric

---

[6] See especially Juan Duchesne Winter, *Caribe, Caribana: Cosmografías Literarias* (Ediciones Callejón, 2015), 201.

[7] See especially the 2007 United Nations Declaration on the Rights of Indigenous Peoples and UN Permanent Forum on Indigenous Issues, 'Report on the eight session', UN Doc. E/C.19/2009/14 (2009).

[8] See Julieta Lemaitre (Comp.), *La Quintiada (1912 – 1925). La Rebelión Indígena liderada por Manuel Quintín Lame en el Cauca. Recopilación de Fuentes Primarias* (Universidad de los Andes, 2013).

[9] Rappaport, *The Politics of Memory*, ix.

law through indigenous cosmologies. In the second part, I present Lame's first years in order to situate both his personal life and the socio-political context of the department of Cauca. The third part sets forth a reading of Nasa cosmological referents. In doing so, it shows that Lame's ethnic militancy is not only the product of the regime of exploitation of indigenous labour, but it also rests on Nasa's non-chronological history. The fourth part explains Lame's ethnic militancy as well as his performance as an indigenous lawyer. In this role, Lame's archetypical interpretation of Law 89 of 1890, a Republican ethnocentric law, reinterpreted according to Nasa cosmological frames, will be decisive. In particular, I show here Lame's claim of indigenous self-determination, from an indigenous point of view, as a key legal principle in the struggle for their survival, then and now.

5.1. Manuel Quintín Lame and Inverse Legal Anthropology in the Nasa world

Undoubtedly, Lame's figure occupies a privileged position in twentieth century Colombia (see Figure 5.1). His writing has become an archetype of indigenous traits in modernity: a work that unfolds oral tradition, recreated from his voice and set on paper by his scribes' indigenous hands.[10] The enlightened echo of his program: a mind educated in the mountains, able to speak the language of the usurpers in order to refute them with his own indigenous thinking. The conceptual sophistication of his legal discourse: a thousand allegations able to create a legal theory to interpret indigenous and agrarian laws, in both cases, harmonizing in an exemplary manner the procedural knowledge of state-centric laws with cosmological and legal arguments capable of guaranteeing indigenous peoples self-determination. His political boldness and his tenacious will to bear all sorts of penalties: heated debates with the Colombian elite evince his indomitable spirit and his civil courage that never shrank before the

[10] For a genealogy on the development of Lame's legal documents see Lemaitre (Comp.), *La Quintiada*. See also Julieta Lemaitre, '¡Viva Nuestro Derecho! Quintín Lame y el Legalismo Popular' (which shows the way Lame uses the law to talk as an indigenous authority in order to promote favorable legal interpretations regarding indigenous rights and, ultimately, to justify the disobedience of the laws which promote the dissolution of indigenous *resguardos*); Karla Escobar, 'Lame en Contexto: Terratenientes, Colonos, e Indígenas en la Búsqueda de la Modernidad' (which explains the conflictive and heterogeneous context of modernization of the period when the indigenous rebellion occurred); and Paulo Ilich Bacca, 'Tras las Huellas de Manuel Quintín Lame' (which presents the personal history of Lame during his years of legal and political activism).

accusations that confined him to prisons during extended periods during his life.

Figure 5.1 Manuel Quintín Lame in his later years
Photo in the public domain from the collection of José Vicente Piñeros

Corroborating the pertinence of Lame's thinking has been one of the main inspirations for my proposal to develop an *inverse legal anthropology.* There are specific aspects, related to the points mentioned earlier, that verify the importance of his life and work for contemporary indigenous movements. First, his focus on education as a device to break away from any kind of colonial clause. Lame's relationship with the communities that he represented was essentially pedagogic. It was a kind of propaedeutic that encouraged learning the white culture in order to acquire the competences to revert the regime of exploitation derived from such a model. Lame was aware that the burden of 'under-age status' imposed on indigenous peoples depended on the scientific model of the dominant society. Provocative and incisive, the indigenous man educated in the Colombian forests, not only denounced the exploitation of indigenous peoples in the countryside, but also revealed the system of truth that diminished their knowledge—always assessed with the standards of the dominant Western academic yardstick. According to Lame:

> It is not true that only those men who have studied fifteen or twenty years, who have learned to think about thinking, are the ones who have a vocation, etc. having ascended from the Valley to the Mountain. Because I was born and reared in the mountain and from the mountain I have come down to the valley to write the present work.[11]

Secondly, Lame's work is an excellent example of how cosmological references are used to interpret state-centric laws. In this regard, drawing on Rappaport's work, I intend to translate the claim of ontological self-determination that appears in this thesis into an *inverse legal anthropology* that takes indigenous rights seriously. A better understanding of this turn can be achieved by analysing Lame's legal assertions in light of his philosophical treaty. In 1939, after decades of social struggle, Lame—in his distinctive way of standing side by side with his scribes—wrote the manuscript entitled *Los Pensamientos del Indio que se Educó Dentro de las Selvas Colombianas* (The Thoughts of the Indian Educated in the Colombian Forests)—hereinafter *Los Pensamientos.* Rappaport states, '[d]ictated to Florentino Moreno, his Indian secretary from the department of Tolima, the treatise was to be the culmination of three decades of struggle against the oppression of Colombia's Indians, laying out Lame's teachings so that future generations could take up where he left off'.[12] This unclassifiable work integrates autobiographical memories, political proclamations and Nasa cosmological reflections, rendering it both enigmatic and epistemologically demanding. At times, the reader seems to be facing a work of poetry divided between transcendentalism and realism in Whitmanian fashion, while at others, it seems to be a philosophical and political manifesto written in a language tainted by an Andean past.

As mentioned in the introduction, the value of ambiguity and the natural forces are key epistemological points in which Nasa cosmological referents coalesce to invigorate Lame's legal arguments. To start with, Lame's texts are 'enigmatic' in the same way as the writings of Juan Tama, his predecessor. As emphasized by Deborah Poole,[13] the cryptic nature of these Andean narrations constitutes a challenge to our own systems of thinking because they do not respond to mainstream academic accounts. For instance,

---

[11] *The Thoughts of the Indian Educated in the Colombian Forests*, in Gonzalo Castillo, *Theology and the Indian Struggle for Survival in the Colombian Andes: A Study of Manuel Quintín Lame's Los Pensamientos* (Columbia University, 1984), 353.

[12] Rappaport, *The Politics of Memory*, 117.

[13] See Deborah Poole, 'From Pilgrimage to Myth: Miracles, Memory and Time in an Andean Pilgrimage Story', (1991) 17 *Journal of Latin American Lore,* 131-163.

they overlap past, present and future events, thus creating uncertainty for the Western reader. And as such, they become an invitation from the indigenous standpoint, for foraging from 'our perspective' background knowledge that is not always encapsulated in narrative forms but in indigenous primary sources. From an *inverse legal anthropological* logic, it should be seen as an epistemological advantage for researchers and not simply as a lack of clarity:

> Juan Tama's history reflected other knowledge which his own followers possessed, some of which was probably articulated in the ceremonies accompanying the ratification of the title. Surviving fragments of historical interpretation were fragmentary to begin with: unlike linear narratives, these were images that invited participation and interpretation, they existed because they were ambiguous, and they were useful in practice for precisely this reason.[14]

In this way, ambiguity is a key epistemological tool in Nasa cosmology (cosmology as history) and as such, it is essential to interpret colonial and republican laws from an indigenous point of view. The past gains importance as long as it can still support the struggles of the present; thus, what in Western accounts may seem as ambiguous and imprecise—for example, the interpretation of current laws through colonial titles—from a Nasa point of view becomes epistemologically valid. In fact, Nasa cosmology, replete with 'imprecise genealogies' from a Western angle, turned state-centric laws into something else —something with an indigenous soul. As Rappaport highlights: 'For both Tama and Lame, the focal point of history lay in the present and not in the past; historical data was useful only as a support for current concerns'.[15] Lastly, for Nasa cosmology—which is also the case in other indigenous worlds—nature is the main source of law and, as such, plants and animals play a pivotal role in the history of humankind. Indeed, for indigenous peoples there is no distinction between natural history and human history—the history of mankind only makes sense as long as the environment is conceived as an active backdrop. According to Rappaport, '[t]he primary "sources" cited in *Los Pensamientos* come from Nature, which the author held as superior to books and universities. Although Nature surrounds us, the Indians have more immediate access to it because they live in closer proximity to the natural world'.[16]

---

[14] Rappaport, *The Politics of Memory*, 84.
[15] Ibid., 123.
[16] Ibid., 127.

Thirdly, Lame's written work has been disseminated as study material both in the academy and within social movements; because of its unique style, distinguished writers have studied and discussed his work.[17] In addition to this, there is abundant journalistic material that narrates his life and work, which demonstrates the importance of his school of thought for both national and international indigenous movements.[18] Furthermore, it is important to point out the literary fertility of his writings, as Lame's prose weaves a universe where Nasa oral tradition becomes poetry. The intensity and precision of his legal briefs and political speeches contrast with the sensitivity and refinement of his baroque literary style. His autobiography, contained in *Los Pensamientos*, his piece of work with most poetic allusions, suggests deep meditative states of contemplation, and this introspection hints at a catharsis to balance the adversities that have refined him and his written production.

Alluding to the thinking of his greatest detractors, those who assisted the great educational cloisters, Lame reminds us that their senses are too limited to gain access to the education that strengthens the Indian's soul:

> Herein it is found the thinking of the child of the forests, where he was born, reared and educated, in the same way that the birds are educated to sing, and their chicks are trained to fly by clapping their wings until the day when they shall challenge the space and cross it with extraordinary intelligence; and as they take off for the sky they regard each other with loving care, the male and the female, as they make use of the wisdom which Nature has taught us. Because out there in the lonely forest it is found the Book of Love Relations, the Book of Philosophy. Out there one finds the true poetry, the true philosophy, the true literature. Because out there Nature has an interminable concert of songs, a choir of philosophers who exchange thoughts every day […][19]

Finally, one must also keep in mind that Lame's life continues to be a model for the Colombian indigenous movement. In a historical space characterized by the exaltation of racist behaviour and politics, Lame managed to place himself as the defender of

[17] See especially Gonzalo Castillo, *Liberation Theology from Below: The life and Thought of Manuel Quintín Lame* (Orbis, 1987); Mónica Espinosa, *El Andar Territorial de Quintín Lame* (Universidad de los Andes, 2009); Alina López de Rey, *Un Líder y su Causa: Quintín Lame* (Academia de Historia del Cauca, 1992); Joanne Rappaport, *La Política de la Memoría* (Universidad del Cauca, 2000); Francisco Theodosiadis, 'Quintín Lame Brújula de Resistencia Indígena en el siglo XX' in Betty Osorio (ed), *Literatura y Cultura Narrativa Colombiana del Siglo XX* (Ministerio de Cultura, 2000); Fernando Romero, *El Indígena Ilustrado* (Universidad Tecnológica de Pereira, 2005).

[18] See especially Archivo General de la Nación (AGN), Bogotá, República, *Ministerio de Gobierno, Ministerio de Fomento;* Archivo Histórico José María Arboleda, Popayán, *Informes de Departamento del Cauca, Cuadernos Indígenas*, *Manuscritos grupo N. 3. Archivo de la República.*

[19] Rappaport, *The Politics of Memory*, 356.

Colombian indigenous peoples. His recognition not only affected the internal structures of indigenous peoples, with many communities giving him the power of representation, but at the same time it transcended into white society, where the political, economic, and intellectual elite of the time felt their hegemony threatened and feared the possibility of indigenous rebellion. The written, oral and ritual sources where Lame's legacy is manifested highlight the power of his figure. In Nasa oral tradition, his teachings are still transmitted from generation to generation, and, as well as Juan Tama's wisdom, his thinking is alive in the daily lives of those communities.[20] Appealing specifically to the spiritual bond that links the Colombian indigenous movement with Lame, Bruno Mazzoldi, who has explored resonances between Lame's and Derrida's work on issues related to oneiric realities as well as the wisdom of plants and animals, among others,[21] made the following proposal during the development of the workshop *Tramas y Mingas Para el Buen Vivir* carried out in the University of Cauca in May 2012:

> It is urgent to advance the beatification process of Manuel Quintín Lame and the priest Álvaro Ulcué, the first Colombian indigenous clergyman and member of the Nasa indigenous peoples, independently of the opinion of the Catholic Church. The proposal stems from the desperate need to illuminate the capacity for sanctifying testimony which has been proven through the lives, work and deaths of these two martyrs of the Colombian indigenous movement; their light should accompany all peoples in the same way that it continues to lead the way for the Nasa and their guards. [22]

Following Mazzoldi and considering the prominent state of contemplation that emanates from Lame's work, I took the opportunity of launching the book *La Quintiada,* in order to create a new proposal at the 26th International Bogotá Book Fair; this time, as with Mazzoldi's suggestion, in the presence of national and regional indigenous authorities.[23] In May 2001, the *United Nations Educational, Scientific and Cultural Organization* (UNESCO), proclaimed the oral and cultural manifestations of

---

[20] See Joanne Rappaport, 'Manuel Quintín Lame Hoy' in Manuel Quintín Lame, in Manuel Quintín Lame, *Los Pensamientos del Indio que se Educó Dentro de las Selvas Colombianas* (Universidad del Cauca, 2004), 18.

[21] Bruno Mazzoldi, '*Fractio Libri:* Una Introducción a la Lectura Mágica' in Javier Tobar (ed)., *Derrida Desde el Sur. La Universidad del Monte o el Pensamiento sin Claustro* (Universidad del Cauca, 2017), 99-126.

[22] Bruno Mazzoldi, *Intervención en la Conferencia Tramas y Mingas Para el Buen Vivir,* (May 2012).

[23] Paulo Ilich Bacca, 'A la Sombra de Dos Gigantes: Evocación a Manuel Quintín Lame y a Juan Fernando Jaramillo' (April 2013), *Intervención en el Lanzamiento del Libro La Quintiada.* Lemaitre, *La Quintiada.*

the Zápara indigenous peoples from the Ecuadorian and Peruvian Amazon jungle as oneiric intangible cultural heritage of humanity.[24] By presenting the political power of the interpretations of their dreams in the process of resistance to colonial and neo-colonial onslaught—that has kept them on the brink of physical and cultural extinction—their visions were declared masterpieces of the oral and intangible heritage of the world.[25] Following this example, I then proposed to the Colombian indigenous organizations to advance the proclamation process of Lame's work as an oneiric encyclopaedia of the Nasa peoples. This is precisely what *inverse legal anthropology* means: taking indigenous cosmologies seriously and directing them to the framework of international law. Fortunately, the UNESCO has already taken the first step, and I ask international legal scholars and beyond to take indigenous cosmological sources seriously as oneiric cultural heritage of humanity.

In the next part, I begin to explore historical and literary materials in order to introduce biographical data regarding Lame's childhood. This review will allow the reader to better understand the socio-political context in which Lame, as a native advocate, and the indigenous' *resguardo* regime, as a colonial institution reappropriated by indigenous peoples, were situated at the end of the nineteenth century and first decade of the twentieth century.

5.2. Manuel Quintín Lame's History vis-à-vis Nasa History

5.2.1 Manuel Quintín Lame's First Years

There are few public records about the first years of Manuel Quintín Lame's life. The literature relies heavily on the biography written by Diego Castrillón (1917-2009), the first version of which was a novel,[26] and on the poetic version by Lame himself contained in *Los Pensamientos*. In this section, I present an overview of Lame's first

---

[24] See UNESCO, *El Patrimonio Oral y las Manifestaciones Culturales del Pueblo Zápara* (Inscrito en 2008 en la Lista Representativa del Patrimonio Cultural Inmaterial de la Humanidad, originalmente Proclamado en 2001), https://ich.unesco.org/es/RL/el-patrimonio-oral-y-las-manifestaciones-culturales-del-pueblo-zapara-00007

[25] See especially Anne-Gael Bilhaut, *El Sueño de los Záparas. Patrimonio Onírico de un Pueblo de la Alta Amazonia* (Abya Yala – Flacso, 2011).

[26] See Diego Castrillón, *El Indio Quintín Lame* (Tercer Mundo, 1973).

years through Castrillón's eyes, a white conservative from Popayán (the capital city of Cauca). Since he was extremely familiarised with the department of Cauca, Castrillón bears witness to the geographic space where Lame spent his early childhood. According to Castrillón, at the time of Lame's birth, his family occupied a piece of land known as El Borbollón within the Polindara farm owned by Manuel María Arboleda, a man belonging to the elite of Popayán.

From early childhood, Lame was destined to become a farmworker and so he began to work in the fields until 1890 when he became the farm owner's personal servant. At that time, his older sister died due to fever and his mother's brother, Leonardo Chantre, began to frequent El Borbollón. In Castrillón's account, this uncle has a key role in Lame's training. He claims that there was a kind of brotherhood between them. Leonardo, commonly invited Lame to spend the night at his ranch, where he taught him to read and some rudiments of politics. This becomes a significant fact since Lame mentions that his desire to go to school began at an early age: this idea emerges from his early memories and will continue to spread across the length and breadth of his work.

As ethno-pedagogue Fernando Romero has pointed out in his work *El Indígena Ilustrado* (The Illustrated Indian), Lame constantly defended indigenous peoples' rights to education.[27] In Lame's view, the exploitation established by landowners through the economic system could be avoided and counterbalanced with the education of indigenous peoples. His references to formal education, however, contrasted with his demand for indigenous peoples to maintain their own ways of thinking. Lame always referred to indigenous thought with pride, making innumerable allusions to his practical training, both on the margins of the colonizers' domain as well as within indigenous worlds. His interest in education was an early manifestation of his revolutionary temperament based on indigenous reappropriations of Western pedagogical tools:

> I cannot take pride in sophisms saying that I spent a long time studying in a school or a college. My college was faith coupled with an untiring enthusiasm, because when I asked my father, Sr. Don Mariano Lame, to give me education, that is, to send me to school, he gave me instead a shovel, an ax, a machete and a sickle and sent me with my seven brothers to clear up the forest. However, with that overpowering enthusiasm which I felt inside of me I thought that I should instead learn to write using a piece of wood and a piece of coal, and with a needle on the

[27] Romero, *El Indígena Ilustrado.*

> leaf of a tree. The result was that knowingly I took a number of papers that belonged to my aged uncle, Leonardo Chantre.[28]

In 1894, El Borbollón was sold and annexed to the San Isidro Farm, owned by Ignacio Muñoz, father in law of Guillermo Valencia, a well-known poet and conservative presidential candidate during two periods (1918 and 1930).[29] The transaction included indigenous servants and so the Lame family was passed on to Muñoz. This change benefited Mariano Lame because the *terraje* or work load[30] shifted from four to two days. With the results from the rest of his work, Mariano bought a piece of land called Pichinguará and towards 1899, he left his son to take care of this property, since Quintín refused to work for the landowners.

Lame joined the Conservative army during the Thousand Days' War (1899-1902): a Colombian civil war between the Conservative Party, accused of stealing the 1898 presidential elections, the Liberal Party, which led the opposition after losing, and radical sectors, protesting against mainstream politics and the economic crisis.[31] In January 1901, Lame enlisted in the army and marched to Panamá in conservative general Carlos Albán's unit, during which, according to Castrillón, he received reading, writing, and history lessons from the general.

At the end of 1906, after he returned to Polindara, both his wife and first-born daughter passed away. These events, together with the unjust practices of the *terraje* system, soon brought Lame's rebelliousness afloat. He stopped paying *terraje* and Muñoz denounced him for breach of trust, suggesting that Lame had spent money from his farm to get drunk.[32] In his later writings, Lame talked about the whites from Popayán in pejorative terms. Lame clearly considered that the aristocracy from Cauca were his enemies, who joined forces to accuse him and dishonour his name. The indigenous

---

[28] Lame, *The Thoughts* in Castillo, *Theology and the Indian Struggle*, 354.

[29] Ignacio Muñoz is the prototype of an agrarian and commercial landowner that replaced the traditional aristocracy of the 19th century productive model based on servitude and slavery. Gonzalo Castillo, 'Manuel Quintín Lame: Luchador e Intelectual Indígena del Siglo XX' in Lame, *Los Pensamientos*, 18.

[30] The *terraje* was an institution of agrarian law with deep feudalist roots according to which an indigenous family had to work for free in order to 'obtain' and 'benefit' from a piece of land within the landowner's farm. For a classic work analysing this institution in the Andean world from an indigenous perspective, see Fausto Reynaga, *La Revolución India* (Movil Graf, 2001).

[31] For a detailed context see Marco Palacios, *Entre la Legitimidad y la Violencia: Colombia, 1875-1994* (Norma, 1995).

[32] Ibid., 78.

movement resisted and counteracted the *terraje* system through the legal-colonial figure of the *resguardo*. The *resguardo* appeared in Colombia during the second half of the sixteenth century in order to achieve a colonial administrative regime over indigenous territories and populations;[33] it was 'comprised of an aboriginal community living within designated lands that were not always delimited in a strict fashion, but frequently included the terrain lying within the radius of a league from the town center'.[34]

In the case of the Nasa nation, the *resguardo*, which appeared to be disintegrating Colombian national ties, was in fact guaranteeing Nasa survival. This was due to the fact that, at the beginning of the *resguardo* system, the territorial dispersion of indigenous communities was an internal defence mechanism. The Nasa did not give up; rather the opposite, they were resisting the control of a central colonial body. Later on, at the end of the seventeenth century, indigenous *caciques* played a pivotal role in claiming full territorial rights over the *resguardos* using both indigenous and Spanish laws: '[t]he new *caciques* based their power on the trappings of the earlier *cacicazgo,* but at the same time transformed it. They consolidated broader *cacicazgos* encompassing wide stretches of territory. This period is key to any analysis of the Nasa vision of history because it is in the documents issued during the development of the "new *cacicazgo*" that we find the first detailed information regarding Nasa ideas about the past'.[35]

This socio-political context would be the seed of Lame's rebelliousness; however, it would not have blossomed without the Nasa cosmological mind-set. It is precisely this powerful mixture, which allowed Lame to transform mainstream legal interpretations on *cacicazgos* and *resguardos* by using an indigenous point of view. I analyse this perspective based on Nasa non-chronological history in the next section.

5.2.2 Nasa Millennial History

Lame's childhood and the beginning of his ethnic militancy must be viewed in the

[33] See Margarita González, *El Resguardo en el Nuevo Reino de Granada* (La Carreta, 1979).
[34] Rappaport, *The Politics of Memory*, 47.
[35] Ibid., 48.

context of Nasa ideas regarding history, as well as the legal claim to their ancestral land; in this way, ideas about the past also comprise an indigenous interpretation of the *resguardo* and the *cacicazgo.* Nasa historiographical accounts related to legal claims go back to at least three centuries of political resistance against the colonizers, and there was a key breaking point in the eighteenth century when Nasa chief, Don Juan Tama, deployed a legal strategy based on a trail of colonial titles legitimatizing Nasa sovereignty. As Rappaport asserts:

> Eighteenth-century *resguardo* titles were written with the participation of *caciques,* the most well-known of whom was Don Juan Tama of Vitoncó. While establishing a territorial and political base for communities, they also provide a Nasa interpretation of intertribal relations and the rise of a new political authority. Although the titles appear on the surface to be chronological narratives of events that transpired during the coming to power of these rulers, a careful reading suggests that the narrators condensed time-frames, giving us accounts that combine information from the pre-Conquest era with colonial data. These sources, which are official colonial documents, were written in Spanish.[36]

Nasa *resguardo* titles are a legal source that, as products of the colonial process, were turned into a crucial part of Nasa cosmology as memory, which embodied both jurisdiction and history. Given the fact that Spanish historical canons privileged the written word, and that the usual Nasa sources were embodied in their oral tradition, the Nasa people were forced to diversify their corpus of knowledge in order to establish themselves within the colonial system. This diversification of knowledge, which is a practice of resistance,[37] implied not only a particular way of adjusting native sources within the fetishized written word but also of turning a Western legal vehicle into a cosmological reference.

In Nasa history, the past has also been a focal point for projecting the present, and thus, since pre-colonial times, a form of messianism, which was politically updated throughout time, became widespread throughout the Andean world. In the pre-Conquest era, knowledge and shamanic divination were inextricably linked, and Andean shamans played and continue to play the role of historians of the community. They not only

[36] Rappaport, *The Politics of Memory*, 20.

[37] By studying the complex process of linguistic changes in the Peruvian Sierra during colonial times, Arguedas has pointed out that both the encomendero and Catholic preacher were forced to learn the indigenous language in order to 'impose' their own. Thus, Quechua and not Spanish became the main vehicle to spread the Western culture in the Peruvian mountains. See José María Arguedas, *Formación de una Cultura Nacional Indoamericana* (Siglo Veintiuno Editores, 1981), 23-24.

recount the past but also foretell the political future: '[d]uring the colonial era messianism was adapted and transformed in practice through millenarian movements which attempted to throw off the yoke of Spanish domination'.[38] The *caciques* were associated with supernatural forces, that were to lead these movements like divine emissaries in the same way that the Messiah did within the Christian tradition. Cosmologically speaking, 'notions of the past were applied to the present and to the future in the form of millenarian ideas and movements'.[39] In this turn, spectral heroes return in periods of crisis.[40] From a political point of view, millenarian ideas have also traversed ancient and contemporary stories in which the roles of key legendary figures are personified by mythical leaders like Tama and their colonial titles.[41] Indeed, as Rappaport argues:

> The bare bones of the story derive from Juan Tama's title to Vitoncó, where he calls himself the "son of the star of the Tama Stream." The elaboration contained in present-day stories reflects Andean notions of the *amaru,* the snake that travels downriver in a period of chaos to establish an era of equilibrium, much as the *cacique* floated downstream in order to establish the *resguardo* system.[42]

During the eighteenth century, the province of Cauca *resguardo* system was organized around a chiefly ideology[43] that was rooted in the *cacicazgos* of the pre-Conquest era, which were key institutions ensuring indigenous self-rule. Tama renewed this institution and, as the main *cacique,* personified the political power to keep Nasa self-determination alive. To do so, the authority of the *cacique* was reinforced by previous chiefs and supernatural occurrences, expanding in this way the scope of his authority from colonial times to the *resguardo* titles themselves. In this sense, the *resguardo* titles embodied a key example in which indigenous peoples, on the one hand, challenged the status of the Western Rule of Law by transforming its very framework through the use of their own cosmologies and, on the other hand, shifted the purpose of colonial laws,

---

[38] Rappaport, *The Politics of Memory*, 69.
[39] Ibid., 67.
[40] That is why shamans have a key role in the interpretation of historical knowledge since pre-Hispanic times: 'In the pre-Conquest era knowledge was disseminated by shamans who, as those who implemented historical knowledge in practice, might be thought of as historians of the community. Modes of recounting the past and of determining the future came together in the person of the shaman, who was also responsible for divination'. Ibid., 69.
[41] The resonances with Benjamin's idea of a moment of danger in which the past revitalises the present is astonishing. See Walter Benjamin, *Illuminations* (Schocken, 1968), 250-260.
[42] Rappaport, *The Politics of Memory*, 156.
[43] The tangled historical trajectory of the Nasa chiefdom was based on Incan roots. Rappaport, *The Politics of Memory*, 87.

which is a perfect example of what I term in this thesis *inverse legal anthropology*.

In the case of Nasa *resguardo* titles, the anthropological distinction that characterises indigenous cosmologies as 'mythological thinking' (a fabled idea without empirical consequences) while Western history entails a 'true fact' (verifiable knowledge of the social world) is in crisis.[44] It is in this moment that it becomes possible to see how Viveiros' perspectivism interconnects with Rappaport's reading of Nasa non-Western historiographies. If, for Viveiros, anthropology is an art of distances because the anthropologist should be able to divest herself of her own knowledge in order to promote an interchange with those who have been historically silenced,[45] for Rappaport, the anthropological exercise supposes the hearing of indigenous cosmologies encoded in popular practices and rituality, which implies their recognition as true epistemologies.[46]

By shifting the ethnographic endeavours projected by Rappaport and Viveiros into indigenous jurisdictions, the reading of indigenous living laws should not be submitted to the disciplinary standards of international law. On the contrary, everyday activities in which indigenous communities experience the memory of their 'legal systems' should be the basis for pursuing intercultural dialogue. In this ethnographic setting, it is possible to explain history and law through cosmology. Indeed, encoded in everyday practices, indigenous cosmologies are historical and legal frames to narrate social histories and enact laws: 'much popular history is not encoded in formal narrations, but in public activities and ritual, in an entirely non-chronological fashion. This alternative means of representing temporal process is not less historical than our own written canons'.[47] Here, Rappaport and Viveiros once again agree with the idea according to which ethnographers are not seeking to circumscribe indigenous thinking within the fixed standards of our social sciences; at most, we do interpretations and classifications.

---

[44] It is precisely what Sahlins has been problematizing when it comes to working between the distinction of 'mythological thinking' endorsed as 'static structure' and 'historical thinking' credited as 'real fact'. See especially Marshall Sahlins, *Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom* (University of Michigan Press, 1981).

[45] Eduardo Viveiros de Castro, 'The Untimely, Again' in Pierre Clastres, Archaeology of Violence (Semiotext(e), 2010), 14.

[46] Joanne Rappaport, *Cumbe Reborn. An Andean Ethnography of History* (University of Chicago Press, 1994).

[47] Rappaport, *The Politics of Memory*, 14.

The adaptability and versatility of Nasa thinking in colonial periods not only responds to a resistance strategy but also to its innate power to transform historical frameworks. It is precisely this power that was able to *indigenize* Spanish legal forms by interpreting them according to Nasa cosmological referents. It can be seen, for instance, when Tama was establishing the hereditary background to link himself to chiefly lines. Curiously, he did not have any true surname to claim his *cacicazgo*.[48] Nevertheless, it was clear to him that before the arrival of the Spaniards to the department of Cauca, the Calambás dynasty headed by Don Diego Calambar (*cacique* of Guambía) and Doña Beatriz Timbío Calambas (*cacica* of nearby Timbío) ruled the entire area. Tama claimed a military triumph over Calambás in order to achieve his sovereign power in Andean fashion, which also implies the acquisition of the family title.[49] The Calambás line belonged to the Guambiano people and, at the time of the Spanish invasion, the Nasa defeated the Guambianos. In principle, the version of Tama according to which the Nasa conquered the Guambianos is true. Ambiguity appears, in any case, if we consider that those facts took place before Tama's birth, 130 years before his writings.

Nevertheless, and a crucial point here, oral cultures used to condense their historical accounts telescoping the past and projecting the future.[50] Tama 'was well aware that he had not killed Calambás, nor banished the Guambiano to the banks of Piendamó. This was clearly not a case of confusion of time-frames, but a very conscious effort at revising history'.[51] What is key in Nasa condensation of time periods, as Rappaport notes, is their definition of *history as what should have occurred instead of what happened*: 'For them history was the living past, part of the present and a road to the future, intimately linked with divination'.[52] Thus, what Tama's followers were seeing in his political chronicles is the living configuration of their messianic idea of history. Where we are seeing imprecision, confusion, and even deception, Nasa people are connecting a glorious past with their cultural survival in the future.

---

[48] 'The only true surnames in eighteenth-century Tierradentro were attached to chiefly lines, names as Gueyomuse, Calambás, Pasquín, etc. These were passed from *cacique* to *cacique,* it appears, upon assumption of the *cacicazgo,* and occasionally were also adopted by siblings'. Ibid., 72.

[49] 'Given that Tama conquered – or said he conquered – Calambás, we can compare his use of this surname to analogous practices in Peru. There, in order to acquire the lands of a conquered lord, he who triumphed had to take possession of that lord's mummy and keep it in his house, marry his wife, or take his name.' Ibid., 73.

[50] For the practice of telescoping in oral traditions see especially David Henige, *The Chronology of Oral Tradition: Quest for Chimera* (Clarendon Press, 1974).

[51] Rappaport, *The Politics of Memory*, 79.

[52] Ibid.

Then, Don Juan Tama was linking himself to Calambás and to the *cacicazgo* institution, ensuring Nasa sovereignty by cosmological means. And it was so, to the extent that the use of names is related to Tama's vision about history:

> First, it demonstrates the use of historical knowledge for creating a moral continuity between past and present. Although Juan Tama's *cacicazgo* was a departure from the chiefdoms of the pre-Columbian period and although the Nasa had never belonged to the *cacicazgo* of Calambás, his choice of a title was a link to the past, and a glorious one at that. Moreover, as Tama's chiefdom was under Spanish law less fluid and more stratified that those of the precolumbian Nasa *caciques,* it was in fact more comparable to that of Calambás.[53]

To a large extent, Lame's ethnic militancy is the product of both the regime of exploitation of indigenous labour and the reception of Nasa millennial history during his first years. The synthesis between Nasa class-consciousness and Nasa historic-awareness, allowed him, first, the mastery of Colombian agrarian laws in order to uphold the unity of native territories, and, second, the positioning of Nasa cosmology within state-centric laws, which allows for the transformation of mainstream legal interpretations from an indigenous perspective. This is the life trajectory of an indigenous leader, who was not only a *cacique* without *cacicazgo* but also a self-educated lawyer without an academic title. I examine this fact, which turns Lame into a modern indigenous jurisprudent in the next section.

5.3. Lame: The Modern Jurisprudent

5.3.1 Popayán: Between Landlords and Rebels

The transition between the eighteenth and the twentieth centuries in the Nasa world (the political age that connects the life and work of Tama and Lame) was marked, on the one hand, by empowerment of Nasa people that set up the legitimization of landholdings through *resguardo* titles.[54] On the other, by the birth of the Colombian republic and the continuing denial of indigenous self-determination. This new scenario is the entry point of a political and economic system concerned with national unity and capitalist

[53] Ibid., 76.
[54] 'Political authority was cemented under the new *caciques.* The colonial state accepted and even encourage the creation of semi-autonomous political units, so long as they continued to provide a source of tributary revenue for the Crown.' Ibid., 87.

expansion in favour of the new ruling elite.[55] Few areas of the Colombian geography exemplified this shift like the Cauca province. Indeed, Lame had to bear the burden of his own historical tradition and the development of a legislation, which sought to eliminate the outcomes of eighteenth-century Nasa political process. Like Tama, however, Lame 'was skilled in establishing contacts that facilitated the setting down of his thoughts in an alien medium',[56] as well as navigating between Nasa cosmology and the secrecies of Western writing.

Lame had constant contact with the city of Popayán at the beginning of the twenty-century and he interacted with radical lawyers there. Those contacts were the fruit of his curiosity about the colonial *resguardo* titles and for the legality of territorial expansion, in particular, the one related to Muñoz's lands. Lame, together with the liberal lawyer Francisco de Paula Pérez, reviewed the Cauca province archives and verified that the Borbollón land had been given to Luisa Hurtado de Aquila, including all the tribute paying indigenous people who lived there, by the King of Spain.[57]

His relationship to Pérez was so close that Pérez shared legal documents with Lame. Among these, Castrillón considered particularly useful *The Lawyer at Home*, by Lisímaco Paláu, a handbook with examples of legal briefs and basic notions of legal procedure. Lame also bought a Civil Code that he learned to use skilfully, acquiring a reputation of pettifogger, which was reinforced by people who called him Dr Quintino. Moreover, he gained independence from the *terraje* payment by distancing himself from the patrons and, towards 1912, he took up the task of raising consciousness about land rights among indigenous servants (*terrazgueros*), tribes and villages (*parcialidades*).

Lame's ethnic militancy yielded success. Indigenous peoples acknowledged his

[55] Ibid.
[56] Ibid., 82.
[57] It is precisely during this historical period that the news about Lame's proselytism appeared. Gonzalo Castillo and Renán Vega consider that Quintín proclaimed himself indigenous defender in 1910. The reference was corroborated by Lame himself in 1924, when he affirmed, in an interview given to *El Espectador,* that in 1910 he was elected 'Chief, Representative, and General Defender of the indigenous reserves (cabildos) of Pitayó, Jambaló, Toribío, Puracé, Poblazón, Cajibío, Pandiguando, among others.' See Gonzalo Castillo, 'Manuel Quintín Lame: Luchador e Intelectual Indígena del Siglo XX' in Lame, *Los Pensamientos,* 17; Renán Vega, *Gente muy Rebelde: Protesta Popular y Modernización Capitalista en Colombia (1909-1929)* (Pensamiento Crítico, 2002), 66; *El Espectador* (1924).

leadership and attended meetings openly.[58] These meetings were full of symbolism: Lame appeared followed by Pioquinta, his second wife. She carried the papers and codes, giving rise to a ritual in which the solemnity of the acts of government took place. Lame started to chant the national anthem of Colombia, at the time when everybody was singing, he raised his hands and asked for silence, and then began to speak about the unjust and unequal treatment that indigenous people received from the regime.[59]

Documentary sources record that between 1913 and 1914 the *terrazgueros* from the Cauca region refused to pay *terraje*.[60] Indigenous peoples began to disobey landowners and some overseers were beaten. At the beginning of 1914, Lame led his first concrete action. Lame held meetings with the *terrazgueros* with whom he prepared the pacific takeover of Paniquitá, a small village near Popayán. In the midst of the excitement, Lame occupied an improvised platform and addressed those attending in the following terms:

> The independence that gave us Bolívar[61] was a delusion… Bolivar fought together with the indigenous peoples offering to give them back the lands usurped by the Spanish. But what happened? Bolivar lied and did not give back the lands, instead he left them in the hands of other white conquerors to whom we pay *terraje*. We should never have to pay *terraje* because we did not come as pigs without pitchfork for entry into a strange land. This land is ours.[62]

When contrasted with his philosophical work embodied in *Los Pensamientos*, Lame's political speech stands out for being able to synchronize Nasa cosmological referents with state-centric laws. The recurring claim of indigenous self-determination based on supernatural instances as the stars, which are genealogically connected with Nasa

---

[58] Vega, *Gente muy Rebelde,* 66.

[59] Remembering that time, Pedro Lame, Quintin's nephew, affirms: 'He came back a lot here. He visited Dinde, Poblazón, Belalcázar, Inzá, San Antonio a lot… He gave conferences in favour of the Indians. [He taught us] how we should move forward. That [the lands] were not owned by the landowners but by the *parcialidad*, that from Popayán upwards everything belonged to the indigenous people, but that the rich people had covered all, because they had deceived us'. Quoted by Castrillón, *El Indio Quintín Lame,* 20-21.

[60] AGN, Bogotá, República, *Ministerio de Gobierno,* sección 4 varios, t.107, ff.0006-0007v. to t.107, f.00026.

[61] Simón Bolívar (1783-1830) was a Venezuelan political leader, who as a privileged son of Spanish parents, fought against Spanish rule, leading the independence movement of Colombia, Bolivia, Ecuador, Venezuela and Perú. See especially David Bushnell ed., *El Libertador: Writings of Simón Bolívar* (Oxford University Press, 2003).

[62] Testimony of Luis Bustamante quoted by Castrillón, *El Indio Quintín Lame*, 98.

chiefly lines, stands out as the main example of daily life experience. This exercise of *indigenization* takes the inverse path, but it has the same logic as my proposal to advance an *inverse legal anthropology*. Lame was skilful at listening to both colonial and republican laws but always with the purpose of keeping alive indigenous laws—my purpose here, as a matter of fact, is to take those laws seriously, which implies the challenge of considering indigenous cosmologies whenever we are dealing with indigenous rights.

Following the footsteps of Tama, Lame was seeking the union of indigenous territories in order to constitute a centralized political movement. In this regard, Lame is once again telescoping the knowledge of the Nasa from the nineteenth century, trying to configure an indigenous political unity where it did not exist legally speaking: 'nineteenth-century Nasa political leaders weakened the indigenous colonial political system by utilizing precisely those characteristics that had been its strength during the previous century. Where colonial *caciques* asserted their political autonomy by ruling over large, semi-independent *resguardos,* the Republican self-styled *caciques* accomplished this by commanding independent Nasa military units during the civil wars'.[63] All of this was accomplished by following a reading based on Nasa cosmology in which historical knowledge is not based on the past but on the very present and, in this regard, the past is a political tool to support current struggles.

Thus, when Lame is interpreting the transferring of oppressive policies from colonial to republican times, there is not only a political but also an indigenous philosophical background that connects in a messianic way, as in Nasa accounts, indigenous past, current struggles, and future survival. In this historical reading, as Rappaport demonstrates, justice is always to come:

> In Quintín Lame's theory of history, time is both a progression of ages and a means of judging the actions of human beings, it is both historical and philosophical. This combination permitted Lame to situate the sufferings of his indigenous brothers and ancestors, the oppressive actions of non-Indians and his own struggle within a common messianic context. History is at once an individual and a social process, situated in the past and in the present, but bearing implications for the future.[64]

[63] Rappaport, *The Politics of Memory*, 96.
[64] Ibid., 123.

After the pacific takeover of Paniquitá and considering Rosalindo Yajimbó's[65] call, Lame travelled to Tierradentro. At the beginning of 1914, some Páez indigenous *resguardos* had been invaded by whites and mestizos from Inzá. They were seeking the annexation of indigenous *parcialidades* to the municipality, and the indigenous people opposed the seizure because they faced the risk of losing their communal lands, as well as their self-government. This was the prelude of the period called *La Quintiada* in which 'a growing confrontation arose between the elite of Cauca and its dispossessed Indians, who fought to maintain *resguardos* or to re-establish them in the face of white encroachment on their lands'.[66] Such events, recounted in the next sections, began with Lame's fruitless trip to Bogotá seeking support for his cause and his first detention in Popayán upon his return.

5.3.2 The National and the Local: Between the Elite and Indigenous Grassroots

In May 1914, Lame reached the capital city of Bogotá, as can be corroborated in a document addressed to the minister of government, Miguel Abadía Méndez (1914-1918), which is the first manuscript that now appears in *La Quintiada.* In this emblematic document, Lame anticipates not only his life's destiny but also the spirit of his work, always divided between the pragmatism associated with social struggles and the poetic style inherent to Nasa cosmology. The indigenous leader referred to the adversities of his trip in the following terms: 'Besieged as I am by continual threats, I took the saddened path of begging in order to arrive at the Colombian capital to request protection from the horrible tempest that threatens me'.[67]

Since his first communication to the Minister of Government and the magistrates of the Colombian Supreme Court, Lame denounced that he was being persecuted for talking to his indigenous brothers on the rights granted by the Law 89 of 1890: 'Central to the turn toward a more gradual process of integration was Law 89 of 1890, which included

[65] Rosalindo Yajimbó was Lame's ally in Tierradentro, who was known for his participation in the Thousand Days' War. 'People were sure that he had never been injured during the confrontations, what gave him an aura of invincibility; he became a hero in Tierradentro for killing captain Lorenzo Medina, a government official who was responsible for the death of a large number of Nasa people. Yajimbó was also well known for having done sacrificial rituals in Puente Bejuco during the 1876 war'. Rappaport, 'Manuel Quintín Lame Hoy', 61-62.

[66] Rappaport, *The Politics of Memory*, 138.

[67] AGN, Bogotá, República, *Ministerio de Gobierno,* sección 4 varios, t.107, ff.0006-0007v.

protectionist measures safeguarding the *resguardo,* but also stipulated a period of 50 years within which the communal holdings must be prepared for privatization. Building upon earlier nineteenth-century legislation,[68] Law 89 also defined the *resguardo* as a much smaller and weaker unit'.[69] Lame's interpretation of this law, which openly advocates the revival of colonial rule, is one of the most vivid examples of a full understanding of the transfusion of a Nasa cosmological ethos into the present, which is always projected to the future.

Anchored again in millenarian thought, the basic assumption of Lame's interpretation of the Law 89 was perfectly linked with Tama's historical reading that allows for the creation of the *resguardos* of Vitoncó and Pitayó. According to Rappaport, '[w]hat he created was new, born within a colonial context and developed according to an incipient pan-Indian ideology which stressed the importance of being the first Americans and claiming land rights for that reason'.[70] Lame addressed the implications of such an assumption through the following reasoning: if indigenous peoples are the original owners of the Colombian territory there is and should be a legally binding nature to the agreements signed between states and indigenous nations. This key statement enables the shifting of an emerging pan-Indian ideology into a modern framework of indigenous peoples in international law. In this context where future, past and present converge, Lame's signature is one of the best representations of Nasa's legal time: it evokes the cosmological future, which appears plotted with two stars in direct reference to Juan Tama (son of the star); the colonial past, which arises by using the rubric of colonial notarial documents; and the Western legal tradition of the present, which involves the use of the signature to validate official contracts (see Figure 5.2).

Lame's interpretation regarding Law 89 in conjunction with Nasa cosmology, now operating in theory and practice between experts and advocates at the national and international level,[71] was also accompanied by social mobilization. According to archival materials, Lame organized an indigenous uprising by means of a letter at the

[68] See Ley 6 de 1832 and Ley 1 de 1848 *Convención Constituyente de la Nueva Granada.*
[69] Rappaport, *The Politics of Memory*, 93.
[70] Ibid., 76.
[71] See Robert Williams, *The American Indian in Western Legal Thought. The Discourses of Conquest* (Oxford University Press, 1992).

beginning of 1915.[72] Nevertheless, he was arrested in Popayán on 29 January and imprisoned without a court order. The letter analysed by historian Alina López, dated 11 January and directed to his brothers, gave an account of this mobilization. In the letter, the leader summoned the indigenous *parcialidades* to meet on 14 February. This call was done through an announcement that requested the reintegration and independence of all indigenous *parcialidades*.[73]

Figure 5.2 Manuel Quintín Lame's signature in the lithography of Colombian artist Antonio Caro, 1978.
Image in the public domain from 'El Poste de la Galería'

But the summon has an additional importance: the cosmological language with which Lame introduced his reflection. Lame began by announcing a much more dignified future for indigenous peoples. Using the metaphor of a green garden reaching the flowering stage, he promoted the joining together of intellectual efforts in order to fight against the tyrants who trampled indigenous rights. Lame talked about the Virgin Mary as the banner of his movement and, subsequently, she was materialized in a star that would speak to them through her lightning and thunder. He stated that, at that moment, 'a hurricane will descend and will rip that thickness and will leave trimmed the blue of the sky and the king star's rays will cherish our lips and we will break into voices and

[72] López de Rey, *Un Líder y su Causa.* Photocopy of the manuscript pages 42-47. López de Rey documented this event from a series of letters which do not appear in the archives.
[73] Ibid.

concepts and we will talk as sages of pure and philosophical language.'[74]

Before the agreed date, on 6 February 1915, Lame was captured and accused of the crime of rebellion. According to the Cauca government, Lame's capture implied the annihilation of the scheduled meeting at Calibio and, consequently, the indigenous revolt was averted. After his arrest, on 22 February 1915, Lame requested his release from prison arguing that he could not be syndicated of the crime of rebellion because he had not attacked or violently resisted to any State agent. Lame regained his liberty in September 1915, after a seven-month detention, and began an expedition to the indigenous *parcialidades*.

5.4 Indigenous Rebellion in Cauca

5.4.1 The Takeover of Inzá

The last months of 1915 and the beginning of 1916 were full of tension among Cauca authorities. On 9 February 1916, the governor of Cauca, Miguel Arroyo Díez (1914-1916), wrote to Abadía Mendez, informing him that Lame presided over the whole indigenous *parcialidades* of the central mountain range, and that he had declared himself their general *cacique*.[75] This self-proclamation is key in cosmological terms because the *cacicazgo* had disappeared as a colonial political system; thus, Lame's assertion is intended to regenerate a pre-Columbian and colonial memory. Such recollection traces the path of Nasa cosmology: if the potency of indigenous self-determination was guaranteed by the *cacicazgo* system, in Lame's thinking, its framework would still be current, this time as a spectre that traverses the past to be allocated in the *resguardo* scheme of the present—*history as what should have occurred instead of what happened.*[76]

On 1 May 1916, two printed sheets signed by Lame and originating in the printing press

[74] Ibid.
[75] AGN, Bogotá, República, *Ministerio de Gobierno,* sección 4 varios, t.107, ff.00053-00055.
[76] 'Where colonial *caciques* asserted their political autonomy by ruling over large, semi-independent *resguardos,* the Republican self-styled *caciques* accomplished this by commanding independent Nasa military units during the civil wars.' Rappaport, *The Politics of Memory*, 96.

of the radical newspaper, *El Cauca Liberal* appeared in Popayán. The first piece entitled *Luz Indígena en Colombia* (Indigenous light in Colombia)[77] claimed equality between men and questioned the treatment given to indigenous peoples. The text required the application of Law 89. For Lame, that law guaranteed indigenous peoples the election of cabildo authorities. On the basis of such a statement, Lame criticizes the growth of districts where the cabildo authorities were appointed by the mayors of the municipalities: 'some municipal major's offices from the districts should not impose on us false reasons, we should take into consideration that as indigenous peoples we are not bound by the general laws of the republic but by a special law'.[78] A new series of Lame discourses intended to put an end to the institution of *terraje* appeared in June that year; these also supported an indigenous man's candidacy for congress, and criticised the inequality in the endowment of rights.[79]

Lame's proclamations increased his visibility and the anguish of the white authorities. Thus, on 8 June 1916, Lame was again detained. On this occasion, at the San Isidro prison, the famous picture of Lame next to many indigenous men and policemen was taken: Lame sported long hair and smoked tobacco in the middle of the multitude (see Figure 5.3). Lame's detention started a debate in the Popayán press that would last the rest of the year. He confronted factions of whites who led diverse political parties and were part of the local press of the time. While some said the detention was unjust and that there was some truth to Lame's complaints, others wrote about the critical importance of the issue, and predicted a war of races if Lame was liberated again. He was released on 23 September, nevertheless.

At the end of 1916, Lame targeted the population of Inzá where the critical events of this story took place. It is difficult to know the complete truth of what happened, and the archives show different versions of the facts. Everyone agrees that Lame was surrounded by a large group of indigenous people and that he gave a speech pointing out that the whites had stolen the lands of the indigenous *resguardo*. It is also clear that he came back two days later with a smaller number of followers and that there was a violent confrontation between Inzá inhabitants and his comrades. In this clash, many

[77] AGN, Bogotá, República, *Ministerio de Gobierno,* sección 4 varios, t.107, ff.42-96.
[78] Ibid.
[79] *El Cauca Liberal,* Serie VI-número 56 to 59.

indigenous people were killed and injured, and many villagers of Inzá were also hurt. The versions, however, do not agree on who and how the violence started. A new confrontation was presaged and, in effect, the news of the first clash arrived to the central government on 12 November when the governor of Cauca, Antonio Paredes (1916-1917), reported to the Minister of Government that an estimated five were dead and fifteen injured, apparently, all indigenous people. The Inzá major confirmed to the prefect of La Plata that one of the injured was Lame himself.[80]

Figure 5.3 Manuel Quintín Lame at his 1916 arrest at San Isidro
Photo in the public domain from the collection of Diego Castrillón Arboleda

The events of Inzá led to a realignment of the positions of the Popayán elite. Nobody any longer wanted to appear as a defender of Lame. On 5 November, Lame arrived to Inzá with more than five hundred men, though official communications claimed it was two thousand. The next day, he arrived with only sixty indigenous men because the major had requested him to bring ten. On 29 November, *Opiniones,* the republican newspaper that reported the case most objectively wondered: 'if Lame had more than five hundred men armed with machetes and shotguns, according to their own authorities, and if the objective was to attack Inzá, why did only sixty men accompany Lame on the day of the events?'[81] The editorialist concluded that this was so because

[80] AGN, Bogotá, República, *Ministerio de Gobierno,* sección 4 varios, t.104, ff.00276-00281.
[81] *Opiniones,* 'Seguimos Pidiendo Justicia', Popayán, 29 de Noviembre de 1916, página 1.

there was no intention of attacking the town.

5.4.2 Law as Exile and Justice to Come

The Inzá takeover would result in not only the third and definitive imprisonment for Lame in Cauca, but also an implicit sentence of exile. Lame's detention was the result of a trap. In 1917, there were elections for the Department Assembly and some liberal politicians contacted Lame requesting his support. Lame accepted to meet the liberal leadership and the local police organized the capture on 9 May 1917. On 10 May, still at El Cofre—the detention centre near Popayán—according to the archives Lame was photographed with a group of indigenous men and gendarmes; however, in view of the missing physical presence of such a picture, now we are left with the task to visualise the scene: he appeared in the middle of the group, his face disfigured due to the blows received and his eyes swollen, his feet were shackled, and he was dressed in a hat and a white poncho.

That same day, he entered Popayán, while, according to the legend, hundreds of persons flocked to the *Humilladero Bridge* to hiss at the indigenous prisoners. According to one version, Guillermo Valencia approached Lame and spat at him, while in another version the poet and politician went to the prison and punched him.[82] Conversely, Alina López interviewed Álvaro Pío Valencia, Guillermo Valencia's son, who insisted that his dad had not been in Popayán at that time. Subsequently, Lame pointed to Guillermo Valencia as the mastermind of the order for his arrest and of having arranged for a 28-pound bar of shackles to be placed on his ankles. The Popayán newspapers rejoiced. On 13 May 1917, the *Opiniones* editorial claimed that the indigenous uprising had been stopped—the editorialist characterized Lame as a trickster and standard-bearer of impossible demands.[83] *La Unión Conservadora,* a right-leaning newspaper, celebrated, while *El Liberal*, for its part, limited itself to criticising the trick used to capture Lame.[84] Lame remained confined without trial from May 1917 to April 1921. In a key document dated 18 July 1920, many indigenous *parcialidades* addressed the Colombian president

[82] Castrillón, *El Indio Quintín Lame.*
[83] *Opiniones,* 'Fin de una Conflagración', Popayán, 13 de Mayo de 1917, página 1.
[84] See *El Tiempo,* 'Cómo fue Aprehendido el Indio Lame', Bogotá, 30 de Mayo de 1917, página 3.

Marco Fidel Suárez (1918-1921) to notify him that Lame, in his condition of general governor of the indigenous *parcialidades* of Cauca, Valle, Huila, and Tolima, had conferred legal power of representation to José Gonzalo Sánchez, Ignacio Lame, and Roberto Braulio Cruz. Equally, the *parcialidades* pointed out the creation of the Supreme Council of the Indies and the National Indigenous Presidency of the *cabildos* under Lame's command.[85] The first institution, as during the fifteen century, would carry out the task of promoting recognition of indigenous rights. This became a new example of how Lame directed the Nasa mindset against state-centric laws by using colonial historical information to legitimatize a modern project.

Contrary to practice during the colonial period, Lame was not a self-ruling chief but an indigenous representative, who behaved as an intermediary. Lame did not have *cacicazgo*, nevertheless, he skilfully mastered the art of using Nasa colonial information to link the colonial past with the struggle of the present: 'Yet unlike any colonial Nasa institution or the Council of the Indies in Spain, Lame's council was tied to a broad *cabildos* structure through the election of Sánchez as the "National Indian President or the Superior President of the *Cabildos*." This is a clear indication of telescoping in the implementation of historical knowledge'.[86] Indeed, the National Indigenous Presidency would manage all the *cabildos* in accordance with Law 89. The document asked president Suárez to recognize the new institutions. In order to avoid any independentist fear, the petition for recognition was made by providing the possibility of mutual protection between indigenous and state authorities. Importantly, in a contemporary way of 'transferring' indigenous knowledge of the past into the present, this provision was also established in the 1991 Colombian Constitution.[87]

Lame was syndicated of eighteen crimes with the objective of annihilating his thinking once and for all. According to Lame, those events prompted him to be in control of the situation and to confront those who were trained in educational institutions but who had not the civil courage of accusing him publicly while he assumed his personal defence. Talking about these events, Lame referred back to Guillermo Valencia, indicating his reply to a telegram, in which the poet would continue to treat him as a malicious Indian

[85] AGN, Bogotá, República, *Ministerio de Gobierno,* sección 4 varios, t.137, ff.18-21.
[86] Rappaport, *The Politics of Memory*, 136.
[87] See *Colombian Constitution,* article 246.

with horrible temper. Lame sentenced: ‘I don’t accept the insults which Dr. Guillermo Valencia hurls at me in his telegram. But if Dr. Guillermo Valencia’s pen is good for writing *Anarcos,* Manuel Quintín Lame’s pen will be used for the defence of Colombia’.[88]

Finally, on 15 April 1921, the Superior Court of Popayán ruled on the case of the Inzá takeover. Lame was condemned to a custodial sentence for crimes of insurrection, violence against persons, and robbery. He was sentenced to four years of prison. He was also sentenced to the loss of public employment and pension, and the perpetual privation of his political rights. Lame did not appeal the decision. On 30 July 1921, the Superior Tribunal of Popayán ordered Lame’s release, considering that he had already fulfilled in pre-trial detention the corporal punishment to which he was sentenced.

On 13 December 1921, Lame came back to Bogotá seeking the recognition of the *resguardo* lands and an indigenous seat in the Colombian Congress.[89] On 12 March, the chief gendarme of Los Limpios (Huila) commanded a massacre that left three indigenous persons dead and two injured. Lame was charged with the killings, despite the fact that he was in Bogotá. In spite of the evidence, the leader returned once again to prison. On 20 July 1922, Lame was welcomed by the *cabildos* in Ortega (Huila), but from this moment on, Lame was unable to return to Cauca—at least not as a leader. After settling in a village in Huila, which he named San José de Indias, his displacements were constantly monitored by the authorities, which would continue remembering *La Quintiada:* the Cauca indigenous rebellion.

5.5 Conclusions

Lame’s struggle during *La Quintiada* period was only the beginning of a lifetime devoted to the indigenous cause and about which there is a lot of documentation. Lame’s thinking and the power of Nasa cosmology continue opening new research

[88] Lame, *The Thoughts,* 358.
[89] *El Espectador,* ‘Los Indígenas de Tierradentro Piden Representación en el Congreso. El Cacique Quintín Lame Viene a la Ciudad a Luchar por los Intereses de los Indios’, Bogotá, 13 de Diciembre de 1921, página 1.

questions even today, not only on indigenous issues, where its strength is focused, but also on other political practices still enduring in the postcolonial context—for example, in the implementation of international standards of indigenous rights where the silencing of indigenous jurisprudences remains current. Although, Article 3 of the UN Declaration on the Rights of Indigenous Peoples recognizes their right to self-determination, the prevailing economic development model vis-à-vis the epistemological and political approach to indigenous rights hinders the instrumental capacities of the UN Declaration to take indigenous living laws seriously and to look at indigenous cosmologies when dealing with indigenous issues.

Lame' life and thinking reveal a great need to take both indigenous cosmologies and authorities seriously when dealing with indigenous rights. This turn implies directing indigenous cosmologies to state-centric law, which means as I have stated, the recognition of the legal status of indigenous jurisprudence and its capacity to transform Western legal narratives or what I call in this thesis *inverse legal anthropology.* What is astonishing about Nasa history and jurisprudence is, in this way, its versatility in hearing Western accounts of law and in producing their own, textually and in conversation. My attempt in this chapter was precisely to direct Nasa history and laws through the voice and thinking of Lame to Colombian state-centric laws, so as to 'demonstrate' that the methodological endeavour of displaying an *inverse legal anthropology* is not an abstract claim but that it is an actual possibility. As a matter of fact, Lame's work is a vivid example of how, if Western jurisprudents take indigenous laws seriously, it would be possible to transform the language and practice in which conventional accounts have inscribed the framework of indigenous rights as not law, or just custom or 'other', which is indeed, the main chapter's claim.

I did not learn to think about the things of the forest by setting my eyes on paper skins. I saw them for real by drinking my elders' breath of life with the yakoana powder they gave me. This was also how they gave me the breath of the spirits, which now multiples my words and extends my thought in every direction. I am not an elder and I still don't know much. Yet I had my account drawn in the white people's language so it could be heard far from the forest. Maybe they will finally understand my words and after them their children and later yet the children of their children. Then their thoughts about us will cease being so dark and twisted and maybe they will even wind up losing the will to destroy us. If so, our people will stop dying in silence, unbeknownst to all, like turtles hidden on the forest floor.

Davi Kopenawa and Bruce Albert, *The Falling Sky. Words of a Yanomani Shaman* (Harvard University Press, 2013), 23.

6

Towards Indigenizing International Law: The Fight of ONIC Against Indigenous Peoples Genocide and Indigenous Nationhood in Contemporary Colombia

After unveiling the operability of an *inverse anthropological turn* in chapter 5, this chapter analyses the way in which the National Indigenous Organization of Colombia (ONIC)—the main Colombian indigenous organization founded in 1982 to represent indigenous peoples and their legal and political claims—has been *indigenizing international law*. To this end, I undertake a reading of the ethnic militancy of ONIC in relation to its narration of the configuration of Colombian contemporary nationhood and its fight against indigenous peoples' ongoing genocide.

In this chapter, I demonstrate that the importance of approaching indigenous thinking lies in the possibility of changing mainstream historical narratives and legal doctrines through idiosyncratic interpretations driven by indigenous peoples and organizations. In order to do so, first, I analyse the historical way in which ONIC has positioned its political reading of the Colombian nationhood. Then, I present ONIC's legal agenda regarding indigenous peoples' genocide in terms of international law. This analysis demonstrates how the Colombian indigenous movement has been *indigenizing international law* through an advocacy approach that acts concurrently from the outside and inside of the framework of international law. Whilst my attention to the way in which the Colombian indigenous movement *indigenizes* the imaginaries of nationhood from outside the concepts of international law shows the creativity with which indigenous cosmologies changed mainstream state-centric historical narratives, my reading of indigenous peoples genocide, which is based on ONIC's interpretations of international human rights standards, for its part, shows how even on the face of a developmental model that is producing an ongoing genocide, indigenous peoples are still fighting to change international law standards from within in the midst of this humanitarian crisis.

In this chapter, my reading of indigenous peoples' genocide and survival has been inspired by the work of the Puerto Rican literary critic Juan Duchesne Winter.[1] Duchesne's current research project addresses the genocide of indigenous peoples in the age of the global ecology of the Anthropocene—the geological time in which the human impact on the Earth's ecosystems reached a level that produced dramatic ecological fluctuations such as the ongoing anthropogenic climate change. In his work, Duchesne lucidly and relevantly explains the political consequences of valuing indigenous cosmologies and praxis regarding their territories. Indeed, mainstream geographical representations of indigenous territories, taking into consideration the topographic and biologic dimensions of the earth's surface, have emphasised the existence of indigenous populations but have forgotten the pluriverse of organic and inorganic beings that make and negotiate their social living together with indigenous peoples' ecological and spiritual relations. Certainly, 'each territory has political approximations that can be called cosmopolitical since they involve, in addition to humans, a great variety of non-human actors.'[2] In this cosmopolitical line, as I pointed out in the previous chapter, the first step to understand the interpretation of international legal standards from an indigenous perspective entails both the acknowledgment of an epistemological parity between different civilizations and the possibility of changing the imaginaries of international law through indigenous thinking.[3] It is not a matter of speaking for indigenous peoples but mainly of being captivated by their voices.

One of the best examples of the aforementioned anthropological exercise is encapsulated in *The Falling Sky—Words of a Yanomami Shaman,* the collaborative work between Davi Kopenawa, shaman and spokesman for the Yanomami of the Brazilian Amazon, and Bruce Albert, a French anthropologist and Kopenawa's close friend since the 1970s. This book, the outcome of intense fieldwork conducted by Albert, in which countless tape recordings of Kopenawa's teachings, collected between 1989 and 2001, were transcribed and translated into French encompasses a vivid example in which aboriginal accounts impregnate Western narratives enabling their *indigenization.* The style and politics involved in this collaboration, as Eduardo Viveiros de Castro has pointed out, imply a *counter-anthropology* because Kopenawa

---

[1] See especially Juan Duchesne Winter, *Caribe, Caribana: Cosmografías Literarias* (Ediciones Callejón, 2015).
[2] Ibid., 7.
[3] Ibid., 10-201.

took on the task of explaining in 'our' words what we should know about Yanomami thought and how we are perceived by his people. Indeed, according to Viveiros, *The Falling Sky,* '[i]s not a book of anthropology written by Bruce Albert about an Amazonian Indian; it's a book written by an Indian about Bruce Albert and other white people.'[4] This is precisely the sort of anthropological endeavour that should be replicated in terms of indigenous peoples in international law.

On a first level, as Duchesne has explained, Kopenawa is a survivor of the indigenous holocaust that started with the process of colonization of the Americas in the fifteenth century. Consequently, the voice of the Yanomami people questions the political and economic model that has caused the genocide of indigenous peoples and through which the genocide is being reinforced: 'Thus, the cosmo-political manifest of this shaman, co-written with Bruce Albert, is installed in the Anthropocene, the geological era that, by definition, was produced by modern man and will end with him.'[5] In this regard, a principal political concern of *indigenizing* state-centric laws has to do with the imperative need of stopping the indigenous genocide as a way to resist the geological onslaught that is producing the current ecological crisis.[6]

On a second level, it is important to remark that the ethnographic process of listening to indigenous law as law does not pretend to create an academic translation of indigenous jurisprudence as it is enacted on ancestral lands. It is not a matter of representing indigenous knowledge as it appears in particular cosmologies, but as an exercise in which international legal ethnographers allow themselves to be seduced by the reflections of indigenous jurisprudents. I understand this ethnographic act of seduction as the possibility of actively interacting with indigenous concepts, words, and cosmologies to transform the conceptual matrix of state-centric laws and indigenous international standards. In this way, it is not a matter of speaking up for indigenous peoples but of taking their own systems of knowledge seriously. Talking about the work of Viveiros and Philippe Descola, Duchesne has clarified this substantial issue:

[4] Peter Skafish, 'The Metaphysics of Extra-Moderns. On the Decolonization of Thought—A Conversation with Eduardo Viveiros de Castro', (2016), 22:3 *Common Knowledge,* 401-402.
[5] Duchesne, *Caribe, Caribana,* 268.
[6] This political concern has been at the centre of Viveiros' project. See Eduardo Viveiros de Castro and Déborah Danowsky, *Há Mundo por Vir? Ensaio Sobre os Medos e os Fins* (Cultura E Barbárie, 2014).

> Those anthropologists, as authors, are ultimately responsible for the texts that formulate the Amerindian praxis that concerns us, without this preventing the acknowledgement of the important contribution of indigenous thinking to the content of such texts and the fact that the existence of such indigenous thinking is independent of the academic theorists mentioned, irreducible to them and able to revitalize and continue to influence in the development of their proposals, because it develops on its own in oral and collective media which are alternative to the written episteme.[7]

On a third level, the *inverse legal anthropological* approach that appears throughout the length and breadth of this thesis does not seek to turn the discourse of indigenous rights as it appears in international law, into the framework of indigenous cosmologies, but mainly to 'traverse the distance that separates each one's perspective and the different ways of being in which they rest'.[8] Indeed, international law as a project and field of study has been denying the *double bind* between its rules and those arising from indigenous jurisprudence. Thus, it is the distance between international law and indigenous jurisprudence that 'produces' a particular perspective. Since colonial times, the Western Rule of Law has been the unit of measurement of indigenous jurisprudences and, consequently, the silencing of indigenous peoples' jurisdictional speech has been the rule. *Indigenizing international law* entails, in this way, shortening the distance between Western and indigenous jurisprudential accounts, allowing listening to indigenous jurisprudences more closely. If 'we', captivated by the potential of indigenous living laws, allow 'ourselves' to listen to indigenous law as law, the possibility of interpreting international law through indigenous jurisprudences in order to transform its very language becomes possible. Thus, the potential of *indigenizing international law* rests on an *inverse legal anthropology* that is gradual.

The gradualness of *inverse legal anthropology* appears in this chapter in two distinct, but complementary scenarios anchored in the idea of *indigenizing international law.* In the first scenario, mainstream narratives of the Colombian nation will be transformed by indigenous people's voices in a turn in which the distance between Western accounts and indigenous narrations becomes shorter, and in a way that we can learn from them. In the second scenario, a critical reading of international criminal law will be displayed with the objective of showing how state-centric laws mobilized by indigenous organizations and their allies can also be used in the struggle against indigenous

[7] Duchesne, *Caribe, Caribana,* 181.
[8] Ibid., 196.

genocide. If chapter 3 remarked the silencing of indigenous peoples' speech by pointing out their ongoing genocide, this chapter draws attention to resistance processes of survival, demonstrating (through the voices of ONIC's leadership) that indigenous peoples have not surrendered to colonial and postcolonial attempts at perpetrating their physical and cultural annihilation.

To advance in this direction, the first section presents the ONIC history through the memories of Taita Víctor Jacanamijoy and Luis Evelis Andrade, former ONIC vice-president and president respectively. My narrative intertwines, on the one hand, Jacanamijoy's and Andrade's life stories in order to show a concrete example of indigenous survival by means of resistance and, on the other, their explanation (in 'our' words) of what we should know about the ONIC political program and how the ONIC perceives the official narratives of Colombian nationhood. The second and third sections introduce the ONIC political program in international criminal law; especially, concerning the relationship between physical and cultural extinction and indigenous genocide through ecological means. In the last section, conclusions will be presented.

6.1. Ethnic militancy as means of survival

In the midst of a political and free-flowing conversation with Taita Víctor Jacanamijoy (see Figure 6.1), former ONIC[9] vice-president (1986-1990), the image of stepping into their offices in the very heart of La Candelaria (the iconic historical neighbourhood in downtown Bogotá) returned to my mind. As is the case with ONIC, at *Tambo Sinchi Uaira* (Jacanamijoy's home located in the working-class district of San Cristóbal in the capital city) the constant sound of music encompasses rhythmically with material and symbolic enactments of indigenous peoples' social and political struggles. From the moment you walk up the ONIC stairs, the sounds of *vallenatos*—Colombian folk music from the Caribbean region, reappropriated by indigenous peoples from the Sierra Nevada de Santa Marta and the Serranía de Perijá in the north-east of Colombia—complement the eloquence with which indigenous leaders from different parts of the

[9] On ONIC history see especially, Christian Gross, *Colombia Indígena: Identidad Cultural y Cambio Social* (CEREC, 1991), 226-281.

national territory talk about the past, present, and future of political and legal struggles focused on their cultural survival.

Figure 6.1 Tambo Sinchi Uaira, Taita Víctor Jacanamijoy Jajoy, after a twelve-hour intermittent conversation with the author.
Courtesy of Hollman Bonilla (P.Bacca)

Swaying to the *sanjuanitos,* an Andean folk music performed on traditional instruments such as the *bandolin*, *quena*, *charango* and pan flute, I found myself talking with Taita Víctor about his involvement with the national and international indigenous movement. In different ways, Taita Víctor's personal and political life embodies the ONIC agenda in different ways. It is a platform to which he has been connected since its origins in the early 1980s. Originally from the Inga indigenous territory of Santiago—located in the southwest department of Putumayo bordering Ecuador and Perú—Jacanamijoy's community has experienced the consequences of different colonial periods ranging from the aftermath of the Spanish invasion in the 16th century and the Catholic missions' administration of Putumayo since 1547,[10] to the legacy of slavery produced by the rubber boom in the middle of the 19th century, all of which resulted in the annihilation of tens of thousands of indigenous peoples in the Amazonas and Putumayo

[10] See especially Wade Davis, *One River. Explorations and Discoveries in the Amazon Rainforest* (Vintage Books, 2014), 159-199.

departments;[11] and more recently, the militarized eradication of coca crops driven by the U.S.-Colombia antidrug policy (Plan Colombia), with aerial fumigations using Monsanto's glyphosate.[12]

Jacanamijoy spent his early years in Leticia, the capital city of the trans-frontier department of Amazonas in southern Colombia, which turned him early on into a politically involved indigenous subject. On the one hand, his interaction with Amazonian indigenous peoples such as the Bora, Uitoto, Mukuna, Mirana, and Ticuna raises his awareness of biological and cultural diversity. Indeed, Jacanamijoy's prompt contact with indigenous elders of this area piqued his vocation as a healer and political leader. On the other hand, his constant communication with natives and mestizos from Ecuador, Perú, Bolivia, and Brazil across the Amazon corridor made him a versatile polyglot, and fed the cosmopolitan spirit which led him to travel around the Americas, Europe, and Asia denouncing the ongoing genocide of indigenous peoples, as well as promoting their political and ontological self-determination. In this way, Jacanamijoy's life embodies an indigenous' location that cosmologically and politically speaking is beyond the national and the international; indeed, drawing on Paul Gilroy's terminology, Duchesne has remarked that this kind of location is *outernational* because it is constituted as an *out of place* in relation to the nation-state.[13]

Jacanamijoy's ethnic militancy are inextricably linked to ONIC program, which flourished under the experiences of three social events that crystallized the ideas of political resistance and cultural survival at the national level under the heading of self-determination—understood as the power of indigenous nations to choose their own life plans. First, there were the indigenous struggles over land in the 1930s,[14] when the central state's failure to recognise and formalise indigenous territories gave way to the upholding of settler's 'rights', to which Quintín Lame's struggle is essential.[15] The historical background of this fight dates back to 1905 with the enactment of Law 55

[11] See especially Michael Taussig, *Shamanism, Colonialism, and the Wild Man: A Study in Terror and Healing* (University of Chicago Press, 1991).
[12] See Kristina Lyons, 'Can There Be Peace with Poison? (April, 2015), *Cultural Anthropology Hot,* https://culanth.org/fieldsights/679-can-there-be-peace-with-poison
[13] Duchesne, *Caribe, Caribana,* 24. See also Paul Gilroy, *The Black Atlantic. Modernity and Double Consciousness* (Verso, 1993).
[14] See Catherine LeGrand, *Colonización y Protesta Campesina en Colombia (1850-1950)* (Universidad de los Andes—Universidad Nacional de Colombia—CINEP, 2017), 209-219.
[15] See chapter 5 in which I analyse the life and work of Qunitín Lame in detail.

directed toward the dissolution of indigenous reserves (*resguardos*). In the first article of this law, which was in force during Lame's revolution, the Colombian nation ratified the sale of indigenous *resguardos*. The same procedure was repeated in 1919 with Law 104.[16]

Second, indigenous legal appropriations and reappropriations of nation-state laws in the 1970s, under the operation of the *División de Asuntos Indígenas* (DAI) (Division of Indigenous Affairs) that put forth a program to prohibit the dissolution of indigenous *resguardos* until further notice, through which the movement advanced in the consolidation of collective land holding. According to Joanne Rappaport,

> [d]uring this period, the Colombian state was moving toward a growing recognition of the specifity of indigenous needs and demands; [nevertheless], the repressive government of President Julio César Turbay Ayala (1978-82), alarmed at the deepening guerrilla struggle and its presumed links with the Indian movement, attempted to increase state control of resguardos through the introduction of a highly unpopular Indian statute that would supplant all previous legislation.[17]

Finally, the last social event happened in a decisive and meaningful way, by taking advantage of the 1970s indigenous uprisings with the collusion of grassroots organizations. This took place in three complementary scenarios: (a) The appropriation and reappropriation of nation-state laws created by the Instituto Colombiano de Reforma Agraria INCORA (Colombian Institute for Agrarian Reform)—an institution that 'purchased lands for the establishment of community enterprises, which remained, nevertheless, independent of cabildos';[18] (b) A contentious dialogue with the Asociación Nacional de Usuarios Campesinos ANUC (National Association for Peasants)—'an independent peasant movement organized around demands for land and the protection of colonist and smallholders';[19] (c) Fostered by the Consejo Regional Indígena del Cauca CRIC (Regional Indigenous Council of Cauca), an organization set up in 1971, which began the recuperation of the land and territories of the lost reserves,

---

[16] See Paulo Ilich Bacca, 'Tras las Huellas de Manuel Quintín Lame', in Julieta Lemaitre (Comp.), *La Quintiada (1912–1925). La Rebelión Indígena liderada por Manuel Quintín Lame en el Cauca. Recopilación de Fuentes Primarias* (Universidad de los Andes, 2013), 319-320.

[17] Joanne Rappaport, *Cumbe Reborn. An Andean Ethnography of History* (University of Chicago Press, 1994), 16.

[18] Ibid.

[19] Ibid., 15.

which were legally inalienable according to Law 89 of 1890.[20] Outstandingly, by tracing the Nasa cosmological principles revised in chapter 5, CRIC resumed the following demands, first voiced by Quintín Lame, and installed them in the present:

1. Repossession of usurped lands belonging to *resguardos;*
2. Enlargement of *resguardo* territories;
3. Strengthening of *cabildos*;
4. An end to sharecropping;
5. Broadening knowledge of Indian legislation and demanding its application;
6. Defence of the history, language and customs of indigenous communities;
7. Formation of Indian bilingual teachers.[21]

These historical events have been recorded in indigenous' oral tradition and it has been by interacting with academic and indigenous sources simultaneously that I gradually began to better understand the meaning of survival within the Colombian indigenous struggle. Indeed, the image of stepping into ONIC offices that prowled insistently in my mind while I continued talking with Taita Víctor, speaks to me about the 'same' historical period, however, this reminiscence mixes the academic accounts with indigenous voices. From the moment I met Jacanamijoy in 2002 during a campaign that sought the increase of special educational allowances for ethnic minorities, and my subsequent involvement as researcher for ONIC to devise a methodology for prior consultation processes with indigenous communities in 2003, the historical facts that led to the foundation of ONIC have surfaced in my dialogues with indigenous leaders as a prime example of my idea of *indigenizing international law* from an *inverse legal anthropology.*

Thus, for example, in different public and private meetings in the last decade, I have heard Luis Evelis Andrade, former ONIC president (2003-2012), speak eloquently about indigenous survival and genocide in Colombia. Andrade, an Embera indigenous leader from the department of Choco, located in the west of Colombia, headed ONIC during one of the harshest periods of violence in the country's recent history (see Figure 6.2). Remarkably, he talks about indigenous genocide, linking survival to the political program of ONIC, in which self-determination, defence of indigenous territory, and

[20] For a general historical reconstruction see Brett Troyan, *Cauca's Indigenous Movement in Southwestern Colombia. Land, Violence, and Ethnic Identity* (Lexington Books, 2015), 59-153.

[21] This is the famous seven-point program that CRIC built upon Manuel Quintín Lame's indigenist demands. See Joanne Rappaport, *The Politics of Memory. Native Historical Interpretations in the Colombian Andes* (Duke University Press, 1998), 148.

control over natural resources are highlighted. His account, opposed to mainstream historiography, emphasises the way in which indigenous struggles have produced a particular history of Colombian social movements. In this way, contemporary Colombian history is marked by a turn 'manufactured' from within indigenous grassroots organizations.[22] Andrade talks about ONIC history by remarking not only the growing recognition of indigeneity that took place in Colombia when the organization first started working concomitantly with a number of governmental institutions 'devoted' to indigenous affairs such as DAI and Incora;[23] but also by reversing the centrality of state institutions in order to read their history through indigenous voices, that is to say, *indigenizing* local and international standards.

Figure 6.2 Luis Evelis Andrade, Ex-President of the National Indigenous Organization of Colombia.
Courtesy of Revista Semana.

The 'inverse narrative turn', taken by Andrade in particular and indigenous leadership and grassroots in general, displays a storyline in which the political struggles assumed by CRIC were not only able to *indigenise* official state laws in a constant process of appropriation and reappropriation—mainly those driven by DAI and INCORA—but also by fighting for survival against genocide through social mobilization and collective repossession of land (*recuperación*),[24] as we saw earlier in chapter 5. Andrade

[22] See Rappaport, *Cumbe Reborn.*
[23] Ibid., 16.
[24] 'Recuperación is the term used to describe the act of reclaiming territory by occupying usurped lands, a concept best translated into English as "repossession," the term Native Americans use to refer to the same

introduces ONIC history through Trino Morales' voice, a Guambiano indigenous leader from the south-western department of Cauca, who, having the collective repossession of land as a platform for his political agenda during the sixties, took a fundamental step toward strengthening national and international indigenous claims (see Figure 6.3).

In 1962, Morales cofounded the Sindicato del Oriente Caucano (Union of East Cauca), a Guambiano union that launched a program to repossess indigenous territories and to respond to the growing mistreatment of local leaders jointly with the indigenous council (cabildo). In the 1970s, while presiding as indigenous secretary in ANUC, he promoted the separation from this peasant social structure because of internal exclusions and ideological disagreements (mainly the resistance against colonialism that wasn't understood in the same way by the ANUC leadership).[25] This coincided with the creation of CRIC in 1971—the organizational force that provided the impetus behind the development of the contemporary Colombian indigenous movement.[26] Since 1974, under the CRIC political program, Morales directed the Unidad Indígena (Indigenous Unit), a pioneering newspaper, which became a communication platform for indigenous peoples and that resulted in Morales' nomination as the first president of ONIC in 1982.[27]

According to Taita Víctor, these platforms of resistance, though focused on different issues such as repossession of communal lands, strengthening of traditional authorities, promotion of indigenous rights to their own educational and health systems, and defence of indigenous languages, history, and cosmologies, are best understood as an organized whole focused on indigenous ecological survival. Jacanamijoy locates the 1970s with the advent of CRIC and the 1980s with the birth of ONIC, as a foundational moment to understand what was to become the internationalization of the Colombian indigenous movement at the beginning of the 1990s. He positions himself between the

---

process in the United States. By calling their activities "recuperación," the cabildo distinguishes its discourse from that of the state and the landlords, who commonly label these actions "invasions"'. Ibid., 10.

[25] See Christian Gros, *¡A mí no me manda nadie! Historia de Vida de Trino Morales* (ICANH, 2009).

[26] 'CRIC quickly spread through Nasa territory. Many, although not all, the *cabildos* of Tierra Adentro embraced the pan-Indian organization. In some parts of the western cordillera, it effectively repossessed lands, incorporating them into communal farms sponsored by the Colombian Institute for Agrarian Reform.' Rappaport, *The Politics of Memory*, 148.

[27] See Mauricio Archila and Catherine Gonzáles, *Movimiento Indígena Caucano: Historia y Política* (Universidad Santo Tomás, 2010).

First National Indigenous Congress, which institutionalized ONIC in a multitudinous meeting carried out in Bosa (the southwestern 7th locality of Bogotá) and convened between 24 and 28 February 1982, after two years of working sessions in which Trino Morales was traveling throughout the country, and the Second National Indigenous Congress that took place in the same locality between 17 and 21 February 1986.[28]

Between 1981 and 1982, having returned to his native Santiago at the age of fifteen, Jacanamijoy did not have the financial resources to conclude his secondary schooling. Taita Víctor told me that despite the economic precariousness his decision to continue studying was absolute. For that reason, he called on the assistance of his indigenous council, where he held the position of scribe. The budget of the indigenous council was virtually non-existent; however, the governor at the time, Taita Mateo Chasoy, delegated him to conduct an indigenous census through which he earned the sum of 2,000 Colombian pesos. Though the amount was not enough to buy notebooks, pen, pencil, pencil sharpener, and eraser, the school supplies he needed to attend high school, Jacanamijoy recalled with nostalgia that the store owner gave them to him for that price. Between 1983 and 1984, having received a tuition scholarship to complete high school, he combined his work as a part of the student committee with his official appointment as member of the indigenous council, gaining the experience needed to emerge as one of the main indigenous leaders from the Amazon Basin and the Andean region.[29]

In 1985, at the time of his graduation, ONIC convened the Second National Indigenous Congress and he travelled to Bogotá to join the meeting, which would be the beginning of a prominent career within the Colombian indigenous leadership. Using a revitalised voice, Jacanamijoy pointed out that in previous years he had mixed his educational activities with intensive working days next to experienced Putumayo and Amazon healers, with whom he not only learned the science of indigenous medicine but also the art of political resistance to confront their physical and cultural extinction. In the action of walking through ancestral territories throughout the country—as Trino Morales and

[28] ONIC preserved the memories of the meetings. See *Primer Congreso Indígena Nacional: Propuestas y Conclusiones* (ONIC, 1982); *Segundo Congreso Indígena Nacional: Propuestas y Conclusiones* (ONIC, 1986).

[29] 'In 1984, peace accords were signed with four of Colombia's major guerrilla movements, including the M-19 and FARC. By June 1985, few reforms had been promulgated, the military continued to persecute those guerrillas who had signed the accords, and the President [Julio César Turbay] was increasingly receptive to the military and the powerful economic interests that opposed his peace policy'. Rappaport, *The Politics of Memory*, 151.

Taita Víctor have done—indigenous peoples continue to honour their ancestors' work by training new generations of leaders. Acknowledging precisely such an endeavour, the Second National Indigenous Congress' plenary appointed Jacanamijoy as ONIC vice-president for the period 1986–1990. This historical interval characterized by the strengthening of local grassroots would prepare the terrain for the consolidation of a strong social movement at the national level: Indeed, it would be the first Latin-American indigenous movement able to reach a Constituent Assembly and, subsequently, to gain recognition of cultural diversity and of indigenous jurisdictional systems in 1991, in an event that would become a reference point for the international indigenous movement.

Figure 6.3 First President of the National Indigenous Organization of Colombia, Trino Morales. Courtesy of Periódico Universidad Nacional de Colombia

The 1991 Colombian Constitution brought the recognition of cultural diversity and the special indigenous jurisdiction to the heart of the constitutional agenda. With this, the indigenous movement in Colombia actively participated in the constitutionalisation of human rights standards in a 'prosperous' period of legal advocacy.[30] In preparatory sessions to undertaking the Constituent Assembly meetings, Jacanamijoy fulfilled the role of ONIC spokesperson; in this role, he was in charge of communicating to the Colombian civil society that the indigenous movement would not join any alliance in their attempt to be part of the National Assembly. According to Jacanamijoy, in one of

[30] See, Carlos Vladimir Zambrano, 'Transición Nacional, Reconfiguración de la Diversidad y Génesis del Campo Étnico. Aproximación a la Promoción de la Diversidad en la Década 1991-2001' (2002) 15 *Revista Pensamiento Jurídico – Universidad Nacional de Colombia,* 20-21.

the first meetings between Colombian leftist parties and social movements that took place at the Centro de Investigación y Educación Popular-CINEP (Centre for Research and Popular Education, located in Bogotá), the former leader of the 19th of April Movement (M-19), Antonio Navarro Wolff, who at that moment represented the political party that entered mainstream Colombian politics, the M-19 Democratic Alliance—after demobilization through a peace agreement—proposed the integration of indigenous leaders within the M-19 platform (see Figure 6.4).

Figure 6.4 In a distinctive indigenous reappropriation, a few decades after the Constituent Assembly of 1991, Antonio Navarro Wolff, acting as governor of the southwest Nariño Province, celebrates the Andean New Year (Inty Raimy) together with the Pasto nation; to his left, Taita Ramiro Estacio, ex-Senator of the Movement of the Colombian Indigenous Authorities.
Courtesy of Revista Comunicando.

With enthusiasm and pride, Taita Víctor remembers both the moment in which Navarro proposed this to him vis-à-vis the deliberation of the issue with the national indigenous leadership, and the subsequent meeting in which he informed Navarro the ONIC government and grassroots decision to have an independent political representation and program. In 1991, three indigenous delegates (Lorenzo Muelas Hurtado, Francisco Rojas Birry, and Alfonso Peña Chepe) 'were elected to the Constituent Assembly that wrote Colombia's 1991 constitution and were instrumental in redefining Colombia as a

pluriethnic nation'.[31] In line with the constitutional process, the Colombian Congress has had three indigenous representatives among its members, who have contributed to the implementation of international standards of indigenous peoples rights and the development of national indigenous legislation since 1991 (see Figure 6.5). Both Jacanamijoy and Andrade have stressed the importance of the constitutional recognition of indigenous peoples rights in our meetings, and have also expressed their concerns regarding the 'parallel implementation' of a neoliberal economic model characterized by the massive extraction of natural resources in indigenous territories.

Figure 6.5 Lorenzo Muelas Hurtado and Francisco Rojas Birry celebrating the promulgation of 1991 Colombian Constitution.
Courtesy of Revista Semana.

Until now, the distance between mainstream narratives and indigenous storylines on nationhood has produced a history in which the twentieth-century indigenous claims evaluated in chapter 5 materialized in the 1991 Constitution. Indeed, the historical tradition that wiped indigenous peoples off the face of the Colombian map was significantly counteracted, at least in formal terms, since indigenous demands were elevated to a constitutional level. This *inverse legal anthropological* calibration can be complemented with another reading that is a constitutive part of my narration—more invisible but not less important—in which state-centric laws can be *indigenized*. Taita Víctor Jacanamijoy, like David Kopenawa, the Yanomami shaman of the Brazilian

[31] Rappaport, *Cumbe Reborn,* 13.

Amazon that together with Bruce Albert has displayed the most refined exercise of *inverse anthropology*, articulates his political discourse around his mystical experience as a healer. Kopenawa's and Jacanamijoy's political claims are directed to keep indigenous territories alive and to curb the ongoing genocide of their peoples. This claim, as Duchesne has stated, is based on a shamanic ontology. Indeed, in ontological shamanic terms,

> [t]he sense in which the [indigenous] territory appears as a collective network of beings of various kinds, among them humans and their becoming-others, can be thought of as an ontology; that is to say, as a series of juxtapositions, explicit or otherwise, of what exists and its modes of being in one way or another.[32]

Thus, in this particular case, the shamanic ontology in which the defence of indigenous territories rests is encapsulated in the teachings of Kopenawa's and Jacanamijoy's master plants—consciousness-expanding plants that have been a part of indigenous experience for many millennia.[33] Kopenawa is very clear in the epigraph that heads this chapter: 'I did not learn to think about the things of the forest by setting my eyes on paper skins. I saw them for real by drinking my elders' breath of life with the yakoana powder they gave me. This was also how they gave me the breath of the spirits, which now multiples my words and extends my thought in every direction'.[34] In the same way, all the teachings that I have received to this day from Jacanamijoy are grounded on the wisdom of his spiritual medicine—*Ayahuasca*.[35] In both cases, the theoretical framework of thinkers such as Viveiros and Duchesne, in which all beings (non-human, biotic, non-biotic, material, and non-material) that populate the world are able to acquire psychic faculties and agency, as humans do, becomes possible.[36] That is why Kopenawa's and Jacanamijoy's perspective on indigenous genocide is concretely

[32] Duchesne, *Caribe, Caribana,* 275.
[33] '[Y]et modern Western societies have only recently become aware of the significance that these plants have had in shaping the history of primitive and even of advanced cultures'. Richard Evans Schultes, Albert Hofmann and Richard Ratsch, *Plants of the Gods. Their Sacred, Healing, and Hallucinogenic Powers* (Healing Arts Press, 1992), 9.
[34] Davi Kopenawa and Bruce Albert, *The Falling Sky. Words of a Yanomani Shaman* (Harvard University Press, 2013), 23.
[35] According to the interpretation of ethnobotanist Richard Evans Schultes, Swiss scientist Albert Hofmann, and ethno-pharmacologist Christian Ratsch, 'the Indians believe [that Ayahuasca] can free the soul from corporeal confinement, allowing it to wander free and return to the body at will. The soul, thus untrammelled, liberates its owner from the realities of everyday life and introduces him to wondrous realms of what he considers reality and permits him to communicate with his ancestors'. Schultes, Hofmann and Ratsch, *Plants of the Gods. Their Sacred*, 124.
[36] See Duchesne, *Caribe, Caribana,* 180.

located in the age of the global ecology of the Anthropocene. Indeed, during our interactions, Jacanamijoy has insisted that the struggle against genocide encompasses both indigenous peoples' survival and the safeguarding of human and non-human life on the planet.

Here, the gradualness of an *inverse legal anthropology* enunciated in the introduction articulates both the sacred and the profane.[37] Jacanamijoy's reading of the Colombian nationhood operates as a *hinge text*—it functions to create an in-between account of *Ayahuasca* teachings and ethnic militancy towards survival. For example, Jacanamijoy has told me on repeated occasions that indigenous peoples cannot separate rituality from politics—the most important political decisions of his people are taken by following the advice of *Ayahuasca*. In this way, Jacanamijoy's *hinge text* operates between the jungle, where he learns the arts of his ancestral medicine, and national and international meetings where the decisions about indigenous peoples in international law are taken. Admittedly, this is a mandate where history, as Duchesne has commented, can be conceived as an art of transformation:

> First, the rhapsodist that speaks inwardly, for her people, not as a modern author entertained with an individual expression of incidental experiences, but as upgrader of the traditional space of participation constituted by the multiple voices of her people. Second, as someone who writes outwardly, in so far as she assumes the role of spokesperson for her community to engage in another kind of contact, different to the one that has historically marked the loss of identity of her people.[38]

Unlike accounts that read indigenous struggles in light of a history in which the narrative emphasis is placed on official narratives of nationhood, indigenous historical accounts based on oral tradition have developed a social and political history articulated around their own protagonists and horizons of life. As I pointed out in the first chapters, the trajectory carried out by human cultures to produce their own lives has the immediate consequence of enabling their own thinking regarding the production of anthropologies and histories. As such, the possibility of directing an Other's point of view towards us carves out a space where dissenting voices can change our perceptions

---

[37] In indigenous worlds and cosmologies, 'there is no way to separate the profane from the sacred nor the practical-material from the ritual, spiritual or symbolic'. Ibid., 206.

[38] Ibid., 25. Duchesne is following closely the work of Ferrer and Rodríguez. See Gabriel Ferrer and Yolanda Rodríguez, *Etnoliteratura Wayuu: Estudios Críticos y Selección de Textos* (Universidad del Atlántico, 1998).

about our own history and anthropology. This is precisely what has happened with my discernment about indigenous survival in general and indigenous peoples in international law in particular by listening to ONIC history through indigenous voices. Indeed, in this ethnographic exercise, the indigenous uprisings in Colombia acquired a human dimension, one in which both the hope for survival and the darkest side of genocide is displayed within the memory of indigenous cultures.

In the next section, I explore how my approach to the genocide of indigenous peoples vis-à-vis international criminal law, as identified in chapter 3, belongs to the Colombian indigenous movement. In this context, I locate a new *inverse legal anthropological* turn able to *indigenise international law*, one in which indigenous peoples use state-centric laws for strengthening their political agenda. At the same time, my evaluation considers the way in which ONIC has combined the use of international law standards with social mobilization, in order to exert political resistance against the genocide of indigenous peoples by ecological means.

6.2. Ethnic militancy in international law

I can undoubtedly say that the simplest as well as the sharpest way to evaluate the recognition of cultural diversity and indigenous peoples' rights in the framework of the 1991 Colombian Constitution is to contrast its political formula in daily life with the way in which indigenous jurisdiction is acknowledged. According to Articles 1 and 7 of the Constitution, 'Colombia is a social state under the rule of law' where 'the state recognizes and protects the ethnic and cultural diversity of the Colombian nation'. Article 246, for its part, recognizes the indigenous jurisdiction 'in accordance with their own laws and procedures *provided these are not contrary to the Constitution and the laws of the Republic*' (emphasis added).

Indeed, my first steps on the path of indigenous issues were marked by the internal contradictions of the Constitution's political formula that, seeking the integration of indigenous peoples within the Colombian Republic, ended up disavowing the peculiarities of each indigenous nation; and, at a second level, by experiencing the

contradictions of a multicultural society within a unitary republic,[39] and the difficulty of making such a constitutional recognition effective, considering that since colonial times the idea of European superiority over indigenous cultures has remained current.[40] And, last but not least, by witnessing first-hand how the Colombian indigenous movement, being aware of the operational capacity of the development model over the political formula of a pluriethnic nation, has been strategically combining the use of international law standards and social mobilization as a way to resist politically.

A decade after the 1991 Constitution, government policies in relation to indigenous peoples displayed the tendencies of global capitalism characterized not only by the positioning of indigenous rights at an international scale but also by the structuring of an extractive mode of production in which 'conflicts over the exploitation of indigenous lands have multiplied and escalated rapidly across the world'.[41] I initially perceived the challenge by interacting with national indigenous leaders affiliated to ONIC, who always insisted on the need for using national and international procedural norms to counteract the risk of annihilation of indigenous peoples, and, at the same time, their unbreakable will to continue empowering social mobilization as a political banner to defend their right to self-determination; including of course, their territory's management plans focusing on their physical and cultural survival. During the last decade, ONIC has been drawing attention to the fact that 62,7% of all Colombian indigenous peoples are at risk of extinction if one cross examines ONIC internal statistics with the numbers offered by the Colombian Constitutional Court (CCC).[42]

There were decisive events in the configuration of my understanding of the genocide of indigenous peoples through ecological means in the aforementioned context. I locate these balanced points between two symbolic dates: First, the day of the abduction and

[39] Beatriz Eugenia Sánchez, 'El Reto del Multiculturalismo Jurídico. La Justicia de la Sociedad Mayor y la Justicia Indígena', 38. In Boaventura de Sousa Santos and Mauricio García Villegas (eds.), *El Caleindoscopio de las Justicias en Colombia Tomo II* (Siglo del Hombre Editores, 2001).
[40] See, Mauricio García Villegas and César Rodríguez, 'Derecho y Sociedad en América Latina: Propuesta para la Consolidación de los Estudios Jurídicos Críticos' in García and Rodríguez (eds.), *Derecho y Sociedad en América Latina. Un Debate sobre los Estudios Jurídicos Críticos* (Universidad Nacional de Colombia – ILSA, 2003), 35.
[41] César Rodríguez, 'Ethnicity.gov: Global Governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields', (2011) 18 (1) *Indiana Journal of Global Legal Studies,* 266.
[42] ONIC, *Palabra Dulce Aire de Vida. Forjando Caminos para la Pervivencia de los Pueblos Indígenas en Riesgo de Extinción de Colombia* (2010).

subsequent murder of indigenous leader Kimy Pernía Domicó; and second, the day when the CCC determined the existence of 35 indigenous peoples at risk of extinction. Pernía, Embera Katío indigenous leader and water protection activist, died at the hands of paramilitary groups in northern Colombia (see Figure 6.6). He led the collective mobilization of the Embera Katío nation against the construction of the Urrá dam, a massive hydroelectric project of the Multipropósito Urrá S.A. Enterprise, that changed the course of the Sinu River, a main watercourse that passes through northern Antioquia department and continues its way across the north Cordoba department before flowing into the Caribbean.[43] The Embera Katío life project, located in the midst of the extractivist development model, epitomises the 'environmental struggles of the poor' within the Colombian indigenous movement; specifically, the struggles of those who have given their lives to offer 'resources of hope in the unequal battle to apprehend, to stave off, or at least retard the slow violence inflicted by globalizing forces'.[44]

The beginning of the Urrá project did not include the process of prior consultation with the Embera Katío nation and, in this context, Pernía's activism to defend the physical and cultural survival of his people included a precursory Constitutional Court judgement that, affirming indigenous peoples' right to self-government and prior consultation, became a reference point in the framework of indigenous peoples' rights in international law.[45] His international activity encompassed a process of witnessing before 'a committee of [Canadian] MPs charged with oversight of foreign affairs. He told them about the devastating impact of a hydroelectric megaproject, built with financing from Canada's Export Development Corporation'.[46] He also attended a meeting with government ministers and civil society organizations while the 3rd Summit of the Americas was taking place in Quebec City in 2001.

On 2 June of the same year, a paramilitary group called Autodefensas de Córdoba kidnapped Pernía in the Caribbean municipality of Tierra Alta. His people never saw

[43] See especially César Rodríguez and Natalia Orduz, *Adiós Río. La Disputa por la Tierra, el Agua y los Derechos Indígenas en Torno a la Represa de Urrá* (Colección DeJusticia, 2012); Efraín Jaramillo Jaramillo, *Kimy, Palabra y Espíritu de un Río* (IWGIA, 2011).
[44] Rob Nixon, *Slow Violence and the Environmentalism of the poor* (Harvard University Press, 2011), 30.
[45]CCC., Noviembre 10, 1998, Sentencia T-652/98, http://www.corteconstitucional.gov.co/relatoria/1998/T-652-98.htm
[46] Amnesty International, 'Remembering a Beloved Defender of Indigenous Rights and the Deadly Struggle that Continues in Colombia', http://www.amnesty.ca/blog/remembering-beloved-defender-indigenous-rights-and-deadly-struggle-continues-colombia

him again, and only after more than five years since the tragic day, the Embera Katío nation finally learned what had happened to their mythical leader. On 15 January 2007, under the process of demobilization of paramilitary groups conducted during the government of Álvaro Uribe Velez, one of the chief commanders, Salvatore Mancuso, confessed in his free version before the Medellín prosecutor's office that Carlos Castaño, one of the main paramilitary leaders, ordered the mercenary John Henao (alias H2) to assassinate Pernía.[47]

As a prelude to the murder of Kimy Pernía, in 1999, there was a process of social mobilization that led the Embera Katío nation to march to the offices of the Ministry of Environment in Bogotá, which suddenly and unexpectedly, became crowded with indigenous peoples. The Embera communities and their supporters demanded their right to prior consultation; indeed, a fundamental right that was violated with the beginning of construction work on the Urrá dam in 1993.[48] This mobilization process reminded the generation of law students at the beginning of the century of the stories about indigenous leaders who 'came down from the mountains' and 'roamed jungle trails' to arrive at the 1991 Constituent Assembly to give their point of view on human rights, cultural and physical survival, political self-determination, and beyond. The figure of Kimy Pernía, which rests in the memory of the contemporary Colombian indigenous movement, has been key to my analysis of indigenous' social realities. Certainly, it was through his life story that I approached the second break point that set out my understanding of the ongoing genocide of indigenous peoples.

This succeeding fact took place on the 26 January 2009 when the Colombian Constitutional Court (CCC) determined the existence of 36 indigenous peoples at risk of extinction because of causes directly and indirectly connected with the armed conflict and the social phenomenon of forced displacement in the country. In response to the weakness of the Colombian state to formulate a public policy on forced displacement for both indigenous and non-indigenous victims, in January 2004 the CCC issued Judgment T-025,[49] which according to experts is the 'most ambitious ruling in its two

---

[47] Rodríguez and Orduz, *Adiós Río*, 132-140.
[48] Ibid.
[49] CCC., Enero 22, 2004, Sentencia T-025/04, www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm. For all the ins and outs of the matter see César Rodríguez and Diana Rodríguez, *Cortes y Cambio*

decades of existence'.[50] After adding the constitutional complaints (*tutelas*) of 1,150 displaced families, 'the CCC declared that the humanitarian emergency caused by forced displacement constituted an "unconstitutional state of affairs",[51] that is, a massive human rights violation associated with systemic failures in state action'.[52] According to the UN Refugee Agency UNHCR, Colombia has the highest rate of forced displacement in the world with 6,9 million internally displaced persons, as a result of its armed conflict (cumulative figure from 1985 to 2015).[53] In order to overcome this unconstitutional state of affairs, the CCC ordered a series of structural measures including both social and economic actions.

As part of the monitoring measures of the CCC, in September 2007, a technical briefing was convened to analyse the particular case of indigenous peoples. [54] Having reviewed the reports from indigenous and civil society organizations, the CCC ruled with the objective of protecting the fundamental rights of indigenous peoples displaced by armed conflict or at risk of forced displacement.[55] The CCC pointed out three structural factors related to the physical and cultural extermination of indigenous peoples. First, the confrontations taking place in indigenous territories between armed actors which integrated *factors directly caused by the conflict,* 'for example, militarization or belligerent confrontations occurring within indigenous territories, massacres, and false charges of rebellion or terrorism brought against indigenous persons'.[56] Second, the war process that actively involved indigenous peoples and their individual members in the armed conflict, encapsulating *factors related to the conflict but not directly caused by it,* 'as in the cases of territorial dispossession caused by economic actors, acting illegally or legally, interested in the land's natural resources or other actors interested in the

---

Social: Cómo la Corte Constitucional Transformó el Desplazamiento Forzado en Colombia (Colección DeJusticia, 2010).

[50] César Rodríguez, 'Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America', (2014) 89 (7) *Texas Law Review,* 2.

[51] 'Although the CCC has not explicitly drawn on comparative constitutional law to develop its jurisprudence on unconstitutional states of affairs, there are similarities between the jurisprudence of the CCC and the doctrines of structural injunctive remedies in common-law jurisdictions such as India, South Africa, and the United States', Ibid., 3.

[52] Ibid.

[53] See UNHCR Colombia, http://www.acnur.org/recursos/estadisticas/

[54] See Amnesty International, 'The Struggle for Survival and Dignity. The Human Rights Abuses Against Indigenous Peoples in Colombia' (2010), 8.

[55] Ibid., 3.

[56] Rodríguez, 'Beyond the Courtroom', 9.

territory's strategic location.'[57] And third, the social and socioeconomic process associated with internal armed conflict that affects indigenous peoples' traditional territories and cultures, integrating *factors that are aggravated by the conflict,* 'that increase vulnerability, such as poverty'.[58]

Figure 6.6 Embera Katío leader, Kimy Pernía Domicó.
Courtesy of Amnesty International.

The gap between the legal instruments and the material reality of indigenous peoples is enormous: the Interamerican Protection Measures—precautionary and provisional—as a general rule have been ineffective. Despite their denouncing character, the early warnings and risk reports have only resulted in crimes and displacements. The formal titling of lands and the establishment of indigenous *resguardos* have not in fact guaranteed the material possession of these territories. The government has established that,

> nearly 30 per cent of the country (a total of some 34 million hectares of land) has been allocated by the state to 710 *resguardos*. However, Indigenous representatives have pointed out that much of this land is unsuitable and does not meet the needs of indigenous peoples. For example, less than 8 per cent of *resguardo* land is suitable for agriculture. Some 445,000 Indigenous people live outside *resguardos* and do not have official recognition of their collective rights over the land on which they live.[59]

---

[57] Ibid.
[58] Ibid.
[59] Ibid., 5.

Ruling 004 of 2009 has been referred to as supporting evidence of genocide and crimes against humanity according to United Nations institutions and bodies that specifically target indigenous peoples' concerns. Indeed, previous to the CCC decision, in November 2004, Former Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen, launched an alert in relation to the ongoing genocide in Colombia.[60] In 2009, ONIC submitted a report to the Special Adviser to the Secretary-General on the Prevention of Genocide, which provided evidence of genocide and crimes against humanity against indigenous peoples.[61] In 2010, Former Special Rapporteur, James Anaya, following-up Stavenhagen's endorsement made the following recommendation:

> The State is urged to invite the United Nations Special Adviser on the Prevention of Genocide to monitor the situation of the indigenous communities that, according to Decision 004 of the CCC, are under threat of cultural or physical extermination. The State is also urged to continue cooperating with the Office of the Prosecutor of the International Criminal Court.[62]

That same year, ONIC submitted a report to the UNPFII which highlighted the inefficiency of the protective measures taken by national and international entities on behalf of indigenous peoples and which clearly advised that 'genocide [was] still the expression of the state-arranged policy and the imposition of an economic model by which the usurpation of territories [was] an easy way to have access to the resources available in the indigenous territories'.[63] At the same time, ONIC launched the campaign Sweet Words, Air of Life (Palabra Dulce, Aire de Vida),[64] in support of indigenous peoples at risk of genocide, and of efforts to find a negotiated political resolution to the Colombian conflict that should include civil society and indigenous authorities.

The campaign focused on pedagogic forums to defend indigenous peoples' development models, especially with regards to the conservation of their traditional

---

[60] Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, UN Doc E/CN.4/2005/88/Add.2 (2004), para. 29.
[61] ONIC, 'Situación de las Comunidades en Riesgo de Extinción' (2009).
[62] James Anaya, *The Situation of Indigenous Peoples in Colombia: Follow-up to the Recommendations made by the Previous Special Rapporteur*, UN Doc A/HRC/15/37//Add.3 (2010), para. 64.
[63] ONIC, 'Los Pueblos Indígenas de Colombia y su Pervivencia en Medio del Conflicto Armado Interno' (2010).
[64] See ONIC, *Palabra Dulce Aire de Vida.*

crops and the implementation of small-scale productive projects. In this sense, in criticizing the monist developmental perspective, namely, the one focused on the implementation of megaprojects, the campaign sought to generate social consciousness about the importance of guaranteeing the survival of indigenous peoples considering their own environmental policies and plans. Thus, ONIC prompted the use of communication and information media to present a critical reading of the rights of indigenous peoples to prior consultation. According to ONIC, a major problem in the processes of prior consultation has been the lack of transparency and disclosure of information as well as the internal disputes between indigenous organizations dissolving the line between the protection of ancestral life-plans and the negotiation of economic resources with public and private entities to fulfil everyday needs.[65]

Interestingly, the campaign presented indigenous peoples' present taking the colonial past as a reference point to understand their ongoing genocide. Following this periodization, the campaign manifested the causes of indigenous peoples' demographic decline over time: ranging from colonial slavery and indigenous deaths caused by unfamiliar diseases to the violent nineteenth-century rubber boom through the emergence of human trafficking; and from the Texaco oil explorations of the sixties directly connected to the loss of indigenous territories as a result of forced displacement to the current expansion of mining and agro-industrial plantations that have put indigenous peoples' environmental sustainability at risk. In this context, the ONIC analysis of Ruling 004 underscores two complementary registers. On the one hand, indigenous peoples have the right not to be subjected to any act of genocide contained in the UN Indigenous Peoples Declaration of 2007, which implies, on the other, the importance of considering that indigenous peoples understand the right to life linked to their territories and ecosystems. In this way, ONIC pointed out the inappropriateness of separating physical and cultural genocide and, consequently, the existence of an indigenous genocide by ecological means.[66]

[65] Ibid.
[66] Ibid.

6.3. Genocide by Ecological Means

Like the struggle of the Ogoni in Nigeria against the Shell and Chevron pipes that poured poison into the land, streams, and bodies of people, and which provoked the great indigenous leader and writer Ken Saro-Wiwa to take up the life of protest that was to be his triumph and his undoing,[67] ONIC has been invoking the connection of minority and environmental rights to argued that their people are victims of an 'unconventional war being prosecuted by ecological means'.[68] Although, the idea of linking the act of killing with the environmental annihilation of communal landscapes has an interesting genealogy both in international law doctrine and environmental studies since the seventies, the main problem was and continues to be the experts' preference for avoiding the legal consequences of such a connection in terms of international criminal law, as shown in chapter 3.

Thus, for example, in February 1970, before a setting of North American intellectuals discussing the war crimes perpetrated by the United States in Vietnam, the renowned plant biologist Arthur W. Galston coined the term *ecocide*, 'culminating for years of herbicide research and his attempts to end Operation Ranch Hand', an action that elevated to the scale of chemical war the tactic of defoliation by means of the 'environmental destruction and potential human health catastrophe arising from [this] herbicidal warfare program'.[69] In 1973, Princeton University International Law Professor Richard A. Falk pointed out that those war crimes could amount to genocide considering not only acts of killing but also and, more importantly, genocidal policies. Raising the issue of environmental warfare in Indochina, Falk drew attention to the importance of understanding 'the extent to which environmental warfare is linked to the overall tactics of high-technology counter insurgency warfare and extends the indiscriminateness of warfare carried on against people to the land itself. Just as counter-insurgency warfare tends toward genocide with respect to the people, so it tends toward ecocide with respect to the environment'.[70] In Galstons case, it was clear that ecocide was not tantamount to genocide; indeed, he suggested that if Ranch Hand had

---

[67] Nixon, *Slow Violence and the Environmentalism of the poor,* 103.
[68] Ibid., 111.
[69] David Zeirler, *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment* (University of Georgia Press, 2011), 14-15.
[70] Richard A. Falk, 'Environmental Warfare and Ecocide Facts, Appraisal and Proposals', (1973) 4 (1) *Security Dialogue,* 80.

been conducted in the form of extractive projects it would not be ecocide.[71] Falk, for his part, proposed the drafting of an Ecocide Convention to examine the way in which the Genocide Convention could contribute to the debate, a fact that I also examined in detail in chapter 3.

The legal documentation of cases such as the Urrá project and the ongoing genocide of indigenous peoples in Colombia show the type of paradoxes that the 'marginalized poor and the environments they depend on' have to face in order to perpetuate their survival.[72] On the one side, there are precedents of indigenous human rights' defenders who have been using procedural regulations in their fight against genocide in a strategic way; indeed, that can possibility depend on their direct involvement in negotiation processes with the state and multinational enterprises as well as their alliance with 'national indigenous organizations who—due to their legal expertise in other consultations—can help balance out power relations'.[73] On the other, the most inhuman and ruthless face of the neoliberal governance paradigm, the one that displays the 'human and ecological costs of such "development"'.[74]

The ONIC struggle against indigenous genocide not only succeeded in connecting indigenous extinction with forced displacement within the CCC jurisprudence, but also in leading doctrinal reflections regarding indigenous genocide by ecological means as a governmental and profitable model. As Rob Nixon has rightly stated, impoverished communities nowadays are exposed to displacement without moving (as happened with the Embera Katío nation). Thus, this radical notion of displacement 'instead of referring solely to the movement of people from their places of belonging, refers rather to the loss of the land and resources beneath them, a loss that leaves communities stranded in a place stripped of the very characteristics that made it inhabitable'.[75]

In such a context, the ONIC interpretation of Ruling 004 increased the possibilities of questioning the way in which the CCC eluded dialogue regarding genocide within the framework of international criminal law, even under the assumption of the risk of

[71] Zeirler, *The Invention of Ecocide,* 18.
[72] Nixon, *Slow Violence and the Environmentalism of the poor*, 26.
[73] Rodríguez, 'Ethnicity.gov', 302.
[74] Nixon, *Slow Violence and the Environmentalism of the poor*, 26.
[75] Ibid, 19.

physical and cultural extermination of indigenous peoples. In monitoring implementation of Ruling 004, ONIC brought the Colombian case before the UN bodies as a clear example of genocide by ecological means. In this setting, in 2011, *The Study on International Criminal Law and the Judicial Defence of Indigenous Peoples' Rights* was published, making the conclusions of Bartolomé Clavero—appointed Special Rapporteur on Indigenous Genocide by the UNPFII—public. The study, which is one of the most important examples of an official UN document that takes indigenous interpretations of international law seriously, points to Colombia as an emblematic case of an ongoing genocide of indigenous peoples by ecological means.[76] According to the UNPFII, the legal approach of Ruling 004, unlike the predominant theory of criminal international law, makes clear that the extermination of some indigenous communities is not just a by-product of the armed conflict, but rather a political and economic enterprise.[77]

The UNPFII's conclusions coincide with ONIC to the effect that, in determining the factors that are generating the ongoing genocide, territorial and socio-economic processes like extraction of natural resources and large-scale infrastructure projects lead to the dispossession of indigenous territories by economic actors who seize the land and resources owned by indigenous peoples.[78] According to ONIC, the risk of genocide of indigenous peoples is buttressed by structural conditions.[79] On the one hand, the political economy is marshalling a violent takeover of the territory of indigenous peoples; on the other, the revival of ethnocentric policies is concealed in the discourse on human rights.[80]

In December 2011, after a year of negotiations with the Colombian government, ONIC achieved the promulgation of Special Decree 4633, which provides individual and collective measures for the reparation of indigenous victims, as well as special

---

[76] The Colombian case is only referenced in the Spanish version, See Bartolomé Clavero, *Derecho Penal Internacional y Defensa Judicial de los Derechos de los Pueblos Indígenas*, UN Doc E/C.19/2011/4 (2011).

[77] UNPFII, 'Report on the eight session', UN Doc. E/C.19/2009/14 (2009), para. 28-30.

[78] Rodríguez ed., *Pueblos Indígenas y Desplazamiento Forzado,* 19.

[79] ONIC, 'Estado de los Derechos Humanos y Colectivos de los Pueblos Indígenas de Colombia: Etnocidio, Limpieza Étnica y Destierro. Informe al Relator Especial para los Derechos de los Pueblos Indígenas' (2009).

[80] On the case of the colonial right to conquest, see Robert Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford University Press, 1992).

mechanisms for the restitution of the territories abandoned and dispossessed in the framework of the armed conflict. Exemplarily, the decree recognizes that indigenous peoples consider the territory also as a victim, and through this statement for legal purposes, the only subjects of the rights granted by the Decree would be the indigenous communities and their individuals. However, the restitution of territorial rights only operates for the events that took place after 1991, safeguarding the interests of mining and oil palm companies that have been occupying and defoliating ancestral territories.

In the framework of the *Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace* signed between the Revolutionary Armed Forces of Colombia (FARC-EP) and the Colombian Government on November 24, 2016, ONIC achieved the inclusion of a chapter on ethnic issues. The chapter includes among others, measures for the identification, demarcation and communal titling of indigenous territories, and collective reparation for indigenous victims. Nevertheless, ONIC has denounced that new forms of illegitimate control by third parties are taking place in indigenous peoples' territories. Since the signing of the peace agreement, the internal displacement of 4,281 indigenous peoples and the homicide of 48 people that include indigenous leaders have been registered.

These facts show both the creativity with which indigenous organizations have been interpreting international law standards and the gap between the law applicable to indigenous peoples and its actual implementation. ONIC has been *indigenizing international law* to the extent that mainstream interpretations of international law are capable of transformation through the intervention of indigenous questions and thoughts. There is no doubt that indigenous organizations locally, nationally, and globally need the help of legal experts; but neither is there any doubt that it is the experience of indigenous leaders (narrating the facts, expressing the practical concerns, and talking about indigenous rights using their languages and cosmologies), which has headed the most important jurisprudence and international legal standards regarding indigenous issues.[81] In any case, there is also no doubt that to be able to meet all the

[81] For the Colombian case in the ecological age of the Anthropocene see especially, Presidency of the Republic of Colombia. 'Decree Law 4633, Special Decree for the assistance, attention, integral reparation and restitution of territorial of indigenous peoples' (2011); CCC., Noviembre 10, 2016, Sentencia T-622/16 (acknowledging the Atrato River as subject of rights), http://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm; Corte Suprema de Justicia., Abril 5,

epistemological and methodological challenges that supposes listening indigenous law as law, international legal scholars and ethnographers should pay attention to the way in which indigenous peoples conceive their social environments in order to promote legal measures against the ongoing indigenous genocide by taking into consideration the relationship between human and non-human beings, such animals, plants, and spirits. In this case, the task continues to be to shorten the distance between international law and indigenous jurisprudence, consequently, the *indigenization of international law* would operate as a strategy to help improve the humanitarian crisis of indigenous peoples.

6.4. Conclusions

This chapter has presented a case study as a way of responding to the main question of this thesis, which is: Can international law be indigenized through an inverse legal anthropology? To do so, I evaluated two facets of the ONIC ethnic militancy in relation to the ongoing genocide of indigenous peoples in Colombia. First, the ONIC reading of contemporary Colombian nationhood based on a dialogue with Taita Víctor Jacanamijoy and Luis Evelis Andrade, former ONIC vice-president and president respectively. And, second, the articulation of the ONIC reading of international criminal law standards with its political mobilization, which together underpin the indigenous struggle for survival.

By analysing the genocide of indigenous peoples in the age of the Anthropocene, I remarked on the importance to listen to indigenous law as law. This implies taking the ecological and spiritual relations with which indigenous peoples enact their laws in their territories seriously, and, in so doing, decolonizing the framework of international law with the help of indigenous knowledge. Thus, I claimed that the *indigenization of international law* does not imply the pretention to talk on behalf of indigenous peoples but the possibility of producing a new perspective on international law, allowing us to be seduced by indigenous jurisprudences.

2018, STC4360-2018 (acknowledging the Amazon region as subject of rights), https://redjusticiaambientalcolombia.files.wordpress.com/2018/04/stc4360-2018-2018-00319-011-1.pdf

The ONIC approach to Colombian nationhood and indigenous genocide allowed me to experiment with the methodological tools offered by an *inverse legal anthropology* that is gradual: On the one hand, by shortening the distance between mainstream historical narrations and indigenous alternative histories—as a first exercise of *indigenization*, indigenous interpretation of Colombian nationhood was woven into a *hinge text* in which Jacanamijoy's stories, based on his role as a healer, were able to change conventional historical accounts; on the other hand, by shortening the distance between state-centric and indigenous interpretations on international criminal law—in a second exercise of *indigenization*, in which the Colombian indigenous movement develops an international law analysis to talk about the genocide of indigenous peoples by ecological means.

As original peoples, we have long memories, centuries old wisdom and deep knowledge of this land and the importance of empirical, scientific inquiry as fundamental to the well-being of people and planet [...] Let us remember that long before Western science came to these shores, there were Indigenous scientists here. Native astronomers, agronomists, geneticists, ecologists, engineers, botanists, zoologists, watershed hydrologists, pharmacologists, physicians and more—all engaged in the creation and application of knowledge which promoted the flourishing of both human societies and the beings with whom we share the planet. We give gratitude for all their contributions to knowledge. Native science supported indigenous culture, governance and decision making for a sustainable future—the same needs which bring us together today [...] As we endorse and support the March for Science, let us acknowledge that there are multiple ways of knowing that play an essential role in advancing knowledge for the health of all life. Science, as concept and process, is translatable into over 500 different Indigenous languages in the U.S. and thousands world-wide. Western science is a powerful approach, but it is not the only one [...] Indigenous science provides a wealth of knowledge and a powerful alternative paradigm by which we understand the natural world and our relation to it. Embedded in cultural frameworks of respect, reciprocity, responsibility and reverence for the earth, Indigenous science lies within a worldview where knowledge is coupled to responsibility and human activity is aligned with ecological principles and natural law, rather than against them. We need both ways of knowing if we are to advance knowledge and sustainability.

Indigenous Science Statement for the March for the Science, 'Let our indigenous voices be heard', (Washington DC. April 18, 2017).

7
Conclusion

The main question behind this thesis was if international law could be indigenized through an inverse legal anthropology. To respond to this question, this thesis aimed to challenge traditional international legal understandings of indigenous peoples and of their place in the production of international norms. The thesis analyses the complexity of the *double bind* between post-colonial domination and indigenous resistance in order to demonstrate the creative and imaginative power with which indigenous peoples and organizations transform and recreate Western legal accounts inviting us to listen to indigenous law as law. By appreciating indigenous law as law—a process that I call in this thesis *indigenizing international law*—I placed the interaction between domination and resistance in the context of the meeting of state-centric and indigenous jurisdictions. In this regard, the endeavour of transforming international law's concepts and doctrines through indigenous thinking—what I call in this thesis *inverse legal anthropology*—is encapsulated in indigenous peoples' capability to transform the impositions exerted by sovereign states and the international legal order. My main contribution to current literature in relation to indigenous peoples and international law is, in this sense, to actively use indigenous languages and cosmologies to interpret international law. It supposes, on the one hand, recognizing that indigenous cosmologies are true sources of international law and, on the other, to acknowledge the possibility of improving the Western legal tradition through the use of indigenous jurisprudence.

My proposal of *indigenizing international law from an inverse legal anthropology*, which is placed within the *double binds* that traverse the meeting between rival jurisdictions, is the result of a long process of academic and participant-observation engagements. In what follows, I will present the genealogical trajectory of my research, the main argument of the thesis considering the interventions advanced by my indigenous interlocutors, and the future agenda that could arise from this thesis.

7.1. Research Trajectory

7.1.1 Legal Pluralism and Anthropology

In the last five decades, the rights of indigenous peoples have been at the heart of legal and political debates. Undoubtedly, international human rights law has been one of the most important disciplines in which this discussion has taken place. The constitutional recognition of indigenous jurisdictions in Latin America, the increase in indigenous studies with a focus in decolonization theory in settler nations such as Canada, Australia, New Zealand, and the United States, and the centrality of the rights of indigenous peoples in both the Inter-American and the Universal Human Rights systems are examples of this new reality.

My intellectual and professional trajectory have resulted from the aforementioned debates. Indeed, the impulse for my idea of *indigenizing international law from an inverse legal anthropology* has been encouraged by a number of academic and social contexts directly linked to international recognition of indigenous peoples' rights. Towards the end of 2001, having completed the basic cycle of my studies in law at the Universidad Nacional de Colombia, I experienced an academic dilemma. The end of a period in which the Colombian constitutional law played a major role in my legal formation through my involvement in an academic project lead by Juan Fernando Jaramillo, Rodrigo Uprimny and Mauricio García was accompanied by the start of a period in which my legal training was determined by a doctrinal-based approach supported by a robust civil law tradition. In the former case, Jaramillo, Uprimny, and García had promoted an initiative for the critical study of constitutional law through political and legal philosophy, human rights history, and socio-legal studies. In the later, it was a legal movement inspired by the historical reminiscence of the 1804 Napoleon Code's translation into Spanish represented by prestigious judges of the Civil Chamber of the Colombian Supreme Court. In the interim of my professional training, a series of doubts and questions derived from the deep-seated positivism of the civil law tradition were decisive in my interest and future vocation for international legal anthropology and ethnographic studies.

Between 2001 and 2002, some revealing events allowed me to think about constitutional law in terms of critical theory. First, a succession of debates arising from the celebration of the first decade of the 1991 Colombian Constitution brought the recognition of cultural diversity and the special indigenous jurisdiction at the epicentre of the constitutional discussion. It was a pivotal point in Colombian constitutional history: a shift took place from the conservative 1886 Constitution—historically pro-Hispanic and confessionally Catholic—to the liberal 1991 Constitution based on the social rule of law and multicultural rights. This constitutional shift played a crucial role in the empowerment of social movements and a flourishing period of human rights advocacy.[1] Faced with this panorama of political effervescence, another series of events were of fundamental importance in my engagement with legal anthropology.

In 2001, Boaventura de Sousa Santos and Mauricio García Villegas launched two voluminous books under the title *Calendoscopio de las Justicias en Colombia* (The Kaleidoscope of the Justices in Colombia).[2] The collection put together twenty-two chapters to study the state, the law, and the system of conflict resolution in Colombia. The thematic options were oriented following two key working hypotheses in legal sociology. The first is the difference between *law-in-books/law-in-action.*[3] The second one was the difference between *official-law/unofficial-laws.*[4] Criticizing the liberal idea of viewing law as a monopoly of the state,[5] the volumes studied unofficial laws and systems of justice (some of them complementary to official law and justice and others generating conflicts and contradictions).[6] This social phenomenon is called in the sociology and anthropology of law *legal pluralism,* and it has emphasized that the societies are jurisdictional constellations. According to Tamanaha:

---

[1] See, Carlos Vladimir Zambrano, 'Transición Nacional, Reconfiguración de la Diversidad y Génesis del Campo Étnico. Aproximación a la Promoción de la Diversidad en la Década 1991-2001' (2002) 15 *Revista Pensamiento Jurídico – Universidad Nacional de Colombia,* 20-21.

[2] See, Boaventura de Sousa Santos and Mauricio García Villegas (eds.), *El Caleindoscopio de las Justicias en Colombia Tomos I - II* (Siglo del Hombre Editores, 2001).

[3] See especially, Roscoe Pound, 'Law in Books and Law in Action', (1910) 44 *American Law Review*, 12; and Carroll Seron and Susan S. Silbey, 'Profession, Science, and Culture: An Emergent Canon of Law and Society Research' in Austin Sarat, *The Blackwell Companion to Law and Society* (Blackwell, 2004), 30-59.

[4] See especially, Peter Fitzpatrick, 'Law, Plurality, and Underdevelopment' in David Sugarman (ed.), *Legality, Ideology and the State* (Academic Press, 1983), 159-183; and Brian Z. Tamanaha, 'A Non-Essentialist Version of Legal Pluralism', (2000) 27 *Journal of Law and Society,* 296.

[5] See especially on a political and legal theory assuming for a monopoly on legalized violence, Max Weber, *The Vocation Lectures* (Hackett, 2004); Hans Kelsen, *Pure Theory of Law* (University of California Press, 1967).

[6] See, Santos y García (eds.), *El Caleindoscopio de las Justicias en Colombia Tomo I*, 1-2.

> Legal pluralism first began to garner attention within academia in legal anthropology in the 1970s through studies of law in colonial and post-colonial situations. The label 'legal pluralism' in that context referred primarily to the incorporation or recognition of customary law norms or institutions within state law, or to the independent coexistence of indigenous norms and institutions alongside state law (whether or not officially recognised). In the late 1980s, legal pluralism moved to centre stage in socio-legal studies, when prominent scholars labelled it 'a central theme in the re-conceptualisation of the law/society relation,' and the 'key concept in a post-modern view of law.' Since then, its popularity has steadily spread, penetrating comparative law, political science, international law, and legal philosophy (in a limited way).[7]

On the basis of legal pluralism, the second volume drew widely upon the so-called multicultural justice.[8] I was especially captivated when I saw that indigenous social movements had managed to position their jurisdictions and rights in the political and legal agenda at both the national and international level after centuries of struggle. This was fascinating because I had had a previous relation with the Pasto indigenous nation. As a matter of fact, I decided to study law in 1999 while doing social work with Pasto communities in the Southern part Colombia (where I am originally from), in a project that aimed to strengthen their legal and political strategies to recover their ancestral territory. What was in my perception a local grassroots movement suddenly became a powerful global social movement one moment to the next. Two decades later, I can say in retrospect that the *Calendoscopio* prepared the ground to think both about the *double bind* between colonial impositions and indigenous resistance, as well as the idea of *indigenizing international law from an inverse legal anthropology*. This first intellectual engagement with the rights of indigenous peoples at the academic level enabled me to challenge the assumptions of legal and political liberalism and offered me the possibility to link the discourses of domestic law and international law.

---

[7] Brian Z. Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global', (2008) 30 *Sydney Law Review,* 390.

[8] On Colombian legal multicultural recognition see, Beatriz Eugenia Sánchez, 'El Reto del Multiculturalismo Jurídico. La Justicia de la Sociedad Mayor y la Justicia Indígena', 1-139. On the case of the internationalization of Colombian indigenous rights see, Luis Carlos Arenas, 'Poscriptum: Sobre el Caso U'wa', 143-156. On the conflict between indigenous justices and state law see, Esther Sánchez Botero, 'Aproximación desde la Antropología Jurídica a la Justicia de los Pueblos Indígenas', 159-198. On the theoretical and practical challenges of indigenous issues in modernity see, Boaventura de Sousa Santos, 'El Significado Político y Jurídico de la Jurisdicción Especial Indígena', 201-210, in Santos and García (eds.), Tomo II.

7.1.2 From Legal Pluralism and Anthropology to Indigenizing International Law from an Inverse Legal Anthropology

Nevertheless, a concomitant event finally defined what was the beginning of my engagement with indigenous issues broadly conceived. Around 2002 and 2003, I also started supporting the creation of a set of documents to increase the number of special allowances for ethnic minorities and to waive the requirement for indigenous students to demonstrate their knowledge of a language other than Spanish in order to graduate from university. I had this experience working with an indigenous student collective from Southwest Colombia, which organized activities to empower indigenous knowledge at the Universidad Nacional de Colombia. This experience connected me to indigenous leaders and communities with whom I have been interacting since then. In this context, I met Diego Tupaz, a Pasto indigenous leader and musician who was working with the *Movement of the Colombian Indigenous Authorities* (AICO) which had been set up in 1980 to support the struggle of Colombian Southwest indigenous communities, and who namely 'advocated that repossessed lands be reincorporated into resguardos [or reservations]'.[9] Diego was a connecting bridge for developing the *double bind* of my research—indigenous jurisprudence vis-à-vis indigenous rights in international law—given that he had lived the clash between indigenous and state-centric jurisdictions first hand.

As a law student with an intellectual vocation, Diego experienced the encounter between rival jurisdictions. Having the capability to discuss the Colombian constitutional recognition of cultural diversity from an indigenous point of view, Diego was able to criticize the political philosophy that pursued the integration of indigenous peoples within the Colombian Republic and ended up disavowing the peculiarities of individual indigenous nations. Interestingly, Diego examined how the 'Rule' stories of legal dualism put the own 'Law' stories of his community in the municipality of Aldana in southern Colombia at risk. Diego was also concerned with the transformation of the position of indigenous governor that had taken place in the 1980s and 90s. Traditionally, it was a position reserved for well-seasoned leaders, both men and woman, with unique expertise on indigenous jurisprudence, geographical knowledge of

[9] Joanne Rappaport, *Cumbe Reborn. An Andean Ethnography of History* (University of Chicago Press, 1994), 17.

the territory, historical accounts of the political struggle, and advanced philosophical understanding of the language and indigenous cosmologies. After the 1991 Constitution, the position started to be highly coveted by indigenous leaders who from one moment to the next began to be interested in the management of the royalties payable to indigenous reservations according to their new constitutional recognition.

Following in the footsteps of *The Kaleidoscope,* Diego and I had long conversations about what pluriethnicity and multiculturality meant in a nation that conceives the recognition of legal pluralism within the unity of the republic, consequently generating monolingual constitutionalism: the Others are recognized only if they follow constitutional values. Conversely and in order to complete the *double bind,* we also read and discussed the work of Bolivian thinkers such as Fausto Reynaga and Ramiro Reynaga. The former was the receptor of Franz Fanon within the Andean indigenous movement; the later for his part, proposed the indigenization of Marxism.[10] From these readings and conversations, I realized the dimension of the existing gap between indigenous jurisprudence and indigenous rights in western jurisprudence as well as the complexity of the *double bind* between colonial impositions and indigenous resistance. Since then, my reading of international and constitutional recognition of cultural diversity has been accompanied by a critical reading of legal pluralism and a focus on the variety of appropriations and reappropriations produced in the course of the meeting of rival jurisdictions. Thus, as illustrated in this thesis, the laws of the encounter, far from being an indulgent intercultural dialogue, should instead be understood as a simultaneous translation in which each jurisdiction exercises its right to speak the law. The simultaneity of this kind of translation includes a multiplicity of languages to speak the law; so for example, in the case of indigenous languages, the concept of rights covers human and non-human beings. Consequently, the laws of the encounter are complementary and antagonistic at the same time.

The possibility of exploring how the loss of indigenous languages undermine the principles of a multicultural society, in the context of the campaign to recognize indigenous idioms as first languages, as well as the potential of indigenous

[10] See Fausto Reynaga, *La Revolución India* (Movil Graf, 2001); and Ramiro Reynaga, *Tawa Inti Suyo. Cinco Siglos de Guerra India Chukiagu – Marka Kollasuyu* (Consejo Indio de Sudamérica, 2007), 267-304.

revolutionary literature, in the context of the reading of radical Andean writers, not only gave a particular character to my research but also opened new windows into indigenous worlds. Discussing the thesis of Fausto Reynaga and Ramiro Reynaga, according to which rather than looking at indigenous realities through European lenses it is necessary to see the revolutionary European solution through the indigenous gaze,[11] I began to think about the possibility of carrying out a study on multicultural policies that has as its starting point the epistemological parity of indigenous and Western legal orders. It implied reassessing the main principle of legal pluralism, namely, that there is one formal state-centric law and multiple informal non-state laws.

Acknowledging the potentialities of an anthropological approach that has pointed out the theoretical and practical tensions resulting from the interaction of different legal orders,[12] my interest in this thesis has been, therefore, to highlight the political and ontological self-determination of indigenous peoples. In this regard, I have also insisted in the possibility of negotiating between indigenous legal structures and the legal systems of national states and those that configured the international legal order, on a level playing field. In this way, rather than applying an extrinsic knowledge produced by the legal pluralism approach to indigenous peoples' legal orders,[13] the objective of this thesis has been to consider indigenous jurisprudence as a potential instance for transforming the frameworks on which international standards regarding indigenous rights rest. Consequently, the idea of *indigenizing international law from an inverse legal anthropology* does not search for the equivalent of anthropological knowledge contained in the legal 'pluriverse'; quite the contrary, it seeks the radical encounter between the multiple laws that exist in the 'pluriverse'.

In this context, I have not questioned the importance of analysing the way in which state law intersects itself 'with other legal orders, whether that of nation-states or other organizations or forms of private governance', or the 'growing body of scholarship

[11] Ibid., 267.
[12] This thesis has concentrated on the relations between colonized and colonizer, however, '[l]egal pluralism has expanded from a concept that refers to the relations between colonized and colonizer to relations between dominant groups and subordinate groups, such as religious, ethnic, or cultural minorities, immigrant groups, and unofficial forms of ordering located in social networks or institutions.' Sally Engle Merry, 'Legal Pluralism', (1988) 22 (5) *Law & Society Review,* 872.
[13] We know that legal pluralism 'is the name of a social state of affairs and it is a characteristic which can be predicated of a social group. It is not the name of a doctrine or a theory or an ideology.' John Griffiths, 'What is Legal Pluralism?', (1986) 24 *Journal of Legal Pluralism,* 67.

[that] examines the way customary forms of justice among indigenous groups interact with international human rights law'.[14] My task instead has been to formulate an anthropology of international law by listening to indigenous law as law; exploring at the same time the way in which indigenous jurisprudences can change other legal orders. It has been precisely by questioning the overuniform international law jargon present in the literature dealing with indigenous peoples rights, including many works that use legal pluralism as their theoretical framework, that I started to think about the idea of *indigenizing international law* vis-à-vis legal anthropology. In this program, the terms of the interaction between Western and indigenous jurisprudence are not placed on the 'Rule' stories of legal dualism, which would be an attempt to solve 'our legal' problems, but on the basis of indigenous thinking and its jurisprudence. This problem is anthropological and it is precisely in the continuity between indigenous jurisprudence and indigenous peoples in western jurisprudence where the 'art of legal anthropology' resides. As Viveiros has stated,

> Above all, such an approach takes off from the principle that the anthropologist may not know in advance what this problems might be. In such a case, anthropology poses relationships between different problems, rather than placing a single ('natural') problem in relation to its different ('cultural') solutions. The 'art of anthropology', I suggest, is the art of determining the problems posed by each culture, not of finding solutions for the problems posed by our own. It is just for this reason that positing a continuity between the procedures of the anthropologist and the native is such an epistemological imperative.[15]

It was by following the path of the art of anthropology that I became allured by the richness of Andean languages, and in line with the art of deconstructive critique, as an epistemological proposal for acknowledging the existence of a plurality of philosophical languages. Wade Davis, the Canadian anthropologist, ethnobotanist and filmmaker, has rightly pointed out that a language is far from being a repertoire of grammatical rules or a vocabulary. It epitomizes the medium by which the soul of each culture comes into the material world, as he explains, 'Every language is an old-growth forest of the mind, a watershed of thought, an ecosystem of spiritual possibilities'.[16] Curiously, my interest

[14] Sally Engle Merry, 'Anthropology of International Law', (2006) *35 Annual Review of Anthropology*, 101-109.
[15] Eduardo Viveiros de Castro, *The Relative Native. Essays on Indigenous Conceptual Worlds* (HAU Books, 2015), 20.
[16] Wade Davis, *The Wayfinders. Why Ancient Wisdom Matters in the Modern World* (Anansi Press, 2009), 3.

in deconstruction came from the teachings of my indigenous friends' struggle to keep their ancestral memory alive. Each language is a philosophical system in itself and indigenous languages, coming from non-Western philosophical traditions, are key to keeping alive the world's cultural diversity and to expanding our understanding of 'other' legal philosophies and systems of justice. While 20 percent of mammals, 11 percent of birds, and 5 percent of fish are at risk of extinction, and the loss of 10 percent of botanic diversity has been anticipated, linguists and anthropologist today suggest the imminent disappearance of half the extant languages of the world.[17] Perceiving both the fertility of indigenous languages and the disastrous effects of their ongoing disappearance, I started my writing journey on indigenous peoples rights. This is how the main argument of this thesis came to be: there is an imperative need to *indigenize international law.*

7.2. Main Argument and Interlocutors

By examining the political agendas of the Andean indigenous social movements, this thesis interacted with various historical periods in which indigenous peoples voices and my interpretation of them, displayed a critical evaluation on colonial, republican, and contemporary laws. This analysis has not only highlighted the potentialities of listening to indigenous jurisprudences but also revealed the dark side of silencing the laws enacted on ancestral lands, epitomized by the ongoing genocide of indigenous peoples. Consequently, my reading has highlighted both indigenous peoples struggle to keep their political and ontological self-determination, in addition to their fight against their physical and cultural annihilation.

Andean Indigenous peoples, like all first-nations around the world, have been demanding the right to self-governance and independent-thought since the beginning of the process of colonization of the Americas in the fifteenth century. For this reason, my idea of *indigenizing international law from an inverse legal anthropology* was directed at exploring epistemological and methodological ways to engage and interact with indigenous jurisprudence by acknowledging, on the one hand, its long history; and, on the other, its inherent capacity to enhance the tradition of the Western Rule of Law. My

[17] Ibid, 5.

engagement with both indigenous law and international law was based on an ethnographic approach, which in its effort of interlocution between dissimilar jurisprudential landscapes, emphasised what 'we' could learn from indigenous jurisprudence instead of how 'we' can encapsulate indigenous laws in our terms.

This ethnographic endeavour led to two results: first, the presentation of an anthropological reading of indigenous peoples rights within the framework of international law; and, second, an exercise to imagine another kind of law by paying attention to indigenous cosmologies. In the first flank, I interconnected a postcolonial critique of international standards on indigenous rights since their inception in the United Nations system with a critical analysis of international law's hegemonic and counter-hegemonic dimensions. While on the second side, I interconnected a reading on Andean cosmologies based on my interlocutions with indigenous leaders, participant-observation engagements, and archival research with deconstructive interventions. Both ethnographic endeavours helped me to explain why indigenous thinking matters.

Consequently, my ethnographic undertaking in this thesis combined a theoretical and an empirical examination of three main co*ncepts: doub*le bind (Chapter 4), *inverse legal anthropology* (Chapter *5),* and *indigenizing internati*onal law (Chapter 6). The literature tackling the operability of these concepts is vast and, consequently, what I have done in this thesis constitutes an idiosyncratic translation into the field of international legal ethnography. My interaction with the *double bind* as a paradoxical instance in which two conflicting demands are contradicting and complementing each other comes from two main sources. First, from my reading of José María Arguedas, who studied and experienced the contemporary Peruvian identity through the *double bind* between the Inca world and the Hispanic colonial legacy. And, second, from my involvement with the work of Silvia Rivera Cusicanqui, who has been transforming mestizo culture in theory and in practice. Indeed, the combination produced by the meeting between Europe and first nations has been traditionally translated into a disruption away from indigenous origins and in the reaffirmation of the Western heritage as superior and dominant. Both Arguedas and Rivera, show the fertility and versatility with which the indigenous world extends its lifespan into the future by fighting, negotiating, and transforming European legacies.

The *double bind,* where an Andean indigeneity is creatively 'imposed' over the mainstream mestizo culture, inhabits the life and work of my three direct interlocutors in the empirical chapters of this thesis. In Chapter 4, I engage with Silvia Rivera Cusicanqui, herself, a *ch'ixi* woman: A lover of manual work as an anarchist, an Andean alchemist as a coca leaf chewer, a visionary who keeps future and past alive in order to write about the present as an author, a stained feminist as a social fighter able to harmonize the best of the European and the Andean world, a sociologist of the image as a filmmaker who transfuses past indigenous rebellions into the current Bolivian social struggle. Under the decisive impetus of Rivera's words and teachings, this thesis found a way to talk about the Andean world as a horizon for the transformation of international law. My effort has consisted precisely, in contaminating the international law apparatus with a set of alien sources. And I have done this by following one of the main characteristics of Andean thought, which is the possibility of changing what is given as a fact into something else; indeed, something mingled, enriched, and influenced by indigenous cosmologies.

Manuel Quintín Lame, the second character with whom I undertake a dialogue in Chapter 5, was both a Nasa indigenous jurisprudent and a self-taught lawyer. As such, he was able to move with versatility between indigenous territories and the world of the usurpers, creating a unique interpretation of Colombian agrarian laws based on his people's cosmology. In this sense he is a great example to illustrate the mechanics and possibilities of an *inverse legal anthropology.* My job as the doer of *inverse legal anthropology* consists in taking Nasa cosmology seriously to explore how it influences Lame's interpretations about Colombian agrarian laws. That is why I have given Lame the title of a 'cosmograher', as an indigenous jurisprudent that is able to transform state-centric laws by applying his own laws. Indeed, Lame used oral tradition to decode the colonial titles with which the Nasa nation claimed sovereignty over their ancestral territories in an idiosyncratic way. His interpretation stands out, as a result, as a recreation of Nasa non-linear history in which events of the past reappeared to explain crucial issues of the present. As somebody who embodies the meeting of rival jurisdictions, Lame captured the clashes with which indigenous and state-centric laws support, complement and in many ways contradict each other with remarkable accuracy. Moreover, his legal briefs are truly *double bounded* sources that reflect both an in-depth understanding of Colombian law and the poetry that nourishes the way in which

indigenous cosmologies talk about the world. Here, I have acted as an idiosyncratic archivist, that is to say, as somebody who conducts archival work seeking to find traces of indigenous cosmologies within historical records in order to analyse the present.

In Chapter 6, Taita Víctor Jacanamijoy, my third interlocutor, has played an essential role within the Colombian indigenous movement, notably because of his ability at mediating between indigenous grassroots and human rights national and international bodies. Being a healer, his interpretations of indigenous rights are based on indigenous peoples' spiritual and material relations with their ancestral lands. This characteristic has made him a highly effective representative of the ONIC campaign to prevent the ongoing genocide of indigenous peoples—a campaign that started in March 2010 with a tour of Europe and North America. This campaign has placed an emphasis on the extraction-based development model that produces genocide by ecological means in Colombia. Indeed, in the age of climate change, the only way to prevent the cultural and physical annihilation of indigenous peoples is by the conservation of their natural ecosystems. By taking into consideration this social reality, I positioned the *indigenization of international law* in the biological age of the Anthropocene. This implies not only shortening the distance between state-centric and indigenous jurisdictions by listening to indigenous law as law but also emphasising the urgent need to take the life plans and development models of indigenous peoples seriously.

7.3. Future Endeavors

If I remember rightly, Jorge Luis Borges once said that one writes a single book. I agree with this statement and, in this regard, I feel that this thesis is not only connected with what I have already written but also with what I will write in the future. Fortunately, the trajectory between future, present, and past is not linear and I am able to identify not only resonances but also contradictions and anachronisms in my own writing path. Surely, it will continue being the case and, under that premise, I am both cautious and sceptical about the possibility of building a concluded program for future work. Therefore, in what follows I will attempt to sketch only preliminary ideas for potential endeavours, which would be derived from this thesis. Of course, the development of

those ideas and endeavours is open to anyone interested in the issues I have discussed here.

First of all, I will continue working simultaneously on the refinement and development of the theoretical and empirical components of this thesis. Works such as those advanced by Silvia Rivera Cusicanqui and Gayatri Chakravorty Spivak show the fruitfulness of aligning the level of popular traditions and academic sources—both equally complex and sophisticated. Likewise, the course of the ethnographic work of anthropologists such as Eduardo Viveiros de Castro and Roy Wagner has revealed that extensive participant-observation engagements can lead to the elaboration of anthropological philosophy and vice versa. The contemporary relevance of such endeavours can be corroborated in the success of specialized journals like the *Journal of Ethnographic Theory* and *Decolonization: Indigeneity, Education & Society*, which are examples not only of the fruitfulness of participant observation exercises, auto-ethnography, and ethnographic theory but also of the diversity of readers interested in indigenous issues.

One of the main goals for my future research is to work with Andean communities who have been interacting with indigenous human rights in order to keep their own cosmologies alive. In this regard, I am interested in contrasting Manuel Quintín Lame's archival materials with sources from the oral tradition of the Nasa people, in order to disseminate new registers for analysing the way in which the past is brought to bear on the present in order to interpret human rights by national and international standards. It will imply, for example, on the one hand, the involvement with the legal and political agenda of the Regional Indigenous Council of Cauca (CRIC); and, on the other, the cooperation with indigenous councils of government that continue making active use of Lame's documents. Concomitantly, I look forward to expanding my hypothesis about the use of cosmological frameworks to interpret state-centric laws into the field of comparative indigenous law. Thus, for example, the cases of Túpac Amaru II (1742-1781) in Perú, and Túpac Katari II (1750-1781) in Bolivia, who were active users of indigenous jurisprudence and colonial laws, could bring additional information to better understand the deep roots of the meeting of rival jurisdictions in the Andean region.

Finally, I also plan to use all the sources that document the ongoing genocide of indigenous peoples in Colombia in order to help advance the analysis of similar cases in the Americas, Africa, Asia, and Oceania. In my view, the international standards regarding the right to prior, free, and informed consultation could be improved through a consistent strategy to make visible the inappropriateness of separating physical and cultural genocide. And this is the case because the most serious processes of prior consultation nowadays involve the risk of irreversible environmental damages, which simultaneously causes an indigenous genocide by environmental means. Without any doubt, the debate on indigenous peoples' rights is and will continue to take place in the geological age of the Anthropocene, and it is there where 'we' must now give some thought to how we can prevent indigenous peoples' physical and cultural annihilation.

BIBLIOGRAPHY

Allain, Jean, *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention* (Martinus Nijhoff, 2008).

Alvez, André A and José M. Moreira, *The Salamanca School* (Bloomsbury, 2010), 86-102.

Amnesty International, 'The Struggle for Survival and Dignity. The Human Rights Abuses Against Indigenous Peoples in Colombia' (2010), 8.

'Remembering a Beloved Defender of Indigenous Rights and the Deadly Struggle that Continues in Colombia', http://www.amnesty.ca/blog/remembering-beloved-defender-indigenous-rights-and-deadly-struggle-continues-colombia

Anaya, James, *Indigenous Peoples in International Law* (Oxford University Press, 2004).

The Situation of Indigenous Peoples in Colombia: Follow-up to the Recommendations made by the Previous Special Rapporteur, UN Doc A/HRC/15/37//Add.3 (2010), para. 64.

Angie, Antony *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005).

Archila, Mauricio and Catherine Gonzáles, *Movimiento Indígena Caucano: Historia y Política* (Universidad Santo Tomás, 2010).

Archivo Histórico José María Arboleda, Popayán, *Informes de Departamento del Cauca, Cuadernos Indígenas*, *Manuscritos grupo N. 3. Archivo de la República.*

Archivo General de la Nación (AGN), Bogotá, República, *Ministerio de Gobierno, Ministerio de Fomento.*

Arcos-Palma, Ricardo 'The Potosí Principle. How Can We Sing the Song of the Lord in a Foreign Land?', (2011) 80 (126) *ArtNexus*, http://certificacion.artnexus.net/Notice_View.aspx?DocumentID=22805.

Arenas, Luis Carlos 'Poscriptum: Sobre el Caso U'wa', In Boaventura de Sousa Santos and Mauricio García Villegas (eds.), *El Caleindoscopio de las Justicias en Colombia Tomo II* (Siglo del Hombre Editores, 2001).

Arguedas, José María, *Formación de una Cultura Nacional Indoamericana* (Siglo Veintiuno Editores, 1981), 23-24.

Yawar Fiesta (Waveland Press, 1985).

The Fox from Up Above and the Fox from Down Bellow (University of Pittsburgh Press, 2000).

‘Opening remarks made by the Peruvian author before reading some of his work at a public gathering of fiction writers in Arequipa on June 14, 1965.’ John V. Murra, ‘Introduction’ in Arguedas, *Deep Rivers* (Waveland Press, 2002), ix-x.

Atlas Walter Benjamin Constelaciones (Circulo de Bellas Artes, 2010), 40.

Bataille, George, *Story of the Eye* (Penguin Modern Classics, 2001).

Bacca, Paulo Ilich ‘Las Contranarrativas Constitucionales en el Seguimiento Jurisprudencial de la Jurisdicción Especial Indígena’ (2008) 22 *Revista Pensamiento Jurídico*, *Antropología, derecho y política*, 193-232.

‘Tiempo y Espacio de las Reparaciones Colectivas para los Pueblos Indígenas Víctimas de la Violencia’, in Rodrigo Uprimny ed., *Reparaciones en Colombia: Análisis y Propuestas* (Universidad Nacional de Colombia, 2009).

La Doctrina Defensorial y los Derechos Indígenas en el Derecho de los Derechos Humanos: Técnicas de Análisis y Recomendaciones (GIZ and Defensoría del Pueblo, 2010).

‘Tras las Huellas de Manuel Quintín Lame’, in Julieta Lemaitre (Comp.), *La Quintiada (1912–1925). La Rebelión Indígena liderada por Manuel Quintín Lame en el Cauca. Recopilación de Fuentes Primarias* (Universidad de los Andes, 2013), 319-320.

‘A la Sombra de Dos Gigantes: Evocación a Manuel Quintín Lame y a Juan Fernando Jaramillo’ (April 2013), *Intervención en el Lanzamiento del Libro La Quintiada.* Lemaitre, *La Quintiada.*

Estudio sobre Genocidio y Crímenes de Lesa Humanidad en Curso: El Caso de los Pueblos Indígenas de Colombia (ONIC, 2014).

Bady, Aaron, ‘Is Genocide Right for You?’, *The New Inquiry,* 3 August 2014, http://thenewinquiry.com/blogs/zunguzungu/is-genocide-right-for-you/.

Barad, Karen, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Duke University Press, 2007).

Barr, Olivia, ‘Walking with Empire’, (2013), 38 *The Australian Feminist Law Journal,* 61.

A Jurisprudence of Movement: Common Law, Walking, Unsettling Place (Routledge, 2016).

Becker Lorca, Arnulf, *Mestizo International Law: A Global Intellectual History 1842-1933* (Cambridge University Press, 2015).

Bennet, Jane, *Vibrant Matter: A Political Ecology of Things* (Duke University Press, 2010).

Benjamin, Walter, *Illuminations* (Schocken, 1968), 250-260.

'Theses on the Philosophy of History,' in Hannah Arendt ed., *Illuminations* (Schocken, 1969) 253-264.

Bennington, Geoffrey, *Jacques Derrida* (University of Chicago Press, 1993).

Bilhaut, Anne-Gael, *El Sueño de los Záparas. Patrimonio Onírico de un Pueblo de la Alta Amazonia* (Abya Yala – Flacso, 2011).

Black, C.F., 'Constitutional Dreaming' in Charles Sampford and Tom Round (eds.), *Beyond the Republic: Meeting Global Challenges to Constitutionalism* (The Federation Press, 2001)

The Land is the Source of the Law. A Dialogic Encounter with Indigenous Jurisprudence (Routledge, 2011), 9.

Brown, Wendy, *Politics Out of History* (Princeton University Press, 2001), 149.

Bushnell, David (ed), *El Libertador: Writings of Simón Bolívar* (Oxford University Press, 2003).

Butt, Danny, 'Double-Bound: Gayatri Chakravorty Spivak's An Aesthetic Education in the Era of Globalization' (2015) Working Paper 1, *Research Unit in Public Cultures – The University of Melbourne,* 7.

Castillo, Gonzalo *Liberation Theology from Below: The life and Thought of Manuel Quintín Lame* (Orbis, 1987).

'Manuel Quintín Lame: Luchador e Intelectual Indígena del Siglo XX' in Manuel Quintín Lame, *Los Pensamientos del Indio que se Educó Dentro de las Selvas Colombianas* (Universidad del Cauca, 2004).

Castrillón, Diego, *El Indio Quintín Lame* (Tercer Mundo, 1973).

Chalk, Frank and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies* (Yale University Press, 1990), 23.

Charters, Claire and Rodolfo Stavenhagen, 'The UN Declaration on the Rights of Indigenous Peoples: How It Came to Be and What It Heralds', in Charters and Stavenhagen (eds), *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (IWGIA,2009).

Chiam, Madeleine, Luis Eslava, Genevieve Painter, Rose Parfitt, and Charlotte Peevers, 'The First World War Interrupted: Artefacts as International Law's Archive (Part 1)', http://criticallegalthinking.com/2014/12/15/first-world-war-interrupted-artefacts-international-laws-archive/

‘The First World War Interrupted: Artefacts as International Law’s Archive (Part 2)’, http://criticallegalthinking.com/2014/12/16/interruption-five-artefacts-international-law/

Churata, Gamaliel, *El Pez de Oro* (Editorial Canata, 1957).

La Resurrección de los Muertos (Universidad Nacional del Altiplano, 2010).

Clavero, Bartolomé, *Genocidio y Justicia. La Destrucción de las Indias, Ayer y Hoy* (Marcial Pons, 2002).

El Orden de los Poderes. Historias Constituyentes de la Trinidad Constitucional (Trotta, 2007).

Genocide or Ethnocide, 1933-2007. How to Make, Unmake, and Remake Law with Words (Giuffre Editore, 2008).

‘Genocide and Indigenous Peoples in International Law’, (2009) Paper presented at the Indigenous Peoples’ Rights Lecture Series, Columbia University, 1.

‘Instrumentos internacionales sobre los derechos de los pueblos indígenas: Declaración de Naciones Unidas y Convenio de la Organización Internacional del Trabajo’, (2010) 13 (20) *Revista de Debate Social y Jurídico Primero – Derechos Humanos de los Pueblos Indígenas y Nueva Constitución Boliviana,* 116.

¿Hay Genocidios Cotidianos? Y Otras Perplejidades sobre América Indígena (IWGIA, 2011), 197-204.

‘Nación y Naciones en Colombia entre Constitución, Concordato y un Convenio 1810 – 2010’ (2011) 41 *Revista de Historia del Derecho,* 79-137.

Derecho Penal Internacional y Defensa Judicial de los Derechos de los Pueblos Indígenas, UN Doc E/C.19/2011/4 (2011).

Derecho Global: Por una Historia Verosímil de los Derechos Humanos (Trotta, 2014).

‘Consulta Indígena: Colombia (Y España) Entre Derecho Constitucional y Derechos Humanos’ in Deborah Drupat ed., *Convenção 169 da OIT e os Estados Nacionais* (ESMPU, 2015), 11-51.

Cobo Martinez, José, *Study of the Problem against Indigenous Populations,* vol. v, *Conclusions, Proposals and Recommendations,* UN Doc E/CN 4/ Sub 2 1986/7.

Constable, Marianne, *Just Silences. The Limits and Possibilities of Modern Law* (Princeton University Press, 2005).

Cooper, Joshua, ‘25 years of ILO Convention 169’, (2014) Cultural Survival, https://www.culturalsurvival.org/publications/cultural-survival-quarterly/25-years-ilo-convention-169.

CCC., Noviembre 10, 2016, Sentencia T-622/16 (acknowledging the Atrato River as subject of rights), http://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm.

Noviembre 10, 1998, Sentencia T-652/98, http://www.corteconstitucional.gov.co/relatoria/1998/T-652-98.htm.

Enero 22, 2004, Sentencia T-025/04, www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm.

CSCJ., Abril 5, 2018, STC4360-2018 (acknowledging the Amazon region as subject of rights), https://redjusticiaambientalcolombia.files.wordpress.com/2018/04/stc4360-2018-2018-00319-011-1.pdf.

Creischer, Alice, Max Jorge Hinderer and Andreas Siekmann (ed.), *Principio Potosí ¿Cómo Podemos Cantar el Canto del Señor en Tierra Ajena? La Economía Global y la Producción Colonial de Imágenes* (Museo Nacional Centro de Arte Reina Sofía, 2010).

Creischer, Alice 'Primitive Accumulation, as Exemplified in Potosí' in *Principio Potosí ¿Cómo Podemos Cantar el Canto del Señor en Tierra Ajena? La Economía Global y la Producción Colonial de Imágenes* (Museo Nacional Centro de Arte Reina Sofía, 2010).

Davis, Wade, *The Wayfinders. Why Ancient Wisdom Matters in the Modern World* (Anansi Press, 2009).

One River. Explorations and Discoveries in the Amazon Rainforest (Vintage Books, 2014), 159-199.

de Arriaga, Pablo *Extirpación de Idolatría del Pirú: 1621* (Facsímil, 1910).

de Carvajal, Micael ca. 1576, Carlos A. Jauregui and Mark I. Smith-Soto, *The Conquest on Trial: Carvajal's Complaint of the Indians in the Court of Death* (Pennsylvania State University Press, 2008).

Deleuze, Gilles and Félix Guattari, *A Thousand Plateaus* (Bloomsbury, 2014).

Derrida, Jacques *Writing and Difference* (Chicago University Press, 1978).

The Ear of the Other. Otobiography, Transference, Translation, ed. Christie V. McDonald (Schocken Books, 1985), 98-110.

'Heidegger's Hand (*Geschlecht* II)' in John Sallis ed., *Deconstruction and Philosophy: The Texts of Jacques Derrida* (University of Chicago Press, 1987), 161-196.

Of Spirit: Heidegger and the Question (University of Chicago Press, 1989).

'On J. Derrida's "Paul de Man's War" VII Biodegradables Seven Diary Fragments', (1989) 15 *Critical Inquiry,* 841.

‘Force of Law: The ‘Mystical Foundation of Authority’, (1989-1990) 11 *Cardozo Law Review,* 951.

Acts of Literature, in Derek Attridge ed (Routledge, 1992), 268.

‘Heidegger’s Hear: Philopolemology (*Geschlecht* IV) in John Sallis ed., *Reading Heidegger* (Indiana University Press, 1993), 163-218.

Specters of Marx: The State of the Debt, and the Work of the Mourning, and the New International (Routledge, 1994).

‘The Future of the Profession or the University Without Condition (Thanks to the ‘Humanities,’ what could take place tomorrow)’, in Tom Cohen, ed., *Jacques Derrida and the Humanities: A Critical Reader* (Cambridge University Press, 2002), 26.

The Animal that Therefore I am (Fordham University Press, 2008), 37-38.

Dissemination (Bloomsbury, 2013).

Dorsett, Shaunnagh, and Ian Hunter (eds.), *Law and Politics in British Colonial Thought: Transpositions of Empire* (Palgrave Macmillan, 2010).

Dorsett, Shaunnagh and Shaun McVeigh, *Jurisdiction* (Routledge, 2012).

Dorset, Shaunnagh and John McLaren, ‘Laws, Engagements and Legacies. The Legal Histories of the British Empire: An Introduction’, in Dorset and McLaren, *Legal Histories of the British Empire: Laws, Engagements, and Legacies* (Routledge, 2014), 1.

Duchesne Winter, Juan, *Caribe, Caribana: Cosmografías Literarias* (Ediciones Callejón, 2015), 201.

‘Derrida y el Pensamiento Amazónico (La Bestia y el Soberano/El Jaguar y el Chamán) in Javier Tobar ed., *Derrida desde el Sur. La Universidad del Monte o el Pensamiento sin Claustro* (Universidad del Cauca, 2017), 33-51.

‘Early Modern History Lessons: The Potosí Principle’, http://post.thing.net/node/3181.

Echeverría, Bolívar, *La Modernidad de lo Barroco* (Era, 2000).

Eide, Asbjorn ‘The Indigenous Peoples, the Working Groupon Indigenous Populations and the Adoption of the UN Declaration on the Rights of Indigenous Peoples’, in Claire Charters and Rodolfo Stavenhagen (eds), *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (IWGIA, 2009), 33.

El Cauca Liberal, Serie VI-número 56 to 59.

El Espectador, 'Los Indígenas de Tierradentro Piden Representación en el Congreso. El Cacique Quintín Lame Viene a la Ciudad a Luchar por los Intereses de los Indios', Bogotá, 13 de Diciembre de 1921, página 1.

El Tiempo, 'Cómo fue Aprehendido el Indio Lame', Bogotá, 30 de Mayo de 1917, página 3.

Eliot, T.S., *The Waste Land and Other Poems* (A Signet Classic, 1998).

Escobar, Karla 'Lame en Contexto: Terratenientes, Colonos, e Indígenas en la Búsqueda de la Modernidad' in Julieta Lemaitre (Comp.), *La Quintiada (1912 – 1925). La Rebelión Indígena liderada por Manuel Quintín Lame en el Cauca. Recopilación de Fuentes Primarias* (Universidad de los Andes, 2013).

Eslava, Luis, Liliana Obregón and René Ureña, 'Imperialismo(s) y Derecho(s) Internacionale(s): Ayer y Hoy' in Eslava, Obregon and Ureña eds., *Imperialismo y Derecho Internacional* (Siglo del Hombre Editores, 2016) 13-94.

Eslava, Luis, 'Istanbul Vignettes: Observing the Everyday Operation of International Law' (2014) 2 (1) *London Review of International Law*, 3-47.

Local Space, Global Life. The Everyday Operation of International Law and Development (Cambridge University Press, 2015).

'Joe Sacco's *The Great War*', (2017) 5 (1) *London Review of International Law*, 49-86.

Espinosa, Mónica, *El Andar Territorial de Quintín Lame* (Universidad de los Andes, 2009).

European Institute for Progressive Cultural Policies, 'How Can We Sing the Song of the Lord in an Alien Land? / The Potosí Principle', http://eipcp.net/calendar/1272304058.

Ezeinshtein, Sergei, *El Montaje de Atracciones en el Sentido del Cine* (Siglo XXI, 1999).

Falk, Richard A., 'Environmental Warfare and Ecocide Facts, Appraisal and Proposals', (1973) 4 (1) *Security Dialogue,* 80.

Ferrer, Gabriel and Yolanda Rodríguez, *Etnoliteratura Wayuu: Estudios Críticos y Selección de Textos* (Universidad del Atlántico, 1998).

Fitzpatrick, Peter, 'Law, Plurality, and Underdevelopment' in David Sugarman (ed.), *Legality, Ideology and the State* (Academic Press, 1983), 159-183.

'Ultimate Plurality: International Law and the Possibility of Resistance' (2016) 1 (1) *Inter Gentes*.

Gairola, Rahul K., 'Occupy Education: An Interview with Gayatri Chakravorty Spivak' (8 January 2012), *Politics and Culture,* http://politicsandculture.org/2012/09/25/occupy-education-an-interview-with-gayatri-chakravorty-spivak/.

Gago, Verónica, 'Silvia Rivera Cusicanqui: Against Internal Colonialism' (October 2016), *Viewpoint Magazine,* https://www.viewpointmag.com/2016/10/25/silvia-rivera-cusicanqui-against-internal-colonialism/.

García Canclini, Néstor, *Hybrid Cultures: Strategies for Entering and Leaving Modernity* (University of Minnesota Press, 1995).

García Villegas, Mauricio and César Rodríguez, 'Derecho y Sociedad en América Latina: Propuesta para la Consolidación de los Estudios Jurídicos Críticos' in García and Rodríguez (eds.), *Derecho y Sociedad en América Latina. Un Debate sobre los Estudios Jurídicos Críticos* (Universidad Nacional de Colombia – ILSA, 2003), 35.

Gilroy, Paul *The Black Atlantic. Modernity and Double Consciousness* (Verso, 1993).

Goodrich, Peter 'Visive Powers: Colours, Trees and Genres of Jurisdiction', (2008) 2 (2) *Law and Humanities.*

Gross, Christian, *Colombia Indígena: Identidad Cultural y Cambio Social* (CEREC, 1991), 226-281.

¡A mí no me manda nadie! Historia de Vida de Trino Morales (ICANH, 2009).

Guardiola-Rivera, Oscar, *What if Latin America Ruled the World, How the South will take the North into the 22nd Century* (Bloomsbury, 2010), 43.

Graeber, David, *Radical Alterity is Just Another Way of Saying 'Reality'. A Reply to Eduardo Viveiros de Castro,* (2015) 5 (2), *HAU Journal of Ethnographic Theory,* 1-41.

González, Margarita, *El Resguardo en el Nuevo Reino de Granada* (La Carreta, 1979).

Gray, Andrew, 'The Indigenous Movement in Asia', in R.H. Barnes, A. Gray and B. Kingsbury (eds.), *Indigenous Peoples of Asia* (Association for Asian Studies, 1995), 35-58.

Griffiths, John, 'What is Legal Pluralism?', (1986) 24 *Journal of Legal Pluralism,* 67.

Handler, Joel, 'Postmodernism, Protest, and the New Social Movements', (1992) 26 (4) *Law and Society Review,* 697-731.

Henige, David, *The Chronology of Oral Tradition: Quest for Chimera* (Clarendon Press, 1974).

Horning Barraclough, Frances, 'Translator's Note' in José María Arguedas, *Deep Rivers* (Waveland Press, 2002).

ICJ, 'Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion' (ICJ Reports 15, 1951), 23.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Jurisdiction and Admissibility, Judgement of 3 February 2015.

Indigenous Science Statement for the March for the Science, 'Let our indigenous voices be heard', (2017).

Ingold, Tim, 'Editorial', (1992) 27 (4) *Man, New Series,* 693.

Jaramillo Jaramillo, Efraín, *Kimy, Palabra y Espíritu de un Río* (IWGIA, 2011).

Keal, Paul, *European Conquest and the Rights of Indigenous Peoples. The Moral Backwardness of International Society* (Cambridge University Press, 2003) 7.

Kelsen, Hans *Pure Theory of Law* (University of California Press, 1967).

Klabbers, Jan, *International Law* (Cambridge University Press, 2013), 6.

Kopenawa, Davi, and Bruce Albert, *The Falling Sky. Words of a Yanomani Shaman* (Harvard University Press, 2013), 23.

Koskenniemi, Martti, *From Apology to Utopia* (Cambridge University Press, 1995).

Lame, Manuel Quintín, *The Thoughts of the Indian Educated in the Colombian Forests*, in Gonzalo Castillo, *Theology and the Indian Struggle for Survival in the Colombian Andes: A Study of Manuel Quintín Lame's Los Pensamientos* (Columbia University, 1984), 353.

Los Pensamientos del Indio que se Educó Dentro de las Selvas Colombianas (Universidad del Cauca, 2004), 18.

Lander, Eduardo 'Ciencias sociales: saberes coloniales y eurocéntricos' in Eduardo Lander (ed.), *La Colonialidad del Saber: Eurocentrismo y Ciencias Sociales. Perspectivas Latinoamericanas* (Clacso, 2005), 16.

Lemaitre, Julieta (Comp.), *La Quintiada (1912 – 1925). La Rebelión Indígena liderada por Manuel Quintín Lame en el Cauca. Recopilación de Fuentes Primarias* (Universidad de los Andes, 2013).

'¡Viva Nuestro Derecho! Quintín Lame y el Legalismo Popular', in Lemaitre (Comp.), *La Quintiada*.

Lemkin, Raphael, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace, 1944), 79.

LeGrand, Catherine, *Colonización y Protesta Campesina en Colombia (1850-1950)* (Universidad de los Andes—Universidad Nacional de Colombia—CINEP, 2017), 209-219.

Ley 6 de 1832 and Ley 1 de 1848 *Convención Constituyente de la Nueva Granada.*

Lezama Lima, José, *La Expresión Americana* (Alianza Editorial, 1969).

Lightfoot, Sheryl R., 'Selective Endorsement Without Intent to Implement: Indigenous Rights and the Anglosphere (2012) 16 (1) *The International Journal of Human Rights,*116-119.

Longkumer, Arkotong, 'The Gaidinliu Notebooks as Language, Prophecy, and Textuality', (2016) 6 (2) *Journal of Ethnographic Theory*.

López de Rey, Alina, *Un Líder y su Causa: Quintín Lame* (Academia de Historia del Cauca, 1992);

Luban, David, 'Calling Genocide by its Rightful Name: Lemkin's Word, Darfur, and the UN Report' (2006) 7 (1) *Chicago Journal of International Law*, 308.

Lyons, Kristina, 'Can There Be Peace with Poison? (April, 2015), *Cultural Anthropology Hot,* https://culanth.org/fieldsights/679-can-there-be-peace-with-poison

Malabou, Catherine, *Plasticity at the Dusk of Writing. Dialectic, Destruction, Deconstruction* (Columbia University Press, 2009).

Mawani, Renisa, 'Law's Archive' (2012) *Annual Review of Law and Social Science,* 337.

Maybury-Lewis, David, *The Savage and the Innocent* (Beacon Press, 2000); *Millennium: Tribal Wisdom and the Modern World* (Viking, 1992).

Indigenous Peoples Ethnic Groups, and the State (Allyn and Bacon, 1997).

The Politics of Ethnicity: Indigenous Peoples in Latin American States (Harvard University Press, 2002).

Mazower, Mark, 'The Strange Triumph of Human Rights, 1933–1950', (2004) 47 (2) *The Historical Journal,* 379.

No Enchanted Palace. The End of Empire and the Ideological Origins of the United Nations (Princeton University Press, 2009), 127.

Mazzoldi, Bruno and Freddy Tellez, *La Entrevista de Bolsillo. Jacques Derrida responde a Bruno Mazzoldi y Freddy Téllez* (Siglo del Hombre Editores, 2005).
'The Pocket-Size Interview with Jacques Derrida', (2007) 33 (2) *Critical Inquiry,* 362-388.

Mazzoldi, Bruno, 'La Prueba del Culo: ¿Existe una Filosofía Latinoamericana?', *Henciclopedia,* http://www.henciclopedia.org.uy/autores/Mazzoldi/PruebaCulo.htm

Jackie Derrida. Retrato de Memoría (Siglo del Hombre Editores, 2007).

Intervención en la Conferencia Tramas y Mingas Para el Buen Vivir, (May 2012).

A Veces Derrida. Derrida desde las Indias – Antropología y Desconstrucción – El Silencio de los Dátiles – Bordes de la Plegaria – Golosa (Universidad Externado de Colombia, 2013).

'Fractio Libri: Una Introducción a la Lectura Mágica', in Javier Tobar ed., *Derrida desde el Sur. La Universidad del Monte o el Pensamiento sin Claustro* (Universidad del Cauca, 2017), 99-126.

McVeigh, Shaun and Sundhya Pahuja, 'Rival Jurisdictions: The Promise and loss of Sovereignty' in Charles Barbour and George Pavlich eds., *After Sovereignty: On the Question of Political Beginnings* (Routledge, 2010), 97-114

McVeigh, Shaun, (ed), *Jurisprudence of Jurisdiction* (Routledge-Cavendish, 2007)

'Law As (More or Less) Itself: On Some Not Very Reflective Elements of Law', (2014) 4 *UC Irvine Law Review,* 477.

Merry, Sally Engle, 'Legal Pluralism', (1988) 22 (5) *Law & Society Review,* 872.

'Anthropology, Law, and Transnational Processes', (1992) 21 *Annual Review of Anthropology,* 368.

'Anthropology and International Law', (2006) 35 *Annual Review of Anthropology*

'Anthropology of International Law', (2006) *35 Annual Review of Anthropology*, 101-109.

Mitchell, Andrew J, and Sam Slote (eds), *Derrida and Joyce. Texts and Contexts* (State University of New York Press, 2013), 22-40.

Muñoz, Juan, *Double Bind & Around* (Hangar Bicocca, 2015).

Murra, John V., 'Introduction' in José María Arguedas, *Deep Rivers* (Waveland Press, 2002).

Museo Nacional Centro de Arte Reina Sofía, http://www.museoreinasofia.es/en/multimedia/reverse-side-potosi-principle-silvia-rivera-cusicanqui.

Mussawir, Edward, *Jurisdiction in Deleuze. The Expression and Representation of Law* (Routledge, 2011), 2.

Nixon, Rob, *Slow Violence and the Environmentalism of the poor* (Harvard University Press, 2011), 30.

Nollkaemper, André, 'Framing Elephant Extinction', (2014) 3 (6) *European Society of International Law,* 1.

Obregón, Liliana, 'Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America', in Anne Orford, ed., *International Law and Its Others* (Cambridge University Press, 2006), 247-264.

Office of the High Commissioner for Human Rights, Fact Sheet No. 9 (Rev.1), The Rights of Indigenous Peoples, http://www.ohchr.org/Documents/Publications/FactSheet9rev.1en.pdf

ONIC, *Primer Congreso Indígena Nacional: Propuestas y Conclusiones* (ONIC, 1982); *Segundo Congreso Indígena Nacional: Propuestas y Conclusiones* (ONIC, 1986).

'Situación de las Comunidades en Riesgo de Extinción' (2009).

'Estado de los Derechos Humanos y Colectivos de los Pueblos Indígenas de Colombia: Etnocidio, Limpieza Étnica y Destierro. Informe al Relator Especial para los Derechos de los Pueblos Indígenas' (2009).

'Los Pueblos Indígenas de Colombia y su Pervivencia en Medio del Conflicto Armado Interno' (2010).

Palabra Dulce Aire de Vida. Forjando Caminos para la Pervivencia de los Pueblos Indígenas en Riesgo de Extinción de Colombia (2010).

Opiniones, 'Seguimos Pidiendo Justicia', Popayán, 29 de Noviembre de 1916, página 1.

'Fin de una Conflagración', Popayán, 13 de Mayo de 1917, página 1.

Oxford English Dictionary (Oxford University Press, 2016).

Pahuja, Sundhya, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011), 1.

'Laws of Encounter: A Jurisdictional Account of International Law', (2013) 1 (1) *London Review of International Law,* 63-98.

Painter, Genevieve, *Partial Histories: Constituting a Conflict between Women's Equality Rights and Indigenous Sovereignty in Canada* (PhD Dissertation, University of California, Berkley, 2015).

'A Letter from Haudenosaunee Confederacy to King George V: Writing and Reading Jurisdictions in International Legal History', (2017) 5 (1) *London Review of International Law*, 7-48.

Pagden, Anthony, (ed.), *The language of Political Theory in Early-Modern Europe* (Cambridge University Press, 1987);

Palacios, Marco, *Entre la Legitimidad y la Violencia: Colombia, 1875-1994* (Norma, 1995).

Parfitt, Rose, 'The Spectre of Sources', (2014), 25 (1), *The European Journal of International Law*.

Parsley, Connal, 'Seasons in the Abyss: Reading the Void in *Cubillo*', in Anne Orford, ed., *International Law and Its Others* (Cambridge University Press, 2006), 105.

Poma de Ayala, Felipe Guaman *The First New Chronicle and Good Government. On the History of the World and the Incas Up to 1615* (University of Texas Press, 2002), 53.

Pons, Horacio, 'Foreword' in Jacques Derrida, *El Monolinguismo del Otro o la Prótesis de Origen* (Manantial, 1997).

Poole, Deborah, 'From Pilgrimage to Myth: Miracles, Memory and Time in an Andean Pilgrimage Story', (1991) 17 *Journal of Latin American Lore,* 131-163.

Pound, Roscoe, 'Law in Books and Law in Action', (1910) 44 *American Law Review*, 12.

Presidency of the Republic of Colombia. 'Decree Law 4633, Special Decree for the assistance, attention, integral reparation and restitution of territorial of indigenous peoples' (2011).

Rajagopal, Balakrishnan, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press, 2003).

Rappaport, Joanne, *Cumbe Reborn. An Andean Ethnography of History* (University of Chicago Press, 1994).

The Politics of Memory. Native Historical Interpretations in the Colombian Andes (Duke University Press, 1998), 83.

La Política de la Memoría (Universidad del Cauca, 2000).

'Manuel Quintín Lame Hoy' in Manuel Quintín Lame, in Manuel Quintín Lame, *Los Pensamientos del Indio que se Educó Dentro de las Selvas Colombianas* (Universidad del Cauca, 2004), 18.

Reynaga, Fausto, *La Revolución India* (Movil Graf, 2001).

Reynaga, Ramiro, *Tawa Inti Suyo. Cinco Siglos de Guerra India Chukiagu – Marka Kollasuyu* (Consejo Indio de Sudamérica, 2007), 267-304.

Rivera Cusicanqui, Silvia, *Invisible Realities: Internal Markets and Subaltern Identities in Contemporary Bolivia* (SEPHIS - SEASREP, 2005), 13.

'Colonialism and Ethnic Resistance in Bolivia: A View from the Coca Markets', in Fred Rosen (ed.), *Empire and Dissent: The United States and Latin America* (Duke University Press, 2008), 141-143.

'Pensando desde el Nayrapacha: Una Reflexión sobre los Lenguajes Simbólicos como Práctica Teórica' (2010) 9, *Pensares y Quehaceres.*

Principio Potosí Reverso, (Museo Nacional Centro de Arte Reina Sofía, 2010).

'Ch'ixinakax Utxiwa: A Reflection on the Practices and Discourses of Decolonization', (2012) 111 (1) *The South Atlantic Quarterly,* 95.

'La Pérdida del Alma Colectiva', (2012) 2 (5) *El Colectivo*.

'The Potosí Principle: Another View of Totality', (2014) 11 (1), *E-MISFÉRICA*.

'¿Es Posible Descolonizar y Desmercantilizar la Modernidad?' Paper presented at the Decolonizing the Modernity Lecture Series, México DF, Universidad Nacional Autónoma de México UNAM, 2014.

'Sociology of the Image: Orality, Performance, and the Gaze in the Andes', (Syllabus presented as Andrés Bello Chair in Latin American Literature & Culture, New York, New York University, 2014), http://clacs.as.nyu.edu/docs/IO/32040/GA_1014_cusicanqui.pdf .

'The Potosí Principle: Another View of Totality' (2014) 11 (1) *E-MISFÉRICA*, http://hemisphericinstitute.org/hemi/en/emisferica-111-decolonial-gesture/e111-essay-the-potosi-principle-another-view-of-totality.

Sociología de la Imagen. Miradas Ch'ixi Desde la Historia Andina (Tinta Limón Ediciones, 2015).

Contra el Colonialismo Interno: An interview with Silvia Rivera Cusicanqui' (March 2016), *Anfibia, Universidad Nacional de San Martín,* www.revistaanfibia.com/ensayo/contra-el-colonialismo-interno/

Un Mundo Ch'ixi es Posible. Ensayos desde un Presente en Crisis (Tinta Limón Ediciones, 2018), 70.

‘Silvia Rivera Cusicanqui: Premio Nacional de Ciencias Sociales y Humanas (Trayectoria Intelectual y Aporte al Pensamiento Boliviano)’, https://www.youtube.com/watch?v=UxN-39WL3zA

Rodríguez, César, and Diana Rodríguez, *Cortes y Cambio Social: Cómo la Corte Constitucional Transformó el Desplazamiento Forzado en Colombia* (Colección DeJusticia, 2010).

Rodríguez, César, and Natalia Orduz, *Adiós Río. La Disputa por la Tierra, el Agua y los Derechos Indígenas en Torno a la Represa de Urrá* (Colección DeJusticia, 2012).

Rodríguez, César, ‘Ethnicity.gov: Global Governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields’, (2011) 18 (1) *Indiana Journal of Global Legal Studies,* 266.

‘Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America’, (2014) 89 (7) *Texas Law Review,* 2.

Rodríguez-Piñero, Luis, *Indigenous Peoples, Postcolonialism and International Law. The ILO Regime (1919 – 1989)* (Oxford University Press, 2006).

Rolling Stone, ‘10 best Latin Albums of the Year’ (December 2015), https://www.rollingstone.com/music/lists/10-best-latin-albums-of-the-year-20151230

Romero, Fernando, *El Indígena Ilustrado* (Universidad Tecnológica de Pereira, 2005).

Rosenau, Pauline, *Post-modernism and the Social Sciences* (Princeton University Press, 1992).

Rush, Peter, ‘An Altered Jurisdiction: Corporeal Traces of Law’, (1997) *6 Griffith Law Review,* 149-150.

Sáenz, Jaime, *Poesía Reunida* (Plural Editores, 2016).

Sahlins, Marshall, *Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom* (University of Michigan Press, 1981).

Sánchez, Beatriz Eugenia, ‘El Reto del Multiculturalismo Jurídico. La Justicia de la Sociedad Mayor y la Justicia Indígena’, 38. In Boaventura de Sousa Santos and Mauricio García Villegas (eds.), *El Caleindoscopio de las Justicias en Colombia Tomo II* (Siglo del Hombre Editores, 2001).

Sánchez Botero, Esther, ‘Aproximación desde la Antropología Jurídica a la Justicia de los Pueblos Indígenas’, In Boaventura de Sousa Santos and Mauricio García Villegas (eds.), *El Caleindoscopio de las Justicias en Colombia Tomo II* (Siglo del Hombre Editores, 2001).

Santos, Boaventura de Sousa, and Mauricio García Villegas (eds.), *El Caleindoscopio de las Justicias en Colombia Tomos I - II* (Siglo del Hombre Editores, 2001).

Santos, Boaventura de Sousa, 'Law: A Map of Misreading; Toward a Postmodern Conception of Law', (1987) 14 *Journal Law & Society,* 279-302.

'El Significado Político y Jurídico de la Jurisdicción Especial Indígena', In Boaventura de Sousa Santos and Mauricio García Villegas (eds.), *El Caleindoscopio de las Justicias en Colombia Tomo II* (Siglo del Hombre Editores, 2001).

Seron, Carroll, and Susan S. Silbey, 'Profession, Science, and Culture: An Emergent Canon of Law and Society Research' in Austin Sarat, *The Blackwell Companion to Law and Society* (Blackwell, 2004), 30-59.

Scherer, Bernd M., 'Prólogos' in Silvia Rivera Cusicanqui (ed.), *Principio Potosí Reverso,* (Museo Nacional Centro de Arte Reina Sofía, 2010).

Shabas, William, 'Cultural Genocide and the Protection of the Rights of Existence of Aboriginal and Indigenous Groups', in J. Castellino & N. Walsh eds., *International Law and Indigenous Peoples* (Martinus Nijhoff, 2005).

Schultes, Richard Evans, Albert Hofmann and Christian Ratsch, *Plants of the Gods. Their Sacred*, 124.

Schwartzberg, Eduardo, 'Cultura, Patrimonio y Arte. Eufemismos de la Cadena Colonial', in Silvia Rivera Cusicanqui (ed.), *Principio Potosí Reverso,* (Museo Nacional Centro de Arte Reina Sofía, 2010).

Skafish, Peter 'The Metaphysics of Extra-Moderns. On the Decolonization of Thought—A Conversation with Eduardo Viveiros de Castro', (2016), 22:3 *Common Knowledge,* 401-402.

Spivak, Gayatri Chakravorty, 'Can the Subaltern Speak?' in C. Nelson and L. Grossberg eds. *Marxism and the Interpretation of Culture* (Macmillan Education, 1988), 103.

An Aesthetic Education in the Era of Globalization (Harvard University Press, 2012).

'Translator's Preface' in Jacques Derrida, *Of Grammatology* (Johns Hopkins University Press, 2016).

Stavenhagen, Rodolfo, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, UN Doc E/CN.4/2005/88/Add.2 (2004), para. 29.

Tamanaha, Brian Z., 'A Non-Essentialist Version of Legal Pluralism', (2000) 27 *Journal of Law and Society,* 296.

'Understanding Legal Pluralism: Past to Present, Local to Global', (2008) 30 *Sydney Law Review,* 390.

Tandioy, Domingo, and Stephen H. Levinsohn, and Alonso Maffla, *Diccionario Inga del Valle de Sibundoy* (Townsend, 1982).

Taussig, Michael, *Shamanism, Colonialism, and the Wild Man: A Study in Terror and Healing* (University of Chicago Press, 1991).

Theodosiadis, Francisco, 'Quintín Lame Brújula de Resistencia Indígena en el siglo XX' in Betty Osorio (ed), *Literatura y Cultura Narrativa Colombiana del Siglo XX* (Ministerio de Cultura, 2000);

Todd, Zoe, 'Indigenizing the Anthropocene', in Heather Davis and Etienne Turpin, ed., *Art in the Anthropocene. Encounters Among Aesthetics, Politics, Environments and Epistemologies* (Open Humanities Press, 2015), 243.

Tomlins, Christopher and John Comaroff, 'Law As… Theory and Practice in Legal History', 1 (3) *UC Irvine Law Review,* 1041.

Torres Fernandez de Córdoba, Glauco *Diccionario Kichua – Castellano, Yurakshimi – Runashimi* (Casa de la Cultura Ecuatoriana, 1982).

Troyan, Brett, *Cauca's Indigenous Movement in Southwestern Colombia. Land, Violence, and Ethnic Identity* (Lexington Books, 2015), 59-153.

UNPFII, 'Report on the eight session', UN Doc. E/C.19/2009/14 (2009).

'Study on International Criminal Law and the Judicial Defense of Indigenous Peoples' Rights', submitted by the Especial Rapporteur Bartolomé Clavero Salvador, UN Doc. E/C.19/2011/4 (2011), para. 5.

UN Declaration on the Rights of Indigenous Peoples (2007)

UNESCO, *El Patrimonio Oral y las Manifestaciones Culturales del Pueblo Zápara* (Inscrito en 2008 en la Lista Representativa del Patrimonio Cultural Inmaterial de la Humanidad, originalmente Proclamado en 2001), https://ich.unesco.org/es/RL/el-patrimonio-oral-y-las-manifestaciones-culturales-del-pueblo-zapara-00007

UNHCR Colombia, http://www.acnur.org/recursos/estadisticas/

UNPFII, 'Report on the eight session', UN Doc. E/C.19/2009/14 (2009), para. 28-30.

Valverde, Mariana, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Routdledge, 2015).

Vega, Renán, *Gente muy Rebelde: Protesta Popular y Modernización Capitalista en Colombia (1909-1929)* (Pensamiento Crítico, 2002), 66;

Virilio, Paul, *Speed and Politics* (Semiotext[e], 1986).

Viveiros de Castro, Eduardo, and Déborah Danowsky, *Há Mundo por Vir? Ensaio Sobre os Medos e os Fins* (Cultura E Barbárie, 2014).

Viveiros de Castro, Eduardo ‘Cosmological Deixis and Amerindian Perspectivism’, (1998) 4 (3) *Journal of the Royal Anthropological Institute,* 469-488.

‘The Untimely, Again’ in Pierre Clastres, Archaeology of Violence (Semiotext(e), 2010), 14.

La Mirada del Jaguar. Introducción al Perspectivismo Amerindio. Entrevistas (Tinta Limón Ediciones, 2013), 86.

Cannibal Metaphysics (University of Minnesota Press, Univocal, 2014).

The Relative Native. Essays on Indigenous Conceptual Worlds (HAU Books, 2015), 5.

‘Who’s afraid of the ontological wolf?’, (2015) *Marilyn Strathern lecture*.

Wagner, Roy, *The Invention of Culture* (University of Chicago Press, 1981).

Max Weber, Max, *The Vocation Lectures* (Hackett, 2004).

Whitten Jr., Norman E., *Ecuadorian Ethnocide and Indigenous Ethnogenesis: Amazonian Resurgence Amidst Andean Colonialism* (IWGIA, 1976).

Willemsen-Diaz, Augusto, ‘How Indigenous Peoples’ Rights Reached the UN’, in Charters and Stavenhagen (eds), *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (IWGIA,2009).

Williams, Robert *The American Indian in Western Legal Thought. The Discourses of Conquest* (Oxford University Press, 1992).

Zambrano, Carlos Vladimir, ‘Transición Nacional, Reconfiguración de la Diversidad y Génesis del Campo Étnico. Aproximación a la Promoción de la Diversidad en la Década 1991-2001’ (2002) 15 *Revista Pensamiento Jurídico – Universidad Nacional de Colombia,* 20-21.

Zavaleta Mercado, René, *Obra Completa,* in Mauricio Souza Crespo ed. (Plural Editores, 2013).

Zeirler, David, *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment* (University of Georgia Press, 2011), 14-15.