

BETWEEN COMMUNAL, EMPHYTEUTIC, AND PRIVATE PROPERTY: Liberal Experimentation on Agricultural Land in Nineteenth-Century Bolivia

ABSTRACT: This paper examines the gradual imposition of private property on agricultural land, mostly occupied by Indigenous communities, in the early nineteenth century by Andean republics' ruling classes. The state's weak authority and the Indigenous resistance to economic and political border advance impeded the immediate destruction of previous power structures, resulting in genuine statal formations in the region and clashes for the imposition of the newly adopted liberal ideas. This paper focuses on two early agricultural property privatization attempts in Bolivia, which have not been properly analyzed yet. First, José Ballivián's governmental project, which resolved to dismantle the Indigenous communities through capitalist education, by placing "good examples" of white and mestizo colons between Indigenous lands using the legal formulation of emphyteusis, thus expanding the liberal conception of property and taxation and then making the existence of communal lands futile, achieving social homogeneity, enforcing capitalist production, and widening executive authority. Second, Jorge Mallo's posterior pamphlet, which gave continuity to Ballivián's policies through public opinion and linked them to the ones finally imposed in the second half of the century. Both initiatives were not successful but were remarkable steps in the process of Indigenous land usurpation by the state and white-mestizo colons.

KEYWORDS: Bolivia, state-building, indigenous communities, liberalism, land

In *Lo nacional popular en Bolivia*, René Zavaleta presents Bolivian society as "abigarrada" from its very formation. For the author, in the country—and more broadly, in the Andean region—different historical periods and forms of social organization overlapped simultaneously, thereby complicating the homogenization that the liberal model seemed to aspire to,¹ a tendency toward unification that he identified in political, social, and economic terms, but which can also be extended to the realm of legal equality and property rights.² Precisely,

1. René Zavaleta Mercado, *Lo nacional popular en Bolivia* (Mexico City: Siglo XXI, 1986).

2. Oscar Oszlak, "Reflexiones sobre la formación del Estado y la construcción de la sociedad argentina," *Desarrollo económico* XXI (1982): 1–2; Brooke Larson, *Trials of Nation Making. Liberalism, Race, and Ethnicity in the Andes, 1810–1910* (Cambridge: Cambridge University Press, 2004), 13; Ingrid de Jong and Antonio Escobar Ohmstedt, "Un contexto comparativo del papel de los indígenas en la creación y la conformación de las naciones y los estados en la América Latina del siglo XIX." In Ingrid De Jong and Antonio Escobar Ohmstedt, coord., *Las poblaciones indígenas en la conformación de las naciones y los Estados en la América Latina decimonónica* (Mexico City/Zamora: El Colegio de México – CIESAS – El Colegio de Michoacán, 2016), 14; Marta Irurzoui, "Ciudadanía armada versus caudillismo. Tres historias

this paper aims to analyze one of the attempts to break the abigarrado condition of land property in Bolivia, following the weak post-independence efforts of Antonio José de Sucre to extend liberalism to the Bolivian countryside, and preceding the decisive blow to the communal land property of the *ayllus* and their legal personality, which would be dealt by the government of Mariano Melgarejo. The boundaries between the different layers of the social map proposed by Zavaleta were ever-changing, and therefore, the establishment of specific studies that explore the initiatives for the advancement or regression of these internal limits should enable a more nuanced understanding of the general process of political-economic liberalism's expansion in the Andes.³

In this regard, we position ourselves during the presidency of José Ballivián, from 1841 to 1847. His government was one of extensive liberal and reformist ambitions, which, among various issues tackled, sought to address the transformation in both the ownership, and most notably, the nature of land property.⁴ To this end, marked by significant political experimentation and liberal innovation, he drew upon the lessons learned from the previous experience of Sucre, whose government recognized the impossibility of creating a legally and ethnically homogenous society, given that state survival depended on Indigenous contributions, particularly the agricultural output essential for the nascent internal market.⁵ Moreover, pluralism, linked with the “*abigarramiento*,” was an ever-present political concept that delegitimized any radical shifts in legislation taking place.

The government of José Ballivián was more cautious than that of Sucre and did not seek a direct confrontation with indigenous ways of life. It adopted a legal concept rooted in Roman law, with a long medieval and modern tradition, which had been introduced into republican Latin America through colonial practices: emphyteusis. This arrangement allowed for the leasing of land usage to a peasant or agricultural investor while retaining the eminent domain under state authority.

bolivianas sobre violencia y ley constitucional, 1841–1875.” In Nùria Tabanera and Marta Bonaudo, coord., *América Latina de la independencia a la crisis del liberalismo, 1810–1930, vol. V* (Madrid: Marcial Pons, 2016), 107; Hilda Sabato, *Republics of the New World: The Revolutionary Political Experiment in 19th-Century Latin America* (Princeton, NJ: Princeton University Press, 2018).

3. The legacy of this tense framework between Indigenous communities and the state persists to the present day, manifesting in historical resistances and collaborations, including strategies of adaptation, negotiation, and avoidance regarding these power structures. This reality has been canalized by violence, but also by law or language (Rossana Barragán, “The census and the making of a social ‘order’ in nineteenth-century Bolivia.” In Laura Gotkowitz, *Histories of Race and Racism: The Andes and Mesoamerica from Colonial Times to the Present* (New York: Duke University Press, 2011), 113).

4. Pol Colàs, *La Presidencia de José Ballivián (1841–1847). Construcción del Estado e imposición de un proyecto nacional en Bolivia* (La Paz: Plural Editores, 2024).

5. William Lofstrom, *La presidencia de Sucre en Bolivia* (La Paz: Biblioteca del Bicentenario de Bolivia, 2017 [1983]); Erick D. Langer, “Bajo la sombra del Cerro Rico. Redes comerciales y el fracaso del nacionalismo económico en el Potosí del siglo XIX,” *Revista Andina* 37 (2003): 77–94.

It served as a beneficial legal instrument for political classes hesitant to an abrupt transition directly from the Ancien Régime's framework—characterized by compulsory labor and corporatist tributes—to a modern individual property system, particularly due to the resistance that such changes could incite.⁶

During Ballivián's administration, the key document for understanding economic and political border expansion through land ownership legislation in the Bolivian altiplano was the circular of December 14, 1842. This document declared land held by *originarios* as state property, positioning indigenous individuals as leaseholders who owed an emphyteutic canon to the Bolivian state; then it implemented emphyteusis as a type of imperfect property on Indigenous-held lands. Such a framework facilitated the redistribution of land, leasing portions to white-mestizo individuals committed to capitalist, export-oriented agricultural practices, thereby providing ayllus with models of the "correct" methods of cultivation beyond mere subsistence farming or production for local markets.⁷

Indigenous resistance and the questionable legality of the circular led to significant difficulties for the government in making emphyteusis enforceable.⁸ That process will be analyzed in these pages. However, it is considered that although Ballivián's governmental actions were largely unsuccessful, they represent a crucial link between the inherited colonial structure and the subsequent imposition of total land ownership by Melgarejo, and they represent remarkable steps in the process of Indigenous land usurpation by the state and white-mestizo colons, as will be shown as well as that immediate failure made heterogeneity an essential component in explaining the broader process of state formation in Bolivia and Latin America.

This analysis also engages with a text by Jorge Mallo. Mallo was a significant figure in nineteenth-century Bolivia. Curiously, he appeared as a defendant in a failed rebellion against President José Ballivián in 1842, for which he served a prison sentence.⁹ However, in the 1860s and 1870s, Mallo held important public positions related to the Ministry of Finance, such as chief accountant. Although,

6. As stated in Ligia Maria Osorio Silva and María Verónica Secreto, "Terras públicas, ocupação privada: elementos para a história comparada da apropriação territorial na Argentina e no Brasil," *Economia e sociedade* 12 (1999): 118–119.

7. In terms of "capitalist education," following what has been said by Marta Irurozqui, "The sound of the Pututos. Politicisation and indigenous rebellions in Bolivia, 1826–1921," *Journal of Latin American Studies* 32:1 (2000): 85; Silvia Rivera Cusicanqui, *Violencias (re)encubiertas en Bolivia* (La Paz: La Mirada Salvaje – Editorial Piedra Rota, 2010), 40–41.

8. Antonio Mitre, "Modernización, reforma política y unidad estatal en Bolivia," *Universum* 23:1 (2008): 135–136.

9. Jorge Mallo, *Defensa hecha por la parte del ciudadano Jorge Mallo en la causa criminal seguida contra él por tentativa de delito de rebelión en la noche del 28 de mayo último* (Sucre: Prensa de Castillo, 1842).

beyond these details, his biography remains largely unknown, he was involved in several public debates in Bolivia, particularly one concerning land ownership. In this regard, he wrote *Aplicación económica cambiando el sistema rentístico de la República conforme a las costumbres modernas* in 1861, under the name of citizen Jorje Mallo, as a pamphlet that aimed, without a doubt, at influencing the political–legal reality. The text was positioned as a significant mediator between emphyteusis and the eventual policies that emerged in the 1860s, aiding in the examination of the relationship between liberal politics and agricultural land in Bolivia. It is difficult to ascertain whether the text truly had a political impact, although its intertextual connections with Ballivián’s earlier laws and Melgarejo’s later ones suggest that it may have. Regardless, what is undeniable is that it is a document of considerable interest, illustrating the connection between emphyteutic policies and the usurpation of indigenous land in Bolivia, a process that continued to evolve within public opinion during the intervening decades.

What has been said thus far holds historiographical significance, as the topic of agricultural emphyteusis, viewed as an example of nineteenth-century political experimentation in Latin America, has been scarcely explored in the historical literature. However, this policy significantly impacted agricultural property legality during the first half of the century. The better documented case of Argentina serves as a paradigmatic example. Infesta argues that emphyteusis emerged as a practical legal tool in various contexts, adopted by governments with diverse political ideologies and social bases. From Argentina’s independence through the administrations of Rivadavia and Rosas, its primary application was to agricultural lands designated for colonization rather than altering the status of previously held lands.¹⁰ Rubinstein illustrates that Rivadavia sought to enhance land values while maintaining control over them.¹¹ Similarly, Juan Manuel de Rosas effectively implemented emphyteusis,¹² although the offers of emphyteutic leases threatened the land market by drastically lowering prices, a situation exacerbated by the seemingly endless parcelization of lands to the south and west.¹³ Gelman notes

10. See María Elena Infesta, *La Pampa criolla. Usufructo y apropiación privada de tierras públicas en Buenos Aires, 1820–1850* (La Plata: Archivo Histórico de la Provincia de Buenos Aires, 2003).

11. Juan Carlos Rubinstein. *Filiación histórica y sociopolítica de la enfiteusis rivadaviana* (Buenos Aires: Fundación Banco de la Provincia de Buenos Aires, 1984), 9–15.

12. María Verónica Secreto, “Procesos judiciales y recorridos administrativos. La conflictiva propiedad de los Díaz Vélez, Buenos Aires, siglo XIX,” *Prohistoria* 5 (2001): 230–232; María Valeria Ciliberto, “La tierra pública periurbana: arrendamiento, enfiteusis y ventas en el entorno agrario de Buenos Aires (San José de Flores, 1800–1862),” *Trabajos y Comunicaciones* 35 (2009): 1–2.

13. Juan Carlos Garavaglia and Jorge Gelman, “Mucha tierra y poca gente: un nuevo balance historiográfico de la historia rural platense (1750–1850),” *Historia Agraria* 15 (1998): 40; Valeria D’Agostino, “Enfiteutas, propietarios, agregados y ocupantes en el ‘nuevo sur’: los partidos de Arenales y Ayacucho (1823–1860),” *Mundo Agrario* 7:14 (2007): 4.

that, despite the presence of emphyteutic tenants in rural Buenos Aires, they failed to generate the expected revenue.¹⁴

Outside the province of Buenos Aires, some sources indicate that emphyteusis did not prevent the alienation of Argentine public lands.¹⁵ The province of Jujuy exemplifies this, as in 1839, emphyteusis became a pathway between alienation and full leasing, progressively liberalizing land while avoiding ideological contradictions, in a region geographically close to Bolivia.¹⁶ Nevertheless, the rapid expansion of larger estates ultimately marginalized emphyteusis in favor of private ownership.¹⁷

In Brazil, emphyteusis similarly shaped the relationship between tenants and their land, as illustrated by Osorio Silva. The colonial *sesmarias*—analogous to emphyteusis but focused on land development without tenant payment—were abolished in 1822.¹⁸ However, the legislation intended to replace *sesmarias* was not enacted until 1850.¹⁹ This prolonged transition resulted in disorder and fraud in land transactions, pressuring legislators to adopt alternative forms of property, such as emphyteusis, while *sesmarias* retained critical importance in land occupation.²⁰

Other notable examples in Latin America include Mérida, Venezuela, where the assumption of agrarian individualism followed emphyteutic legislation, significantly undermining communal ownership.²¹ In Guatemala, emphyteutic payments dominated the relationships between *ayuntamientos* and Indigenous populations until the late nineteenth century.²² Furthermore, emphyteusis was widely utilized in Europe, with studies on its practices during that century providing insight into the historical realities of agricultural property. Portugal

14. Jorge Gelman, "Producción y explotaciones agrarias bonaerenses entre la colonia y la primera mitad del siglo XIX. Rupturas y continuidades," *Anuario del IEHS* 12 (1997): 61.

15. Diego Escolar, "Huarpe archives in the Argentine desert: Indigenous claims and state construction in nineteenth-century Mendoza," *Hispanic American Historical Review* 93:3 (2013): 460.

16. Cecilia A. Fandos and Ana A. Teruel, "¿Cómo quitarles esas tierras en un día después de 200 años de posesión? Enfitéusis, legislación y práctica en la Quebrada de Humahuaca (Argentina)," *Bulletin de l'Institut Français d'Études Andines* 41:2 (2012): 215.

17. María Verónica Secreto, *Fronteiras em movimento: História comparada – Argentina e Brasil no século XIX* (Niterói: Editora UFF, 2012), 239.

18. Ligia Maria Osorio Silva, *Terras devolutas e latifúndio* (Campinas: Ed. da UNICAMP, 1996), 95–97.

19. With an uneven impact through Brazilian geography (Vilma Eliza Trinidad de Saboya, "A Lei de Terras (1850) e a política imperial—Seus reflexos na Província de Mato Grosso," *Revista Brasileira de História* 15:30 (1995): 115–136).

20. Osorio Silva, *Terras devolutas*, 334–336.

21. Edda O. Samudio A., "De propiedad comunal a propiedad individual en el escenario agrario republicano de Venezuela. El caso de Timotes, Mérida," *Procesos Históricos* 26 (2014): 216–227.

22. Aquiles Omar Ávila Quijas, "Interpretaciones sobre la redención de censos enfitéuticos en Guatemala a finales del siglo XIX. Los casos de Antigua Guatemala, San Felipe y San Mateo Milpas Altas," *Mundo Agrario*, 13:25 (2012): 1–2.

and France are representative cases due to their long traditions of emphyteusis;²³ in Spain, emphyteusis had deep roots in Catalonia, dating back to 1486, and some protests even erupted in Barcelona in 1851 when its abrogation was proposed.²⁴

The cases reviewed thus far must have had an influence on the legal development in Bolivia, especially given the historical link with the Hispanic colonial administration and the geographic, political, and social proximity to contemporary Argentina. Moreover, considering the influence of Argentine politicians in the administration of José Ballivián, it is difficult to believe that such a connection did not exist.²⁵ Emphyteusis in Bolivia could not have arisen spontaneously, directly from a distant past; rather, it must have been influenced by that applied by its neighbors, which, in turn, was shaped by their own influences.

However, the case of Bolivia presents specific characteristics that justify a focused analysis of the relationship between state liberal reforms concerning land, Indigenous communities, and the state-building process. The evolution of the state's legal strategies regarding agricultural property standardization is particularly evident in the *altiplano*. This case is historically compelling due to the strong presence of ayllus and the enduring perception of their “incompatibility” with liberal property models, which contrasted with the circumstances in Brazil and Argentina, where policies were more oriented toward new lands for colonization.

Thus, the following sections will analyze emphyteusis, its impacts, and its continuity in Bolivia, utilizing governmental communications, legislation, and Mallo's study to interpret the dominant legal narrative surrounding Indigenous ownership, communal relations, and the state over the long term.

THE DECEMBER 14, 1842 EXECUTIVE CIRCULAR: LAND EMPHYTEUSIS AND ECONOMIC EXPANSION

The 1840s have been recognized as a critical period for understanding state-building, the establishment of republican legitimacy, the introduction of new

23. Gérard Béaur and Jean-Michel Chevet, “Droits de propriété et croissance: l'émergence de la propriété «parfaite» et l'ouverture du marché foncier, moteurs de la croissance agricole?,” *Histoire & Sociétés Rurales* 48:2 (2017): 49–92; Rosa Congost and Pablo F. Luna, ed., *Agrarian Change and Imperfect Property: Emphyteusis in Europe (16th to 19th Centuries)* (Turnhout: Brepols, 2018).

24. Llorenç Ferrer i Alòs, “La formació d'una estructura de la propietat de la terra a la Catalunya Vella (segles XVI–XIX),” *Manuscripts. Revista d'Història Moderna* 33 (2015): 69.

25. Pol Colàs, “Félix Frías y el giro a los Orientes bolivianos de José Ballivián,” *Revista de Indias* LXXXI:283 (2021): 525–557.

economic schemes, and the expansion of Bolivia's internal capitalist frontiers.²⁶ As mentioned, the transition from communal to private property—and, consequently, the dismantling of Indigenous communities as they were traditionally known—necessitated a complex legal framework and a nuanced process of legitimation to avoid catastrophic consequences for the state's existence. The challenges encountered prompted ruling elites, represented by the state, to engage in experimental politics, immersing themselves in a broad legal trend characterized by trial and error. The 1840s, particularly during the presidency of José Ballivián, saw an effort to implement new ways of political experimentation in this regard.

As mentioned in the previous introduction, the circular of December 14, 1842, was a key document during Ballivián's administration for understanding how land ownership legislation expanded economic and political boundaries in the Bolivian altiplano. Issued by Hilarión Fernández, the Minister of Finance, this document aimed to clarify how public authorities could resolve disputes over Indigenous territories. It positioned Indigenous people as leaseholders, obligated to pay a emphyteutic rent to the Bolivian state, while declaring their land as state property. Upon the death or departure of these individuals, the provincial governor was empowered to redistribute land among ayllu members. This structure required the governor, the public administrator of provincial governance, to oversee land usurpation, lawsuits, and disputes arising within communities.²⁷ In cases where competing ayllus contested territory, jurisdiction was transferred to *jueces de paz y de letras*, lower-ranking judicial officials dedicated to such disputes in the provinces. The circular justified its existence by asserting that it sought to protect Indigenous people from prolonged and economically burdensome trials, while also safeguarding provincial governors from a loss of authority, thereby preventing erratic decision-making.²⁸

26. Janet Groff Greever, *José Ballivián y el Oriente boliviano* (La Paz: Empresa Editora Siglo Ltda., 1987); Pilar García Jordán, *Cruz y arado, fusiles y discursos: la construcción de los Orientes en el Perú y Bolivia, 1820–1940* (Lima: IFEA – IEP, 2001), 251–252; Carlos Pérez, “The political origins of the Cinchona Bark Lobby of La Paz, 1840–1847,” *Bolivian Studies Journal* 14 (2007): 213–234; Pol Colàs, “Estrategias en pugna para el control del guano y la cascarilla en Bolivia,” *Secuencia: Revista de historia y ciencias sociales* 115 (2023): 1–29.

27. Chosen by executive decision, the governors were heads of provincial governments, with the explicit function of centralizing and delivering the product of the indigenous contribution to the public treasury, enforcing the legality approved by Congress and the orders and decrees of the administration, defending the legitimacy of elections, overseeing the police, restoring roads, schools, and prisons, providing provisions to stationed troops, supervising the functions of *jueces de paz y de letras*, conducting provincial statistics and censuses, proposing mayors, and ensuring the proper functioning of the clergy; in Pol Colàs, “En los intersticios de la localidad. La institucionalización legal del poder local en Bolivia,” *Boletín Americanista* 87 (2023): 19.

28. “Son de la propiedad del estado, las tierras que poseen los originarios, no debiéndose considerar estos, sino como una especie de enfiteutas que pagan cierta cantidad al Sr. del dominio directo por el usufructo, y cuando fenecida la familia de los poseedores, quedan vacantes dichas tierras, toca al Gobernador que representa al estado, y a cuyo cargo corre la recaudación, adjudicarlas a otro indíjena [sic], y solo a él pertenece también el derecho de recojer [sic], las que hayan sido usurpadas, para darles igual destino que a las vacantes. Por lo cual, y porque informado S.E. el Presidente de la

This justification sought to legitimize the legal actions taken. Internal doubts within the executive arose regarding the public acceptance of the circular, which the procedural approach weakened. Unlike a law or presidential decree, a circular lacked the immediacy and authority needed to assert its legitimacy. Ballivián's presidency in 1842 was in its early stages and was not yet considered constitutional, but rather provisional. Consequently, this decision introduced uncertainty and a lack of legal foundation to the concept of emphyteusis.

In addition, the use of a circular to impose such a significant change as transferring eminent property of communal lands to the state suggested a perception of continuity rather than a radical shift. However, in the context of Sucre's prior attempts to individualize land property and the ensuing quiet interregnum until 1842, Ballivián's action represented a considerable legal transformation, compelling the executive to reinforce its decision. Indeed, Bolivian emphyteusis was among the least legally substantiated initiatives of its kind in mid-nineteenth-century Latin America, particularly in its initial phase.²⁹

To mitigate the absence of a robust republican legal tradition, the redaction of the circular drew on the existing colonial indigenous tributary structure to justify itself. The authorities interpreted *tributo*³⁰ as evidence of imperfect indigenous property rights, arguing that this payment indicated ayllus' rights to land were equivalent to those of leaseholders or *emphyteuta*, who were required to pay a canon to the owner of the eminent domain—the colonial administration, and subsequently, the republican state.³¹ This interpretation parallels similar cases in geographically and historically analogous contexts.³² Consequently, the circular

República, ya de que en las provincias los jueces de letras y de paz, dando el carácter de contenciosas a las disputas, que se suscitan entre los indígenas originarios sobre terrenos, se han avanzado hasta a anular los títulos dados por los gobernadores, y aun a calificarlos de expoliativos, causando de este modo alteraciones de las matrículas; ya además, de que los miserables indígenas, en sus pequeñas diferencias sobre límites, hacen gastos excedentes al valor de lo litigado, con lo que se arruinan e incapacitan para continuar contribuyendo; oído el dictamen del M.I.S. Fiscal de la Corte Suprema de justicia, se ha servido resolver: que en cuestiones de usurpación de terrenos pertenecientes a originarios, en adjudicación, y en las de límites, den entender privativamente los gobernadores de provincia, quedando únicamente reservadas a los jueces, las que se entablen entre comunidad y comunidad. Consiguientemente, ninguna autoridad judicial tiene jurisdicción para injerirse en estas medidas, que son puramente económicas y gubernativas" (*Colección Oficial de Leyes, Decretos, Ordenes y Resoluciones Supremas que se han expedido para el Régimen de la República Boliviana*, (Sucre: Imprenta de López, 1858) [hereafter *Colección*]: vol. 8).

29. Mostly compared with the case of Mérida, Venezuela, analyzed by Samudio A., "De propiedad comunal a propiedad individual," 227.

30. The Indigenous *tributo*, known as the contribution during republican times, was essentially a colonial inheritance that underwent little change and formed the basis of public budgets in countries such as Bolivia and Peru during the first half of the nineteenth century. It was collected within the same communities by *kurakas*, who, in turn, forwarded the payment to the provincial governors. In this article, the term "tributo" is used to emphasise its connection with colonial administration.

31. Ana A. Teruel, "La desvinculación de la propiedad comunal indígena a comienzos del siglo XIX en la provincia de Sud Chichas: pervivencias y transformaciones," *XI Jornadas Interescuelas/Departamentos de Historia. Universidad de Tucumán* (2007): 8.

32. Fandos and Teruel, "¿Cómo quitarles esas tierras en un día después de 200 años de posesión?," 215.

drew upon pre-liberal customary law and colonial legitimacy rather than a flawed republican framework concerning communal land.³³ This indicates not an improvisational approach but rather a deliberate legal experiment, albeit one marked by a lack of understanding of how to proceed with state-building through the dismantling of indigenous communities; a path fraught with contradictions.

The ambiguous nature of the circular and its complex interpretation necessitated further clarification from state authorities to bolster its legitimacy. To enforce emphyteusis, three resolutions and an order were made public: (1) a resolution on September 16, 1843 regarding judicial competencies over indigenous territories; (2) a resolution on January 31, 1845 that corrected the previous one; (3) an order on April 25, 1845 delineating the functions of judicial and political powers in the provinces, concerning communities; and (4) a resolution on November 13, 1845 clarifying the provincial governor's role in overseeing the emphyteutic structure. Additionally, the economic dimension of emphyteusis was addressed in a law and its accompanying decree: (5) on November 4, 1844, a law was passed establishing how complete ownership of land could be attained by those holding useful domain under an emphyteutic contract; and (6) on December 1, 1844, a decree was issued further regulating the consolidation of that ownership. It is worth noting that these orders, resolutions, and laws were issued after the declaration of the constitutionality of Ballivián's presidency in 1843, thereby solidifying the legitimacy of the executive. One could interpret that this renewed legitimacy was used to articulate legislation with greater clarity than in the case of the first circular.

First, the resolution of September 16, 1843, used the province of Chayanta, Potosí, as a case study to elaborate on the assertions made in the previous circular. Its provincial governor aimed to standardize the procedures arising from the possibilities introduced by emphyteusis, particularly regarding which authorities should adjudicate disputes over land between Indigenous communities (or individuals) and non-Indigenous landholders or *hacendados*. The governor petitioned the Ministry of the Interior on these terms. While disputes among Indigenous communards were common, the governor believed the circular could potentially exacerbate such conflicts, especially between Indigenous people and hacendados. To prevent this, he requested that the executive provide the provinces with the necessary tools to address these disputes. The government's response, issued by the Ministry of Finance, was somewhat vague, merely referencing adherence to "las reglas generales del derecho" and incorrectly

33. As, in part, happened much later in Mendoza, as shown by Diego Escobar, "Mitologías soberanas: tierras indígenas y construcción de la propiedad privada en Mendoza a fines del siglo XIX," *Memoria americana* 28:1 (2020): 92–116.

asserting that disputes between different ayllus, or within the same one, should be resolved by the governor, thereby granting him the authority to adjudicate these conflicts.³⁴

Second, in the resolution of January 31, 1845, the Minister of Finance, Miguel María de Aguirre, amended inconsistencies from the prior resolution, returning to the original text of the circular and affirming the provincial jueces de paz y letras' roles in land disputes between different ayllus for the whole of Bolivian territory.³⁵ This could have exacerbated Indigenous resistance to the measure, as, on paper, the lengthy land disputes they were attempting to avoid would still be channeled through provincial courts. However, we find no evidence to support this.

Third, the same Minister of Finance, in issuing the order of April 25, 1845, sought to ensure proper procedures for Indigenous communal land lawsuits in response to persistent complaints from the Indigenous peoples regarding corruption among provincial governors in land distribution. This order required governors to maintain an up-to-date record of their activities, which would be accessible to both individuals and the executive. If a party felt aggrieved by a governor's decision, they could file a complaint with the prefecture, which would either confirm or amend the governor's decision and possibly refer the matter to the judiciary if illegal actions were alleged.³⁶ Although we assume that such records may have had real continuity and must have existed, they are not referenced in the ministerial documentation.

Fourth, the resolution of November 13, 1845, issued by Minister Aguirre, further elaborated on the provincial governor's role in applying emphyteutic legislation, as his Ministry had identified some malfunctions. In some cases, indigenous people sent their demands (though it is unspecified whether these were against other Indigenous people or white-mestizos) to the departmental prefect, bypassing the governor, even though both were public authorities appointed by the executive. The resolution strengthened the prefects' capacity to oversee the governors' activities while reaffirming the governors' authority over legal matters related to land usurpation and boundary disputes.³⁷

Fifth, the law passed by Congress on November 4, 1844, addressed the economic aspects of emphyteusis, stipulating that those holding the usufruct of state-

34. "Juez para las cuestiones de terrenos de originarios", *Colección*: vol. 8.

35. "Los Jueces de Letras de Provincia son competentes, para conocer de las cuestiones de comunidades de indígenas", *Colección*: vol. 9.

36. "Modo de proceder en las demandas verbales sobre terrenos de indígenas. Apelación", *Colección*: vol. 10.

37. "Atribución de los Gobernadores de Provincia en los asuntos de terrenos de indígenas", *Colección*: vol. 10.

owned land under an emphyteutic contract could eventually attain full ownership by paying the land's value, as determined by an expert, plus one-third of that value, using a combination of money and public credit vouchers.³⁸ In fact, the law contained inconsistencies that could have complicated its implementation, such as requiring government approval for the sale of certain emphyteutic estates, though it remains unclear whether this actually occurred. Notably, the law did not prevent indigenous individuals from using it to become property owners, which posed the risk of eliminating the communal payments owed to the state, although this risk ultimately did not materialize.³⁹ Additionally, we presume that the shift from a circular on emphyteusis to the enactment of a weakly drafted law in 1844 may have been perceived by prospective *colonos* as inadequately fortified to safeguard speculative interests and facilitate the physical encroachment of white-mestizos upon indigenous territories.

Sixth, the decree of December 1, 1844, signed by President Ballivián, sought to clarify the previous law by specifying the requirement for assessments from three experts to determine the land's value for sale. One expert would be appointed by the individual seeking to acquire the land, one by the governor, and one by the departmental administration. The prescribed sum was to be paid by tenants seeking property ownership, with the stipulation that payment must occur within thirty days; failure to do so would result in physical punishment.⁴⁰ Furthermore, the decree did not clearly delineate the allocation of funds generated from sales of eminent property, apart from an eighth portion earmarked for police funding in regional capitals.⁴¹ The fate of the remaining potential revenue was not specified in the legislation nor in the documentation exchanged between the executive power, the departments, and the provinces, making it difficult to determine its ultimate destination, other than attributing it to the administration itself.

EMPHYTEUSIS AS A CENTRAL POLICY TO UNDERSTANDING STATE-BUILDING IN BOLIVIA

It is crucial to quantify the number of ayllus that may have been impacted by this pivotal legal shift that the government of Ballivián, in alliance with the legislative power, attempted to implement. According to José María Dalence, in 1845, there were 106,132 Indigenous communities in Bolivia, compared with 5,135

38. "Consolidación del dominio directo de fincas enfiteúticas del Estado", *Colección*: vol. 9.

39. "Consolidación de dominio de fincas enfiteúticas de Beneficencia", *Colección*: vol. 10.

40. "Reglamenta la consolidación del dominio de fincas enfiteúticas", *Colección*: vol. 9.

41. "Parte correspondiente a la Policía en el dinero que se obla, por consolidación de dominio de fincas enfiteúticas", *Colección*: vol. 10.

haciendas, comprising a total of 478,084 members.⁴² Those communities situated nearest to centers of state decision-making were the most likely to be immediately affected by the changes announced by Ballivián's policy. As was later observed during the presidency of Mariano Melgarejo, these communities were predominantly located around La Paz.⁴³

However, historians have not reached a consensus regarding the real effects of emphyteusis on the thousands of communities potentially impacted; their assertions vary significantly. Peñaloza interprets emphyteusis as an assault on Indigenous rights, characterizing it as both unjust and absurd, while also emphasizing its connection to colonial practices. He argues that no substantial practical effects ensued, a viewpoint echoed by other scholars.⁴⁴ Often, discussions surrounding the analyzed circular merely draw a connection between the administrations of Sucre and Melgarejo, leaving a 30-year gap unexplained and resorting to a rather abstract and Manichaean narrative of progressive state empowerment in opposition to the downfall of the Indigenous communities.⁴⁵

Rodríguez Ostria rejects this overarching perspective, emphasizing the urgency of detailed and qualitative analyses on this issue.⁴⁶ Soux, in alignment with him, acknowledges the significant role of emphyteusis in the ongoing process of undermining the legal status of indigenous communities, which prompted either reorganization within the ayllus or negotiations with republican political actors, such as provincial governors. This policy instigated changes in inheritance practices, affecting internal relations within the ayllus and influencing their demands for land, thereby altering their relationships with public intermediary authorities.⁴⁷ Langer, Grieshaber, Platt, and Barragán have examined this relationship, also addressing Indigenous resistance to liberal policies and the changes and continuities noted in the latter half of the century.⁴⁸ Notably,

42. Even with those numbers, Dalance tried to undermine communities' importance, detaching them from a continuity with the mythical Inca past and affirming its close expiration, using emphyteusis as an undeniable practical reality (José María Dalance, *Bosquejo estadístico de Bolivia* (Sucre: Imprenta de Sucre, 1851), 233–237).

43. Following Erick D. Langer, "El liberalismo y la abolición de la comunidad indígena en el siglo XIX," *Historia y Cultura* 14 (1988): 1880–1930.

44. Luis Peñaloza, *Nueva historia económica de Bolivia. De la independencia a los albores de la Guerra del Pacífico*, (La Paz: Editorial Los Amigos del Libro, 1983), 84–88.

45. Herbert S. Klein, *Haciendas y ayllus en Bolivia, ss. XVIII y XIX* (Lima: IER, 1995), 165.

46. Gonzalo Rodríguez Ostria, "Entre reformas y contrarreformas: las comunidades indígenas en el valle bajo cochabambino (1825–1900)," *Data. Revista del Instituto de Estudios Andinos y Amazónicos* 1 (1991): 172.

47. María Luisa Soux, "El problema de la propiedad en las comunidades indígenas." In Rossana Barragán, Dora Cajías and Seemin Qayum, comp., *El siglo XIX: Bolivia y América Latina* (Lima: IFEA, 1997), 497–505; what created a relationship on the basis of dependence, according to Roberto Choque Canqui, "La servidumbre indígena andina de Bolivia." In Rossana Barragán, Dora Cajías and Seemin Qayum, comp., *El siglo XIX: Bolivia y América Latina* (Lima: IFEA, 1997), 438–444.

48. Erwin P. Grieshaber, "Survival of Indian communities in nineteenth-century Bolivia: a regional comparison," *Journal of Latin American Studies* 12:2 (1980), 223–269; Erick D. Langer, "Persistencia y cambio en las comunidades

Irurozqui's work scrutinizes how indigenous land ownership became a catalyst for political engagement within the ayllus, manifesting both through insurrection and legal actions for participation. Indigenous communities defended their contributions, viewing them as a guarantee of land possession—something that emphyteusis began to jeopardize.⁴⁹

What is generally agreed upon by these scholars is that Ballivián's policy served as an inspiration for Melgarejo's administration, although it is also common to describe emphyteusis as an anecdotal step in the advancement of liberal land ownership in Bolivia. Consequently, both the temporality and the overall scope of this prolonged process are obscured by analyses that focus solely on its initial and final stages, hindering efforts to contextualize Bolivian emphyteusis within a regional framework and its historical evolution.

In fact, sources indicate that emphyteusis in Bolivia had a profound epistemological foundation, positioning it as a central policy for understanding the broader process of state-building, and there is compelling evidence that emphyteusis was not merely a procedural step, but a mechanism for legitimizing private property and liberalizing land markets on its own. Although the fundamental argument of this study regarding that was articulated by the *visitador* in Chayanta, Potosí, to the Minister of Finance in 1844, it is affirmed that the reflections he articulated resonated with the mentalities of the ruling classes, representing a deeply ingrained conceptualization. As such, his message accurately reflects the government's intentions.

In his communication, the *visitador* revealed that some individuals (specifically whites and mestizos, who were not affiliated with the ayllus in Chayanta) sought government permission to lease land within community territories for cultivation, the establishment of mills, and even for constructing roads that would connect Potosí with Cochabamba. He noted that a significant agricultural investment would benefit local economy and asserted that it would not harm the communities.

Most critically, his discourse included the following statement:

“Todo esto me parece muy ventajoso a la Nación y a los intereses [sic] públicos. Advierto también que cultivados esos terrenos por manos más laboriosas y más inteligentes que las de los indíjenas [sic] ofreserían [sic] mayores y más variadas

indígenas del sur de Bolivia en el siglo XIX,” *Data. Revista del Instituto de Estudios Andinos y Amazónicos* 1 (1991), 61–83; Rossana Barragán, “¿Ladrones, pequeños empresarios o trabajadores independientes? K’ajchas, trapiches y plata en el cerro de Potosí en el siglo XVIII,” *Nuevo Mundo Mundos Nuevos* 15 (2015), 1–2.

49. Irurozqui, “The Sound of the Pututos,” 85–92.

producciones. La mezcla [sic] de personas racionales con los indígenas [sic] mejoraría a estos y quisá [sic] después de algún tiempo viéramos confundidas estas castas. Esta práctica tampoco es nueva, y se halla establecida por el reglamento jeneral [sic] de revisitas, mas no he querido avanzarme de las atribuciones detalladas a mi comición [sic] por los supremos decretos del caso.”⁵⁰

These considerations expand the understanding of the role liberal land policies played in shaping Indigenous–state relations. The visitador’s remarks elucidated the potential offered by emphyteusis, particularly in relation to the figure of the colono (“rational person”). Embodying the power of “civilization,” the colonist was perceived as a vector of progress and the best opportunity for the capitalist frontier to penetrate Indigenous communities in regions such as Chayanta. Whites and mestizos were envisioned as instructive models for Indigenous peasants, enhancing production primarily of food for both the internal market and, more desirably, for exportation, ultimately aiming to homogenize the Bolivian countryside.⁵¹

Numerous individual petitions to the government sought to use the legal provisions offered by emphyteusis to acquire agricultural lands within and between ayllus beyond those in Chayanta. In 1844, a visitador in Tacopaya urged the administration to lease communal lands to investors wishing to establish a mill, which would significantly enhance production and revenue.⁵² In this instance, land distribution occurred not only to colonists, but also to landless Indigenous individuals, although the exact proportions remain unknown.⁵³ Landless individuals were included, as it was believed that, beyond providing “good examples” of agricultural exploitation among communal crops, the implementation of emphyteusis could improve “public morality and national convenience” by actively educating the “idle” in capitalist production. The Minister of Interior told provincial visitadores that:

“sin ocupación útil, la corrupción es necesaria, especialmente en la lista de los hombres, que por su condición propia se hallan más espuestos [sic], y se propuso S.E. evitar este mal a los indígenas [sic] sin tierras, disponiendo, que les fueran adjudicadas [. . .], porque arrancados así del ocio, y de la insignificancia [sic] infamante a que condena a los vagos el buen sentido público, no solo reportarán para si mismos los beneficios de la industria agrícola, obteniendo además la

50. Visitador of Chayanta to the Ministry of Finance, August 15, 1844, Fondo Ministerio de Hacienda [MH], 96/21, Archivo y Biblioteca Nacionales de Bolivia [hereafter ABNB]. The original writing is conserved, as done with the following texts.

51. Ministry of Finance to José Ballivián, January 11, 1842, Fondo Ministerio del Interior [MI], 91/11, ff. 1-1r, ABNB; Governor of Muñecas to Prefecture of La Paz, November 11, 1843, MI, 96/51, ABNB.

52. Visitador of Tacopaya to the Ministry of Finance, July 30, 1844, MH, 98/39, f. 1, ABNB.

53. Visitador of Chayanta to the Ministry of Finance, August 18, 1844, MH, 96/21, ABNB.

importancia, que en las relaciones sociales se da a los productos, sin que también fueran útiles al Estado, [...] en la del aumento del fondo destinado, a conservar la existencia [sic] nacional.”⁵⁴

As land constituted a leased public property, the executive could distribute it to whomever they deemed appropriate when emphyteutic contracts expired due to misuse or death. Moreover, through the authority of provincial governors, land could be allocated to Indigenous individuals lacking access to stable contracts for arable land. Such decisions could be enacted through provincial authorities, which were empowered to oversee land redistribution in accordance with the resolutions and orders outlined previously. This approach aimed not only to resolve recurrent judicial disputes over land within ayllus, thus freeing indigenous peasants to focus on production and resource acquisition for the payment of contributions, but also to address the deteriorating provincial judicial administration, which was mired in ongoing lawsuits regarding encroachments and boundary disputes over communal lands.⁵⁵ In fact, this policy of strengthening provincial authority also targeted the notorious land accumulation by *caciques* in the provinces of Omasuyos and Ingavi.⁵⁶

Furthermore, the emphyteutic legislation emphasized not only the educational advance of the capitalist frontier, but also its political dimension. If the state aimed to control and redistribute its leased properties, *revisitas* (inspections) were indispensable for assessing actual divisions, land use, leasing practices, and the expected contributions from communities.⁵⁷ This explains the government's renewed interest in dispatching fiscal experts to various provinces during the 1840s, including Paria and Carangas (Oruro), Omasuyos and Ingavi (La Paz), Mizque (Cochabamba), and Chayanta, among many others.⁵⁸ Particularly, the aforementioned cases were significant due to the impracticality of conducting

54. Ministry of Finance to visitadores, April 26, 1844, MI, 83/27, ABNB.

55. Governor of Tapacarí to Prefecture of Cochabamba, March 14, 1842, MH, 86/19, ff. 58–59, ABNB; Agent to Prefecture of Cochabamba, August 3, 1842, MH, 86/19, ff. 60–61, ABNB (“son también muy comunes las usurpaciones que se notan, pues que hay indígenas que se han apropiado de asignaciones vacantes y se hallan en posesión [sic] de dos y tres mientras que los demás careciendo de terrenos para el cultivo [sic] se ven imposibilitados [sic] para el pago de la contribución de su clase y sirviendo como colonos a los usurpadores que no satisfacen más que una contribución en perjuicio de los intereses del Estado”).

56. What effectively limited the production of the community destined to exportation, at the expense of what was pursued by the executive (Visitador of Omasuyos and Ingavi to the Ministry of Finance, June 25, 1844, MH, 96/21, ABNB).

57. “Por la Suprema Circular de 11 de Diciembre de 1842 se hallan declarados propiedad del Estado todos los terrenos que poseen los indígenas [sic] originarios [sic], con nombre de comunidad. El artículo 19 del Código de procedimientos ordena que los Jueces de Letras de las Capitales de Departamento conozcan [sic] privativamente en todos los negocios en que se versen intereses del Estado. Conforme a este artículo, el juez de letras primero de la Capital debería conocer de todos los litigios a que sobre estas tierras se ventilan en las ocho Provincias de que consta el Departamento” (Corte Superior de La Paz to the Ministry of Finance, January 13, 1845, MH, 99/3, f. 1, ABNB).

58. Governor of Paria to Prefecture of Oruro, March 4, 1844, MI, 102/28, ff. 2–3, ABNB; Visitador of Chayanta to the Ministry of Interior, June 30, 1844, MI, 102/29, ABNB; Agent to Prefecture of Cochabamba, August 3, 1842, MH, 86/19, f. 60, ABNB; Visitador of Chayanta to the Ministry of Finance, July 22, 1844, MH, 96/21, ABNB.

revisitas. The vast acreage requiring revision entailed considerable resource expenditure on an undertaking that, in many cases, could prove futile due to agricultural overcrowding or infertility. Land could not be redistributed without breaching contracts or facing diminishing returns, which could trigger political and economic disruptions.

The implicit dangers posed by the revisita were a cause for concern. A notable case occurred in Mizque in 1842, where the prefect of Cochabamba underscored the necessity of controlling and delineating land, as agricultural boundaries had been partially ignored since 1792.⁵⁹ The prosecutor of the Supreme Court of Justice acknowledged the value of conducting a revisita, but cautioned:

“que no podría practicarse la visita, sin quitar tierras de unos indígenas, añadir a las de otros, y espeler [sic] a los que se creyese detentadores [. . .]; que acaso la visita proporcionaría golpes de autoridad para, sin audiencia de interesados ni formas legales, turbar y desatender la posesión [sic], título muy importante por derecho público, civil e internacional con respecto al goce de cualesquier bienes, y cuya privación se llama despojo o público, o privado [. . .]; que de quitarse esas tierras, habría una gran pérdida en las costumbres, en la riqueza pública y en los más caros intereses de la nación, como lo prueba el ejemplo de la Inglaterra donde la extinción [sic] de los monasterios y adjudicación de sus posiciones urbanas y rurales al estado produjeron multitud de pordioseros.”⁶⁰

In this correspondence, the prosecutor explicitly argued against the liberal disengagement and confiscation of land, expressing concerns about poverty and even the potential for Indigenous rebellion should the state proceed to displace individuals from their lands. He was, therefore, advocating for a conservative approach. This discussion illustrates the existence of a debate among the ruling classes regarding a harsh application of liberal land ideals, exemplified by the prefect's position, versus a more tempered approach that deferred the clash between models while not renouncing the foundational principles of private property. Should emphyteusis function as intended, it would facilitate the establishment of a developed economic frontier and a consolidated group of individualistic capitalist producers and exporters within the Indigenous population.

Nevertheless, the approach represented by Ballivián's government was insufficient to achieve its principal objectives. The expansion of private

59. “La seguridad de las propiedades territoriales y el conocimiento de sus límites, es, sin duda, una de las grandes ventajas que ofrece la civilización, y de esta ventaja todavía no gozan los aboríjenas [sic]” (Prefecture of Cochabamba to the Ministry of Finance, October 11, 1842, MH, 86/19, f. 191, ABNB).

60. Prosecutor of the Corte Suprema de Justicia to Prefecture of Cochabamba, November 5, 1842, MH, ff. 192–192r, ABNB.

property was limited, primarily due to two factors: the political actions of ayllu members against what was perceived as usurpation, coupled with the state's lack of resources to impose its decisions; and the weakness of the policy in terms of republican legitimacy, which failed to provide white-mestizo colonists with adequate security for their investments and their encroachment upon Indigenous lands.

First, most of the revisitas during this period were halted not only due to economic inadequacy, but also because of Indigenous resistance and the possibility of revolt. In 1847, a resurgence of historically recurrent Indigenous rebellions occurred in the region.⁶¹ The scarcity of public funds compelled the executive to demand that ayllus prepay their contributions, alienating indigenous support from Ballivián and shifting it toward alternative political options, such as José Miguel de Velasco, and notably, Manuel Isidoro Belzu.⁶² Therefore, although it could be argued that Ballivián's government was challenging the pact between the ayllus and the State, which was based on the payment of tribute in exchange for the respect of communal property, in practice, it actually reinforced this arrangement, placing greater emphasis on the Indigenous contribution as a source of revenue for the treasury. This situation underscored the capacity of Indigenous communities to manipulate legitimacy, thereby affirming their status as active political actors.⁶³ By demonstrating their political agency, these communities maintained their communal property over agricultural lands and their legal personality throughout the decade.⁶⁴

Although a civic-military uprising in 1847 succeeded, with widespread Indigenous support for the change, the loss of Indigenous backing for Ballivián's government cannot be directly attributed to the emphyteutic legislation; however, the threat of losing their land undoubtedly influenced their direct involvement in the revolt. In sum, Indigenous resistance was not always linked to events directly related to violence and could be associated with the coercion of public employees or the fabrication of physical injuries to justify the non-payment of the tributo or a potential emphyteutic rent.⁶⁵

61. Recurrent as one can follow a clear path of rebellions dating from the eighteenth century (Leon G. Campbell, "Recent research on Andean peasant revolts, 1750–1820," *Latin American Research Review* 14:1 (1979), 3–49; Charles F. Walker, *The Tupac Amaru Rebellion* (Cambridge, MA: Harvard University Press, 2014)).

62. Ministry of Finance to the Ministry of Interior, May 27, 1846, MI, 113/17, ABNB; May 30, 1846, MI, 113/17, ABNB. Both oppositors were to be the following presidents of Bolivia; Velasco took the oath for only few months (Iruruzqui, "The Sound of the Pututos," 92). Belzu's presidency would be more decisive.

63. In this case, using violence to defend what they perceived as their rights (see Marta Iruruzqui, *Ciudadanos armados de ley. A propósito de la violencia en Bolivia, 1839–1875* (La Paz: Plural Editores – IFEA, 2018)).

64. Tristan Platt, "Liberalismo y etnocidio en los Andes del sur," *Autodeterminación* 9 (1991), 20; J. Gutiérrez Ramos, "Comunidades indígenas, liberalismo y estados nacionales en los Andes en el siglo XIX," *Anuario de Historia regional y de las fronteras* 4:1 (1998), 314. Then, emphyteusis was part of a cautious liberal offensive, but this extreme necessity of the contribution contradicted the political movement in its own basis.

65. Colás, *La Presidencia de José Ballivián (1841–1847)*, 142–143.

Secondly, a more hypothetical question arises from the preceding arguments: could it be that emphyteusis failed not only due to the state's incapacity to impose it upon ayllus that resisted, but also because it was inadequately constructed to pass through the rituals of republican legitimization? The vacillation, indecisiveness, and inconsistencies evident in the legal framework reflect hidden realities regarding the relationship between the ostensibly liberal state and Indigenous communities, particularly the former's inability to integrate the latter under terms of individual property and capitalist agriculture.⁶⁶ The transition from a circular on emphyteusis (introduced in 1842) to a law in 1844, which was drafted in ambiguous and evasive terms, likely appeared insufficiently robust to potential colonos, who may have perceived it as inadequate for protecting speculative interests and enabling the physical encroachment of white-mestizos onto indigenous lands. Consequently, the capitalist frontier could not advance as desired, perpetuating usurpation as a preferred method for acquiring land by colonists, provincial governors, and public officials. This practice was antithetical to the state, intent on controlling the influx of colonists onto ayllu lands as part of a managed liberal expansion.⁶⁷

In summary, while the enactment of legislation was the primary vector in the state-building process, in the context of land ownership, the actions of the ruling classes adapted to Indigenous resistance, striving to promote the advancement of the capitalist frontier through the controlled introduction of "civilized" colonists as instructive "good examples." Concurrently, this approach aimed to undermine communal property, homogenizing agricultural ownership and taxation. Jorge Mallo, a Bolivian intellectual actively engaged in politics during that decade, recognized this attempted process and sought to refine it, ensuring continuity of Ballivián's policies over time.

A BRIEF LOOK AT THE EMPHYTEUTIC LEGACY IN JORGE MALLO'S WORK

Considering the previous analysis, the connection between Ballivián's policies and the conflict between Melgarejo's administration and the ayllu in the 1860s has remained elusive in most historical works, likely due to a significant lack of sources. As will be shown below, the potential for establishing this link lies not in legal frameworks, but in the public sphere. Jorge Mallo's pamphlet serves as a crucial point in this narrative, presenting a hybrid proposal that bridges the approaches of José Ballivián and Mariano Melgarejo.

66. Gutiérrez Ramos, "Comunidades indígenas, liberalismo," 304–314.

67. Governor of Tapacari to Prefecture of Cochabamba, March 14, 1842, MH, f. 58, ABNB; Visitador of Omasuyos and Ingavi to the Ministry of Finance, June 25, 1844, MH, 96/21, ABNB.

Written in 1861, Mallo's work offers a comprehensive historical context for the social and economic conditions in 1860s Bolivia. It critiques the tax system, particularly its impact on Indigenous communities, stating that those who suffer from "no crime but simplicity" and "natural ignorance" have become worse off than any serfs or enslaved persons. Furthermore, Mallo presents a project aimed at fundamentally reforming the country's fiscal policy, backed by detailed economic data from the 1857 state budget. His text also addresses issues related to currency, public debt, and customs.⁶⁸

Despite its depth, Mallo's work has largely been overlooked by historians, with notable exceptions such as Irurozqui's analysis.⁶⁹ Irurozqui emphasizes that Mallo was not alone in discussing land tenure during the 1860s, as public debates around this topic were increasing.⁷⁰ The significance of Mallo's text lies in its ability to experiment with liberal ideas while occupying a middle ground between the two administrations mentioned.

Mallo explicitly aimed to improve the conditions of the indigenous population. He condemned the contribution tax, viewing it as a tyrannical remnant of vassalage that curtailed individual freedom, rendered the land market irrelevant, and constrained labor within speculative industries.⁷¹ He argued that the collection of this tax led to a deterioration in the living conditions of Indigenous people since Latin American independence movements.⁷² However, this humanitarian sentiment was quickly overshadowed by his underlying economic motivations. Mallo believed that Bolivia's independence, achieved through political revolution, was incomplete without concurrent economic and fiscal reform. He posited that the contribution tax, the *tributo*, posed the greatest obstacle to advancing a liberal economic model. Without its reform, Bolivia would remain trapped in a colonial legacy, perpetuating subsistence agriculture.⁷³

68. Jorge Mallo, *Aplicación económica cambiando el sistema rentístico de la República conforme a las costumbres modernas por el ciudadano Jorge Mallo* (Sucre: Imprenta de Beeche, 1861).

69. Marta Irurozqui, "Las paradojas de la tributación. Ciudadanía y política estatal indígena en Bolivia, 1825–1900," *Revista de Indias* LIX:217 (1999), 706–707. Also, one must consult Víctor Peralta and Marta Irurozqui, *Por la Concordia, la Fusión y el Unitarismo. Estado y caudillismo en Bolivia, 1825–1880* (Madrid: CSIC, 2000), 86.

70. It is not the intention of this paper to analyze that debate, with authors, apart from Mallo, such as Melchor Urquidí, José Vicente Dorado, Miguel María Aguirre and Pedro Vargas, as accurately shown by Irurozqui, "Las paradojas de la tributación," 721–722.

71. "La independencia de América, práctica para todos los americanos, i aún los extranjeros [sic] que han entrado en posesión del comercio libre, no lo es para el indígena [sic] que sigue con esa marca de basallaje [sic] impuesta por la mano férrea del fanático Felipe 2^o" (Mallo, *Aplicación económica*, 12).

72. Which, in fact, is rejected by investigations such as those of Antonio Mitre, *El Monedero de los Andes: región económica y moneda boliviana* (La Paz: HISBOL, 1986), 11; or Tristan Platt, *Estado boliviano y ayllu andino. Tierra y tributo en el Norte de Potosí* (La Paz: Biblioteca del Bicentenario de Bolivia, 2016), 81.

73. Mallo, *Aplicación económica*, 27.

His proposals were far from conventional. While seeking to foster legal and social homogeneity in line with the dominant discourse, he did not advocate for the abolition of communal property or the dismantling of the ayllus. Instead, he focused on protecting Indigenous agricultural production. His solution echoed Bolivian legal traditions, resembling emphyteusis in several respects, while simultaneously laying the groundwork for the eventual establishment of private property and capitalist agriculture.

Although the document under consideration is a pamphlet intended for public distribution, Mallo employed a literary strategy designed to imbue it with political significance and to stimulate debate: he framed his ideas as though they were a four-article legislative proposal to be presented before Congress. The first article proposed the abolition of the Indigenous tributo within 18 months. The second prohibited the demand for personal services, such as *pongos* or *mitanis*, from both private individuals and the state. The third transformed the contribution into a tax on the basis of the amount of land an Indigenous individual possessed, allowing them to retain their land as property while preventing its sale to avoid pressure from haciendas. The fourth outlined how to publicly assess the value of Indigenous lands.⁷⁴ As might be expected, that proposal did not reach Congress.

Mallo cleverly anticipated the potential revenue loss for the state resulting from the abolition of the contribution by proposing new mechanisms to replace those funds.⁷⁵ He argued that eliminating the contribution would not incur costs for the state treasury but would provide significant benefits for Indigenous people, promoting their legal equality with white-mestizos and alleviating the economic discrimination associated with the contribution. Additionally, Mallo's emphasis on individual taxation and property linked his ideas to those of Melgarejo and subsequent proposals.⁷⁶

Moreover, the implementation of Mallo's law would have ramifications beyond the legal sphere. His arguments echoed those of the visitador in Chayanta, directly connecting his proposal to Ballivián's policies. He stated:

“No esperemos de un día para otro la realización literal del nuevo sistema rentístico perfectamente adecuado a nuestra natural condición. La ociosidad de

74. Mallo, *Aplicación económica*, 15–16.

75. Taking his pretended law as basis, “se reduciría esta contribución de 836,606 pesos a lo siguiente por lo que pagan los indígenas [sic] con terrenos, según la Memoria del Ministerio de 1857: Orijinarios [sic] con tierras 248,000—Agregados id. 11,000—Forasteros id. 23,500—Total 282,500. Quedan para remplazar 554,106” (Mallo, *Aplicación económica*, 16).

76. Brooke Larson, *Indígenas, élites y Estado en la formación de las repúblicas andinas, 1850–1910* (Lima: IEP – PUCP, 2002), 151–154.

ra[z]a, la ineptitud hereditaria para las industrias i la libertad, no acabarán con razonamientos i amoniciones [sic]; acabarán por la presencia estimulante de poblaciones activas, formadas en la acción del trabajo, mediante un tiempo más o menos dilatado.”⁷⁷

The recurring theme of the “good example” underscored a strategy of production and political organization that positioned a “superior” or “civilized” way of life against the “inferior,” pre-liberal lifestyle that Indigenous people were perceived as stubbornly clinging to. For Mallo, this exemplary presence would facilitate economic development within Indigenous communities and encourage their transition to individualist agricultural practices. He believed that Indigenous people could not fully comprehend what was best for them and required public tutelage for their own benefit and that of the nation; he wrote, “[para que] comprendan poco a poco las ventajas del amor a la propiedad.”⁷⁸ Thus, parallels with Ballivián’s administration become clear, as Mallo sought outcomes similar to those Melgarejo would later pursue.

Additionally, both the Ballivián administration and Mallo’s proposals suggested that despite acknowledging their “corto ingenio,” the Bolivian ruling class believed that Indigenous people could learn and implement a form of capitalist agricultural production. This implies a confidence in the capacity of certain ayllu members to act as agents of capitalist progress, suggesting that their total disappearance, as a “raza de atraso,” was unnecessary. Therefore, while the juridical anomalies of Indigenous communities needed to be addressed, their members as living individuals were not to be eradicated. This perspective aligns with late colonial traditions of coexistence and diverges from later positions related to positivism and social Darwinism.⁷⁹

Recognizing the evident changes and continuities, Mallo’s proposals reflect both the legacy of Ballivián’s legislation and the anticipatory groundwork for Melgarejo’s policies. The author presented a series of proposals in his pamphlet, partially published in the form of a hypothetical law. It cannot be stated with certainty that these proposals had a decisive influence on the subsequent decisions that ultimately led to the disentangling of Indigenous lands. However, an intertextual relationship between Mallo’s text, Ballivián’s attempts, and Melgarejo’s policies did exist and can be interpreted as marks of a continuous chain. It follows that the political class’s concern with land ownership and its relationship with Indigenous communities—first initiated during the republican

77. Mallo, *Aplicación económica*, 11–12.

78. Mallo, *Aplicación económica*, 14.

79. At least, for the Indigenous people submitted to statal authority. In Platt, “Liberalismo y etnocidio,” 12; Rivera Cusicanqui, *Violencias (re)encubiertas en Bolivia*, 40.

period under Sucre's presidency and undergoing certain mutations during Ballivián's era—did not disappear from the political scene and resurfaced with Melgarejo; rather, it never truly left it. Nevertheless, this discussion should not be sought in executive debates or legislative sessions but in the public sphere. From there, Mallo, in a privileged position as chief accountant, was able to influence the debate. Thus, we argue that not only Jorge Mallo, but also the broader public sphere took up the task of advancing economic and political boundaries in Indigenous agriculture, continuing the dialogue surrounding land ownership and setting the stage for the legal homogeneity imposed in the 1870s.

FINAL REMARKS

The process of state-building in Latin America created an oscillating continuum that reflected the strengths and weaknesses of the various political actors involved. Taking the region as a whole, on one side were those advocating for the establishment of a republican state; on the other, those defending local interests and alternative forms of property rooted in pluralism, tradition, and Indigenous sociopolitical structures. This dynamic, particularly evident in Andean countries, constituted what Zavaleta described as an “abigarrada” social formation—a layered society divided into dominator and dominated.⁸⁰ However, this framework is not as straightforward as it may seem; societal layers interacted with one another, and from these “unliberal” relations emerged a broader evolving social process.⁸¹

The contradictions evident during the state-building efforts of nineteenth-century Latin America can be viewed as part of a political experimentation process involving both society and its rulers. These actors attempted to mold new states and nations to fit their conditions, often lacking clear guidance and having to improvise solutions.⁸² Given that reforms frequently strayed from liberal orthodoxy, states had to adapt in response to the actions of citizens, the public sphere, and specifically, Indigenous communities. The actions of the ayllus actively delayed the rural institutionalization of republican power structures by presenting a threat of rebellion from a maximalist perspective while also exerting influence through less spectacular means, such as judicial demands, land disputes, and protests directed at the governors. Their understanding of the state's economic urgency positioned them as a tangible local counter-power, capable of counteracting state moves and affirming the validity of communal property.⁸³

80. René Zavaleta Mercado, *El Estado en América Latina* (La Paz: Los Amigos del Libro, 1989), 175–177.

81. Oszlak, “Reflexiones sobre la formación del Estado,” 1; Irurozqui, “The Sound of the Pututos,” 87.

82. Antonio Annino and Marcela Ternavasio, coord., *El laboratorio constitucional iberoamericano: 1807/1808–1830* (Madrid: AHILA – Iberoamericana-Vervuert, 2012), 9.

83. Louis Dumont, “La Communauté anthropologique et l'idéologie,” *L'Homme* 18:3–4 (1978), 89.

This relationship between Indigenous people and agricultural land was common across many Latin American countries throughout the nineteenth century, prompting questions about whether the existence of communal lands and communities was truly contradictory to liberalism, given their significant role in the regional state-building process. The conclusions of this article support the argument that heterogeneity in land ownership was an intrinsic part of the process of state formation in Latin America.

However, emphyteusis did not in fact result in significant practical changes in territorial organization, as the regulatory structures of traditional power persisted, albeit with some adaptation in their strategies. As demonstrated by Soux, emphyteusis impacted 1840s Bolivia by altering inheritance processes and the relationship between Indigenous institutions. It also introduced a degree of capitalist elements into ayllu lands, aimed at promoting capitalist advances through agrarian education, even if the results did not meet government expectations. Furthermore, Ballivián's initiatives undeniably influenced public opinion, as seen in Mallo's work, and shaped future liberal policies.

In conclusion, the clash between private and communal property allowed Indigenous people to participate in the state-building process. They engaged in local politics, paid contributions, and contributed to internal market movements, all while feeling that their legal status was protected and that they were expressing popular will.⁸⁴ The studied process, initiated by Sucre and continued by Ballivián, was culminated when increased state revenues rendered the contribution tax unnecessary for the budget, which prompted the juridical disappearance of the ayllu in 1874.⁸⁵

ACKNOWLEDGEMENTS

This work is part of the I+D+i project PID2023-147467NB-I00, "Las alteridades de la nación. América Latina, mediados del siglo XVIII-mediados del siglo XX." I am grateful to Charles Walker and José Juan Pérez Meléndez for our conversations on this topic during my time as a visiting scholar at the University of California, Davis. This text owes much to the mentorship of Pilar García Jordán and her scholarly contributions. I would also like to thank the anonymous reviewers and the members of the editorial board of *The Americas* for their insightful comments, which have helped shape the final version of this article.

84. Marta Irurozqui, "El espejismo de la exclusión. Reflexiones conceptuales acerca de la ciudadanía y el sufragio censitario a partir del caso boliviano," *Ayer* 70:2 (2008), 63–67.

85. Platt, *Estado boliviano y ayllu andino*, 77–80.

AUTHOR BIOGRAPHY

Pol Colàs is a researcher and substitute professor at the Universitat de Barcelona (Spain). He is the author of *La Presidencia de José Ballivián (1841–1847). Construcción del Estado e imposición de un proyecto nacional en Bolivia* (La Paz: Plural Editores, 2024).

Universitat de Barcelona, Spain
polcolas@ub.edu

POL COLÀS 