

Plurinational Juristocracy and Rights from Below at Bolivia's Gas Frontier

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8.1 Introduction: In What Justice Can We Believe?

In January 2022 I accompanied a group of human rights activists from Tarija city to conduct a series of workshops in Chiquiacá Canton in the northeast of the Tariquía National Reserve of Flora and Fauna, the site of new hydrocarbon contracts between the Bolivian state oil company YPFB and the Brazilian company Petrobras. The workshop took place in a boarding house for schoolchildren located opposite Chiquiacá's Educational Center. As people arrived, the four workshop organizers, from the activist group Defensores de Tariquía (Defenders of Tariquía) and the feminist nongovernmental organization Mujeres en Acción (Women in Action), asked them to register their name, community, mobile phone number, and identity card number on a form. They then distributed miniature copies of Bolivia's 2009 National Constitution and asked recipients to sign a separate form. I noted some wariness among participants and remembered what I had been told about the "consultation" process in Chiquiacá: that representatives of the state oil company had asked people to sign a form with their identity card numbers in exchange for a free lunch, then used these documents as evidence of their consent for extraction.

On signing in, participants received a package of documents pertaining to the three-part workshop series, which was entitled "Primer of Fundamental Economic, Social, Cultural, and Environmental Rights: Getting to know our rights we defend territory, life and our identity."

A young lawyer led the first activity, asking "What are our fundamental rights?" Community members responded noting various rights such as "the right to life." We looked together at Article 15 in our mini-Constitutions. He explained: "The Constitution is the mother of all the laws. All authorities must submit to it; no one is above it." Following his summary of the previous workshop, an older woman whom I recognized

as the vice president of Chiquiacá's Defense Committee, Nelly Coca, raised her hand to speak. "We know all about the Constitution and there are many laws," she said. "The question is: Do they comply with it? And what can one do to ensure that laws are complied with?"

The young lawyer responded indirectly, by elaborating a case intended to illustrate the law's capacity to deal with the justice claims fairly, based on evidence. In this fictional case, a motorist swerved to avoid a stone and hit a motorcyclist. Who's fault was it? It turned out that the motorcyclist had no plates, helmet, or license. The implication seemed to be that the motorcyclist was culpable – something I felt unconvinced of. Nelly responded by mentioning a real case that happened in a nearby community, where a motorist hit and killed a cyclist from a poor family who was cycling somewhere to get help for a sick relative. The motorist was not charged because he had money to pay lawyers, while the family of the cyclist were forced to pay for damage to the vehicle in addition to losing their son. She concluded, reinforcing her original point: "In what justice can we believe?"

This exchange might appear as an abstract discussion of law's incapacity to deliver justice in the context of a society marked by racial and class divisions. And yet, it acted as a proxy for a question that was at the heart of an ongoing struggle over hydrocarbon development in the Tariquía Reserve. This conflict had brought community activists in Chiquiacá into contact with a new set of regional actors – human rights workers, NGOs, lawyers, environmentalists – who were committed to juristocratic forms of politics. Yet, as will become clear, they already had reasons to be skeptical of the promise of law and rights. Nelly's challenge expressed a moment of juristocratic reckoning, in which the radical promise of Bolivia's 2009 Constitution, enshrined in our pocket-sized texts, was being put to the test by a series of unsuccessful constitutional challenges, as well as encounters with police and park guards defending hydrocarbon interests. Still, workshop participants had evidently not given up on the promise of rights as instruments of territorial defense and movement building. Indeed, as Nelly herself declared in a closing speech: "Look: the people who are here, how many of them were in the march? [implying few had joined recent mobilizations against extraction]. Thank God that we're here learning what are our rights are to the Reserve."

The role of human rights at extractive frontiers is marked by a paradox. On the one hand, processes of accumulation by dispossession that characterize these spaces frequently act as a catalyst for the mobilization

of rights by affected communities. Indeed, the very existence of certain rights, such as the right to prior consultation, is a result of past struggles by those facing dispossession. In this sense, the historical coincidence of neoliberalism and the rise of human rights is not merely a result of elite collusions (Hirschl 2004), but also of on-the-ground struggles by communities whose territories are being opened to investment by transnational corporations. We might say that capitalism and rights are locked in an awkward embrace, part of a common process of territorial expansion.

At the same time, the promise of rights is routinely undermined by the territorial and political imperatives of extraction. The implementation of rights depends on the operation of state power, but postcolonial states are often trapped in relations of economic dependency that render their performance of sovereignty and national development contingent on their ability to secure the resource-accessing claims of transnational corporations. In many cases, communities' rights are from the outset constrained by hierarchical relations between national and international (and in some cases, foreign national) law that protect corporations' right to conquest and future profit. Communities' rights may be protected in law but selectively implemented in practice due to prevailing relations of land, political economy, and social power (Anthias 2018). Of course, "the state" is not a homogenous entity, but an "effect" (Mitchell 1991) and site of contestation between competing interests and governmental projects. The implementation of law and rights – which involves various branches and levels of state power – is itself a terrain of struggle, in which the capacity of local communities to defend their own conceptions of rights comes up against the capacity of extractive interests to bend the law in their favor.

All this makes extractive frontiers privileged sights from which to interrogate the dialectics of what the editors of this volume term "juristocratic reckoning." They define this as a two-part process wherein the law and legal categories become elevated, invested with unusual weight and responsibility, and yet ultimately fail to usher in the utopian future that the juristocratic transformation promises. By exploring how resource frontiers intensify this dynamic, this chapter offers a political ecology account of juristocratic reckoning. That is, I draw attention to the role of conflicts over territory and resources in shaping everyday encounters with the promise and the limits of law. Indeed, I argue that processes of accumulation by dispossession, and the concomitant use of law to facilitate the resource-accessing claims of capital, represents a crucial context for processes of juristocratic reckoning.

Bolivia – the site of a radical experiment in plurinational constitutionalism, which unfolded alongside increased state participation in extraction – offers a fruitful example through which to explore such dynamics. Based on an examination of the unfolding conflict over natural gas development in the Tariquía Reserve, I trace how encounters with the limits of law give rise to extralegal forms of politics – including embodied forms of protest and territorial defense – as well as forms of juristocracy “from below,” through which local actors seek to redefine rights beyond parameters set by capital and the state. I argue that community activists see themselves as defending rights *against* the state – that is, as custodians of a juristocratic settlement achieved through popular mobilization that the state is itself violating due to its relations with transnational extractive corporations.

The remainder of this chapter is structured as follows. The first section engages scholarly debates on human rights as instruments of social transformation, arguing for extending philosophical critiques of rights through ethnographies of rights-based struggles. Section 8.3 considers Bolivia’s recent history of transformative constitutionalism, arguing that a post-neoliberal juristocratic settlement encounters its limits at extractive industry frontiers. The final section provides an ethnographic account of juristocratic reckoning in the context of the ongoing conflict over hydrocarbon development in the Tariquía Reserve.

8.2 Rethinking Rights through Ethnographies of Struggle

The concept of juristocracy belongs to a long tradition of leftist skepticism regarding the possibilities of human rights to address the systemic crises and inequalities produced by capitalist development. The term was coined by Ran Hirschl to describe the post-cold war rise of the “new constitutionalism” as an ideology in which political demands were “juridified” in the form of a bill of rights, to be overseen by a strengthened independent judiciary. While such reforms are often associated with democracy, social justice, or universal rights, Hirschl argued that they were in fact part of political and economic elites’ attempts to insulate policymaking from the vicissitudes of democratic politics. The international human rights movement from the 1970s coincided with the imposition of neoliberal reforms, which devastated the lives of many people in the Global South (Klein 2007). Critics have argued that human rights promote forms of subjectivity that are compatible with the economic imperatives of neoliberalism (Brown 2004). Nancy Fraser (1995)

was among the first to question the long-term consequences of the turn to rights-based recognition as a new framework for “postsocialist” politics. South Africa’s post-apartheid transition is taken as a paradigmatic example of failures of law and rights to address not only economic inequalities, but also postcolonial demands for land redistribution and racial justice (Zenker 2014). As Mark Goodale summarizes (in this volume) “the global human rights revolution would prove to be no match for either the deep-seated structures of global, regional, and national economic inequality . . . or the vast spectrum of demands for justice . . . rooted in particular places, particular histories.”

A more historically grounded critique of human rights has been developed by decolonial and feminist scholars, who have argued that the “human” in human rights – understood as sovereign, self-interested, and separate from nature – is inextricably linked to the rise of modern capitalism and was shaped through the exploitation and dehumanization of colonized peoples, as well as the denigration of women and working-class populations in Europe (Rivera Cusicanqui 2010). The fact that the earliest discussions of human rights doctrine were debates on the humanity of Amerindians is a reminder that human rights were born of histories of conquest and slavery. Scholars have noted the limitations of rights for contemporary Indigenous struggles for self-determination, due to their compatibility with capitalist development and their tendency to reinscribe notions of sovereignty and property grounded in histories of indigenous dispossession (Watson 2002; Coulthard 2014; Anthias 2018).

In light of such critiques, it is tempting to conclude that human rights have reached their “endtimes” (Hopgood 2013). Indeed, an early iteration of the proposal for this edited volume was entitled “After Law.” As discussions at the “After Law” workshop made clear, however, proclamations of an “end of rights” appear out of step with the actual social and legal struggles that many of the contributors study. They are also politically ambivalent in a context where human rights are increasingly under attack from right-wing populism. This volume’s revised focus on “juristocratic reckoning,” in contrast, recognizes that efforts to redress social inequalities through law and rights routinely encounter their limits, while maintaining an ethnographic openness as to what might emerge from such encounters.

My contribution to this debate starts from an observation that in many parts of the world social movements and communities claiming rights are often among the most vociferous critics of both neoliberal capitalism and colonial histories of dispossession (see also Sieder, this volume). This

suggests that law and rights are not merely instruments of elite rule, but are sites of discursive and material struggle by those who are, and have historically been, at the sharp end of liberalism's imbrication of law, capital, and racialized dispossession. As Lara Montesinos Colman (2023: 4) argues:

We should not assume in advance that rights talk constrains emancipatory change or that human rights operate only within the confines of hegemonic political horizons. Indeed, the very idea that we should decide “for” or “against” human rights only really makes sense when we by-pass the politics of struggle.

Her enquiry into human rights as a “vocabulary of resistance” builds on the seminal work of E. P. Thompson (1975), who showed that law was not only an instrument of class rule, but also a forum in which forms of class conflict were fought out. Law and rights have also played a central role in anticolonial struggles. The historical genealogy of human rights must include not only the Valladolid debate of 1550–1, but also the Haitian Revolution (1791–1804) – the outcome of a slave rebellion that gained its moral grounding in the Rights of Man. The exclusion of African slaves from the French republicans' conception of “Man” did not stand in their way; rather, it was precisely the political ground on which the struggle for independence was fought. One can trace a line of historical continuity between the Haitian Revolution – which triggered independence wars across the Americas – and recent and ongoing struggles over the national bill of rights in Bolivia, led by those who were excluded from the category of “citizen” long after national independence.

In other words, the colonial and capitalist foundations of human rights – which consistently locate certain subjects, on whose labor and territory colonial capitalism depends, outside the category of human – is precisely what makes them an important ground for contestation. It should not be assumed that those mobilizing around a language of rights accept the subjective, normative, or humanist foundations of international human rights discourse. Nor do rights claims require prioritizing legal process over more disruptive forms of protest. Paying attention to the unfolding history of rights from below means recognizing that rights are not only defended in the courtroom but are intrinsic to broader processes of movement building and embodied acts of territorial resistance. Ethnographic research can play an essential role in extending philosophical debates on human rights as instruments of social transformation (Coleman 2023).

This chapter draws on ethnographic research in Bolivia's Tariquía Reserve to highlight resource frontiers as key sites of juristocratic reckoning – that is, for the contestation of existing rights regimes (and their power-infused implementation), and for the emergence of counter-hegemonic conceptions of rights. Resource frontiers are sites where the relationship between law and capitalism is thrown into sharp relief, as the resource-accessing rights of capital are prioritized – both in law and in practice – over local rights to consultation. In Latin America, extractive corporations are increasingly turning to law to criminalize Indigenous territorial defenders and their allies. Resource frontiers are also sites of extralegal violence. As Racher Sieder argues (in this volume), “a combination of legality and violence guarantees the functioning of extractive industries.” Struggles that emerge at resource frontiers are fundamentally concerned with recognition, as people rendered sacrificial by capital and the state seek to assert their existence, their humanity, and their right to a say over their own future. Yet rather than a dematerialized politics of recognition, rights claims at resource frontiers are often grounded in struggles to defend territory (understood as an assemblage of more-than-human relations) in the face of the threat of enclosure and dispossession.

I now turn to consider Bolivia's recent history of transformative constitutionalism to highlight how the 2009 Constitution emerged from a reckoning with the limits of neoliberal juristocracy, yet has encountered its own limits in conflicts over resource extraction.

8.3 Bolivia: The Limits of Transformative Constitutionalism, Revisited

In December 2005, following a wave of social protests calling for an end to neoliberalism and the renationalization of the country's gas reserves, former coca growers' union leader Evo Morales swept to power as Bolivia's first Indigenous president. One of his first acts as president was to convoke a Constituent Assembly, with elected representation of Indigenous, peasant, and urban social movements, to rewrite the country's National Constitution. The Magna Carta they produced is arguably the most ambitious example of transformative constitutionalism of this century. It redefines Bolivia a “plurinational state” and recognizes an array of new rights for Indigenous, originary, and peasant peoples, including to “autonomy” (self-governance) in their ancestral territories (Prada 2008). This focus on collective rights has been read as a vernacularization of liberal rights by diverse social actors toward radical, arguably

postliberal, ends (Postero 2010). The 2009 Constitution also redefined the relationship between the state and the market, declaring Bolivia's gas reserves "national patrimony" and giving the state a minimum 51 percent share in all new hydrocarbon contracts. The new bill of rights thus incorporates two sets of social movement demands: first, longstanding demands by indigenous movements for territory and self-governance; and second, an anti-neoliberal platform that demanded the restoration of popular sovereignty over Bolivia's hydrocarbon wealth and a more distributive regime of resource governance. It marks a historic moment of transformation in Bolivia, which has been understood locally as a democratic and cultural revolution, a *Pachakuti* (world-reversal or world-renewal), or simply as the "process of change" (Goodale 2019).

The year 2009 was not the first time in recent history that Bolivia has seen modifications to its Constitution. The 1980s and 1990s saw the National Constitution amended twice to define Bolivia as a multiethnic and multicultural nation, and to recognize some limited Indigenous rights.¹ This echoes a broader trend of "multicultural constitutionalism" (Van de Cott 2000) in Latin America during this period. As in other contexts, these constitutional changes accompanied a neoliberal program of state restructuring, which impoverished ordinary Bolivians while enriching transnational companies. The social mobilizations that led up to the election of Evo Morales in 2005 can thus be read as the outcome of a previous moment of juristocratic reckoning, as indigenous, peasant, and workers' movements encountered the limits of the neoliberal multicultural rights regime of the 1990s. This makes Bolivia a kind of rebel offspring of the juristocracy conceptualized by Hirschl – and an important context from which to revisit his critique.

Significantly, rather than turning away from rights and law as instruments of social transformation, Bolivia's Movement Toward Socialism (MAS) government saw a deepening of this investment in juristocracy, through a constitutional text that promised nothing short of decolonizing the state and society. Law was once again privileged as a mechanism for dealing with past and ongoing injustice, through the creation of new legal instruments, new legal protections, and new legally recognized rights. Bolivia's 2009 Constitution has acquired an iconic status as an example of indigenous-led efforts at decolonizing the state in Latin America. Yet

¹ Specifically, it recognized indigenous peoples' rights to intercultural bilingual education, participation in municipal governance, and collective land rights in Native Community Lands.

challenges were apparent from its inception. The combination of a push for social justice to overcome both colonialism and neoliberalism, on the one hand, and the embrace of liberal political institutions to do so, on the other, was a source of a profound tension (Postero 2017). Staunch resource nationalists pointed out that the 2009 Constitution did not represent a true nationalization of gas (Gustafson 2022). Indigenous rights activists critiqued the watering down of more radical indigenous demands for autonomy and land distribution in the final text following pressure from landowning groups (Garcés 2011). A language of pluralistic belonging glossed over a series of exclusions in the refounded Bolivian nation (Goodale 2019).

Of particular relevance to this chapter is the contradiction between the promise of expanded indigenous rights to territory and a model of socioeconomic transformation based on resource extraction (particularly of hydrocarbons), much of which occurs in indigenous-claimed territories. In the gas fields of the Chaco region, these contradictions were evident early on (Anthias 2012). For many Bolivians and international observers, the 2011 conflict over the construction of a highway through the Isiboro Séure Indigenous territory and national park, or TIPNIS, marked a watershed moment when the MAS government's willingness to sacrifice indigenous rights to an extractivist development model became apparent. Since then, Bolivia has seen a gradual weakening of Indigenous and environmental rights in law. A series of presidential decrees in 2015 weakened rights to prior consultation and opened the way to extraction in protected areas, some of which are also Indigenous territories.

Extractive frontiers have thus emerged as key sights of "post-neoliberal" juristocratic reckoning in Bolivia. In this new phase, it is not so much the tepid nature of liberal rights regimes and their failure to address social and economic inequalities that is at issue, as the impossibility of realizing the radical promise of more plurinational juristocracy in the context of an extractivist development model that requires ongoing colonial processes of accumulation by dispossession. Bolivia has largely addressed the social and economic inequalities that animated social movement critiques of multicultural constitutionalism in the 1990s. However, it has done so at the expense of indigenous rights and the rights of nature.

If socioecological conflicts expose the limits of Bolivia's plurinational juristocracy, then it is also in the context of such struggles that the 2009 Constitution finds its clearest expression. The text is seen by many Bolivians not as a creation or instrument of the state, but as a text

authored and approved by the people, via the Constituent Assembly of 2006–8 and the popular referendum of 2009. This shift in the subject of political and legal authority – from the state to the people – implies that if necessary the Constitution must be defended by the people *from* the arbitrary exercise of state power. This shows the importance of seeing juristocracy not only as an instrument of liberal rule, but as an arena of struggle. It is important here to note the role of indigenous sovereignty – a sovereignty that preexists the state – as a political and legal foundation for the 2009 Constitution. For indigenous peoples, the Constitution did not *create* their rights but merely marks the state’s formal *recognition* of rights to self-governance that predate the state’s existence. What is being violated when these rights are ignored is not merely the Constitution but the indigenous sovereignties that predate and ground it. The 2009 Constitution – with its recognition of indigenous autonomy, indigenous justice, and indigenous “usos y cosumbres” – represents a kind of settlement between the liberal state and indigenous sovereignty – albeit in a form that is unequal and riven with contradictions. This reminds us of the long history of indigenous engagements with rights and law in Bolivia (Ari 2014) and the various imperfect legal settlements that resulted from this, beginning with the notion of “two Republics” (Platt 1984).

In short, extractive frontiers in Bolivia are a key place where the promise of rights is unraveled by the complicity of state power with transnational corporations, but also places where Bolivians emerge as defenders of rights *against* the state in the name of “the people” and, in some cases, specific Indigenous nations or territories. The violation of rights to serve extractive interests leads to critiques of juristocracy in its plurinational formation but, as we will see, not to an abandonment of rights. Rather, extrajudicial forms of protest take on a central role as a means of defending and realizing rights in practice. I now turn to an exploration of these dynamics in the Tariquía National Reserve of Flora and Fauna.

8.4 Mobilizing Rights against Extraction in the Tariquía Reserve

Historically part of the territory of the Guaraní people, the area that now encompasses the Tariquía Reserve saw centuries of intermittent warfare until the late nineteenth century, as efforts at missionization and military subjugation encountered fierce Indigenous resistance. While the reserve still bears many Guaraní place names, today communities of Tariquía

identify as *campesinos* (peasants). The territory's history as a national park adds another layer to its complex political geography. Created in 1989, the Tariquía Reserve of Flora and Fauna is the only protected area of the Andean Yungas, and includes subtropical, temperate, and rare cloud forests, along with hundreds of threatened and endangered species. It plays a critical role in regional hydrology and climate, providing water supply and rain cloud effects for Tarija's regional capital and central valley, an important food and wine-producing region.

At least ten campesino communities live inside the nucleus zone of the reserve, with another thirteen in the surrounding areas or buffer zone. While the relationship between local communities and the national park has not always been harmonious, the territory's status as a protected area has had a formative impact on environmental subjectivities in ways that are consequential for responses to hydrocarbon development. In particular, community members contrast the strict environmental restrictions they have been subjected to for the past twenty years (for example, regarding the use of timber for building houses) with the ease with which oil companies have been able to enter the park and conduct environmentally damaging activities – just one example of how oil companies are perceived as “above the law.”

Tariquía was reserved as an area of hydrocarbon interest by the Bolivian state oil company YPFB in 2007, shortly after nationalization. In 2011–12 Petrobras conducted studies in two blocks which confirmed the existence of significant hydrocarbon reserves. These are thought to be the most significant recent discoveries in Tarija department, and have acquired a heightened political significance in the context of concerns over the decline in gas exports and production in aging fields in the nearby Chaco region, which has led to a depletion of government reserves and a shortage of dollars. This provides the context for a series of presidential decrees in 2015, which opened up protected areas to hydrocarbon development, modified the process of prior consultation, and watered down environmental norms around air and water contamination. The same year, the state parks agency SERNAP contracted a Dutch consultancy to produce a new National Park management plan for Tariquía, which altered the boundaries of the park's nucleus zone so that planned gas wells would fall outside the area of strict protection. Formal contracts between YPFB and Petrobras were signed in 2018, accompanied by two laws which authorized and then validated these contracts. As this suggests, hydrocarbon companies are not merely “above the law” but are key actors in (re)making state law to facilitate extraction.

Plans for hydrocarbon development in Tariquía have generated strong resistance by affected communities, in which women have played a leading role. In 2017, community members from Tariquía Canton marched to the regional capital Tarija city after learning of the initial hydrocarbon agreements. In 2019, activists from Chiquiacá Canton in the northeast of the reserve staged a five-month blockade of a bridge, which prevented the entry of heavy equipment to drill two planned gas wells. The Tariquía Reserve has thus emerged as a key example of resistance to extractive industry development in Bolivia at a moment when the 2009 juristocratic settlement is being gradually eroded, both in law and in practice, to facilitate extraction. I now turn to examine three ethnographic examples of juristocratic reckoning, which illustrate how the promise of law and rights has been simultaneously invoked and undermined by the threat of hydrocarbon development in Tariquía, and how this has produced forms of juristocratic politics “from below.”

8.4.1 *Presenting the Magna Carta*

In June 2019 a cantonal “information meeting” was held in Chiquiacá Canton near the site of a planned gas well. The meeting was open to all residents of the canton and saw the presence of two geologists, as well as the provincial governor and other regional authorities. Sergio, an Argentinian evangelist pastor whose large family are tenants of the property in which the well was to be drilled, attended the meeting with his wife Silvana. The family were part of a group of community members in Chiquiacá who were already organizing to educate themselves and others about the risks of extraction and their rights, following contact with activists in Tariquía Canton. Sergio recounted how he had carefully studied the text of Bolivia’s 2009 Constitution in preparation for the meeting, printing and highlighting the most relevant passages and making notes in the margins about articles of particular relevance. He explained his developing interest in the law as a complement to the religious foundations of his activism:

At the beginning of our involvement in the struggle, the defense, first from our cosmovision as believers we saw that we not only had the endorsement of God in the defense of the environment . . . but I also wanted to investigate . . . I wanted to understand, to see clearly, to what extent the laws of the country also supported our struggle. So I began to research it in our Constitution.

Flicking through his printed pages, Sergio described how his research made him aware of specific articles relating not only to reserves, but to the environment in general. In particular, he learned of the prohibition of hydrocarbon development in regions with important hydrological resources, such as springs. He concluded: “The more I read, the more I investigated, tried to deepen my knowledge, I found that what they are trying to do was *illegal* – well, at least, it went against the fundamental law of our nation.” Sergio viewed the cantonal meeting as a key opportunity to mobilize this knowledge of the Constitution – to share his conclusion that hydrocarbon extraction in Chiquiacá was “illegal”:

When I knew we were going to have this very important cantonal meeting, where they were going to discuss these issues in depth, I decided to organize the principal paragraphs of the plurinational Constitution, to highlight them with the objective of giving – if they allowed me – a brief presentation of the main points.

His brief opportunity to speak only arose after five hours of uninterrupted presentations by authorities regarding various infrastructure projects they were undertaking in the region, as well as data presented “to underplay the impact” of planned gas development. However, his effort to publicly challenge oil companies with reference to the constitutional text was cut short:

I was able to start to read the rights of citizens, the articles related to the environment, to the reserve and to water, and this moment awakened a bit of opposition and annoyance ... there was excitement, people who spoke in loud voices, people who started to leave ... they didn’t want to listen, and in that moment the authority who was presiding the meeting asked me ... he insisted a little bit ... he asked me that please, please, would I stop and, well, I ceded the microphone – but I was able to read the most important articles of our Magna Carta.

Sergio’s account of the meeting, which was corroborated by other community members, shows how activists in Chiquiacá have sought to use rights and law to challenge oil company and state narratives and the legality of planned extraction. The intended audience here is not so much the authorities who organized the event as other community members. The meeting staged a moment of juristocratic reckoning in a double sense. First, it saw state practice challenged with reference to the text of the 2009 Constitution, to which, as Sergio noted, all state organs were supposed to be subject. At the same time, it demonstrated the capacity of state officials to ignore and silence such protestations. Second, the

meeting provided the context for a heated exchange between community members regarding the relevance of constitutional rights for shaping local responses to extraction. If in one sense this example demonstrates the political potency of mobilizing rights beyond official spaces of law, then it also represents one of numerous moments in which juristocratic politics encountered their limits. Not only was Sergio silenced by the provincial governor chairing the event, but those in favour of extraction had little interest in hearing a verbatim reading of the Magna Carta following five hours of presentations by state authorities. Yet Sergio insisted that this didn't matter: "When the people made all that fuss and started to leave, I continued unperturbed; I continued reading so that whoever wanted to listen could listen."

This moment forms part of a longer discursive battle in which community activists challenged oil company and state knowledges. Whether anyone's mind was changed by the reading of the Constitution is impossible to say. But such stagings of rights are significant in the sense that they unsettle the assumed relationship between state power and the implementation of the National Constitution. That is, they open up the potential for a decentering political authority away from the state to *el pueblo* – the political subject, author and approver of the 2009 Constitution. As Sergio put it: "What I wanted to show was simply that it was illegal, that we were going to commit an environmental crime and a crime against the National Constitution and I wanted to show the authorities that they were wrong."

8.4.2 *The Limits of State Justice*

The legality of extraction in Tariquía has not only been challenged in political meetings. Over the course of the conflict, community activists have waged a series of formal legal and constitutional challenges that have contested the legal and constitutional basis for the implementation of the hydrocarbon projects. These encounters with judicial power constitute a broader moment of juristocratic reckoning, in which Tariquía activists and their allies (urban human rights workers, activists, lawyers, and NGOs) have reflected on the possibilities and limits of judicial process at the present political conjuncture in Bolivia.

The first was a constitutional challenge to Supreme Decree DS 2366, signed by Evo Morales in 2015, which permitted hydrocarbon development in protected areas. This was presented to the Plurinational Constitutional Tribunal by a collective of social movements representing

communities in protected areas, including the peasant union of Tariquía. As activist and lawyer Juan Carlos (Negro) Aróstegui explained, the legal basis for the challenge was that anyone directly affected by a change to existing legislation in Bolivia has the right to a consultation. This had not happened in the case of the 2015 decree, as residents of protected areas were not consulted about a modification to the 2009 Constitution that affected their rights.

In fact, this was not the first time such a legal challenge had been made. In 2015, shortly after Evo Morales signed the decree, the national ombudsman presented a similar case to the Constitutional Tribunal. The sentence issued by the tribunal was interpreted by human rights activists as legitimizing the 2015 decree. Because a ruling by the Constitutional Tribunal represents the final legal interpretation of the 2009 Constitution, this was seen as a permanent weakening of communities' constitutional right to prior consultation. This led some leading NGOs – notably CEDIB, which has played a key role in the Tariquía conflict – to refuse to support the latest constitutional challenge. In the context of a politicized judiciary and a state committed to new hydrocarbon development, they feared that the resulting sentence would further weaken rights established in the 2009 Constitution. Despite such antecedents, the new constitutional challenge went ahead, coinciding with the unelected right-wing interim government of Jeanine Añez. Predictably, it floundered at its first hurdle in the departmental Tribunal of Constitutional Guarantees. According to some of those involved, a Santa Cruz tribunal failed to notify Tariquía community leaders in time for the hearing and the judge in Tarija then failed to hear the case. One participant claimed that the judge had called a mutual friend in Palos Blancos complaining that he was under pressure from the Añez government to reject the case. To date, no sentence has been issued.

A further set of legal challenges have focused on the legality of the hydrocarbon contracts and the laws that authorized them. These cases were assembled in 2018–19 by the Commission of Human Rights of the Departmental Assembly of Tarija – at the time made up of assembly members opposed to the ruling MAS party – following a request for help by community members in Tariquía Canton. The commission's first objective was to access all relevant information pertaining to the new hydrocarbon contracts, none of which had been provided to the departmental assembly. The commission sent letters to the Ministry of Hydrocarbons and the Ministry of Environment requesting details of plans for hydrocarbon development in Tariquía. These requests were met

by silence. Finally, after waiting several months, the commission presented a constitutional challenge based on the right to petition. This triggered a response to the initial request for information.

Following its analysis of this information, the commission presented an action of unconstitutionality contesting the laws and decrees that approved the hydrocarbon contracts in Tariquía, on the basis that no legitimate prior consultation had been conducted before approving the contracts, in violation of rights established in the 2009 Constitution. Their complaint referenced both to the timing of the consultation process and the manner in which it was conducted, which is alleged to have involved bribes (the distribution of free stoves and gas cylinders) and the signing of documents under false pretenses (as registration for participation in an information session and free lunch).² As the commission's then legal advisor explained:

What was our main argument? That the Constitution stipulates that there has to be a prior consultation in order to approve contracts and with these incursions of the oil companies there wasn't really a prior consultation, not really; they did a pretense of consultation only in a few communities, which were dominated by MAS.

In March 2019 the commission supported a further legal action in which two leading activists from Tariquía Canton appeared as complainants, defending their constitutional right to prior consultation. This was followed by another in June, presented after the commission discovered that the planned Astillero wells were located in the nucleus area of the reserve according to the original National Park management plan. These cases coincided with the five-month blockade in Chiquiacá and responded to a request from activists to “see what tool we can use from a juridical point of view to defend Tariquía.” These legal actions backfired. Following the first's rejection due to a bureaucratic observation, it was sent to Sucre for revision, which meant that the second could not be legally progressed. Javier concluded:

It was pure malice because it was the way of freezing [the constitutional challenge] so they it wouldn't leave Sucre, where it has taken two or three years and we haven't been able to do anything in this time . . . Juridically they shut the doors; politically it's a legal ruse which isn't illegal, but it's

² My documentary *Tariquía No Se Toca* includes news footage of the distribution of gas stoves and community members' accounts of the “consultation” process (Anthias 2022).

very dirty and very low that they impeded us from protecting [Tariquía residents'] rights.

The work of the commission never regained momentum and it was soon dissolved due to departmental elections. However, leaders from Tariquía continued their legal battle, presenting a further constitutional challenge to interim President Jeanine Añez and Minister of Hydrocarbons Victor Hugo Zamora in February 2020. Despite trying to make political capital from the conflict, the Añez regime saw accelerated progress in the approval of decrees and contracts enabling the entry of oil companies in Tariquía.³ While the legal challenge was predictably unsuccessful, it gained wide publicity in local media.

These frustrated legal challenges reveal how Tariquía activists and their allies have encountered the limits of formal juristocratic process in the context of a state committed to hydrocarbon development, under two contrasting political regimes. They constitute a moment of juristocratic reckoning in which the promise, limits, and risks of legal strategy are reassessed in light of the intimate relationship between extractivism and judicial power. As Negro put it, the issue was not about the MAS government, but about “transnational corporations and their capacity to influence the state.”

It is perhaps surprising that such experiences did not deter activists from pursuing their claims through the law. When I asked why this was the case, Negro admitted that this may have something to do with the interests of the legal profession. Yet he also provided another rationale: the legal cases would generate a record of all the injustices that happened through the law, so that at some undefined future point these could be assessed and the legitimacy of the struggle to defend Tariquía could be recognized. Even when the law failed to achieve justice in the present, it still held the promise of a future perfect form of recognition. Put another way, the legal process was a way of bearing witness. He also expressed a more concrete aspiration. Having exhausted this legal avenue at the level of the nation-state, communities from Tariquía would be in a position to present a complaint to the Inter-American Court of Human Rights. Francisco Romero, a peasant union leader from Tariquía who was one of the plaintiffs in the action of constitutionality, echoed this aspiration. As he put it: “We need that to pass to the next level, which is the International Court of Human Rights; it’s a requirement to exhaust the

³ See https://elpais.bo/tarija/20191128_comunarios-de-tariquia-cuestionan-a-zamora.html.

departmental and national arenas to arrive there.” This prospect of some future moment of reckoning, beyond the spatiotemporal frame of the current state, may help to explain why the promise of juristocratic politics was not extinguished by these experiences of state justice. They did, however, serve to push activists toward extralegal forms of politics. Francisco (who is from Tariquía Canton) described how his experience of being ignored and disrespected by a judge led him to focus on strengthening on-the-ground resistance in Chiquiaca, where the oil companies were now focusing their efforts:

We picked ourselves up off the floor, we organized a Defense Committee, we began attending meetings again, we returned and Chiquiaca was strengthened. When the companies entered [Chiquiaca] we sent help commissions – from Tariquía we left to go there, we went to help.

Activists’ experiences of the limits of state juristocracy thus served to propel them toward embodied tactics for defending territory, where constitutional rights could be put into practice.

8.4.3 *Mobilizing Rights on the Front Lines of Resistance*

As already noted, the conflict over gas development in Tariquía has been punctuated by direct action by communities in two cantons, which have at times drawn support from within the broader region. The use of protests and blockades is commonplace in Bolivia, drawing on a long-established repertoire of tactics of Indigenous anticolonial resistance (Dangl 2019). In Chiquiaca Canton, the first direct confrontations took place in the countryside, when a small group of women challenged oil company personnel who were conducting seismic testing. The women challenged the legality of their operations, given that they didn’t have consent from local communities. They presented their own quasi-legal document in support of their claim. As the president of Chiquiaca’s Defense Committee recalls:

We went to the forest, we caught up with them there by the stream – they were working there – and we notified them with an act; we have an act that says that they were going to leave their work, because the community members didn’t agree. They left later that day. And the next day they went back by another road – so we couldn’t see them. We found out again that they were working and again we went back.

In the forests of Chiquiaca, hydrocarbon workers had little capacity to enforce their understanding of state law over the moral economy and

norms of local residents. It was only when they retreated and returned with the support of vanloads of Bolivian police that the power asymmetries between rural residents and extractive corporations in relation to state law were made clear. Community members responded by occupying the bridge over the Quebrada de las Vacas (cow stream). The inevitable confrontation took place early the next morning. As Juanita Mercado recalled:

Two minivans – or three minivans, I don’t remember – arrived full of police. And we were not more than 20, 30 people. And we thought . . . we felled some trees like this, we thought to stop them with those trees. What did they do? They arrived; we had the flag, we had the National Constitution. The flag was there, they trampled on the flag, they took the Constitution from us, they threw it to the ground . . . we had already told them that they were not going to enter Chiquiacá; they said: “no, yes, you lot get out of here and that’s it” – the police. We wanted to resist so that they couldn’t pass.

Here, the 2009 Constitution was wielded as a physical artefact and visual symbol of community members’ defense of the Constitution *against* the state – a performance in which the police unwittingly collaborated. Video footage of this confrontation circulated widely on local news channels and social media. In one particular clip, which is reproduced in the documentary (Anthias 2022). Bolivian police with plastic shields are shown pushing rural women and children and trampling the protesters’ national flag. Against this backdrop, the following verbal exchange can be heard:

- | | |
|---------------------------------|---|
| POLICEMAN: | Now move on, we need to pass. You cannot prohibit the passage of the police, of your Bolivian police. Got it? |
| ACTIVIST FROM
TARIJA: | Don’t attack us, we’re defending the environment; it’s a defense of the environment and it’s a right to protest that they have. Because these traitors of the country . . . |
| POLICEMAN: | You can’t prohibit the passage of the Bolivian police; the Bolivian police have to be in all parts of Bolivia, and you cannot prohibit a state entity . . . |
| ACTIVIST FROM
TARIJA: | No, no, no, no, no; the right to life and to the environment is above any other right. |
| POLICEMAN: | Ladies and gentlemen, please – |
| LOCAL WOMAN | One question . . . |
| ACTIVIST: | |
| SECOND LOCAL
WOMAN ACTIVIST: | How much money do they pay you to come here to destroy the environment? |

Here, we see rights enshrined in the Constitution mobilized beyond the courts, in ways that made their defense and violation a public spectacle. The circulation of such footage helped to propagate the narrative that Tariquía residents' rights were being violated. This resulted in tangible forms of support for the blockade in Chiquiaca, with many residents of Tarija city donating tents, warm clothing, and provisions. The blockade continued for five long months, with those involved in the defense taking turns to keep watch overnight. When the blockaders took the decision to conclude the blockade with a seven-day march to Tarija, they were joined by supporters from nearby villages and towns. Crowds welcomed them to Tarija, where they assembled for a town hall meeting. If the bridge over Quebrada Las Vacas became a stage for juristocratic reckoning, then the audience for this extended beyond the territory, sparking a regional conversation about community rights and environmental risks in the context of hydrocarbon development.

This is not to say that the women from Chiquiaca's Defense Committee Canton who led these mobilizations saw their struggle primarily through the lens of rights. When asked what animated their activism, they spoke not of rights but of preserving water, forests, and clean air for future generations. They define their struggle as "the defense" (*la defensa*) and its objective as "to defend" (*defender*). The object here is left implicit. Within the broader discourses of human rights activism, what is being defended is "human rights," as made explicit in the widely used term "human rights defender" (*defensor de derechos humanos*). Footage of the standoff described above would reinforce the idea that it is rights that are being defended. Yet for residents of Tariquía, the object of "defense" takes on multiple other meanings. At different moments it can refer to territory, the environment, the Reserve, our resources, or our children's future. Or, as Nelly Coca's song "Resiste Tariquía" (Resist, Tariquía), performed at the end of my documentary *Tariquía No Se Toca* (Anthias 2022) concludes: "the struggle we have is in defense of our own life." The concept of "defense" thus acts as a site of controlled equivocation (Viveiros de Castro 2004), bringing international and national discourses of human rights into play with local conceptions of territory, sovereignty, and living well. Using their bodies to block the entry of oil companies was an expression of a sovereignty, of an ethics of care, and of a spiritual (religious) obligation to "nature" that precedes and exceeds knowledge acquired in human rights workshops.

Still, wielding their copies of the 2009 Constitution – which affirmed the right to prior consultation, the right to protest, and Indigenous and peasant rights to territory and to the protection of its productive resources (among other rights) – lent their tactics an added legitimacy. As noted above, the Constitution was written with participation of Indigenous and peasant social movements, and enshrines their (more-than-liberal) understandings of territorial sovereignty, justice, self-determination, and living well. Seen in this context, such enactments of rights from below reground Bolivia's plurinational juristocracy in the social struggles from which it emerged. They point to the possibility of a plurinationalism that is based not on a contract of mutual recognition with the state (Lund 2016), but rather on a grounded normativity and self-recognition (Coulthard 2014) which finds expression in the embodied defense of territory.

8.5 The Criminalization of Protest and a Response from IACHR

On October 1, 2024 while this chapter was in production, Petrobras and YPFB entered the community of Saican in Chiquiacá Canton to begin the topographic survey for the Domo Oso X3 gas-well project. Community activists mobilized, confronting the workers and arguing that they lacked authorization from the local communities. They referenced the results of a cantonal vote conducted through the peasant union, in which 292 community members voted “No” to the entry of oil companies, while only 182 voted “Yes.” They also argued that the authorizations obtained by the oil companies from supposed property owners were invalid, given the unresolved status of land rights in these areas, which are claimed by conflicting parties and lack legal titles. The next day, the president of YPFB filed criminal charges against twenty community members (later adding another nine), invoking Article 161 (“Obstructing and harming a public official in the exercise of their duties”) and Article 303 (“Attacks against freedom of work”) of the Bolivian Penal Code. These charges combined carry a maximum sentence of four years in prison.

On November 8, urban environmentalist Gonzalo Torrez Terzo, represented by Juan Carlos Aróstegui, filed an “Action of Freedom” (*Acción de Libertad*) lawsuit with the Departmental Court of Justice in defence of the twenty-nine community members facing criminal charges. I had just arrived in Bolivia and offered my testimony in the virtual hearing, where

my documentary *Don't Touch Tariquía: The Resistance of Chiquiacá* (Anthias 2022) was presented as legal evidence. The lawsuit was rejected on the grounds that the penal process had not yet been concluded. However, the virtual hearing provided a public forum where community activists could denounce violations of their rights and the criminalization of their protest. The lawsuit also forced the oil companies to share sensitive information about the unresolved property rights in the planned extraction sites. As in previous instances, activists speculated that the evidence presented could lay the groundwork for a legal case before the IACHR.

I was doubtful this would ever come to pass, having heard similar hopes expressed since 2017. However, in early February 2025, news broke that the IACHR had accepted a request for an audience on the criminalization of environmental defenders in Tariquía, which is scheduled for March 7. This was not a result of the legal action described above, but rather responded to a request presented by the local peasant union Subcentral Campesina Tariquía, the social movement CONTIOCAP (National Coordinator in Defence of Indigenous Originary and Peasant Territories and Protected Areas) and the NGO Centro de Documentación e Información Bolivia (CEDIB).

Regrettably, this hearing took place several weeks after a public consultation process for the project Domo Oso X3 had been completed by Petrobras and YPFB. Participation of those opposed to extraction was limited, with many fearing legal repercussions and some denied access to free transport provided by oil companies. Those who did attend used their voices to denounce the process as fraudulent, to demand respect for the peasant union vote, and to provide emotional testimonies of the effects of criminalization on them and their families.

These events offer further illustration of how activists in Tariquía continue to engage with the promise of law and rights, despite the criminalization of protest and the ongoing failure of legal actions within the Bolivian justice system. They do so in ways that situate legal and political authority within the organic decision-making processes of peasant communities and hold open the hope of achieving justice beyond the state.

8.6 Conclusion

Critics of human rights have pointed to their historical imbrications with colonialism and capitalism, and their systematic failure to address

economic inequalities, and postcolonial demands for land redistribution and racial justice. Yet Bolivia's 2009 Constitution demonstrates the remarkable persistence of juristocracy in Latin America, and its evolution beyond a neoliberal or even (purely) liberal frame. Rather than turning away from the politics of recognition, as a growing number of Indigenous scholars have recommended, Bolivian social movements have overthrown neoliberalism through collective mobilization, then participated in the elaboration of a radical bill of rights that reflects longstanding Indigenous demands for territory and self-governance. In doing so, they have taken transformative constitutionalism to a new level. Ultimately, this experiment has encountered familiar limits. The current neoextractivist development model – which involves greater state participation in extraction and social distribution of rents, but still requires giving transnational oil companies unfettered access to the Bolivian subsoil – has constrained the implementation of plurinational rights in practice, particularly in territories targeted for extraction. The current drive to expand hydrocarbon development into protected areas has heightened such contradictions, producing new alliances between human rights activists, environmentalists, and rural communities.

These dynamics reveal how extractive industry frontiers constitute key sites of juristocratic reckoning, where the promise of rights is simultaneously invoked and undermined as communities' efforts to use rights to defend themselves from environmental dispossession come up against the intimate relationship between extraction and state power. Resource frontiers are also, I have suggested, spaces for the emergence of alternative conceptions and practices of rights from below, in ways that may exceed humanist understandings of both "rights" and "nature." This argument is not specific to contemporary Bolivia. It resonates across many Latin American contexts, where scholars have observed an "eco-territorial" and "eco-feminist" turn of social movements opposing extractivism (Svampa 2019). The particular significance of the conflict over gas development in the Tariquía Reserve is that it constitutes a moment of reckoning for Bolivia's experiment in plurinational juristocracy, which emerged from previous counter-movements against neoliberal extractivism.

Failed constitutional challenges and violent encounters with police have exposed the limits of law and rights as tools against state-led extraction, framing Nelly's question "In what justice can we believe?" Yet the ethnographic examples discussed above also suggest that the locus of political authority has been subtly shifted by the discourse of

plurinationalism and the protagonism of social movements within Bolivia's "process of change." Activists in Tariquía (many of whom voted for the MAS party in 2005) see themselves as custodians of the 2009 Constitution against a state that has been corrupted by its relations with transnational oil companies. By wielding the bill of rights in meetings and mobilizations, as well as in court, they have created public stagings of juristocratic reckoning, in which the gap between rights and their implementation is laid bare to local, regional, and national audiences. It is unlikely that their struggle will unsettle the hegemony of an extractivist development model in Bolivia, or prevent further extraction in the Tariquía Reserve.⁴ But it does provide important insights into the evolving politics of rights, a decade and a half after Bolivia's new Constitution was approved by popular referendum. More broadly, it demonstrates the value of looking beyond philosophical critiques of rights to learn from real-world struggles, where rights – and their relationship to capitalism, the state, territory, and the nonhuman – are being debated, contested, and reinvented.

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⁴ At the time of writing, oil companies had entered communities in the south of the reserve and were making renewed efforts to win local support in Chiquiacá, having been prevented from drilling by the 2019 blockade.

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