

Approaching Indigenous Rights in the Early 21st Century: International Norms, Social Movements and Citizenship Claims

by Theodore Macdonald

Introduction

Some time during dinner on Saturday, November 16, 1532, Fray Vicente de Valverde, chaplain to Francisco de Pizarro, is reported to have explained to an interlocutor of the Inca host, Atahualpa, why tribute was to be paid to God through King Charles IV of Spain. The Inca spokesperson responded with a series of logically-reasoned questions, which invited argumentation. Instead, the Spanish assemblage leapt from **their** seats, attacked their hosts, and stole the **Incas'** gold and silver. From that point on, argues Mexican philosopher Enrique Dussel, the possibility of a genuine multi-ethnic discursive community in Latin America has remained permanently quagmired in asymmetry.¹

Quagmired, yes; permanently, maybe not. From about the late 1980s to the present, Latin American indigenous leaders—particularly among those of the Andean region where the 16th century dialogue closed—sound like **Jürgen** Habermas, when he argues that “...political participation and communication...do not guarantee freedom from external compulsion, but guarantee *the possibility of participating in a common practice*, through which citizens can make themselves into what they want to be –*politically responsible subjects of a community of free and equal citizens.*”²

This five-century leap lands on some of the critical aspirations and dilemmas of human rights policy and practice for indigenous peoples in Latin America. While human rights violations and unfulfilled obligations continue to plague Latin America's native peoples, the responses and the respondents have changed considerably. External advocates, from Fray Bartolomé de Las Casas to Amnesty International, would be and still are welcomed. But indigenous people now speak more frequently for themselves, and this voice no longer simply shouts, *Abajo!* Nor do indigenous peoples project their complaints or demands solely through spectacular but ultimately unsuccessful armed revolts. Messages, though sometimes coded in complex local metaphors, are generally specific and the messengers pass along new and formal human rights avenues and into arenas such as the Organization of American States (OAS), the World Bank and the United Nations, each of which is currently drafting specific indigenous rights declarations or policy papers.

In these new settings, indigenous peoples, particularly their organizations, no longer voice pleas solely to *stop* killings, *desist* from seizing land and natural resources, *end* forced relocation and *cease* cultural denigration. While violations and proscriptive denunciations persist, there are also new demands to respect the obligations that permit power and voice—agency for indigenous peoples to realize prescriptive rights and claims. High on the list are demands for inclusive and effective citizenship, without loss of identity and with dignity. Indigenous peoples now seek the power and position to engage the State, not simply to repel its violations or those it tolerates. New international

treaties and formal commissions, meanwhile, support and emphasize State obligations to advance the realization of participatory rights.³

The focus of this paper rests on some of the obstacles in the path of progressive realization of prescriptive citizenship rights.⁴ These are considered first through a brief review of the Latin American human rights issues and history, and then contextualized through a highly-visible case study—unique, but nonetheless representative—from Ecuador.⁵

Prescriptive—or “positive”—rights are what the State *should* do. In many cases realization, immediate or progressive, requires new allocations of wealth or other resources. Obligations are costly under any circumstances. In developing countries, even with expressed good, governments argue—though not unquestioned or unchallenged—that costs are prohibitive.

By obligating States to make any political decisions, prescriptive rights will always border on partisan politics, or be accused of such. So the moral authority of advocates will be frequently challenged. Indigenous rights—particularly those related to consultation and consensus on development projects or, more broadly, self-determination—threaten the status quo to an even greater extent. They relocate previously marginal political actors directly into the national political arena and thus make them voices in national development decisions rather than objects of their results. Consequently, arguments for indigenous rights, particularly those that relate to group rights (and thus, for some, zero-sum games), do not enjoy the universal support of, for example, the right to life. Governments, which previously determined for or against indigenous groups, are obviously challenged, but even mainstream human rights organizations tread lightly across this complex and, generally, poorly-understood cultural landscape.⁶

Indigenous rights also present a challenge to human rights advocates as well as scholars, most of whom now suggest that groups can realize their ends through liberal approaches to human rights, rather than exclusive and unique collective or “peoples’ rights.”⁷ Indigenous rights, however, are cited as exceptions.⁸ Kymlicka has reconsidered the collectivist/liberal debate and argues persuasively for “group-differentiated rights” in support of groups like indigenous peoples who, through historical geography not choice, find themselves as demographic or political minorities within States.⁹ International treaties—particularly the landmark International Labor Organization’s Convention No. 169¹⁰—now support these legal and philosophical arguments through international human rights norms.

Citizenship Claims

Citizenship rights have become a major thrust of indigenous organizations. While indigenous peoples continue to suffer disproportionate threats to their rights to life, property and livelihood, their organizations recognize that an exclusively defensive emphasis on civil and political rights protection obscures the agency of indigenous

movements in general and neglects the more subtle and equally significant citizenship claims. To illustrate, Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) states, “All peoples have the right to self-determination.”¹¹ However, there are obvious and significant differences between *not* placing civil and political obstacles in the way of self-determination and *enabling* economic and social self-determination. Enabling requires considerable collaboration and effective communication between the State and indigenous peoples.

Demands for civic and political inclusion in decision-making, by their very sophistication, bring with them new sets of practical problems. Providing fora for dialogue, deliberative democracy and argumentation does not un-stack the decks against indigenous speakers. Dussel suggests the near impossibility of a genuine dialogue. Indigenous people, he argues, reflect the “ ‘underside of modernity’ —the irrational voice that asymmetrically *excluded* the world of the Other from all rationality and thus denied the possibility of an ‘an argumentation community’ in which all are respected as equal participants.”¹² Habermas, who inspired much of this debate and discussion, recognizes many of the practical difficulties,¹³ as do others scholars of deliberative democracy. Nonetheless, for indigenous leaders, negotiating amidst structural asymmetry defines many of challenges for indigenous human rights practice in the 21st century and will remain high on the indigenous agenda, regardless of the difficulties and the “pathologies of deliberation.”¹⁴ In addition, the proactive and open indigenous demands are clear challenges to authoritarian regimes or simple electoral democracy and thus serve as bellwethers for much of Latin American’s citizenry.¹⁵

Beyond the clear obstacles that structural asymmetry presents to genuine participation and clear dialogue, other challenges are linguistic, experiential and political. How, many indigenous leaders ask, does one step into new space effectively once a door for dialogue is opened? Such questions reflect inexperience and the need for training rather than some inherent inability or impossibility of argumentation. In addition, and particularly for indigenous organizations, representation is a constant challenge. Ideally and in practice, genuine representation builds from informed consent and the ability to reach points of consensus amidst a variety of potentially conflicting needs and concerns.¹⁶ However, the debates surrounding citizenship rights are generally promoted by indigenous organizations and often through national and international fora. Neither the arguments nor the settings necessarily reflect the more local priorities of the many rural communities that the organizations represent. Leaders, therefore, are often challenged by outsiders to prove that their expressed demands indeed represent those of the communities, aware that any hint of disagreement will be used to diminish indigenous leaders’ legitimacy. However, such charges avoid the obvious: there always will, and should, be questioning of representatives. Local “horizontal dialogue” serves to acknowledge and respond to local issues. Such give and take—local checks and balances—are a permanent, normal and healthy aspect of any participatory democracy. Despite external challenges to representation, participation and discourse are already aspects of most established indigenous organizations, and the organizations thus serve as exemplars for relationships between representatives and the represented.

Changing Patterns of Human Rights Work in Latin America

Protection and fulfillment of specific indigenous rights are relatively new. To a large extent, the Latin American human rights movement emerged from the Southern Cone during the 1970s and 1980s. Most noticeably, and most grotesquely in manner and scale, systematic violations of civil and political rights—arbitrary arrest, absence of due process, and violations of the right to life—in Chile and Argentina dominated human rights work for much of the decade. These crimes produced strong national and international reactions and, to a large extent, provided the images, set the frame, and inspired many active and informed advocates of human rights. The powerful sentiments of the period are illustrated by Argentina's current government and citizenry, who refuse to let the *desaparecidos* disappear.¹⁷

The crimes in the Southern Cone were clear and “classic” violations of civil and political rights undertaken by States that were also military dictatorships. Consequently, advocates accurately voiced opposition to a monolithic “government” or regime. Advocacy required little need for complex or nuanced institutional analysis. Solidarity groups were thus equivalent to human rights organizations. The parallels continued into the early 1980s as human rights attention was drawn to Central America, most noticeably in El Salvador and Guatemala. Nicaragua, with its distinct indigenous rights demands, was the exception, as illustrated by the acrimony that surrounded national and international debates over Nicaraguan sovereignty and Miskito indigenous rights.¹⁸

With the re-emergence of electoral democracies in the 1980s and 1990s, the public sense of shame produced a rights “cascade,” and many Latin American countries moved quickly to ratify international conventions and incorporate their protections within national legal codes.¹⁹ However, that cascade poured largely over a crest of civil and political rights violations against, by and large, non-indigenous Latin Americans.

Rights violations against indigenous peoples—loss of life, arbitrary arrest, forced relocation—were extensive, particularly in Chile, Peru and Guatemala. Yet it took several years before accounts of large-scale rural atrocities in Guatemala became widely known.²⁰ Even today, few are aware that massacres and large-scale disappearances of Chile's Mapuche Indians living near Temuco preceded, by more than a week, the violent September 11, 1973 military overthrow of President Salvador Allende and the subsequent killings of citizens in the capital, Santiago. Specific indigenous rights to land, natural resources, education and citizenship drew even less attention and were concerns of only a handful of national and international human rights groups.²¹

Indigenous peoples, by and large on their own, have generated most of the attention and much of the detail for the protections and obligations of their human rights. Paralleling the highly-publicized and violent regional rights violations and, later, the growing international awareness of their disproportionately large impact on indigenous peoples, grassroots indigenous organizations within and between communities in countries such as Ecuador, Colombia, Bolivia and Peru progressively altered their voice from passive to

active. Organizations spoke out against gross human violations and, equally important, drew attention to the widespread social and economic discrimination, deprivation and marginalization of indigenous peoples. International attention and subsequent norm development for indigenous human rights increased with the 1982 creation of the Working Group on Indigenous Populations within the United Nations Human Rights Commission and its Economic and Social Council.²²

Indigenous Organizations

On February 19, 2004, *The Economist* asked, in a lengthy review of indigenous movements in the Andean counties, whether this “political awakening” was “a threat or a boost to democracy.”²³ Such questions hardly would have been news a decade earlier. The attention illustrates a shift away from romantic imagery to an awareness of the growth and power of the indigenous peoples’ movement. This short article permits only a summary review the movement, which has been detailed elsewhere.²⁴ Briefly, beginning largely in the 1970s, growing rapidly in the 1980s, and extending at present throughout the hemisphere, indigenous peoples have organized at the local, regional, national and international level. They are now a representative political force to be dealt with, not simply a category of marginal victims. Major advances in indigenous national and international human rights norms have accompanied and supported the movement’s claims.²⁵

By the late 1990s, expressing similar concerns over the status and role of civil society, many non-indigenous Latin American citizens were acknowledging the flawed practice of electoral democracy and demanding broader participatory and discursive practices. Indigenous peoples thus became outspoken and visible advocates for political change, as illustrated by their role and influence in drafting Bolivia’s constitutional reforms, Colombia’s new 1991 constitution and Ecuador’s in 1998.²⁶

The conjunction of indigenous rights issues and new national-level demands for more participatory democratic practices in the **still-fragile** Latin American democracies seems to reflect the sentiments that sparked ratification of human rights conventions in Europe. As Moravcsik demonstrates, it was not the stable liberal democracies of Europe that moved first to ratify human rights covenants, but rather the newer and more unstable ones.²⁷ The European sentiments and logic were that, with formal recognition of human rights treaties, it would be difficult for the **still-fragile** democracies to revert to authoritarian regimes.

****may I simply use “fragile” the second time around, or other suggestion?***

A similar argument can be made for social and economic rights Latin America during the 1990s, illustrated through ratification of ILO Convention No. 169. As of July 2003, twelve of the seventeen countries that had ratified the treaty were in Latin America.²⁸ With the possible exceptions of Mexico (1990), Costa Rica (1993) and Dominica (2002), each seems to fit the European pattern. They are Colombia (1991), Bolivia (1991), Paraguay (1993), Peru (1994), Honduras (1995), Guatemala (1996), Ecuador (1998),

Argentina (2000), Venezuela (2000) and Brazil (2003). The dates of ratification, unlike the hemispheric shift away from military dictatorships and toward electoral democracies that produced the earlier rights cascade, reflect current frustrations with inequitable economies and government corruption. Significant social sectors within each these countries seem to have been anxious to go on record—nationally and internationally—not simply as protectors of basic civil and political rights, but also as proponents of the sort of participatory democracy that most visibly **included** indigenous peoples and was strongly obligated through ILO Convention No. 169. In brief, the overall spirit of rights newly accorded to indigenous peoples reflected the desires of large sectors of the middle class as well. However, there is a significant difference between ratification of human rights conventions and, as mentioned earlier, some of the practical implications of the policies that should follow.²⁹ Not unexpectedly, movements to develop practical means for implementing national legislation **to fulfill these obligations have been frustratingly slow.**

Natural Resource Conflicts as Indigenous Rights Stimulus and Metaphor

Implementation of citizenship rights is not simply a matter of legislating and then applying laws but of discussing and negotiating their interpretation. Dialogue, in turn, is not simply a matter of sitting down and reaching a final agreement. **Indigenous peoples' organizations often use dialogue to create public space for themselves and to approach critical community issues, without the need to seek immediate closure.** Natural resource disputes afford perhaps the clearest examples of this dual role for dialogue. The high profile conflicts now surrounding international natural resource exploitation—oil, gas, minerals, timber and water—have become, in part, public means to expose the gaps between legislation and practice and to pressure governments to implement the new norms. This is not to suggest that, either at a local or national level, natural resources disputes are fabricated or that claims are not legitimate. Quite the contrary, many indigenous communities are working with human rights and development groups to control resource use and mitigate related environmental damage.³⁰ Nonetheless, at another level, indigenous organizations have used highly-visible natural resource disputes strategically to catapult themselves, legitimately and quite effectively, into larger national debates over **citizen** consultation and participation.

For many external observers, the projected image of “development” is a simple black and white negative of local communities fighting off megalithic corporations in a zero-sum game. In many cases, the assumption is correct. However, international company/indigenous community disputes also provide unprecedented opportunities for indigenous organizations to pursue some of their equally legitimate citizenship concerns. For example, during the course of the Harvard Dialogues on Oil in Fragile Environments (1997-2000? 2001? 2004?)—among international oil companies, environmental NGOs and indigenous organizations—it became clear that each sector’s principal “gripe” lay, in one way or another, with the national government or government ministries and agencies. Oil development *per se* was not the only, or even the main concern of the indigenous peoples who sat on the lower side of an asymmetric scale. Leaders were equally, if not more, concerned with how development policies and similar decisions were made and

who was included in the process. They argued that genuine citizenship rights, once implemented, would allow more effective argumentation of particular cases.³¹

International legal standards, or rather *efforts to apply* them, thus provide a means, not simply to secure particular rights but also to define the practice of citizenship through discourse. New normative instruments elevate indigenous peoples to the status of ordinary citizen and also provide many with “special” status based on group-differentiated citizenship rights.³² Kymlicka argues that such rights promote equality for those minorities that, unlike immigrants, find themselves living in a State not of their making.³³ Thus, “were it not for these group-differentiated rights, the members of [indigenous national] minority cultures would not have the same ability to live and work in their own language and culture that members of the majority cultures take for granted.”³⁴ Special rights permit inclusion as distinct equals. ILO Convention No. 169 subsequently obligates States to seek consensus-based development and assumes multi-sectoral dialogue and negotiation over definitions and mechanisms for locating, designing, implementing and monitoring development projects that affect indigenous peoples.

Dialogue, properly undertaken and mutually understood, also serves to de-mythify some of the Romantic notions surrounding “indigenous culture.” Recent use and abuse of the term “culture” has created a sort of “black box” into which the unknown is passed over as unknowable.³⁵ Others, including the author, argue that sustained dialogue and, through it, progressive mutual understandings is indeed possible and can permit indigenous peoples, human rights researchers, practitioners and government officials alike to move beyond “cultural” barriers and focus directly on manageable public debates.³⁶ Dialogue also provides the “weaker” indigenous stakeholders with fora in which to discuss critical issues of identity within multi-ethnic States as well as means to protecting and benefiting economically from the management of their land and resources.³⁷ New international social and economic legal instruments provide basic tools with which indigenous organizations and State actors can advance dialogue and jointly chisel out clear rules for contextualizing and implementing rights.

These new indigenous roles fall, by and large, to indigenous organizations. As stated earlier, there is often a gap between the national and international goals of indigenous organizations and the communities that they represent, as occurs with any non-mandated—i.e., most—representatives. Nevertheless, indigenous organizations, unlike many other legitimate representatives, often have their legitimacy questioned by non-indigenous opponents. Political leadership must therefore demonstrate that it is fulfilling a normal representative double burden; it must listen to and respond to local community needs, while also seeking to make other issues heard by national and international actors and institutions. Horizontal dialogues must thus accompany vertical argumentation with State agents as well as dialogue with local communities if the organizations are to maintain the genuine discursive communities needed for recognized representation. This double tension—the need to be heard and the obligation to listen—is clearly illustrated in Ecuador and representative of many other Latin American countries.

Ecuador: A Case Study of Citizenship Rights

Ecuador is arguably the most visible and advanced example of the development, as well as the current dilemmas, of indigenous human rights. That country saw the first emergence of ethnically-defined indigenous organizations. Subsequently, the increasing power and profile of indigenous peoples was exhibited during widely-publicized actions (*levantamientos*): in June 1990, which established the *Confederación de Nacionalidades Indígenas del Ecuador* (CONIAE, **Ecuadorian Federation of Indigenous Nations**) as a national-level protagonist; in January 2000, which precipitated the collapse of the Presidency of Jamil Mahuad; in February 2001, when the organizations again rose in opposition to national politics; in late 2002, when indigenous candidates won large numbers of local elections; and most recently, when in early 2003, several prominent indigenous leaders were elevated to presidential cabinet positions and dismissed about six months later. At the same time, in the Amazon region, concerns of the environmental and social impact of oil development on indigenous lands has drawn wide international interest and legal challenges.³⁸

The direct actions of the past decade could be and have been seen to illustrate the indigenous movement in its most virulent and capricious forms. Public actions have been described as disruptive mass demonstrations rather than as demonstrative of human rights interests. Such reporting masks, or rather publicly punctures the movement's non-violent political evolution that began in the 1960s.³⁹

Like most successful social movements, Ecuador's indigenous organizations began locally and spread widely because the movement responded to issues that resonated with the communities. The organizational shape of the movement emerged from the Amazon region when, in the 1960s, Andean colonists first began to flow down into the region in large numbers. Initially, communities banded together to form land defense groups, largely among the Shuar in the southern region and later among the Quichua in the northern Amazon. These local clusters subsequently aggregated into ethnic federations, and later joined into a regional pan-ethnic federation, the *Confederación de las Nacionalidades Indígenas de la Amazonia Ecuatoriana* (CONFENIAE, **Federation of Indigenous Nations of the Ecuadorian Amazon**).

In the 1980s CONFENIAE's normally defensive posture shifted notably to include demands for recognition and demarcation of territories—areas of traditional use and occupancy. The shift to territorial claims signified a quantum leap in indigenous relations with the State by seeking to change the basic concepts of land rights, not simply to protect their boundaries. By redefining land claims as rights—to be defined and negotiated jointly—the indigenous debates served as a means to enter the political arena, without loss of self-identity. This assertion of independence from the assimilationist tendencies of State corporatism retained and even strengthened the distinct indigenous identity and claims while creating the political space to express them.

In 1990 the first indigenous “General Uprising” (*Levantamiento General*) placed indigenous citizenship demands onto center stage. This direct action also moved broadly-

organized indigenous political strategies out of the Amazon and merged them with what previously had been individual, and not particularly successful, Andean community responses to local disputes. CONAIE, though founded during the 1980s, emerged as the most prominent national actor after the 1990 *Levantamiento*. Throughout the 1990s indigenous leaders worked to insert themselves into the State and increase the national visibility of CONAIE, while working to maintain the representation and legitimacy obtained from the base-level communities.

Among the principal demands of the 1990 *Levantamiento* were formal recognition of Ecuador as a “multi-ethnic and multi-cultural State” and respect for communal indigenous land tenure. In mid-March 1992, the Amazonian Organization of Indigenous Peoples of Pastaza (OPIP) dramatized land rights concerns through a six-day march from the small, regional city of Puyo to Quito, **the nation’s capital**. This *Marcha Indígena por la Vida* (**Indigenous March for Life**), a demand for government recognition of the pan-ethnic Amazonian territories delimited during the 1980s, quickly captured national goodwill, drew in CONAIE, and added an additional theme—respect for indigenous peoples as Ecuadorians—that further galvanized national support for indigenous rights. The actions placed the indigenous movement on high moral ground and accumulated considerable political, as well as civic, goodwill.

CONAIE subsequently and progressively drew itself away from a focus that rested solely on single issues, short-term actions and exclusively “indigenous” problems. The leadership argued that single-cause demands had distinguished indigenous peoples *too* much from the rest of the national society and thus promoted a false dichotomy between “indigenous peoples” and “national society.” The arguments are consistent with Kymlicka’s broad theoretical argument that “the sort of freedom and equality [national minorities such as indigenous peoples] most value, and can make to most use of is *freedom and equality within their own society*.”⁴⁰ For Ecuador’s indigenous leaders, ethnic distinctions *were* the national fabric, not simply an odd strand dangling from it. Indigenous peoples thus positioned themselves—largely independent of non-indigenous human rights organizations—to redefine, through debate, the economic and political practices that reflected and supported what they defined as a “plurinational” country, rather than simply highlighting indigenous peoples as a distinct, and generally marginalized, population.⁴¹

By moving to end non-indigenous perceptions of indigenous peoples as separate from the national society, CONAIE thus replaced the previously homogenizing category of *indio* with that of distinct nationalities. The term *indio* (understood as “colonized peoples”) had served as an essential, unifying pan-ethnic category during the 1980s. By redefining themselves (and all other groups, including the “*mestizo* nationality”) as nationalities, Ecuador’s indigenous peoples sought to institutionalize diversity. The overall goal was simple—*inclusion as equals in a plurinational State*.⁴²

CONAIE argued that only when the state legislative, judicial and executive branches reflected all national differences would Ecuador be truly democratic. The State, for CONAIE, was to become a discursive community in which all of the different

nationalities contributed and created a constitution and its governing procedures.⁴³ Democracy would thus become all-inclusive and permanent participation in political and administrative decision-making. Such ideas are radical redefinitions only because they had not been part of the electoral system whose functioning, or more often disfunctioning, and corruption have frustrated Ecuadorians and many others in Latin America.

In 1996 a new election law allowed new parties into the political process. Indigenous peoples helped to establish, and later claimed as their own, the *Movimiento de Unidad Plurinacional Pachacutik*, or *Pachacutik* as it is most commonly known. *Pachacutik*—whose name is taken from a **Quichua** term meaning “recreation of the earth”—allowed indigenous peoples to end alliances movement with traditional patronage-based political parties and to create an independent political body that accurately and consistently reflected and responded to indigenous interests.⁴⁴

In the months before the 1998 election, a constitutional assembly, which included numerous *Pachacutik* and other indigenous delegates, drafted Ecuador’s new Constitution, which recognized indigenous rights and promised to consolidate Ecuador while also recognizing regional diversity of peoples, ethnic groups and cultures. Several constitutional articles drew directly from ILO Convention No. 169 (ratified by Ecuador in 1998) and thus established indigenous peoples as legal subjects with broad collective as well as individual rights and placed strong emphasis on indigenous participation in all aspects of policy and practice that affected them.⁴⁵

In the August 1998 national elections, *Pachacutik* gained additional legislative seats, and initial relations between indigenous political actors and organizations and the government of President Jamil Mahuad were quite good. Among other items, the government agreed to create time and space for regular dialogue with CONAIE. However, in February 1999 a banking crisis and subsequent scandals dominated political discourse and economic life. Funds promised to indigenous communities became unavailable, and dialogue stalled. In March 1999 CONAIE was calling for a *levantamiento*. By expressing widespread public frustration with unpopular issues, CONAIE obtained strong popular support and peacefully brought the country to a halt. The subsequent agreement between CONAIE and the Mahuad government (March 19, 1999) established a dialogue with indigenous peoples and, at CONAIE’s request, created another opportunity for a national dialogue that would include other sectors of civil society. But when the national economic situation deteriorated further, the *Pachacutik*/CONAIE plan for participatory decision-making ended as the government closed its doors to all but a small and select group of old colleagues, a move interpreted by CONAIE as a direct rejection of the open *mesas de diálogo* (dialogue tables).

As “plurinationalism” virtually disappeared from the government’s viewing screen, the government was perceived as unwilling or unable to accept and implement the broad participatory governance and state management that the indigenous movement had advocated and worked to advance, theoretically and practically, throughout the decade. The continued marginalization of indigenous organizations from any decision-making

provoked, in part, an unlikely alliance with young army officers, who supported and later joined with CONAIE's leadership in the *levantamiento* and subsequent coup of January 2000, which ousted President Mahuad. However, rather than accept the tripartite governing alliance (military, social movements and indigenous peoples) proclaimed by CONAIE, the military simply replaced President Mahuad with his vice president, Gustavo Noboa.⁴⁶

In the ensuing months, CONAIE challenged President Noboa's "neo-liberal" economic policies, arguing that they left little space to attend to indigenous needs and requests. So, as the anniversary of the January 2000 coup arrived, CONAIE called for another *levantamiento*. During the year, however, President Noboa had deftly altered the armed forces and confidently warned that the army and police would put down any form of "civil disruption." Nevertheless, in late January 2001 CONAIE mobilized **Indians **is this ok?**** throughout the country. Unlike the previous actions, indigenous peoples were met with considerable opposition, force and occasional violence.⁴⁷ The indigenous peoples' non-violent response to abuses of basic rights won wide popular support, while the government's repressive and violent reaction was highly publicized, circulated internationally and generally condemned. So, on February 6, 2001, President Noboa agreed to meet with CONAIE leaders, and they jointly drafted and signed a 20-point agreement, which included open dialogue with CONAIE on the solution of Ecuador's financial, social, commercial and monetary policies. With this, CONAIE resumed leadership status in the development of national policy and, by including other sectors of civil society into the dialogues, indirectly advanced its agenda for "plurinational" governance.

Long before this rapid succession of political events, and partly in response to the previous year's aborted efforts to assume the apex of national power and partly to retain the goals of participatory government, CONAIE shifted its focus toward community-based popular assemblies at the mayoral level. This moved the organizations away from an exclusive focus on national executive power toward broad, popular participation at the local level.⁴⁸ After the 2002 presidential elections, national and local consensus issues again melded. When Lucio Gutiérrez took the oath of office as president of Ecuador, he repeated his campaign promises to eliminate Ecuador's infamous corruption and alleviate the nation's extraordinary rural poverty. The national and international press emphasized the coincidence and irony that, three years earlier, then-Army colonel Gutiérrez had led the January 2000 coup attempt that ousted President Jamil Mahuad and left Colonel Gutiérrez cashiered and jailed.

The press also noted that President Gutiérrez had obtained much of his support from Ecuador's indigenous peoples.⁴⁹ **During the previous August—and after acknowledging that their chosen presidential candidate, Mayor Auki Tituaña, was still unlikely to be elected president of Ecuador—indigenous leaders provided Gutiérrez with enough votes to move him into, and win, the November run-off elections.** Equally important, CONAIE and *Pachacutik* had made major leaps in the previous elections of November 2002. Indigenous candidates won nine congressional seats, placed nine members in powerful provincial councils, and took fifty-five seats in municipal councils. The popular Tituaña

was reelected mayor of Cotacachi by a large majority, which included many non-indigenous voters.

What drew most attention to the 2003 government was President Gutiérrez's cabinet. It included two of Ecuador's most prominent, respected and outspoken indigenous leaders and co-founders of Pachacutik. Nina Pacari, a lawyer and congresswoman from the Otavalo region, was named Ecuador's—and the world's—first indigenous woman Minister of Foreign Relations. Heading the equally-important Ministry of Agriculture was Luis Macas, a lawyer who was Ecuador's first indigenous congressman and former President of CONAIE.

By early 2004, however, President Gutiérrez's policies had diverged significantly from those expected by CONAIE.⁵⁰ Rancor with indigenous organizations and disagreements within the cabinet became public. In August 2003 President Gutiérrez dismissed his indigenous cabinet members. CONAIE and *Pachacutik* then abandoned their support for the Gutiérrez government. As of mid-2004 the indigenous parties and politicians remained relatively isolated from national decision-making, holding only ten of the one hundred congressional seats. In their initial support for Gutiérrez, neither CONAIE nor *Pachacutik* established strong alliances with parties other than Gutiérrez's small and marginal Patriotic Society, so they were isolated from the give and take of party politics. CONAIE's rapidly souring relations with President Gutiérrez worsened with an as-yet-unresolved assassination attempt against CONAIE's president, Leonidas Iza, on February 1, 2004.⁵¹

Such political infighting and intrigue smack more of traditional Ecuadorian party politics than any noble aspirations for participatory politics and discursive communities. What, one could ask, happened to the organizations' civically-focused goals of participation, inclusion and dialogue that constituted the consistent indigenous agenda of the previous twenty-five years? Likewise, would such ideals—now embedded in the Ecuadorian constitution and supported by that country's ratification of international human rights treaties—be postponed until future elections, when indigenous people would probably remain frustrated once again?

These questions suggest that the only avenue for indigenous participation in mainstream politics leads to the capital and into the national political arena. That is not the case in Ecuador, nor with strong social movements anywhere. Despite Quito-focused headlines, Pachacutik still holds nineteen out of two hundred and fifteen municipalities and five provincial governorships out of twenty-two. This is not insignificant. Moreover, it is not the accumulation of **space** that matters now, but rather *how* that **space** is occupied and utilized that reveals current indigenous approaches to human rights obligations.

****perhaps “position” or “opportunity”****

Here again, and to cite purposely a major international news source that does not traditionally follow or support Latin American indigenous human rights issues and thus to illustrate the emerging global significance of and interest in indigenous movements, the 2004 article in *The Economist* cited earlier points to exemplary local leadership and

actors and reviews participatory, democratic, local self-government at work in Cotacachi, a small Ecuadorian town north of Quito. The article refers specifically to the indigenous mayor, Auki Tituaña, as “a thoughtful economist” who has “launched ‘participatory budgeting’, an idea copied from Brazil’s left-wing Workers’ Party.”⁵² Tituaña has shifted budget priorities, and public discourse, out of the main town of Santa Ana de Cotacachi, whose 7,000 people are 90% *mestizo* (mixed race) and spread it across the predominately Indian rural areas. He has combined this emphasis with a crackdown on corruption and government mis-spending so the town has not lost out. “Each year, he reports back to a three-day communal assembly. It all seems to work: Mr. Tituaña was re-elected in 2000 with 80% of the vote (including that of many *mestizos*). Such experiences show that the Indian movements can bring about a welcome deepening of democracy.”⁵³

Aspects of Brazil’s Worker Party may have impressed Auki Tituaña, but his and other leaders’ participatory and consensus-based ideas were not recently imported. They have been embedded in Ecuadorian indigenous organization for nearly **a quarter of a century** and in the municipality of Cotacachi itself for over eight years. What is most impressive here, and in similar contexts, is the progressive and solid **development** of simple ideas into formally-recognized principles and practices of rights related to participation, inclusion and dialogue.⁵⁴ As such rights become realized in the manner and spirit in which they were initially—and later formally—defined, indigenous peoples are now governing parts of Ecuador through discursive democracy. This is not because indigenous people were permitted to do so by the State, but because some of them decided to realize existing rights on their own. Moreover, the grassroots manner in which governance is taking hold strongly suggests that, if and when ideas and practices of participatory governance move up the political ladder, this ladder will be well reinforced by experienced and well-informed citizens. Asymmetry would thus diminish more by progressive attrition than by formal decree.

Conclusion

Indigenous peoples in Latin America have advanced the “progressive realization” of their social, economic and cultural rights through the very processes they hope to institutionalize. However, some of their critics—e.g., government officials and executives of extractive industries who now meet regularly with the indigenous leaders—wonder when they will stop acting as obstacles by demanding more meetings and talks and simply rest satisfied with their not-insignificant progress.⁵⁵ Such comments, however, miss the point of progressive realization as that process relates to citizenship rights. One neither can nor should expect closure. The on-going discourses and debates **ensure** an approach to democracy that is consistent with human rights norms. While indigenous peoples will, most likely, never retrieve the wealth lost after dinner in 1532, they are now claiming their right to participate in, and transforming the nature of, political argument. In the process, they may recoup some economic losses but, perhaps more important, they will have an active voice in restoring their personal and **collective** dignity.

Notes

1. See Ute Bühler, “Discursive Democracy in the Age of Globalization and Exclusion?” (paper presented at the 51st Political Studies Conference, Manchester, England, 10-12 April 2001); Enrique Dussel, *The Invention of the America*, trans. Michael D. Barber (New York: Continuum, 1995); William H. Prescott, *History of the Conquest of Peru* (New York: Modern Library, nd, circa 1843).
2. See Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory* (Cambridge, MA: MIT Press, 2000), 241 (emphasis added).
3. See S. James Anaya, *Indigenous Peoples and International Law* (New York: Oxford University Press, 1996); International Labor Organization (ILO), *Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169* (Geneva/ International Centre for Human Rights and Democratic Development, Montreal, 2000); Tara Melish, *Protecting Economic, Social, and Cultural Rights in the Inter-American Human Rights System: A Manual for Presenting Claims* (New Haven, CT: Orville H. Schell Jr. Center for International Human Rights, Yale Law School, 2002).

I would like to replace the above with:

Manuela Tomei and Lee Swepston, *Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169* (Geneva: International Labour Office, July 1996) [hereafter, *ILO Guide*].

This is based on the online version available at:

<http://www.ilo.org/public/english/employment/recon/eiip/publ/1998/169guide/index.htm#top>

We could also include the website if you like, I think it would be quite useful.

4. Some writers continue to argue that rights listed within the International Convention on Civil and Political Rights (ICCPR) should be considered prior to those within the International Convention on Economic, Social and Cultural Rights (ICESCR), and others suggest some basis needs within the ICESCR should be equally prioritized. See Henry Shue, *Basic Rights* (Princeton: Princeton University Press, 1996). This paper follows most human rights research and thus acknowledges that rights detailed in each convention are overlapping and interlinked and that the separate covenants emerged as distinct treaties for historical and geopolitical reasons. See Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca: Cornell University Press, 2003); Henry J. Steiner and Philip Alston, eds., *International Human Rights in Context*, 2nd ed. (New York: Oxford University Press); Asbjorn Eide, Catarina Krause and Allan Rosas, eds., *Economic, Social and Cultural Rights: A Textbook* (Norwell, MA **Not The Hague?**: Kluwer Law International, 2001). Nonetheless, the prescriptive nature of many economic, social and cultural rights—particularly those associated with citizenship—provides a useful, practical distinction between the two covenants.

5. Focusing on current concerns with citizenship rights is not to suggest that the more traditional and historical political and civil rights violations no longer exist; they do and will. However, aside from the growing concerns over international interventions, response mechanisms for such violations are well established, **though** far from infallible. See Donnelly, *Universal Human Rights*; Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001); Samantha Power, *"A Problem from Hell:" America and the Age of Genocide* (New York: Harper Collins, 2002).

By contrast, the means and methods to approach prescriptive human rights are still being defined. Most agree that each case will have to be analyzed and approached uniquely. In addition, indigenous people and recent human rights conventions emphasize that any such approach to prescriptive rights must take place through deliberation, argumentation and subsequent negotiation. **See International Labor Organization (ILO) *Indigenous and Tribal Peoples: A Guide to ILO Convention No. 1*, (Geneva/ International Centre for Human Rights and Democratic Development, Montreal, 2000).**

****see query above****

6. For an overview, see "Righting Wrongs," *The Economist*, 16 August 2001.

7. Philip Alston, ed., *Peoples' Rights* (New York: Oxford University Press, 2001), especially 277-279; James Crawford, "The Right of Self-Determination in International Law: Its Development and Future," in *ibid.*; Benedict Kingsbury, "Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law," in *ibid.*; and Donnelly, *Universal Human Rights*.

8. Donnelly, *Universal Human Rights*, 215-217; See also Will Kymlicka, *Multicultural Citizenship* (New York: Oxford University Press, 1995) and **Will Kymlicka, *Politics in the Vernacular* (New York: Oxford University Press, 2001).**

9. Kymlicka, *Multicultural Citizenship*, 49-74.

10. Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, International Labor Conference (entered into force September 5, 1991 [hereafter ILO Convention No. 169]. This historic document sets out a wide range of rights, but places particular emphasis on direct participation and informed consultation, as opposed to the assimilationist nature of its predecessor, International Labor Convention (No. 107) Concerning the Protection of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, June 26, 1957. For a detailed interpretation and explanation of the intent and meaning of ILO Convention No. 169, see ***Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169* (Geneva/ International Centre for Human Rights and Democratic Development, Montreal, 2000).**

****see query on this source above****

11. International Covenant on Civil and Political Rights, December 16, 1966, G.A. Res. 2200 (XXI), Art. 1(1), 999 U.N.T.S. 171 (entered into force March 23, 1976) and International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966. G.A. Res. 2200 (XXI), Art. 1(1), 993 U.N.T.S. 3 (entered into force January 3, 1976).
12. Bühler, “Discursive Democracy,” 2.
13. See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 2001 ****confirm date, not 1998? (from MIT Press website)****) and William Outwaite, *Jürgen Habermas: A Critical Introduction* (Stanford: Stanford University Press, 1994), 13. Critical examination of deliberative democracy has produced volumes. To illustrate, see Jan Elster, *Deliberative Democracy* (Cambridge, UK: Cambridge University Press, 1998) and Susan Stokes, “Pathologies of Deliberation,” in Elster, *ibid*.
14. See Stokes, “Pathologies of Deliberation.”
15. The press release (21 April 2004) for the recent UNDP report *Democracy in Latin America* quotes the lead author, Dante Caputo. “There is no unease about democracy, but there is an unease within democracy. Overcoming this requires...freedom to discuss the things that cause unease, which some would rather conceal...freedom to know why a system that is virtually a synonym of equality exists side by side with the highest level of inequality in the world.” In brief, there is broad popular demand for the sort informed deliberation and consultation most clearly articulated by some indigenous organizations.
16. Habermas reviews participation with a short definition: “Rights of political participation refer to the legal institutionalization of a public opinion and will-formation terminating in decisions about policies and laws” (*Between Facts and Norms*, 151).
17. Editorial, “History Reappears in Argentina,” *New York Times*, 27 March 2004.
18. See Theodore Macdonald, “The Moral Economy of the Miskito Indians: Local Roots of a Geopolitical Conflict,” in *Ethnicities and Nations: Processes of Interethnic Relations in Latin America, South Asia, and the Pacific*, eds. Remo Guidieri, Francesco Pellizzi and Stanley J. Tambiah (Austin: Rothko Chapel/U. of Texas Press, 1998), 107-153 and Charles R. Hale, *Resistance and Contradiction: Miskitu Indians and the Nicaraguan State, 1894-1987* (Stanford: Stanford University Press, 1994). Retrospective analysis suggests that the simple solidarity group/rights group unity may also have blurred many of the complexities of indigenous rights issues in Guatemala during the 1980s. See David Stoll, “To Whom Should We Listen? Human Rights Activism in Two Guatemalan Land Disputes,” in *Human Rights, Culture and Context*, ed. Richard A. Wilson (Chicago: Pluto Press, 1997), 187-215.
19. Ellen L. Lutz and Kathryn Sikkink, “International Human Rights Law and Practice in Latin America,” *International Organization* 54, no. 3 (Summer 2000): 633-659.

20. See Shelton Davis, "Agrarian Structure and Ethnic Resistance," in Guidieri, Pellizzi and Tambiah, *Ethnicities and Nations*, 78-106.

21. Among the more well-known non-indigenous groups at the time were the *Centro de Información y Promoción Amazónica* (CIPA) and *Centro Amazónico de Antropología y Aplicación Práctica* (CAAAP) in Peru, *Apoyo Para el Campesino Indígena del Oriente Boliviano* (APCOB) in Bolivia, the *Comissão Pro-Índio/SP*, the *Consejo Indigenista Misionario*, and the *Centro Ecumenico de Documentação Indígena* in Brazil, the Indian Law Resource Center and Cultural Survival in the U.S., Survival International in England, and the International Work Group for Indigenous Affairs in Denmark.

22. Anaya, *Indigenous Peoples*, 51.

23. "Political Awakening," *The Economist*, 19 February 2004.

24. See Alison Brysk, *From Tribal Village to Global Village* (Stanford: Stanford University Press, 2000); Theodore Macdonald, *Ethnicity and Culture amidst New "Neighbors": The Runa of Ecuador's Amazon Region* (Needham Heights, MA: Allyn and Bacon, 1999); Theodore Macdonald, "Perspectives on Consultation: A Review from the Dialogues on Oil in Fragile Environments" (Program on Nonviolent Sanctions and Cultural Survival, Weatherhead Center for International Affairs, Harvard University, 2001); David Maybury-Lewis, *The Politics of Ethnicity: Indigenous Peoples in Latin American States* (Cambridge, MA: The David Rockefeller for Latin American Studies/Harvard University Press, 2002); Richard Chase Smith, "A Search for Unity Within Diversity: Peasant Unions, Ethnic Federations, and Indianist Movements in the Andean Republics," in *Native Peoples and Economic Development*, ed. Theodore Macdonald (Cambridge: Cultural Survival, 1985); Richard Chase Smith, *A Tapestry Woven from the Vicissitudes of History, Place and Daily Life: Envisioning the Challenges for Indigenous Peoples of Latin America in the New Millennium* (Lima: Ford Foundation/Oxfam-America, nd, circa 2003).

25. See Anaya, *Indigenous Peoples*; Macdonald, *Ethnicity and Culture*; Rodolfo Stavenhagen, "Cultural Rights: A Social Science Perspective," in Eide, Krause and Rosas, *ESCR: A Textbook*, 85-109; and Roque Roldan Ortega, *Pueblos indígenas y leyes en Colombia* (Bogota: Tercer Mundo Editores, 2002).

26. See Donna Lee Van Cott, *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America* (Pittsburgh: University of Pittsburgh Press, 2000). Peru is one of the few exceptions here. For a review and explanation of indigenous organizations and political openings, see Deborah Yashar, "Contesting Citizenship: Indigenous Movements and Democracy in Latin America," *Comparative Politics* 31, no. 1 (October 1998): 23-42.

27. Andrew Moravcsik, "The Origins of International Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54, no. 2 (Spring 2000): 217-252.

28. Of the five others, Norway, Denmark and the Netherlands are to be expected, as problems of ethnicity are minimal and international support of human rights standards have been traditionally high. Fiji is an interesting case, where, despite ratification, the colonist minorities are experiencing problems with discrimination and exclusion from the demographic and political indigenous majority.

29. Given the potential economic losses that some economic sectors could suffer through full implementation of these norms, one can skeptically ask if non-indigenous sectors would support the logical extension of indigenous human rights legislation. Likewise, one could question the willingness to implement or establish mechanisms that would guarantee indigenous peoples such social and economic rights as prior consultation and recognition of indigenous territories. To do so would require radical political changes and potential economic losses.

30. See note 37.

31. See Macdonald, "Perspectives on Consultation."

32. See *Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169*. Geneva/ International Centre for Human Rights and Democratic Development, Montreal, 2000.

33. Kymlicka, *Multicultural Citizenship*, 68.

34. Ibid., 126.

35. For the range of such views on culture, see Samuel P. Huntington, *The Clash of Civilizations and the Remaking of the World Order* (New York: Simon and Schuster, 1996) and James Clifford, *The Predicament of Culture* (Cambridge, MA: Harvard University Press, 1988).

36. See Habermas *op cit* ****which? two cited above**** and Kymlicka *op cit*. ****which? two cited above****

37. These opportunities and attitudes sharply contrast with similarly marginalized groups those who, recently and in many other parts of the world (e.g., the Middle East), respond to their marginality through violent, and frequently unsuccessful, means.

38. A detailed review of the highly-publicized issues and debates surrounding oil development and indigenous lands and rights is beyond the scope of this paper. Briefly, in terms of indigenous responses, the Amazon region is now characterized by wide variety, generally correlated with the current local presence or absence of oil activities. Many of those in the more isolated and currently undeveloped regions oppose new oil development on their lands. Others negotiate compensation for access. The major Ecuadorian regional indigenous organization, CONFENIAE, has created its own hydrocarbon (natural gas) development project, and other indigenous leaders have

formed private companies to service the industry. Most dialogue and negotiation centers on individual and local issues, rather than broad, national citizenship rights.

39. This summary review is drawn from Macdonald *op cit* 2002. ****You have not given me a source for 2002? Do you mean the “Perspectives on Consultation” paper? If so, confirm date as 2001 or 2002, please. If not, I need this 2002 reference**** Additional citations are included only for primary sources.

40. Kymlicka, *Multicultural Citizenship*, 93 (emphasis added).

41. See CONAIE Indigenous Plurinational Mandate 1992. Available at <http://conaie.nativeweb.org/conaie9.html>. ****no longer online?****

42. Indigenous leader Ampam Karakras, personal communication with author, Quito, Ecuador, January 2001.

43. Ibid. For a Latin American regional perspective, see the United Nations Development Programme (UNDP), *Democracy in Latin America: Towards a Citizens’ Democracy* (2004). ****Do you actually have the English version, which I still can’t seem to access online? Can you provide the other bibliographic information: publisher, place of publication?****

44. Karakras, personal communication.

45. See note 10.

46. For details see Macdonald, *op cit.*, 2002. ****see note 39, oops!****

47. Denied access to their symbolic and traditional Quito campsite, *El Arbolito*, many indigenous protesters sought the refuge offered by the Salisian University. ****like place names, I generally do not translate university names**** The police cordoned off the area occupied by the protesters, denying the occupants’ access to food and other basic supplies.

48. The new focus was highlighted by the visibility of one of the main negotiators, Auki Tituaña, a highly-popular indigenous mayor of the Andean municipality of Cotacachi, and one of those most successful in establishing *gobiernos comunitarios*, or Popular Parliaments, in rural municipalities.

49. See “Lucio Gutiérrez asume la tarea de dirigir el país,” *El Comercio*, 16 January 2003; “Ecuador’s New President Takes Office” and “Ex-Coup Chief Becomes Ecuador President,” *New York Times*, 15 January 2003.

50. Pacari, a strong critic of United States’ use of the Ecuadorian air base at Manabi for its logistic support to Plan Colombia, saw U.S. military presence increase. Macas, in turn, has been highly critical of the displacement of traditional indigenous agriculturalists by

extensive agri-business estates that feed only international markets. Neither minister saw any benefit for Ecuador's poor farmers through the proposed Free Trade Agreement of the Americas. As Gutiérrez continued to support these and other issues unpopular with indigenous peoples, both cabinet members were dismissed in August 2003.

51. See "Más presión para que se clarifique el atentado a Iza," *El Comercio*, 5 February 2004.

52. "A Political Awakening," *The Economist*, 19 February 2004.

53. Ibid.

54. As occurred in Brazil during the 1970s and at present in Mexico, Colombia, Bolivia, Peru and Ecuador, indigenous actions and claims become metaphors for increased non-indigenous democratic participation and consultation, as well. In Mexico, Colombia, Bolivia and Peru, indigenous interests and demands highlight norms for participatory democracy that have been included, or are at least heavily debated, in recent ratification of international law as well as national laws and constitutions, even though such standards are rarely practiced satisfactorily. See the articles by David Maybury-Lewis, Jerome Levi, Jean Jackson, Bret Gustafson, Paul H. Gelles and Bartholomew Dean in the *The Politics of Ethnicity: Indigenous Peoples in Latin American States*, ed. David Maybury-Lewis (Cambridge: DRCLAS/Harvard University Press, 2002).

55. The author frequently heard such comments while serving as an observer to dialogues and negotiations involving indigenous peoples, State agencies, and/or national and international natural resources development companies.