

Law and Peasant Communities in Peru (1969-1988)



Pedro Germán Nuñez Palomino

STELLINGEN

1. The legalisation process shows the complex relationship between State law and Andean law within a local space.
2. The first studies of Andean reality showed that a ingenuous and benevolent phantasy has no solid support (Castro Pozo 1973).
3. Obtaining legal recognition influences the strengthening of communal organisation and authority among the comuneros themselves and towards outsiders (this thesis).
4. The Dutch winter is favourable for working at home during the evenings. But one misses the summer!
5. The idea of a homogeneous reality very strongly prejudices intellectual discourse about communities (this thesis).
6. For some scholars, a legal system can be found in State institutions as well as in non-State ones. Factories, corporations, universities, popular organisations, peasant communities, are all involved in creating law (Griffiths 1986; Santos 1977; K. von Benda-Beckmann 1991; Merry 1988).
7. The idea that law is an instrument to overpower Indian groups in Latin America is a generalization which not always has an empirical basis.
8. A legal system can be found in State institutions as well as in non-state ones. Nevertheless, State law has a great strength in influencing the semi-autonomous social fields of a given society (Moore 1973).
9. With respect to law peasants identify themselves with their Andean rules, procedures, sanctions and decisions. When one of their institutions becomes old fashioned, they just change it.
10. The term "community" denotes different realities, and is used by various social protagonists with different meanings.
11. Legal pluralism is a process of adaptation between legal systems in a complex process in which their boundaries are continuously redrawn.
12. I think that the outcome of my research will become a tool for the analysis in the relationship between the State and the peasant community in Perú.

Germán Núñez
Lima, September 1995

LAW AND PEASANT COMMUNITIES IN PERU

(1969-1988)

CENTRALE LANDBOUWCATALOGUS



0000 0670 0427

BOELEN, J. H. J.
LANDRECHT EN HET
WETGEVEN

Promotor: dr. F. von Benda-Beckmann, hoogleraar recht, meer in het
bijzonder het agrarisch recht van de niet-westerse gebieden

NU08201, 1981

Pedro Germán Nuñez Palomino

LAW AND PEASANT COMMUNITIES IN PERU

(1969-1988)

Proefschrift
ter verkrijging van de graad van doctor
in de landbouw- en milieuwetenschappen
op gezag van de rector magnificus,
dr. C.M. Karssen
in het openbaar te verdedigen
op woensdag 20 september 1995
des namiddags te vier uur in de Aula
van de Landbouwniversiteit te Wageningen

U81 914725

CIP-DATA KONINKLIJKE BIBLIOTHEEK, DEN HAAG

Núñez Palomino, Pedro Germán

Law and peasant communities in Peru (1969-1988) / Pedro Germán

Núñez Palomino. - [S.l.;s.n.]. - III., maps, tab.

Thesis Landbouwniversiteit Wageningen. - With ref. -

With summary in Dutch.

ISBN 90-5485-451-0

Subject headings: peasant communities ; Peru / legal pluralism.

To all the people who helped me

TABLE OF CONTENTS

page

List of Tables	xi
List of Maps	xii
Preface	xiii
1 Law and Peasant Communities: A conceptual framework	1
1.1 Andean Communities	2
1.2 Law and Society	5
1.3 Andean Law	10
1.3.1 Elements of Andean Law	12
1.3.2 Andean Mechanisms for Resolving Conflicts	13
2 A Historical Perspective	17
2.1 Introduction	17
2.2 The pre-Hispanic period	18
2.2.1 The Inca Period	19
2.3 The Spanish Period	20
2.3.1 The Spanish <i>Reducciones</i>	21
2.3.2 The Chaotic Colonial Property System	22
2.4 The Republican Period	24
2.4.1 Indigenist Thinking	25
2.4.2 The 1933 Constitution	25
2.4.3 The 1936 Civil Code	27
2.4.4 Later Legislation	28
2.5 The Agrarian Reform Period	30
2.5.1 Law Decree 1503730	31
2.6 1969 Military Agrarian Reform	32
2.6.1 Law Decree 17716	32
2.6.2 The Peasant Position regarding the Agrarian Reform	35
2.6.3 1970 Community Statute	36
2.6.4 The Response of the Communities	38
2.7 Recent Laws on Peasant Communities	40
2.7.1 The 1979 Constitution	40
2.7.2 Liberal and Populist Policies	41
2.7.3 Peasant Communities Law 24656	42
2.7.4 Land Demarcation and Title Law 24657	44
2.8 Summary and Conclusions	45

3	The Regional Study Context: Cuzco	47
3.1	Introduction	47
3.1.1	Different Concepts of "Region"	49
3.2	Ecological Regions of Peru	50
3.3	Economic Regions in Peru	51
	- Central Region	52
	- Southern Andean Region	52
3.4	Regional Economic Aspects of Cuzco	53
3.4.1	Cuzco as a Commercial Space	53
3.4.2	The Productive Features of Cuzco's Agrarian Economy	55
3.4.2.1	Types of Products	55
3.4.2.2	Production and Population Growth Rates	56
3.4.2.3	Consumption Patterns	56
3.4.2.4	Price Levels of Peasant Products	58
3.5	The Microregional Context: Quispicanchis	59
3.5.1	Description	59
	- Economic Areas	60
3.5.2	The Peasant Economy in Quispicanchis	61
3.5.2.1	The Unequal Access to Urco's Market	62
3.6	Conclusions	63
4	The Peasant Community of Paroccan	75
4.1	History	75
4.2	Infrastructure	77
4.3	Paroccan's Social Organization	78
4.3.1	The Communal Organization	78
4.3.2	The General Assembly	79
4.3.3	The Executive Council	80
4.3.4	Specialized Committees	81
4.4	The Organization of Land and Labour	82
4.4.1	The Landholding System	82
4.5	Production	84
4.6	Paroccan's Recognition and Titling Procedures	86
4.6.1	The Recognition Procedure	86
4.6.2	The Social Significance of State Recognition	91
4.6.3	The Titling Procedure	94
4.7	System for Resolving Conflicts	97

5	The Peasant Community of Ccachabamba	103
5.1	The <i>Hacienda De La Torre</i>	105
5.2	The Wiracocha CAP	106
5.3	The Dissolution of the Wiracocha CAP: The Peasant Community of Ccachabamba	108
5.4	The Landholding System and Production	109
	- The Landholding System	109
	- Production	110
5.5	Ccachabamba's Social Organization	111
5.5.1	The "Communal" Organization	111
5.5.2	The Executive Council	113
5.5.3	The Specialized Committees	114
5.5.4	System for Resolving Conflicts	115
5.5.5	Ccachabamba's Recognition Procedure	115
5.5.6	The Lessons of Ccachabamba's Legalization Process	118
	- Conclusions: From "Directive" to "Non-Directive" change	119
6	Paroccan and Ccachabamba: Changes and Continuities	121
6.1	Changes and Continuities in Law and Legal Life	121
6.1.1	The Changing Role of State Law	121
6.1.2	The Changing Significance of the Community and Titling Legislation	123
6.1.3	Changes in the Community's Land Tenure System	125
6.1.4	Changes in the Conflict Resolution System	127
	- The Ccachabamba case	131
6.1.5	Changing Interaction between State and Andean Law	132
6.2	Changes and Continuities in Social Economic and Political Organization	134
6.2.1	Changes in the Socio-Political Organization	134
6.2.2	Changing Role of Women	135
6.2.3	Changes in Land Tenure and Migration	136
6.2.4	Changes in Production and Productivity	137
6.2.5	The Changing Material Conditions of Life	138
6.3	Conclusions	139

7	Summary and General Conclusions	141
7.1	The Effects of Legalization on the State and the Community	141
7.2	The Land Tenure System in the Communities	143
7.3	Andean Law and Conflict Resolution	144
7.4	Common Problems, Common Solutions	146
7.5	Theoretical Conclusions	148
7.5.1	State Bureaucracy and Peasant Communities	148
7.5.2	The Concept of Community	149
7.5.3	Law and Legal Pluralism: Rethinking the Concepts	149
	 Bibliography	 153
	Appendix	163
	Dutch Summary	165
	Curriculum vitae	169

LIST OF TABLES

No. 1: Peru: Regional Economies up to 1980	66
No. 2: Cuzco: Changes in Consumption Patterns Measured by the Expenditure Structure 1966-1979	67
No. 3: Population Data on the Department of Cuzco (on a national level)	67
No. 4: Population Data of Cuzco (on a provincial level)	68
No. 5: District of Quispicanchis	70
No. 6: Quispicanchis Settlement Populations (by ecological levels)	70
No. 7: Officially Recognized Peasant Communities in the Province of Quispicanchis	72

LIST OF MAPS

No. 1: Department of Cuzco	48
No. 2: Location of the Peasant Communities of Paroccan and Ccachabamba	65
No. 3: The Peasant Community of Paroccan	76
No. 4: The Peasant Community of Ccachabamba	104

PREFACE

In Peru, along the coast and throughout the Andes, there are more than five thousand peasant communities, of which only about 50% are formally recognized by the State. Currently, despite this partial recognition, they are the main form of social organisation in the country, and this may well have been the case throughout Peruvian history. Due to their social significance, peasant communities have been the subject of extensive debates between Peruvian law- and policy-makers and social scientists, who have engaged in a long-standing debate, especially since the official recognition of some in 1920.

The discussion on the nature, origins, significance and future of the peasant communities has been monopolized by two different perspectives. On the one hand there are those who think rural communities are obsolete institutions, lone survivors of the Inca or Spanish colonial past, and therefore obstacles to the real development of the country. This position is best described as the "disintegrative" view. It calls for the dissolution of the communities and for setting up the peasantry along different lines of social organization. On the other hand, there are those who argue that communities are, or should be, the real foundation of Peruvian society, the guardians of the cultural -and recently, ecological- heritage of the nation, and hence the fundamental backbone of national development. This might be labelled as the "protective" position, although in many instances it has served only as an excuse for integrationist State policies.

Both conceptions have been the basis of the constantly changing set of State normative precepts. But not only the Peruvian Constitution and the special legislation enacted during the present century were inspired by these positions. A wide range of political projects, development models, and grass-roots programs implemented by State agencies seeking rural development have also been, and still are, nurtured by both concepts. However, for the peasant communities, projects "from the desks of Lima officers" -in the peasants' own words-, have caused more harm than good. In fact, policy-makers have been largely ignorant of the social reality of the peasantry, including their forms of organisation, their legal systems, their modes of production, their access to natural and economic resources and their cultural environment.

In this regard, a key ideological discussion took place in 1968, when intellectuals and politicians discussed the role of the "indigenous" communities in the design of a new normative structure for the State, especially with regard to agrarian lands. Some considered that the peasant community should return to a more collective form of organization and production. This idea clashed with those of others who tried to obtain greater recognition for the plurality of the land tenure systems that actually exist in peasant communities. The outcome of this debate was the Agrarian Reform legislation, the basis of one of the most significant social processes in Peru during the last thirty years.

The present study purports to deal with and explain the terms of the debate regarding peasant communities, to determine its relationship with long—standing views about the peasantry, to analyse the impact of the debate on State legislation and, last but not least, to look at the consequences of its implementation in two highland communities in Cusco, Paroocan and Ccachabamba. In this way, my research attempts to contribute, from a legal and anthropological perspective, to the understanding of the diverse, difficult and changing relationships between the Peruvian State and peasant communities in recent years.

The legalization problem

One of these relationships has been the legalisation of peasant communities; in other words, the opportunity for a community to obtain recognition -legal capacity-, registration, and title deeds from the State. Moreover, the community's legalisation is a vehicle to obtain benefits from public and private agencies, such as loans, financial aid, public services, etc. Nevertheless, it should be stressed that State recognition is not an indispensable requirement for the existence of peasant communities or communal lands. They have managed to survive in political contexts in which national governments have tried by all possible means to abolish them.

The legalization process is an important field for analysing the differences and changes in the State's attitudes towards peasant communities. For example, laws usually contain the State's definition of a "peasant community" and, therefore, show how communities are perceived by lawmakers. The laws also refer to an organisational model, to the requirements for being recognized by the State, to the rights and duties of the *comuneros*, to the land tenure system, and to the state agency that will be in charge of them. All in all, analysis of these aspects of a given law provides the opportunity to discover the type of policy the State is formulating and implementing. The State may or may not be interested in recognizing more communities, for example, by increasing or decreasing the legal requirements for doing so. Or the State might also be willing to recognize and grant more autonomy to the communities and, therefore, allow or promote "weak legal pluralism" (Griffiths 1986).

In the period dealt with in this study, I have found both of these State attitudes. I came across the different meanings of the legalisation process for the State and for the *comuneros*, too. The most important period in terms of this clear breach was the one defined during the Agrarian Reform bill enacted by Velasco's military government (1968-1975), when the government tried to impose a cooperative model on the rural areas, flatly ignoring the communities' customary land tenure and agrarian productive systems. The peasant communities' struggle for legal recognition was part of a wider political conflict. Legalisation to many communities was an important mechanism for confronting the cooperative model imposed by the military government, in order to

maintain their autonomy and social organization.

However, in the current democratic context (1980-), new laws concerning peasant communities -enacted by Alan Garcia's government (1985-1990)- showed wider recognition of communal autonomy and the communities' own organization, opening up some ways for legal pluralism, albeit within the framework of State law. Thus, for the *comuneros*, the search for formal recognition and title to their lands was not so much a response to a State imposition, which had already been tried, but was rather a way of asking for access to State public services or loans (i.e. subsidised credit) as well as to several development agencies.

One of the main objectives in this thesis is to provide a case-study on how the legalization process took place in a specific social field. In order to go beyond the generalizations and abstract statements so commonly made about this process, my research has focused on two peasant communities in the district of Quispicanchis, department of Cusco, in southwestern Peru: Paroocan and Ccachabamba. The first is a community that has finally obtained both its legal recognition and its title deeds, but only after a process lasting almost fifteen years. The second is a community that has suffered through the experiments of the military government. The deep scars caused by the latter's policies have prevented its legalization until now. However, its members have struggled to obtain some non-legal recognition at their local level.

Paroocan and Ccachabamba, therefore, constitute two different realities, with different problems. But both are also the product of the same social process in the same regional space. Where can we find differences between the two communities under study? What are the reasons for this situation? To answer these questions I have focused on their particular histories, forms of organisation, and relationships with the State and private agencies, before and after the land reform. I have also paid attention to the various conditions that permitted or prevented their legalisation, and to the present day consequences of this process.

During this quest I discovered that, unlike envisaged in an instrumentalist approach to law, State law is applied in different ways in the same localities, even in similar cases. Its consequences depend on the features of the social space in which the State law is enforced. However, in all cases it depends on the characteristics of the social individuals who apply and use the norms. Therefore, on the one hand, both Paroocan and Ccachabamba struggle with a regional or local version of State law, which turns out to be different, in practice, from the commands and expected goals of the lawmakers. On the other hand, their own historical and social features finally determine which one achieves official recognition -and subsequently profits- and which does not.

The study of these or similar processes in a social space shows the complex relationships between different social actors, the ever changing role of law, the presence and behaviour of the State at a regional and local level, the contradictory

attitudes and motivations of the *comuneros*, and, finally, the complex relationship between State law and Andean law.

There is an awareness among lawyers and judges that a great sector of the Peruvian population regulates its daily life outside State norms. There is also a common belief that customary law is a definite *corpus*, earlier than and autonomous from State law. Many authors who demand recognition of customary law seriously believe that it has similar institutions and procedures to those of Western law. A first-hand approach to Andean reality can show that this ingenuous and benevolent phantasy has no solid support (Castro Pozo 1973).

On the other hand, law has been seen as an instrument to overpower Indian groups in Latin America. This statement shows a paradoxical positivist approach to law, as this is thought to be exclusively a State privilege. This view is also a groundless generalization and not empirically based.

A few scholars in Peru try to understand the legal phenomenon as something alive, as more than a bill or a certain procedure. They see it as a complex phenomenon (Bustamante 1993; Guevara Gil 1992). Peasants can adjust to foreign law and give it a new meaning, according to their own interests and standards. This adjustment can even help the peasants turn State law against the very same interests State officials are supporting. There are historical examples of this since the beginning of Spanish colonial rule. Regardless of the fact that Peruvian legislation forbids all parallel justice systems, peasants are not worried by the "illegal" situation they are in. Since the first years of colonial rule, Indian authorities assumed other functions than those legally proclaimed.

Conflicts can appear when the state stresses its presence in society (i.e. education, land distribution, authority system, development programs). Sometimes, people accept these interventions without realizing (or even wanting) the scope of the changes being introduced in the traditional legal system. Sometimes, the change is considered an open aggression and, consequently, people show their resistance and dislike. A more advanced step, very common among Amazon people, is the demand for an equal share in the benefits of the development policies. Eventually, the term "ethno-development" shows this desire to maintain an identity and, at the same time, to have a fair share in the profits of development projects.

The human rights issue has recently been emphasized by some scholars. To an important sector of legal activists, communal law is an alternative way of solving conflicts, without the misunderstandings and delays of the State system. An idealistic perception avoids studying how strongly some people in the community can have a hold on power and scarce resources, using traditional devices to maintain this situation. On the other hand, in Peruvian public opinion, peasants are seen as having the tendency to act violently. Thus, it could be very dangerous to recognize their right to solve their conflicts autonomously. This debate has to be placed in an anthropological perspective: *comuneros* usually know and share the values embodied in state law. They understand most of the Criminal Code articles. Despite their lack of

formality, they follow, in their daily lives, many Civil Code rules. Most of the cases of "barbarian" procedures and verdicts have therefore been exaggerated by the mass media.

Particular research has been done on the strategies developed by the peasants to achieve their objectives, and how they relate to the bureaucratic agencies in charge of dealing with them (Urquieta 1993). From this interaction, I have selected the following issues:

- the evolution of the communal land tenure system,
- the origin of, legal context and non-legal factors for legalizing communal lands,
- the main variables that determine the decision of peasant communities to have access to the legalization process,
- the problems and consequences of achieving community legalization, and its significance in Peruvian society,
- the levels of coexistence between State and local law,
- the historical, economic, social and regional context in which peasant communities create their space and their own systems, and
- the ways the State intervenes, especially regarding the behavior of state agencies.

After dealing with these issues it will become clear that Andean and State law have a contradictory but creative relationship. Such has been my task. I trust the outcome of my research will eventually become a tool in the search for a new and more balanced relationship between two of the most significant protagonists in my country. I feel that this is a key condition for the accomplishment of balanced and sound development, not only in Peru but also in the rest of Latin America.

The structure of the thesis

The thesis is divided into six chapters. Chapter 1 aims at exploring key theoretical issues. It starts with a discussion of the concept of community. It then deals with the problem of conceptualizing law and the role law plays in society. Finally, it elaborates a definition of local Andean law. Chapter 2 gives the legal history of the relationships between communities and the State. Chapter 3 then gives an account of regional and micro-regional context of the communities of Paroocan and Ccachabamba. This is followed by looking more in detail at these two communities, describing and analyzing the social and legal developments, the recognition and titling processes in Paroocan (Chapter 4) and the failed attempt to obtain recognition in Ccachabamba (Chapter 5). Chapter 6 adopts a comparative perspective, looking at the changes and continuities in these two communities. Chapter 7 finally sums up the principal conclusions of my research.

A note on the research

Various methods were used to collect the data necessary for this study. In the communities, most information was acquired through interviews and observation. Oral history was elicited from the eldest people in the communities. Many data on the ecological and social environment were collected from NGO's such as Bartolome de las Casas and CCAIJO (Centro de Capacitación Agro-industrial Jesús Obrero). Much information was found in official records of the Ministry of Agriculture, Justices of the Peace, and the Agrarian Court. But it was mainly the help which I received from the people of the two communities which allowed me to learn about their realities and thus enabled me to continue my research.

Acknowledgements

Finally, I would like to acknowledge the institutional aid and financial support I received from the Wageningen Agricultural University allowing me to undertake my graduate studies in the Netherlands. I would also like to acknowledge the support given me by CCAIJO and Centro Bartolomé de Las Casas, both Cuzco-based NGOs, during my fieldwork. I learned a lot from the people of Paroccan and Ccachabamba. Therefore, I am very grateful to them. My thanks also go out to Agnes for her permanent help and to my friends - especially Franz - and to all my colleagues who made substantial criticism of earlier drafts of my work, and thus helped to make this dissertation possible. I also thank my English editor Jeanne Cervantes, and Mrs. T.T. Neijenhuis-Reijmers for bringing my manuscript into its final form. Of course, any mistakes are my own.

Lima, February, 1995

CHAPTER 1

Law and Peasant Communities: A conceptual framework

The peasant community in Peru has been studied from many disciplinary perspectives, especially from sociological, economic and anthropological points of view (Fuenzalida 1970; Gonzáles de Olarte 1986; Golte 1987; Figueroa 1987; Kervyn 1988; Long and Roberts 1978). However, only very few studies and research have been made from a legal scientific position (Gálvez 1987; Villavivencio 1988; Ambía 1988; Figallo 1988). In this area, the studies have taken different State laws as the basis for defining and analysing the peasant community. In most cases, customary law has not been taken into account in this research, and when it has, it has been studied inconsistently. Moreover, the State is usually shown as an entity composed of different bureaucratic agencies, very remote from peasant communities. By removing the State from the picture, most of these studies present an idealized and prejudiced view of the peasants' communal life.

Here, I try to present law as a link between the State and the peasant communities. I will analyse the role of law from a pluralistic point of view, stressing the interactions of those involved in the relation between the State and rural communities. Even though my analysis is concentrated on the State's legal procedures, I will also attempt to demonstrate the existence of different concepts of law among Andean peasants.

For my purposes, the legal link established between the State and the community will be represented by the processes of obtaining recognition and land titles of the two peasant groups under study -Paroocan and Ccachabamba. These processes involve not only the formal procedures established by State law, but also the socio-legal interactions between peasants and peasants, peasants and bureaucrats, and bureaucrats themselves at the different levels of administration. Taking the law as the main variable in the research will have important consequences in highlighting the internal relations of the two peasant groups, their social and economic organizations, and the way in which the State will create or interpret its own legality and policies.

This chapter will explore some of the key theoretical issues, beginning by dealing with the ideas of what peasant communities have meant to Peruvian scholars and how

I understand them. This is followed by an analysis of the role of law in society and, finally, the interaction between State and Andean law in Peruvian society.

1.1 Andean Communities

There is a wide range of interpretations on the nature and significance of the peasant or Andean communities. As Yambert says, communities have been seen indifferently as "close compassion and cooperation groups"; as microcosms of a class-exploitation-and-struggle world; and as reservoirs of untapped energy for development projects (1980:77).

Historically, we find two predecessors of the contemporary peasant community: the Andean *ayllu* and the Spanish *comuna* (Arguedas 1968). The way in which these institutions are intertwined in different configurations is not yet sufficiently explained and needs further systematic analysis. From what is currently known, the *ayllu* appears as the original nucleus of the community structure, and the *comuna* as the model which made possible its consolidation throughout the Colonial change in the *ayllus*¹⁾. This complex articulation of Andean and Colonial elements led some authors, like Fuenzalida (1970) to define the internal structure of the community as "an *artificial* association of corporate units, with kinfolk bases, not necessarily related to each other"²⁾.

However, this is not the only misleading definition that we have found of the peasant community. *Indigenistas* (urban intellectuals who vindicated and supported the community and the Indians' way of life between 1880 and 1940, approximately), social scientists and development activists have used the expression "community" in a way similar to "tribe" or "ethnic group". For them, communities meant "natural" units of organization, embodying primordial sentiments and solidarity. So, the communities' boundaries are seen to be fixed and definite (see Castro Pozo 1973), not as historically determined. For these scholars, the unity and cohesion of the community is based on the adherence of individuals to a shared set of customary values and beliefs. But things are not always that easy: individuals are often capable of claiming or disclaiming their membership -that is, their adherence to or freedom from those beliefs and values- in their "primordial" groups, without losing their communal links³⁾.

In a similar way, other scholars and political activists have opined that peasant communities should be the basis for the establishment of a new, solidary and fair

¹⁾ See the following chapter for historical approach to this process.

²⁾ Unquestionably, colonial changes in Andean human geography broke up previous kin—groups, and disturbed the Andean pattern for access to land and resources based on the vertical control of different ecological levels (Murra 1975:59-115).

³⁾ An example are the links with comuneros who migrated to urban settlements, through the "migrant associations" (Altamirano 1984). Through these associations, many comuneros preserve their identity although they acquire urban values.

society. In this perspective, communal arrangements are seen as being the peasants' main organizing principle for fighting the historically dominant regime in the Peruvian rural areas. This led them to believe that glorious social and cultural remains of the Inca society were kept alive in Andean communities. As Urrutia says,

Grounded in this *indigenista* vision, later strengthened by some social scientists, *ayllu* and *comunidad* became, in our collective imaginary synonyms of a glorious heritage that in this institution [the Andean community] had one of the last strongholds of our autochthonic culture (1992:4).

Leftists inherited a similar ideological approach, insofar as communal organization was construed as an alternative model to State oppression. In this, they paid particular attention to the community, and defined it as the germ needed for a complete social transformation. Overall, both *Indigenistas* and leftists shared a biased vision of the Andean communities, representing them as social fields where men live harmoniously and in a socialist-like mode of production, directly inspired by the Inca Empire.

It is clear that the idea of a homogeneous reality very strongly prejudices intellectual discourses about indigenous people. For example, State law usually denies a specifically communal identity since it formally establishes that all Peruvians are equal as individual citizens. Similarly, this prejudice also appears in the activists who support special laws for indigenous people: all communities are similar. The lawmaker, when using the word *comunidad*, and even when assisted by well-intentioned and progressive intellectuals, does not see the differences between communities, and among *comuneros*.

In my view, the peasant community should not be conceived only on the basis of ancient cultural and social traits. In order to have a more coherent idea of communities, we need to take into account the organisational factors that define peasants not as individuals, but as a part of social institutions. Andean cultural elements cannot be taken as the main factors for determining the existence of a peasant community, because many communities belong to completely different cultural environments. They can feel and enact a strong identity, not necessarily expressed in cultural practices, but in the assertion of their group potential and autonomy.

In my understanding, a peasant community exists when an internal organization, reproduced by a peasant group, administers the group's resources (land, water, livestock, etc.). In relation to external institutions, like the State or non-governmental institutions, this peasant group is represented by its authorities. Moreover, other elements give a particular character to the Andean peasant community. I have defined three main features:

- a) Communal control and usufruct of a physical space (land and water).
- b) The maintenance of communal organization and collective work, based on reciprocity, cooperation and solidarity.

c) The conservation of its cultural and social characteristics.

These features should be analysed from a dynamic perspective, not from a static one. The communal structure has endured a permanent external influence. Its patterns of production have survived Spanish colonial rule despite violent changes in the form of managing resources and, in general, in Andean culture. Later, in the Republican period (XIX-XX centuries), several private groups kept exploiting the peasant labor force: merchants, landholders, State officials and sometimes even peasants within the same community. Thus, the communal structure was never fixed but constantly negotiated through a permanent struggle between external and internal forces. *Haciendas*, later State agencies, and finally NGOs and religious projects provided new social, cultural and economic parameters for communal life. The definition and redefinition process is, therefore, ceaseless in the cultural, organizational and productive structures of the community (see Yambert 1980:78).

Regarding the first characteristic -communal control and usufruct- it must be stressed that although legally the community owns all the lands, in many cases each family holds parcels in private possession. Thus, the communal property of farming lands progressively vanishes. However, in most cases, the communal organization keeps controlling the size, distribution, inheritance and access to land and other resources. The community structure keeps working because it is invested with communal jurisdiction over the free disposal of land. In this sense, I wish to emphasize the function of representation towards individual interests in and outside the community. Peasants tend to join together in communities: they need a corporate institution that organizes its production and represents them in relation to the external world.

Social control is stronger in societies possessing common land and having specific distributive mechanisms governing its members. Even in cases where each peasant privately owns his own plot of land -quite frequent nowadays- the communal taboo against land sale to strangers rigorously limits external agents' influence on the property structure, and tends to limit class differences within the community.

In this sense, I share the view that many communal restrictions are mechanisms used to isolate its members from the society as a whole and from the market which is usually considered dangerous and threatening. The communal leaders struggle to establish limitations on the ability of its members to communicate with the outer world (Wolf 1977:69). Of course, this larger society has many strong mechanisms, capable of penetrating the minds of the *comuneros*, but the communities believe that this formal isolation can permit them to manage foreign influence more resourcefully. In many cases, *comuneros* try to distinguish and incorporate foreign technical advances and useful new products, while defending their capacity to make these distinctions and final decisions about themselves.

Regarding other features -communal organization, collective work, cultural conservatism-, it can be seen that they are only present in various degrees but,

nonetheless, contribute to legitimising the existence of the community. This ideological function is based on the identification of its members with their territory, usually but not always owned since ancient times, and with the communal traits mentioned above. In the community, the relationships and links created by the interaction of its members are precisely the bonds that define them as *comuneros*, as members of a social unit. Without this identity, the *comuneros* would not be more than small independent producers linked by legal means. Families within a community, for example, are linked by productive relations but these are not necessarily equal. On the contrary, they are established on the basis of each family's endowment. Despite these differences, the peasant community maintains certain "collective representations" that legitimize its social system, setting out its members' rights and obligations, and determining their behavior. Thus, peasant communities play important roles in identity and cohesion since they shelter the traditional Andean culture. Authors like Mishkin (1960) see the community as an institution which affirms a group feeling. This "group feeling" arises from kin relationships, and from other relationships that emerge during daily cooperation.

In my view, there is an important variation in the degree to which communal features are present in each peasant group. There is heterogeneity, but not only in one community. There are also substantial differences between communities at a sub-regional level. There can be different forms of social organization in the communities, as well as divergent sets of social, economic and political concepts.

Regardless of these heterogeneities in the rules and premises for structuring communal relations, the common ground is that communities have their own rules and sanction mechanisms, and that these are part of their identity and reproduction as such. Based on this, the community's boundaries, and its internal and external relations create and modify these rules and sanctions, acting as a "semi-autonomous field" in Moore's sense; that is, social fields that create their own rules, customs, procedures, sanctions and symbols for its members, although being vulnerable to rules, decisions and other forces emanating from the surrounding world (1973:720). To develop these ideas further, however, it is important to introduce ideas about the relation between law and society, giving special attention to the debate between law and legal pluralism.

1.2 Law and Society

Created by man to satisfy his gregarious needs, law becomes inherent to society. Law is always a social product. This "living law", as Ehrlich said, "dominates life itself even though it has not been posited in legal propositions" (1936:493; quoted by Griffiths 1986:26). Moreover, law is a historical and cultural expression: it is a part of that *modus vivendi* created by concrete men, in a concrete time and space. Therefore, law does not merely exist in texts or in men's ideas; it is also produced and fed by

daily human life, affecting human conduct in various ways. As Benda-Beckmann says, law consists of the cognitive and normative conceptions by which a certain society recognizes and restricts the autonomy of its members. Law sets limits to the independence or autonomy of a society's members to act and make their own cognitive and normative conceptions (F. von Benda Beckmann 1989).

Using a realistic approach, several normative social orders can be found inside any society. The problem is whether any system of rules can be considered as "legal". This question demands theoretical consideration of what is considered as "law" within each society. Obviously, not all social precepts and values will be considered "legal". There are various kinds of norms: rules involving morality, religion, law, ethical customs, honour, decorum, tact, etiquette, fashion.

From a restrictive positivist approach, legal norms are just the rules created by the State. From this point of view, social institutions like the peasant communities cannot create legal rules, because these can only be promulgated or incorporated by the State. However, it is evident that peasant communities regulate some aspects of the *comuneros'* behavior (i.e. communal work, relations or conflicts regarding resources, etc.). Therefore, we need to adopt a different perspective, that permits us to define as "legal", norms other than those produced by the State.

Following Stavenhagen (1989: 227), we can say that what constitutes the legal or juridical in a certain society should be established by looking at the character of the society concerned. Thus, in states where positive law governs, all that falls under the support of the law -the means by which it seeks to regulate the different spheres of human activity- is legal, while in societies where legal custom prevails, the legal must be the object of additional investigation, because there a clear separation between (state) law and its social and cultural context does not exist. Stavenhagen proposes that the "legal" in such societies is related to:

- a) general public rules of conduct.
- b) internal maintenance of order.
- c) a member's rights and duties.
- d) access to and distribution of scarce resources.
- e) regulating transfer and interchange of goods and services (inheritance, work, etc.), description of crimes against other people and against society.
- f) sanctions.
- g) procedures to resolve conflicts.
- h) description of functions of authorities.

Although, as Stavenhagen mentions, this list does not exhaust the possible elements of legal order, it is useful to define the law for our investigation. In this way, these elements will permit us to determine what, within the Andean communities being studied, can be classified as "legal" without having to derive this character from a state law.

However, due to the difficulties of defining law plurally, it is not easy to adopt such a position. To describe a group of elements, and to define what is legal, does not help us at all if we cannot distinguish the different elements in a plural system and find ways to look at the relations which the elements have with one another in a specific legal order, and what kinds of interactions might exist between State law and other legal orders in a certain social space. Some authors (Griffiths 1986; Santos 1977; K. von Benda-Beckmann 1981; Merry 1988) have developed the concept of "legal pluralism" to analyse these problems. For them, a legal system can be found in State institutions as well as in non-state ones: Factories, corporations, universities, popular organizations, peasant communities, can all be involved in creating law.

Legal pluralism is particularly evident in countries with ethnic minorities or marked cultural differences. In spite of some romantic approaches, directly translating cultural or ethnic marginalities into a separate legal field, the legal (sub)systems in these countries are not isolated. Quite the contrary, their interrelationships may be show different degrees of isolation or contact, or of mutual incorporation. Non-state orders may incorporate many elements of the State's system, but at the same time keep their separate identity. Moore therefore strongly suggest that we should not talk about "isolated legal systems", but about "semi-autonomous" social fields (1973, 1978).

In Moore's conception, a semi-autonomous social field is defined by two central elements: its rule-making capacity and its capability to induce or coerce norm conforming behavior of its members. But the most important characteristic that Moore points out is that the semi-autonomous social field should not necessarily be defined by certain formal elements (whether or not it forms a corporate group), but by the legal *processes* that develop within it (1973:722). This characteristic is relevant, no matter whether one defines a legal order with respect to State law, or whether a legal order operates in a semi-autonomous way with respect to the State law. Moore feels that it is more important that a semi-autonomous field could be effective in regulating the relations of those within its jurisdiction, even if, in order to do so, the actors in the social field use norms, values and symbols of another (the State's) legal order.

Nevertheless, Moore recognized the great strength State law can have in influencing the semi-autonomous social fields of a given society. For her, State law is well above the rest of regulatory systems. It has effective coercive and conditioning means for seeking social compliance. From this it is deduced that the State legal system has the greatest chance of influencing, if not imposing itself, on other regulatory systems. But State law is not always the most powerful one, even though this has been a common Western legal dogma⁴⁾. As Griffiths says about Moore:

⁴⁾ In Western legal theory, the sovereign power, the ultimate legal authority in a polity, can legislate on any matter, and can exercise control over any behavior within the State... classical task of legal anthropology has been to understand the relationship between law and society. The main goal in the past has been to identify the type of societies in which certain legal institutions appear, and to examine the kind of legal procedures, norm principles, rules and concepts found under certain social conditions (Moore

"her central point is that external legislation has not had, and could not be expected to have, the apparently intended effects, precisely because of the semi-autonomy of the social field in which it operates -the fact that the ties of 'mutual obligation' there are frequently stronger than, and in any case deflect, the operation of external law" (1986:30).

Despite this, Moore's theory is important because it emphasises two central aspects for studying situations of legal pluralism, and above all the relations that might arise between different legal systems and the effectivity and spatiality of law. In this respect, I agree with the Benda-Beckmanns' statement that law in society cannot be fully understood without taking into account its spatiality. Space is a structure, not pure physical space. Within a social space there can be differences between one group and another, since external influences do not reach everybody in the same way. Indeed, normative boundaries can be reinterpreted and shifted, and in the group ideas of what is external or internal may change.

"Normative macro-structures do not subsume, they coexist (Knorr-Cetina, quoted in F. and K. von Benda-Beckmann 1991). What is different is the degree of interdependence between social practices of law making, interpretation and maintenance in different localities, the degrees from which they actually subordinate, to which they are invaded and influenced by external law." (F. and K. von Benda-Beckmann 1991).

Following these ideas, it is quite relevant to my research to determine to what extent Peruvian State law -the legal policies formulated for regulating peasant communities- has conditioned or determined the legal norms and conceptions of these communities. The first step in attempting to solve this question is to define what "State law" and "legal policy" are. We must say, first of all, that attempts to develop a descriptive theory of "State law" are still recent within the anthropology of law. For many decades, definitions of State law and its effectivity were pervaded by either "legal centralism" (Griffiths 1986:3) or by "false comparisons" (Van Velsen 1969). These approaches did not take into account the specific differences that do exist between State legal orders. For other scholars, State law is merely taken as something given, without explaining its main characteristics.

In my opinion, State law is a particular way of expressing power relationships. A large part of the political activity is carried out through the State's legal system. The legal system is a catalyst of social interaction and a carrier of power relations within a given society. Therefore, it is more than an instrument of the prevailing social forces, since it includes different and specific trends in society. As Brandt says about Latin American countries:

"Quite often it is forgotten that in developing countries [State] law is also a form of political expression, and that in many countries, 'politics' is increasingly practiced through legal means (1987:33)".

At the same time as Benda-Beckmann (1989:207) and others point out, the issue of legal policy is related to the field of the "implementation" and "efficiency" of the law. Thus, legal policy can be understood as the organized activity of the State aimed at accomplishing a desired impact or a change in part or in society at large. Legal norms are used as means for sending commands of action to different State officials and bureaucrats, and to the general public, in order to make them direct their actions to the end sought by the State. As Benda-Beckmann states:

"Not all policy, of course, is law, but in all contemporary societies salient elements of State policy have to be framed and legitimized in terms of law...And most of law, particularly law originating in government institutions can be seen as policy (1987:207)".

Thus, from the dogma that only State law is real law, the dogma can be deduced that this law (shaped in a multiplicity of legal policies) is efficient in achieving social changes in any sphere of activity. The consequences of misunderstanding the social limitations of State law can be very serious, even for well-intentioned legal activists⁵⁾, because in most cases they cannot achieve the end-results they sought.

One reason for this is that the lawmaker is usually outside the group that creates the rules. He also pretends to understand it and thinks he is capable of enforcing his norms, according to an abstract and idealized vision of the social context and legal structures in which these must be enacted. This has been a common belief among the legal elites in developing countries, where the gap between State law and real social practices have become more evident as the years have passed. Usually, local legal systems and values are ignored by State officials in charge of development projects. A process in which only one way of thinking is accepted tends to fail, although the power relations are not unaltered.

Some studies (Trazegnies 1979; Bustamante 1993), have shown that even State officials have their own particular ideas and interests when dealing with State norms. In a descriptive sense, the State is not an homogenous body with only one objective and one will expressed in its legal policies. On the contrary, the State consists of multiple interests, levels and organizations. It is interlaced by internal struggles and by

⁵⁾ In Peru, some authors (Castro Pozo 1973; Delran 1981) have seriously considered the possibility of respecting traditional rules and making traditional codes. A shared problem is that those codes are not written considering the cultural and social environments.

different relationships within society⁶⁾, depending on the specific social settings in which it operates.

1.3 Andean Law

Now I will try to apply the above-mentioned concepts to the concrete reality of Andean peasant communities. I am particularly interested in these three questions: a) Are peasant communities semi-autonomous social fields or not? b) What are the features of the legal rules created and recreated in the communal social space? And c) What influence does State law have on these processes?

A first element for characterising the peasant communities as semi-autonomous social fields is that they are not isolated settings. There are many ways in which the modern sector penetrates them: the capitalist economy, essentially expansive; the increasing connection of communities to the national market; the Agrarian Reform process; State intervention through education and conscription; the presence of religious institutions and NGOs; the mass media; the migration of peasants to urban and industrialized areas on the coast and to the Amazon basin, and the action of political parties. New patterns of behavior, attitudes, beliefs and values are constantly being introduced, and they give a changing shape to the peasant communities. This influence can be of different degrees, depending on the geographical location of the communities. Those closer to markets, mining camps or roads will tend to be more influenced than those located in impoverished areas with little outside communication.

Thus, the legal values and rules found in a certain peasant community, can have different origins, but at the same time do not create rigid legal repertoires. It is a second central element of this contradiction between communal land property and individual possession of plots. It is the external observer in the local arena who perceives the presence of two or more mutually influenced and sometimes contradictory legal systems. The total is not always harmonious nor structured. What surges from this dynamic is going to make up local law, a term that might be useful for research, but is not necessarily shared or understood by peasants.

In the same sense, there are different disputing institutions in the communal space. Some of them derive their legitimacy from indigenous rules and uses, others from national -sometimes former colonial- legal systems. Some institutions function at the local level; others, like State institutions, usually work at local, provincial and national levels. Moreover, the police and other officials without specific legal jurisdiction, are

⁶⁾ Lipsky's insight is important to give a concrete meaning of different bureaucratic levels. "Street-level practices ration service, organize a client's passage through bureaucracy, and keep scarce organizational and personal resources...cases that deviate from routine processing are not exempt from routinization, however. Street level bureaucracies, instead, call on additional practices to manage the first-round costs of processing people in routine ways. These practices absorb dissatisfaction with common procedures, thereby permitting agencies to continue processing the majority of cases routinely" (1980:133).

also usually asked to deal with disputes.

These institutions' fields of jurisdiction tend to overlap. Disputants can therefore choose between several of them. Parallel to private international law, "forum shopping" is also practiced (K. von Benda-Beckmann 1981), based on what they hope to achieve. In these situations, protagonists are usually identified with the legal system they use in their argumentation (see also Moore 1973; Santos 1977).

In short, peasant communities can be understood as social spaces of semi-autonomous location and the creation of law. The processes resulting from the combination of these characteristics is what I call "Andean law". Thus, Andean law is something quite different from "customary law", as it has been conceived by some scholars in Peru (Brandt 1987; Ambia 1988; Tamayo 1992). They consider custom as related to ancient times, and many rules and customs in Andean society are continuously changing. Customary law also leads us to think about one sole Andean law, but Andean society has always been fragmented and divided. The "customary law" concept has another danger: it is opposed to positive law and has no meaning without it. Roman classical law placed custom as a secondary source of law, and tried to give it a subsidiary role.

When I refer to Andean law, I am not talking about rigid forms, institutions, rules or values. Quite the contrary. I am stressing the dynamic *modus vivendi* for solving different conflicts. This process is influenced by the communal background, the symbolic and material resources peasants manage, the way these have been created or established, the local culture and the regional and national environments. Therefore, Andean law is not a structure or an abstraction, but a living process which occurs within the social dynamism of the group. Andean law is a social product in which the actors' interaction modifies or consolidates certain historical institutions. It also gives concrete meanings to the State's regulations, and to the cooperation systems, settlements of dispute, or social arrangements molded by those involved in the process.

A main element of this dynamism is the mutual conditioning between State and Andean legal systems. Andean law is influenced by the different levels in which State law operates. This depends on the type of social process involved (i.e. migration, market relations). At the same time, State law can also borrow some elements from Andean law, without open acknowledgement. The attribution of special powers to communal authorities, the acceptance of traditional sanctions, respect for "customary" marriage or land distribution are some recent examples of this trend. State officials are probably not conscious of this concession to legal pluralism, but their decisions are very useful for understanding the dynamics of Andean law.

1.3.1 Elements of Andean Law

Before giving an overview of Andean legal rules and procedures, mention must be made of problems that arise when one tries to study them. First, only a few systematic and worthy field studies have been made on this issue in Peru, unlike other countries, such as Bolivia, where greater importance has been given to the subject. Secondly, inter community variability is such that grasping what Andean law is and what it means in different communities becomes difficult. There is not a definite body of laws common to and evenly enacted in all inter-Andean valleys. Thirdly, there has been in the country no dialogue between lawyers and anthropologists, necessary in the light of both disciplines for identifying the central elements of Andean law in Peru. Therefore, the characteristics given here to what we understand by "Andean Law", are only preliminary, subject to greater reflection on the matter, but useful for giving the study a proper framework.

A first characteristic of Andean law is that this is combined, both written and oral. Until some decades ago, it could be sustained that communal law was created and transmitted in a predominantly oral way, but the same cannot be said today. This is due to both greater formal education of the *comuneros* and the greater presence of the State, that requires a written type of communication. Still, in those communities where the majority of peasants cannot read or write, the majority of agreements and rules are registered in writing by communal authorities, who are increasingly frequently required to have a formal education in order to accede to their positions. Thus, almost all the communities have an internal statute that regulates daily activities like communal work, fines, election procedures and communal authorities' duties. Also registered in this way are some agreements reached in general assemblies, called "Minutes" (*actas*).

This does not mean, however, that oral methods have lost their importance in Andean law. There are some traditional principles and values that cannot be translated into written text, but which exist on the basis of many norms and written agreements. The importance of oral ways in Andean law can also be seen in the fact that through this method many agreements can be made between *comuneros* in the various communal spaces: the family, the general assembly are respected and comply without the need for written formality. They do not all share the same language, thus standardizing the peasants, symbolically, but this is a source for and effective discourse on their behavior.

The second characteristic is intimately related to this last matter. Unlike State law, which is a law created basically by specialists, in isolated processes and in professional language, under Andean law everybody can take part in the rule-making process. Assembly decisions that become norms are reached only after *comuneros* have openly debated them. Therefore, rules are accepted by most of them. This feature gives a particular dynamism to Andean law, permitting it to take into account various internal and external factors at the time the norm is created, in turn

strengthening these spaces of communication and communal decision.

A third feature is the permanence of reciprocity and cooperation as essential values to peasants' livelihood and, consequently, as the bases of Andean law. Reciprocal ties are perceived as "natural" and not as legal commitments that might embody unfair arrangements, for which reason they maintain them even when a comunero is working or living outside the communal space itself, thus extending the space. However, sometimes these principles can be used by the most powerful members of the community in order to take advantage of the rest and increase their access to scarce resources. This, together with the introduction of values from the market economy into the communal space, has led to a situation in which the above mentioned principles have become quite relative. Yet even in large commercial communities -as in Huayopampa in Lima- these principles were still found to regulate family relations (Fuenzalina et al. 1982).

Since a community is not a homogenous society, communal law is essentially complex. Thus Andean law is created and recreated at different levels. The individual's interaction with his/her family group gives rise to a set of legal engagements. Links with the rest of the community members also produce a constellation of rights and duties. The outcome of these different forms of peasant cooperation shapes the community. As is well known, Andean culture considers that an individual is poor when he lacks relatives (real or symbolic), because access to labor and land use are granted through kin relationships. The permanent activation of kinship and social bonds for satisfying peasants' needs creates a vast array of social obligations and legal agreements that are the basis of communal life.

1.3.2 Andean Mechanisms for Resolving Conflicts

Communal institutions are in charge of solving an array of potential and actual conflicts: distribution of revenues from shared enterprises, the use of water and other scarce resources, improper accomplishment of land rent agreements, family conflicts, and so on. The most frequent conflicts are produced in the family organization, despite the fact that the family is a very close-knit group that induces a strong sense of allegiance in its members. Moreover, since in the communal space the public and private are not isolated spheres (Wray 1987), it is possible that, in the end, a family conflict might involve all the members of a community. Sometimes, neither State nor traditional mechanisms can stop the erosion of personal or familiar relationships. And this, in turn, threatens the whole sense of communal harmony.

Here is where the internal mechanisms for solving conflicts have to work best. Their chances of success will increase if the social group shares one world view and is homogeneous, even if only at the ideological level. It is frequently said that communal decisions are based on an ideology of harmony. But such supposed harmony does not necessarily respect everybody's interests. Moreover, people try to act harmoniously because they need to in order to achieve their own ends, not only because it is an

ethical command. For example, despite the ideology of harmony, families and communities might nurture intense conflicts over the management of scarce resources such as water. Some traditional institutions of cooperation can be used to process the conflict, but it also happens that State law is brought in to handle the case. These conflicts might last for decades without a visible solution: peasants seem interested in just processing the conflict.

In most cases, people obey communal decisions because they have a sense of allegiance and membership to their group. This makes the community a legitimate place for resolving conflicts and decision-making. However, obedience is not automatic. There is a space for dissidence when a peasant considers the communal authorities' decision unfair. This usually happens when a number of *comuneros* feel a resolution hurts them economically or politically, or goes against the common good. The end result might be a renegotiation of the decision, the submission to it by the parties involved, or the calling in of State authorities. *Comuneros* are not automatically linked to Andean law. Some of them decide to follow State procedures because they seem to be more effective for protecting their interests.

Exercising 'forum shopping' is part of the legal strategies of the parties involved in a conflict. They will be eager to submit the case to the authorities they think will be prone to support their claims. However, if both parties address different forums, the dispute will probably not reach a solution. Needless to say, even a common forum might fail to reach a decision acceptable to the disputants.

Here, direct bargaining becomes an alternative. Complex matters are reduced to the most relevant conflictive points and examined carefully in order to arrive at a satisfactory solution. If litigants are not likely to agree easily, other people -usually the godparents-, will intervene. They will press the parties to reach a solution. Thus, law is in action not only in the courts or communal assemblies but also at this face-to-face level. People can have access to legal decisions without the formal structures so typical of modern Western law.

This absence of formality is even more evident when we observe some forms of social control. When a person acts against the communal interest or behaves against *comuneros*' peaceful coexistence, for instance by gossip, drunkenness, or quarrels, the group avoids a written decision but boycotts the offender. In this case, for example, he or she is not invited to any communal activity. Thus, a normative structure is consolidated by a non-written decision. Moreover, this norm and procedure is also applied to non-community members. If a foreigner acquires land inside the communal territory without previous diplomatic gestures, he will probably be subject to the same icy treatment.

Given the value of human contact in a face-to-face society, it is understandable how harsh this sanction is. In such a society, indifferent and impersonal treatment translates group pressure into a direct sanction applied to the transgressor. And, in private relationships, silence is the sign that an agreement is out of reach. As has been pointed out, people need not only a family, but also a solid network of daily

relationships. These will be pivotal at school, work, or communal assemblies. Moreover, when the comuneros go outside their community to cities or temporary migrant centers, the importance of these networks becomes dramatically highlighted.

It should be pointed out that in all these instances, there is an instrumental use of law. Peasants themselves can deny the value of Andean legal principles when these are not convenient for them. For example, this happens when a community fears a nearby village might become a new community. *Comuneros* will do their best to prevent it, declaring there is no evidence of common ownership or land exploitation, demanding all kinds of formal requisites, even though they themselves do not comply with them.

CHAPTER II

A Historical Perspective

2.1 Introduction

Peru is a socially and culturally fragmented society. A high percentage of its population lives removed from State legality and control. The dissociation between official legality and real social life is due to neither "rebelliousness" nor to civil disobedience. To a great extent, it is caused by a limited social knowledge of State law and policies, and by the meagre influence both have on society as a whole. Peru's fragmentation becomes highlighted when studying the rural sector, especially the sub-sector that has a marked indigenous heritage. Despite *ad hoc* legislation, State-peasant community relations have not been easy. In fact, precisely because of this, peasant communities have made long-standing efforts in order to integrate themselves into Peru's social dynamics.

There are two theories about the origin of peasant communities in the Andean region (Peru, Bolivia and Ecuador). Some scholars argue that the Andean community is a descendant of the pre-Inca "*ayllu*", a social form that still survives despite certain changes (see Castro Pozo 1973; Ballesteros and Marcial Rubio 1979). Others see the peasant community as the outcome of the change in Andean settlement patterns during Spanish colonialism. Indians were forced to abandon their dispersed settlements and live in "*reducciones*" or villages designed to resemble Spanish "*comunas*" (Arguedas 1968; Fuenzalida 1971). Currently, most scholars hold an eclectic view: the peasant community has both Andean and Spanish elements, besides features shaped during Peru's Republican period (XIX-XX centuries).

Therefore, a historical point of view is helpful for understanding how these elements have been blended and worked out within communities, shaping their current form. It is also useful for analysing the different and conflictive relations communities have established with the wider political organizations of Peru's history (Inca, Spanish Colonial and Republican regimes). An abridged historical review of these processes is presented here, starting with the first settlers, continuing with the Inca and Colonial periods and concluding with an overview of the agrarian and communities laws of Independent Peru.

2.2 The pre-Hispanic period

Between 5000 and 1000 B.C., a common social phenomenon was found in the Peruvian highlands: the *ayllu*, the socio-economic basis of pre-Columbian societies. For archaeologists, the *ayllu* emerged with the diffusion of agriculture in the Andean zones. This permitted the settlement of early hunting and food-gathering groups. According to Rostworowski (1979:42), there are two key concepts allied in the term *ayllu*. The first points out the conjunction of family groups or lineages related to each other by kin bonds. Their ancestors, known as *mallqui*, were worshipped by these kinship lines, and this reinforced their solidarity. The second concept is the common origin of these lineages. It was thought they had all emerged from a common *pacarina* (or *huaca*), and this sacred place was worshipped by the whole group. Based on these shared conceptions, the *ayllu* as a group collectively controlled and exploited land and pastures¹⁾.

The Andean notion of "territory" is very different from the Western one. The main characteristic of the *ayllu* territory -called *suyu*, in the Quechua language- is its discontinuity, both vertically -which provided the *ayllu* with resources produced at different ecological or microclimate levels- and horizontally, which responded to the need for reducing the risks inherent in Andean agriculture (Murra 1975; Rostworowski 1993; Camino 1980). In this way, Andean cultures adapted their productive systems to their harsh environment.

Regarding land tenure in *ayllus*, each family received a portion of arable land -"tupu". Its size varied depending on its productive capacity²⁾. For each son the couple received one more *tupu*, and half a *tupu* for each daughter. Millones (1987) points out that this land distribution was initially agreed upon by the family heads and later sanctioned by the "*curaca*" or chief of the *ayllu*. The allocation included the apportioning of land for the local divinities -*huacas*- and for the chief. These portions were also worked collectively. In all cases, land productivity was maintained by, among other means, a fallowing system.

The land labor system was based on reciprocity and redistribution principles. On the one hand, kinship relationships were the basis of a chain of horizontal reciprocal obligations. These were expressed in the form of mutual help -*ayni*-, especially in agriculture. On the other hand, vertical links with the chief and religious leaders were also expressed in the form of reciprocal ties. The collective work on *curaca*'s and *huaca*'s land -called *mita*- had to be construed not as a sign of submission but as part

¹⁾ While the possession of land was a main feature in highland *ayllus*, this was not the case in the coastal ones, where families anchored their solidarity on different bases. Rostworowski documents, for example, the existence of *ayllus* of fishermen and ceramists. These did not control a piece of land but certain fishing grounds or, in the case of the latter, shared some means of production.

²⁾ As Del Busto states, one *tupu* of fertile land was smaller than one of poor land. Moreover, there was no unfairness in such a division because, since the fertile *tupu* required less work, once its possessor finished his work he had to help the possessor of the less fertile *tupu*.

of the reciprocity bonds between leaders and followers. Thus, the *curaca* had to ask for it in a ritual way. In turn, he had to legitimise his authority through redistribution mechanisms, returning part of the crop to the *ayllu* members through feasts and communal rituals (Pease 1993:21).

Aside from these data, and due to the lack of reliable sources, little is known about the economic organization of pre-Inca *ayllus*. However, it is clear that the *ayllu* -also called *villca* on Peru's northern coast, and *hathan* in the Aymara region- was the basis of the different political organisations of the Andean world, such as Chavín or Huari, and local or regional ethnic chiefdoms were all structured around the *ayllus*. It was precisely from one of these chiefdoms that the Inca empire or Tahuantinsuyu emerged (XIV-XV centuries).

2.2.1 The Inca Period

The fast formation -in less than a century- of the Inca Empire brought about important changes in the Andes. The political and military expansion of the Incas began in Cuzco, when they conquered different *quechua* and *puna* ethnic groups (Ayarmacas, Canas, Canchis, Lupaqas, Collas). Later on, they expanded to other areas of the Andean region. At the beginning of the XVI century, the Incas ruled over a territory that included most of what is today Peru, Bolivia, Ecuador, Argentina, and Chile. Cuzco was the capital of the whole empire, where the Inca and the ruling class lived.

Due to their expansionism, the Incas subjugated a vast array of ethnic groups. Their political integration was followed by the growth of an "Inca" spirit, a sense of national awareness in itself. As part of their imperial policies, the Incas accepted the previous *ayllu* organisation and took advantage of it. They also reshuffled Andean principles of reciprocity and redistribution in order to legitimise their State formation. Through these policies they obtained a vital element -the labor force.

Inca hegemony did not attempt to destroy the great ethnic chiefdoms under its aegis, or suppress their peculiarities. On the contrary, Tahuantinsuyu's socio-economic structures were based on them. For the Inca it was enough to be recognized as the absolute ruler. The apportioning of land for the State and the official cult was part of his symbolic and productive power base. Moreover, his supreme position gave him access to the labor force necessary for his public works.

The Incas developed a policy of tolerance and respect towards the local gods, authorities and institutions incorporated into their domain. They also supported and protected the conquered people in exchange for their obedience. However, it is difficult to state that the Incas did not change anything in the Andean world. Spanish chronicles clearly show, for example, that a profound reorganisation of the population took place. People started to be counted in decimal-based censuses. The aim was to enhance the State management of the population. The Incas also ordered massive compulsory migrations of *ayllus* or whole ethnic tribes. These *mitmakuna* or forced migrants were put to work in State projects (i.e. irrigation, construction) throughout

the imperial territory, thus modifying former ethnic boundaries. Moreover, the Incas also tried to impose their *Quechua* language in their domains.

The land tenure system was also modified. A commonly held model was for land within each *ayllu* to be divided into three categories, namely, land for the Inca, for the State-sponsored solar cult, and for the *hatun runa* or commoners. However, the situation seems to have been more complex than that (Murra 1979; Rostworowski 1988). Within the portion assigned to the Inca, three different types can be identified: State lands, *panaca* or royal families' lands, and personal lands of the Inca ruler. The ones assigned to the solar cult included those that provided for the worship of the local *huaca* or divinity. Finally, the land given to the commoners included the family parcels and those allotted to the *curacas*. This land tenure system increased the collective duties of the commoners. The potentially conflictive situation was, in part, solved by the productive input of the *mitmaquna* or *yanaconas* -corvée-like workers- who were in charge of the Inca and of solar lands (Rostworowski 1988:246).

2.3 The Spanish Period

The Andean encounter with the Spanish *conquistadors* in 1532 gave rise to the radical transformation of native societies. However, some cultural and social traits remained alive. Once the military struggle was over, the Spaniards established settlements and assumed the sovereign control of the former Inca domains based on the legal principle of *Ius Belli*. The Spanish domination, unlike the Incan, was not based on reciprocity and redistribution principles, particularly with regard to land exploitation. Regarding the impact Spanish domination had on *ayllus*, Rostworowski makes an interesting point:

"The Spanish intrusion meant to [the Andean macroethnics and their domains] a very early and systematic disarticulation. In contrast, the *ayllu*, being a small unit and the basis of Andean social organization, suffered a less violent impact. The Spaniards did not destroy the *ayllu*, they took advantage of it (1993:202)."

As many scholars stress, the destruction of Andean institutions was sometimes deliberate and sometimes due simply to an incapacity to understand them. A clear example of this was the establishment of *encomiendas*, the earliest form of relationship between colonisers and the colonised. The *encomienda* was not, as some authors say, simply a grant of land to a conqueror or colonist. It was the grant of chiefdoms -*curacazgos*- by the Spanish crown, to privileged vassals who were supposed to be in charge of protecting and promoting the Catholic indoctrination of their subordinates (Basadre 1977:275).

This royal concession gave the beneficiary the right to collect taxes (in kind, money or labor) from the group assigned to him (Trelles 1985). The work force at his

disposal was used for several enterprises such as agriculture, mining, and weaving workshops. To this end, the mediating role of the local or regional ethnic chiefs was crucial. They validated their role as brokers using the symbolic and material reciprocity bonds established with their subjects. In this way, ethnic chiefs provided *encomenderos* with the human energy necessary for their early enterprises. Generally, *curacas* were not prone to leave their roles as cultural, political and economic brokers between the Spaniards and the Andean population. In some noteworthy cases this worsened the position of their subordinates. Beyond the ideological legitimising of this institution, the *encomienda* became a system of Indian exploitation because the Crown was unable to enforce its protective laws and had no effective mechanisms to control the power of the *encomenderos*.

The system got out of control and the Spanish rulers decided to put an end to it. The main reason was the erosion of royal power in the Indies and the *encomenderos'* increasing demands for political autonomy. This conflict triggered a period of wars between the Crown and its powerful beneficiaries. In the end, the latter were defeated, and this meant the gradual abolition of the institution. While in 1561 there had been 1,300 *encomenderos*, in 1584 only 360 of them remained (Burga 1976:69-70). However, the exploitation of the Indians continued, but in different forms.

2.3.1 *The Spanish Reducciones*

In 1569, under the government of Viceroy Toledo, a period of administrative reorganization started. He tried to consolidate Colonial State power, increase the profits obtained from the Indian population, and establish a colonial society framed by Hispanic structures.

As part of his plan, *reducciones* or Indian villages were created. These offered a colonial legal and spatial framework for the Andean *ayllus*. The indigenous population was lumped together in more than six hundred of them. In doing this, the administration pursued three objectives. The first was economic. By concentrating the Indian population, access to the labor force necessary for Colonial enterprises was secured. Moreover, tax collection was optimized and State revenues increased. The second was political, aimed at exercising closer social control over the Indians concentrated in these spatial spheres. The third objective was ideological, seeking to facilitate the spread of Iberian values (especially cultural and religious ones).

In fact, *reducciones* dealt a hard blow to Andean concepts regarding control of space and territory, kinship relations, and socio-political bonds such as reciprocity and redistribution. In those new social and spatial settings, Andean institutions were severely altered, but also kept alive. Another consequence was the erosion of the *curacas'* power base. Their support of Spanish Colonial authorities, and the rise of newly State-sponsored local authorities, such as *alcaldes de indios* (Indian mayors) or governors, caused the decline of most of them (Pease 1993).

The concentration of Indians in *reducciones*, and the demographic collapse caused by epidemics and colonial exploitation, unleashed one more process: the depopulation of vast areas of arable land. This land stock was appropriated by the emerging landowners -*hacendados* and *estancieros*. However, it must be stressed that the colonial administration set apart a land reserve for the indigenous population to secure its reproduction.

To protect this and other rights, Toledo's policies included the reform of the judicial system. His objective was to make Indians' rights enforceable by Colonial judges. Among other means, he used laws already in effect. The Decree of 1549, for example, regulated the election of Magistrates, Aldermen, Constables, Bailiffs and Scribes in villages in which, "according to their ways and traditions, [they] were to administrate justice and settle minor disputes" (Levene 1927:97). This new legal and political structure was the basis for the "*República de Indios*". This one was legally different from the "*República de Españoles*". Each one had its own institutions, its own laws, and its own justice. However, this legal fiction embodied exploitation by the former, which was suffered by the latter.

2.3.2 The Chaotic Colonial Property System

If the pre-Conquest Andean space seems chaotic due to its fragmentation, the Colonial property system appears as even more confusing due to its different forms of land appropriation and exploitation. In the XVII Century, one of the main forms of rural property was the *estancia*. According to the type of land, different activities were practised. The central features of the *estancia* were a large or medium extension of land, cattle raising predominating over agricultural farming, low productivity, and the intensive exploitation of the labor force.

The expansion of *estancias* took place at the expense of the *ayllu* lands, once the policy of *reducciones* opened those spaces to private appropriation. Protective legislation in favour of communities -but loosely enforced-, as well as Court decisions favouring the pillagers made the change in ownership possible, even within communities. Spaniards and *curacas* could claim more lands, and obtain judicial support, by proving these lands were necessary for their livelihood. However, in some cases, the Indians whose lands had been appropriated or reduced managed to make the protective laws effective, and recovered their land; but this was the exception rather than the rule.

The only way to assure an effective landholding was through the formalisation of titles or the acquisition of private or corporate property from the Spanish authorities. This process generated much litigation between Indians and Spaniards. Under Spanish law, it was possible to lease or sell land. This meant the destruction of the Andean worldview (land-man). Hence, a new form of relationship (through non-communal means) shattered the Indian mythical-religious thinking.

In order to avoid increasing lawsuits and constant land conflicts, rural property was organized "from above", through the legal mechanism known as *composicion de tierras* (composition of lands). According to Ots Capdequí:

The *composición* was [...] a legal institution by which, in certain circumstances, a *de facto* situation -extra-legal or against the law- was transformed into a legal situation, through the payment of an amount of money to the Crown" (quoted by Burga 1976:97).

The use of this mechanism by Colonial landowners or holders during the XVII and XVIII centuries usually led to the plundering of communal lands. During this period, *estancias* were subject to a slow but important transformation. The development of a more intensive agricultural exploitation, the incorporation of fixed capital (farming tools, carriages, mills, etc), and the residence of workers on the estates produced a new configuration of the rural landscape: the Colonial *hacienda*³⁾.

The haciendas developed specific social relations in which peasants obeyed their landlords. The latter created their own legal subsystems in which they made decisions not only on labor issues but also on Indian family disputes and other private affairs. The rural population outside the estates tried to survive corporately in peasant communities. Others were just possessors of family parcels.

This was true at the time of Tupac Amaru's uprising, the most serious indigenous revolt against Spanish rule, which took place between 1780 and 1781. Even though it was one of the last of several rebellions against the abuses of certain authorities, it did not mean the end of the will for freedom from Spanish rule. After Tupac Amaru had been defeated, the Spaniards carried out unmerciful measures in order to weaken the Indian organization. *Curacazgos* were suppressed and replaced by *varayocs* or Indian mayors. Quechua language, Inca names and Andean traditional clothing, literature, theatre, and musical instruments were rigorously forbidden. Regarding land tenure, there is no information available about changes in the rights of indigenous people.

Criollos and *mestizos* (half-breeds) who wanted independence from Spain, were at the same time struggling for economic and social power. The early XIX Century revolution against Spain ended in the replacement of the ruling elite. But this political change was not followed by social or economic changes. The existing latifundia system was not questioned. The landholding system remained the same.

³⁾ As Burga said, the difference between the *estancia* and the *hacienda* was not the extension of land or the type of property, but the form of agricultural exploitation (1976:109). However, these forms did not bring capitalist relations into the *hacienda* because agricultural work was carried out by Indian servants (*mitayos*). Estates with high technology and efficient productive organization only appeared in some regions like the Northern coast and the Central highlands.

2.4 The Republican Period

The Independence process -promoted by Indian *criollos* and mestizos- had an important effect on the Indian situation. On 27 August, 1821, less than a month after the creation of the Peruvian Republic, General José de San Martín abolished the indigenous personal tax (applied to heads of family). However, since this tax was the main source of revenue for the newly born State, this decision could not be put into practice. So, the Indians' head tax was restored pretty soon (August 11, 1826).

The new rulers' ideology favored free trade and an open market economy. Consequently, they opposed traditional institutions that hindered the smooth traffic of goods and services. On April 8, 1826, Liberator Simón Bolívar granted the Indians the right to alienate their land to other people. The tacit objective of this decision was to create a class of thriving small independent landowners, capable of developing a national market. However, the outcome was very different. Bolívar's decision implied the legal extinction of the communal organization. Many *hacendados* forced Indians to sell their lands. Indians did not own resources on a large scale. They only had a subsistence economy. Thus, in a market economy they became the weakest sector and, in a critical predicament, had no other alternative but to give up their lands.

The effective enforcement of Bolívar's law was delayed for fifty years. However, there was already a crack in the wall. It divided *hacienda* and community, and paved the way for the great latifundia expansion. The new criollo and mestizo elite increased its political and economic power investing in technology and consolidating its dominant relations with the Indian labor force. In this context, peasant communities tried to survive as such, despite the adverse and exclusive socio-economic model of those times.

Populist measures, like the definitive suppression of the Indian tax by President Castilla in 1854, were aimed at rallying support from the different military factions that competed for power. In general, there was no specific development policy for the peasantry. Instead, the ruling sectors promoted the immigration of European and Chinese coolie labor for their *haciendas*.

During the XIX century, agrarian history shows an acute confrontation between *haciendas* and indigenous communities. The conflict was over the control and possession of the best arable lands and pastures. Estate owners, particularly from the southern highlands, sought the support of government officials using legal mechanisms and political persuasion. Even after judicial decisions, the problem between estates and communities reappeared, especially with regard to the legally determined limits between them. In these situations, peasant protests were usually defeated by the use of all-out violence.

Many Indians had to live in the *haciendas* under a feudal regime, complying with the personal duties established by the landowners. Most of the highland *haciendas* did

not carry out efficient land exploitation. As a consequence, most rural regions fell behind, into a critical situation.

2.4.1 *Indigenist Thinking*

At the beginning of the present century, Peruvian intellectuals were particularly interested in analyzing the "Indian question". The main reason for this was Peru's resounding defeat in the war with Chile (1879-1884). This catastrophe was attributed to the lack of national unity. The existence of different ethnic groups and what to do about them became a hotly debated issue. This, in turn, paved the way for State-sponsored social reform.

The *indigenist* movement was far from being a solid, coherent or systematic set of ideas and images about the Andes (Poole 1990:346). In fact, many indigenists based their ideas on prejudices already circulating about "the Indian" and his community, while others presented new interpretations of both. But all of them shared two features. On the one hand they denounced the exploitation and servitude under which Indians were living. Landowners, judges, priests and local authorities were all blamed for this and for taking advantage of it. On the other hand, they all agreed on a revaluation of the cultural and social accomplishments of the Andean people, believing they were fairer and more solidary than "modern" ones.

Lima and Cuzco were the main centres for the movement, giving it an urban rather than rural character. With a lot of romanticism, lively indigenists expressed their ideas through the urban media, influencing the ruling elite. One of the aims of the movement was to encourage debate and promulgation of protective legislation in favor of peasant communities. This was achieved during the government of President Augusto B. Leguía (1919-1930).

The 1920 Constitution allowed indigenous communities to possess land defined as inalienable. However, this Constitution did not solve the legal problem of community recognition and land titles. A legal vacuum was evident, and communities were forced to assimilate themselves to the regulations of western law.

In this context, the 1924 Criminal Code, following a Swiss positivist conception, considered the socio-cultural condition of indigenous people as attenuating factors for enforcing sanctions. However, these attenuating factors were tied to the incorporation of Indians into "western civilization". Rather than respecting Andean people, this measure betrayed the integrationist and ethnocentric character of the legal system.

2.4.2 *The 1933 Constitution*

The 1933 Constitution, promulgated during the government of President Sánchez Cerro, was conditioned by the political, economic and social demands of that time.

APRA's⁴⁾ founder, Víctor Raúl Haya de la Torre, and other prestigious leftist writers such as José Carlos Mariátegui, had criticized the landowning elite and denounced the situation of the peasantry. All across the intellectual spectrum, the agrarian question and its social, economic, political and legal dimensions were the topic of intense research and lively debate.

As a result, the legal existence and recognition of Indigenous Communities was constitutionally established (Art. 207). Moreover, the State was given the duty to secure the integrity of communal property. In spite of this constitutional protection, landowners expanded their estates at the expense of community land because these protective measures were not enforced. Moreover, no mechanisms were created for promoting the modernization of the peasant economy so as to obtain profits from their interaction with the capitalist system. For example, community land was not considered as collateral for credits. Communities were relegated to a marginal role within the capitalist economy, and were prevented from furthering their economic and political position in Peru's national setting.

The lack of a development policy for the indigenous communities had tragic consequences. In the forties and fifties, there were terrible famines in the highlands. Only when poor peasants decided to migrate massively to the coastal cities, did State policy-makers realise the social significance of the community. It was not only a question of preserving ancestral traditions, but of increasing the peasantry's chances of survival.

According to the legal framework regarding property, real estate ownership was subject to Peruvian laws (art. 31). Thus, the main problem for indigenous communities was how to prove ownership of the lands they had occupied for centuries. An interesting case was Article 37 of the 1933 Charter. It recognized the exclusive State ownership of mines, land, forests, water and all natural resources, except "legally acquired" rights over land. This last expression led some jurists to consider that communities were the owners of the land in which they were settled, and that they also acquired a "preferential" right over the natural resources within or nearby them (see Basadre 1937).

However, for State law, communities were possessors without title deeds. Some communities, which had acquired the property of their lands according to Colonial law, were deprived of them under the 1933 Constitution⁵⁾. Moreover, the

⁴⁾ Alianza Popular Revolucionaria Americana (American Revolutionary Popular Alliance), Peru's main political party.

⁵⁾ In this respect, Mateo Maya, a 1933 Constitutional Assembly representative, said "In the Province of Yauli, [a community] had its titles since the year 1751. However, the *Cerro de Pasco Mining Corporation* acquired mines under the name of "Hacienda Minerales". Later on, the corporation became the owner of those communal lands, alleging a right that did not exist. And all this happened during General Odría's government, which recognized the corporation as the owner, ignoring the group of immemorial people who in fact here the real landowners since time..."

requirements of the 1936 Civil Code made the community's legal status even more fragile.

2.4.3 The 1936 Civil Code

The 1936 Civil Code, in Book I, Section IV, defined indigenous communities as legal corporations. One of the reasons for giving them this status was the 1933 constitutional recognition of their legal existence. However, in its introduction, the Civil Code stressed that:

"The provisions of the preliminary draft are aimed at bringing the Indigenous Communities towards effective legality. Community existence, functioning, and possession rights will be regulated. [In this way], we shall open the way that will lead the members of the present communities to become tomorrow's private owners" (Guzmán Ferrer 1983:215).

The Civil Code was an explicit expression of Liberal thought. It facilitated the abolishment of communities if they were not registered. Registration was a key requirement for their legal existence. A Special Register was to be compiled and updated every five years (Art. 71)⁶. Being registered was the only way to obtain the rights sanctioned in the Constitution.

The registration requirement was questionable, since most *comuneros* were illiterate. Despite this, it was weakly justified on the "possible existence of literate people". However, to communities, registration meant the legal recognition of their existence, and an enhancement of their position vis-a-vis the State, local authorities and landowners.

The communities' representation was attributed to delegates elected by the adult and literate *comuneros*. This was a legal prescription established by the Civil Procedures Code (Article 72) but it was not necessarily in accordance with Andean local law. Community delegates exercised a sort of guardianship⁷ because indigenous people were considered illiterate, and in need of assistance in their civil acts. Other articles regarding the legal existence of communities were similar to those established for certain associations, especially for the trade societies regime.

⁶ According to the *Revista de los Tribunales* (Journal of Jurisprudence, Lima), issue 1932: "The communities' legal recognition is subordinated to their registration in the respective register of the Ministry of Labour and Indigenous Affairs. Without completion of this requirement, community members lack legal representation".

⁷ Guardianship is an institution established by the Civil Code in which the minor not under parental jurisdiction is referred to a guardian, who takes care of his rights and goods (Art. 50).

2.4.4 Later Legislation

The insertion of communities in Peru's wider social dynamics was partially a consequence of their struggle -not always through legal means- to respond to the official requirements imposed by the Peruvian State. The fulfillment of these requirements was necessary for obtaining resources and protection for their base of resources. The dynamism this process unleashed in the rural areas had a national political impact during the forties. Community concerns were finally included on the State's agenda.

The romantic indigenism of the twenties had shown itself to be too weak to satisfy the urgent political demands of the peasantry. After an unstable period, an integrationist and anthropological indigenism was developed in Peru. This was a serious attempt to influence citizens and institutions on behalf of the communities. In this period, the Department of Ethnology of San Marcos University and the Peruvian Indigenist Institute were created⁸⁾. Both carried out an extensive research and development programme on the assimilation of indigenous people into western patterns.

For example, the Institute promoted craftsmanship, cooperatives, agriculture and other activities carried out in the communities. This was a major experience: although it focused on action, the Indigenist Institute seriously tried to study and improve the peasants' living standards. Approximately 250 field studies were undertaken and published in an important journal, "*Peru Indigena*". This research was also used to support bills in favor of the communities. The anthropological perspective was useful in understanding communities in terms of land rights, patterns of authority, and socio-economic development. After these anthropological studies, new perceptions evolved about community elements⁹⁾.

In 1966 the Institute was incorporated into the Ministry of Labour. The Executive branch was put in charge of it for the formulation of policies targeting peasant communities. The Institute's functions were restricted to economic and social research, and to staff training. It was deprived of its political and legal functions. Instead, the new National Bureau for Community Development, under which it was placed, assumed those tasks. However, the Executive gave little support to its own Bureau and indigenous participation remained rather scarce. The following example is helpful in understanding the limitations of the official concept of the problem:

⁸⁾ The Institute was officially created on 25, March 1942, after the participation of Peru in the First Interamerican Indigenist Congress (Patzcuaro 1940). This Congress approved the creation of the Institute along with its national sections.

⁹⁾ A summary of the contents and impacts of these studies can be found in Dobyns (1970). Most of these studies were developed in the Peru-Cornell project, as part of an agreement between the indigenist Peruvian Institute and the Department of Anthropology of the University of Cornell.

In an Indigenous Community in Cuzco, the National Bureau for Communities decided to change the ancestral custom of making artistic pottery. Due to the economic situation, it was more profitable to produce bricks and roof tiles, than ceramics, so community members were forbidden to make artistic pottery, and special furnaces for bricks and roof tiles were built. As a result indigenous people rebelled and destroyed the furnaces.

The first Indigenous Community Statute, promulgated by Supreme Decree No 11 of 2 June 1951, was aimed at regulating all aspects of communal life, as well as the community's position within the official legal framework. Communities were defined as "legal entities subject to private law, based on the association of individuals related by tradition, habits and customs, or by the possession of land in common" (Art. 1).

The key concept for promoting community development was the cooperative system. This was a strong trend in State policy. The State misunderstood the community's internal relationships. Reciprocity, links to the land, and different *comunero* status were not taken into account. Policy-makers saw only a group of people working together in the same field. According to some of them, communities were naturally prone to cooperativism. Unfortunately, peasants usually perceived such cooperative principles as alien impositions.

Nevertheless, the statute included regulations authorizing the internal organization of community affairs based on traditional norms (see infra: *minka* and *ayni*). However, these principles were not necessarily applied for the exploitation of the shared resource base. Moreover, the profitable State intervention in the peasant economy was kept in place, by promoting compulsory community labor for road construction.

The communal appropriation of community land was ratified, though the arable land could be distributed to community members under the status of "private usufruct"¹⁰⁾. In this sense, the *comunero* who owned land in the community (by family succession or community ordering) was secure in his property rights. A compulsory registration policy of land rights in a special Community Register was also established.

The recognition of communal criminal jurisdiction over its members was an important accomplishment. Sanctions were enforced according to the seriousness of the offence: reprimands, fines or suspension of rights. Such suspension required the approval of the General Bureau of Indigenous Affairs. Andean law was also recognised -but through of the limited concept of "customary law"- in some instances, such as in minor family conflicts.

¹⁰⁾ This usufruct was implied in the legal status of the communal land possessor. This was coherent with the provisions that prevented community members from holding private ownership rights. However, such prevention was not enforced, in part due to the promotion of private ownership.

Another important norm was Supreme Decree No 2 of 12 June 1961. This referred to the official recognition of Peasant Communities. The Ministry of Labour and Indigenous Affairs acted along these lines as a supervisory institution.

2.5 The Agrarian Reform Period

The Agrarian Reform was, for Latin American countries, an important process of cultural, social, political and economic changes. Not only the rural areas were transformed. Society at large changed for the better. In the case of Peru, carrying out the agrarian reform was rather difficult. It required decision and political timing. It was a risk that most governments would rather delay, especially when confronted with strong pressures from influential landowners.

In this context, despite thirty years of research on the subject and more than forty years of intensive communal struggle against expansive estate owners, only in 1962 were the first Supreme Decrees and Laws regarding the agrarian reform were promulgated. In their struggles, communities used their old colonial land titles and embarked on long and painful procedures before the Judiciary and the administration in order to defend their land ownership or tenure. In the sixties, the decline of latifundism enhanced the development of communities. At the same time, the first State legal responses were put into effect.

In 1960, the first agrarian reform law was proposed. Here, the question of the indigenous communities played an important role. Aside from this, the Commission of Land and Housing appointed by the Executive branch also dealt with the issue of the indigenous integration into the national scene through a set of bills. These stressed the need for promoting cooperativism, determining the individual rights of community members, maintaining their forced association, and sponsoring communal activities. They stated the possibility of individual ownership of community land, up to the point of regulating the potential "legal expiration" of the common regime. However, these proposed laws were not approved by Congress due to the Congress's opposition to the President and to the lobbying by powerful landowners.

On 16 November 1962, a military government enacted the Bases of the Agrarian Reform Law (number 14238). This was, indeed, a declaration of objectives to be achieved through later specific legislation. It also insisted on promoting cooperativism among *comuneros*, without acknowledging their own forms of organization. In fact, the Agrarian Reform Law Bases tried to put an end to the serious peasant revolt faced by the government in the La Convención and Lares valleys (Cuzco). There, some guerrillas were engaged in "the accomplishment of a radical, and almost integral agrarian reform, doing what the government could not do" (Villanueva 1967:128).

The following Agrarian Reform Law, Decree 14444, was a clearer response to the land question in the above mentioned valleys. This law established new landholding

patterns, working conditions, and production regimes in La Convencion and Lares. An essential element of these was the definition of an "agricultural family unit" (extent of land). The objective was to encourage personal farm management, direct family exploitation, and the attainment of higher incomes. It was presented as a pilot plan for a future Agrarian Reform. The decree was justified, and thus accepted by the dominant national groups as a way of preventing further uprisings in other rural areas.¹¹⁾

2.5.1 Law Decree 15037

In the mid sixties, Peru maintained its agro-exporting status with a weak internal productive structure and a strong dependence on its export sectors (agriculture, mining and fishing). Export-oriented corporations -usually multinationals- exploited Peru's comparative advantages: raw materials, scarce added-value taxation and low labor costs¹²⁾. They also used their economic power to greatly influence the political system.

Furthermore, centralism was one of the features of Peru's development pattern. The main beneficiary of State policies was the city of Lima, due to its high concentration of industrial, political and financial activities. With a weak middle class and the absence of an organized popular movement, the country's administration was a relatively easy task for those agro-exporting sectors.

However, a fraction of the elite that held power in 1963 considered the promulgation of a land reform law as of the utmost importance. They saw the necessity for the introduction of some social and productive changes such as the end of the latifundia system, the redistribution of land in favor of the peasantry, and the development of an internationally competitive agriculture were part of the agenda put forward by this faction. The end result of these claims was Law Decree 15307.

This law was based on a diagnosis made by the Commission of Agrarian and Housing Reform (CRAV) at the beginning the sixties, and on the analysis made by the future leaders of the 1968 *coup d'état*. One of its goals was to guarantee the indigenous communities' rights to ownership over their land and further adjudications. Priority was given to adjudications in favor of landless peasants, communities and cooperatives. Private ownership of communal lands was not allowed. Ownership was therefore attributed to the community as a legal entity.

With regard to the internal community organization, the State enacted a special statute in which its economic regime, administration, communal services and other

¹¹⁾ The accounts of this short military government (July 1962—July 1963), and on the importance of the legislation produced by that *Junta* (the Agrarian Reform in Cuzco; the creation of the National Bank etc.), differ from one author to another (see Villanueva 1967).

¹²⁾ This was clearly shown during the Korean war, period in which the country enjoyed the favorable economic consequences of the demand for its raw materials.

institutions were subject to official guidelines. Community-like groups, *ayllus* and parcelled groups were also treated according to these regulations. The use of water was also recognized as a communal right.

However, Law 15307 did not forbid the overwhelming concentration of land in a few hands, under the so-called "agro-industrial export-oriented model". Overall, concrete property relationships between peasants and landlords did not change, because the latter were also part of the elite who did not want political or social change in the rural areas. This position generated a strong political reaction. Finally, the lack of a long-term national project, a frustrating political deadlock, and the justly born guerrilla warfare, pressed again for the rise of the Armed Forces in Peruvian politics.

2.6 1969 Military Agrarian Reform

The *de facto* government that took power on 3 October 1968 carried out two important measures in Peru's political history: the nationalization of oil companies and the enactment of the Agrarian Reform Law, implemented by Law Decree 17716.

As a referential framework, it should be stressed that the new administration applied many of the reforms devised by the Economic Commission for Latin America (ECLA). Among other things, ECLA advised the development of infrastructure for the import-substitution process, considered in the seventies as the "pattern of development for Latin America". However, ECLA's proposal was not the only one applied by the military government. It also tried to implement the Yugoslavian "self-management" experience.

The government implemented reforms in strategic economic sectors such as agriculture, industry and mining. The common feature was the State's participation in productive, commercial, economic and financial activities. The military project was completely different from previous patterns of State intervention.

The reforms were intended to arouse critical social consequences to overcome Peru's long-standing failures (tightly-knit oligarchy, low political participation, concentration of wealth, etc.). Therefore, 1968 represented the first State-sponsored effort to conceive an integral development policy for Peruvian society. The country attempted to overcome its limitations and problems, though the theories and means used were not suited for these purposes.

2.6.1 Law Decree 17716

Within the first year of the new administration, the government decided to promulgate its Agrarian Reform Law (Law Decree 17716). As has been stated above, the agrarian reform had been a topic of research and political programs for decades. The Senior Military Studies Centre (CAEM) was also interested in it. At least since 1963, CAEM

called for the urgent reform of the latifundia system¹³⁾. The agrarian reform was the main point on the Government's ambitious agenda. It was considered the solution to one of the nation's most important problems. Law 17716 was aimed at launching agricultural production, integrating the rural population into the national economy, and making agrarian development the basis of a sustainable industrialization.

The Agrarian Reform Law Decree, according to Béjar (1983:714), was more radical, swifter and advanced than what had been proposed by the Peruvian political parties and the peasant movement itself. This can be observed in President Juan Velasco's political speech announcing its promulgation:

"From now on, the Peruvian peasant will not be a pariah. Nor will he be disinherited any longer. From this blissful June 24th, the Peruvian peasant will be in fact a free citizen. At last, the motherland recognizes the peasant's right to exploit the land he works as his own. She also recognizes a fair place for him within a society in which he no longer will be a diminished citizen, a man to be exploited by other men...".

According to law 17716, the Agrarian Reform was to be carried out upon:

1. Fallow land.
2. Properties not exploited by their owners.
3. Properties that exceeded the allowed limits.
4. Properties in which there was evidence of working conditions contrary to labor legislation.

The law established the procedures for valuing the rural properties to be expropriated. It also gave a definition of the "non-cultivated land" (by lack or excess of water) under public ownership.

The agrarian reform process was carried out by administrative zonal offices, and by the General Director of Agrarian Reform and Rural Consolidation. A Supervising Committee and an Agrarian Court were also created. The latter was a jurisdictional organ especially in charge of solving the conflicts which had originated in the application of agrarian regulations.

The law's purpose was to give land to groups of peasants organized in large associative companies, that could be of three types: Agrarian Production Cooperatives (CAPs), Agricultural Societies of Social Interest (SAIS) or Social Property Rural Companies (EPS). The idea of establishing large production units was due, as

¹³⁾ Hildebrando Castro Pozo, in an article published in the Military Journal of Peru, defended the indigenous people's communal organization, for it had a "social and moral geopolitical utility". Its distribution in the Andean territory, its traditional forms of ownership and administration, and the state's attention to its basic needs, were the key factors for the strengthening of the Inca state, as opposed to what happened during the colonial and republican periods.

Caballero indicates, to the fact that they would help towards a rapid and effective modernization of agriculture, as well as achieving a socialization of the property and production (Caballero 1990:99).

As Martinez points out, the difference between one form and another was due fundamentally to the location and degree of development achieved by the haciendas and lands at the time of their expropriation. While the CAPs were created on *haciendas* that already had good technological and productive development -especially on the coast, but also in the mountains- the SAIS were created mainly on the large cattle *haciendas* in the mountains, where precapitalist production relations predominated (1980:107). From the legal point of view, both were considered self-managing companies, but with a basic difference: in the CAPs (Agrarian Cooperatives of Production) membership was obtained individually or on a family basis, while in the case of the SAIS (Agrarian Society of Social Interest) the members of the society were not individuals but peasant communities, cooperatives and peasant groups which were represented in the Administration Council. A more detailed definition of CAPs and SAIS comes further on in this research.

Regarding indigenous communities, perhaps one of the most important aspects of the law was the shift of the communities' legal denomination. Instead of "indigenous", the law called them "peasants". A racial reference had been replaced by a socio-economic term. However, not even the State could deny the persistence of ethnic and racial problems. The main consequence of this legal decision was not to take into account cultural or ethnic features when implementing a sound rural development policy. To decision makers, the peasant question was considered just a matter of production, land distribution, income redistribution, and technology. The outcome of these biased assumptions became clear in the following years.

The responsibility for community matters were transferred from the General Bureau for the Integration of the Indigenous Population, a Ministry of Labour agency, to the Ministry of Agriculture, specifically to the General Bureau for Agrarian Reform and Rural Consolidation.

There was also a change in State objectives. The traditional administrative position had been one of just attempting to consolidate a communal self-sufficient economic structure. It had also acted merely as a referee when communities clashed with other rural social agents. The new official policy had a different objective. The goal was to expressly include peasant communities within the State process. This was the first State effort to integrate communities into the national arena.

There was also an implicit interest in "technifying" communities and organizing them into cooperatives. The main criteria at the base of this associative model was to "avoid the fragmentation of communal lands". Thus, most of the land was adjudicated to cooperatives or SAIS, but the *comuneros'* individual possessions were also recognized.

However, if a *comunero* abandoned or did not directly exploit his parcel, an expiration date was set¹⁴⁾ for his ownership (or usufruct) rights.

Article 123 established litigation procedures regarding ownership or possession rights. In this regard, a substantial improvement was made because this special jurisdiction speeded up usually slow ordinary procedures. In fact, the Agrarian Court was one of the main vehicles for carrying out the Reform. It prevented expropriated landowners from using the legal labyrinth for delaying or avoiding the application of Law 17716 (see Pásara 1973).

An important difference in the 1960 bill was that the legal framework applicable to the new communal lands was the Land Reform Law instead of the Civil Law¹⁵⁾. Later, Supreme Decree 240-69-AP -The By-laws of Agrarian Cooperatives-, set forth that arable land would be adjudicated to:

- Productive units aimed at the entrepreneurial administration of the land.
- Individuals. Here, the term "individual" included communities, groups of peasants (or recently established cooperatives), and individual peasants.

2.6.2 *The Peasant Position regarding the Agrarian Reform*

The peasants' attitude towards the agrarian reform was not as enthusiastic as expected. There was general scepticism about the government's offer. This suspicion made an immediate rapprochement between government and peasants impossible.

For state officials, this problem was going to be solved by a "demonstration effect". The speedy and effective application of the Agrarian Reform Law would soon turn distrust into active peasant support and participation. However, this turned out to be wishful thinking only. It not only ignored the conflicts and the complexity of the relationships within the peasantry: feudatories, *yanaconas*, comuneros, paid workers, etc. It also disregarded the geographical and cultural diversity of the peasant world.

Sometimes, cooperatives and SINAMOS¹⁶⁾ were rejected by the peasants, especially on the central coast -where feudatories and paid workers predominated-, and in some Andean regions -where communities were more numerous¹⁷⁾. On the coast, a higher

¹⁴⁾ This norm already appeared in the 1960 bill and in the 15037 law (art. 135).

¹⁵⁾ Other related norms that indirectly regulated the communal issue were the Supreme Decree 163-69-AP of August 19, 1969, which regulated the granting of land for the agrarian reform; and Supreme Decree 236-70-AC, of August 4, 1970.

¹⁶⁾ SINAMOS (Sistema Nacional de Movilización Social), the National System of Social Mobilization was a state organism for promoting people's participation, and support for the military Revolution. "*Sin-amos*" also means "without masters".

¹⁷⁾ An interesting case was that of the SAIS Marangani (Cuzco). An official emphasizes the *comuneros'* indifference: "They didn't believe us", in spite of him being a Quechua speaker, visiting house by house, and participating in their Assembly. "We had to threaten them with closing down their schools, cutting down state aid, and even nullifying the community's property titles, if they did not accept the formation of

level of pre-existing unionism explains such a response.

Some peasants tried to maintain the productive practices acquired during the former land tenure system. This occurred especially among those who had lived in haciendas, in a very submissive and paternalistic relationship. The main problem was that they did not identify with the principles of the cooperative system. For example, they refused to give their livestock to the cooperatives or SAIS as a contribution to "their" enterprises.

Other authors point out that peasants refrained from harvesting the biggest potatoes so that, at night, they could grab them for their own benefit (Thorp 1978). Likewise, they stole the finer cattle imported by the SAIS. Another way of damaging the new rural enterprises was to refuse to pay for the use of the land, assuming it was theirs. They did not even want to pay for the right to pasture their livestock. The most revealing protest action was the takeover of land. Not only land from the haciendas, but also that of new enterprises was suddenly occupied. In general, all these actions show the lack of identification with the officially sponsored model.

With regard to *comuneros*, the agrarian reform was a welcome opportunity to claim and attempt to recover communal land. This objective usually clashed with the State's modernizing interests, such as sponsoring the cooperative system. Overall, the problem was that the SAIS and the cooperatives became conflict settings between the State and the communities. Moreover, only few peasant communities received real benefits from the land reform. Overall, in terms of concrete property relationships, landlords lost their landed property rights and these were adjudicated to peasants.

2.6.3 1970 Community Statute

The Community Statute attempted to restructure the economic, social and cultural dimensions of peasant communities. Its goal was to adapt them to the national development plans of the military government. The State attempted to "modernize" peasant production and living conditions through the establishment of cooperative associations and the implementation of high technology projects¹⁸⁾.

The peasant community was defined as a "group of families which possess land and is identified with a specific territory. Community families are linked by social and cultural traits, communal work, reciprocal help and, basically, by activities associated with agriculture" (Article 2, *Reglamento del Estatuto de Comunidades Campesinas*;

the SAIS. In a threatening and distrustful environment, they named their delegates when pressed to do so, and in some cases with a great deal of reluctance. I remember that a peasant woman from the Manuera community told us: You are going to be cut into pieces if it doesn't work" (Auroi 1986:115).

¹⁸⁾ Ignoring even the peasants' rationality and values, the Agrarian Reform only analyzed the effects of human action upon the technical system. It did not take into account the economic, social, cultural and political rationality that inspires the peasants' decision making process. UNC-UNAC "Manual Silvo-Agropecuario".

Bylaw of the Community Statutes).

With the same regulatory objective, there was an attempt to codify the community's economic and political regime, both internally and externally. Recognition as legal entities in private law, a status already acquired in the 1936 Civil Code, was legally confirmed. The administration tried to integrate communities into the State's dynamics, but in a strictly formal way. Thus, it maintained the requirement of an administrative act to obtain legal representation and protection from third party interests.

To obtain recognition, the community needed an ownership title or some other evidence of land possession. The community also needed to prove it was a "social group", with solid internal ties, and that it had the approval of two thirds of its *comuneros*. However, any interested party could oppose the recognition procedure. The Agrarian Reform law sought to revitalize "traditional norms and values" if they did not clash with the government's national development project. Such revitalization took into account Andean mutual help and traditional cooperation¹⁹).

"Communal annexes", defined as peasant groups inside main communities, controlling and living in specific areas and with a semi-autonomous organization, were allowed to separate from their mother communities and obtain independent status as themselves. This new status meant a social and political upgrading to meet challenges such as population pressure and the subsequent need for more services. Moreover, this policy also revealed the official effort to prevent the emergence of internal conflicts.

Requirements to be considered as a *comunero* were: to be a resident of the community, to be essentially an agricultural worker, to own no rural property within or outside communal lands, to have no source of income outside the community²⁰, and not to be a member of another community. Assimilation, by which a foreigner could be integrated into the community, was also allowed. A *comunero* lost legal status by changing residence, not fulfilling communal obligations, or by acquiring rural property outside the community.

The communities administrative regime was regulated by three institutions taken from the associative model: the General Assembly, the Executive Council, and the Supervisory Council. Council members carried out their functions for two years. They were usually not paid. Representation of *comuneros* who dwelled outside the communal nucleus was also allowed through the appointment of "delegates" to the

¹⁹ Values already permeated by market forces, political competition, and the impact of Western ideological premises.

²⁰ Migration (internal or external) has been a way of social mobilization in Peru. The Statute attempted to restrict the privileges of *comuneros* only to residents and, by doing so, restrain internal migration.

Executive Council²¹⁾. The Statute also established the grounds for cases of dismissal from or vacancy in communal offices: improper disposal of communal goods, unlawful use of land, and improper use of power were among these.

Special Committees were created. They had an internal structure similar to the Executive Council. Their functions were mainly economic, including planning, productive programming, technological innovation, rational exploitation of communal resources and designing communal activities.

One more alien element imposed by the Statutes was the establishment of an Electoral Committee. It consisted of two *comuneros*, the oldest and the principal one of the Communal School. This represented the indirect presence of the State in matters exclusively concerning the *comuneros*. The vote was obligatory and secret.

Communal property consisted of goods and rents. The former included land and buildings within and outside the communal territory. Land for grazing, forests, and their accessories, including machinery, tools, capital, furniture and goods were also part of the communal property. The latter included interests earned on communal capital, cooperative or SAIS revenues, payments for land usufruct, and "revenues obtained from rodeos, according to local custom". In this case, a custom thus was recognized for practical reasons.

Regarding the administration of these assets, the Director of Peasant Communities was put in charge of supervising peasants' management²²⁾. Again this newly created post was alien to peasant communities custom.

Finally, the communities could be legally dissolved if: a) agricultural land changed its status to urban use; b) most community land was subject to private usufruct; or, c) a community did not develop its institutional life according to this regime.

2.6.4 *The Response of the Communities*

An obvious failure in this Statute was considering communities only as productive units. It totally disregarded their complexity as social organizations. The new system, then, brought about a disparity between the *comuneros*' expectations and the rights granted to them by the State. Most associative or communal forms were hard to implement, because of their excessive formalism. The communities responded to the Statute in three different ways:

²¹⁾ This was an attempt to encourage participation of settlers that fled the central nucleus. De Zutter explains the process: "...the first communities were set up on lower lands. Since land and power were concentrated on them, and the youngsters were jobless (without parcels), they decided to form a group and settle down in the highlands, where nobody dwelled. They set up their own community, some kind of subsidiary of the mother community, from which they slowly became independent..." (1975:80).

²²⁾ This was an application of article 21 of the 1933 Constitution.

- a) by changing their organization to that recently established, thus altering their own rationality. Such changes resulted from the urgent need for legal recognition and its subsequent legal support.
- b) by splitting into groups: some comuneros sought to maintain the ancestral organization in spite of the newly imposed legality, while others found themselves protected by the new organization and supported its implementation.

No reaction could better demonstrate one of the deepest mistakes in the Statute - the near-sighted belief in the homogeneity of the *comuneros*. The Statute had not perceived the conflicts instigated by the diverse economic positions within the group.

Different motivations explaining the conservative behavior of certain *comuneros* can be pointed out: cases of land monopolies, position and influence, profiting from membership in religious or political associations, or kin relationships with outsiders (especially with people living in Lima).

- c) Some communities, on a small scale, made an effort to adapt their own system to the regulations established by the State. For example, they adapted authority denominations or delegates' responsibilities, in order to keep the former organizational rationality²³).

This option had only an outside chance of success: relationships with the exterior (market articulation, reduction of community space, literacy, mass-media) made the reproduction of older historical patterns quite difficult. However, some communities far from the urban settlements, such as in Colca Valley (Arequipa), managed to use this mechanism. For example, Valderrama and Escalante found that in the community of Yanque there exist "two communal structures for the use of water: one formal, fixed by the Ministry of Agriculture, and the official society, and the other -which is really used in the community- directed by the Yaku Mayor Vara, who is the one who organises the use of the hydraulic system (1988:20).

²³) Paerregaard points out: "...This new structure of communal government replaced the former, in which the agent, the president and the other members of the Communal Junta were the community's main representatives. Under President Leguia's government, another system of communal government existed. In that regard, the older community members declared that the primary authority was the Mayor of the Stick (Alcalde de Vara). When asked what the difference between these systems was, they stated that the changes are only in LABELS AND NAMES since, in fact, the Community continues to be ruled according to the forms of government that date from Leguia's times..." (1987:66).

2.7 Recent Laws on Peasant Communities

Velasco's reform changed the economic and social structures of Peru. The economy went from stern control by the export sector entrepreneurs to State control that prevented the monopolistic practices by the most powerful productive agents. In macroeconomic terms, the military tried to "modernize" and "unify" the management of both public and private economic agents. Industry also benefitted from the protectionist regime. External loans allowed the State to finance the increasing bureaucracy and carry out important projects. But this artificial bonanza was shattered, due to the dramatic drop in international prices for Peru's traditional exports, the sharp rise of the fiscal deficit, and sky-rocketing inflation.

Thus, in spite of the favorable initial conditions of the military government, the Junta could not solve the structural bottlenecks of the Peruvian economy: extreme dependency, unfair income distribution, lack of a source of dynamism and self-sustained development. Furthermore, no high productivity levels were accomplished in the agrarian and industrial sectors. On the contrary, there was a lack of surplus and, therefore, the impossibility of fully financing the implemented reforms.

In August 1975, a change in the military leadership took place. General Juan Velasco was replaced by General Francisco Morales Bermudez. This represented a total shift in economic matters and the paralysis of the reformist project. One of its consequences was the stagnation of the agrarian reform. However, the crisis was to show its deep effects only after 1977. The GDP contracted and inflation went up steadily. Briefly, the new military administration could not satisfy the demands and expectations aroused by the previous reform attempts. It faced a political crisis and finally, in 1978, agreed to convoke a Constitutional Assembly.

2.7.1 *The 1979 Constitution*

This Charter institutionalized many of the political, economic and social reforms proposed and implemented during the 1968-1975 period. At the present time, however, it has been abrogated and replaced by the 1993 Constitution.

Peasant communities were dealt with in Section III - "The Economic Regime"- of Chapter VIII (Articles 161 to 163²⁴⁾). The text was inspired by an old misunderstanding: communities were seen just as economic units of production, while their social and cultural dimensions were hardly acknowledged.

According to the 1979 Constitution, the fundamental criterion for defining land ownership rights was direct management. In other words, the ownership of the land

²⁴⁾ The constitutional text refers to "Peasant Communities", including the so-called "Native Communities". "Native" was the euphemism chosen by the government to refer to the Amazonian people. Law 20653 recognized some of their peculiarities but forced them to settle in small villages, following peasant community settlement patterns.

was conditioned on the landowner working it directly; otherwise he could be relieved of it by the State. However, this never occurred in reality. Ownership could be exercised in individual or associative ways (i.e. cooperative, communal). A second criterion was the social function of property. For example, special attention was paid to the use of goods, disregarding the issues of profits and transfers.

The legal existence and the representation of communities were also constitutionally recognized. Regarding communal land, it was established that it could only be transferred when in the public interest or with the agreement of two thirds of the *comuneros*. This was highly criticized by some political leaders, especially of the APRA and leftist political parties, who considered this measure as non protective of peasant communities. In spite of these fears, for at least thirteen years no communities have agreed to transfer their lands.

The autonomy of peasant communities was also expanded in aspects such as land use, communal work, organization, economic management and internal administration. But communities were still kept from full-blown participation in the national economy, by preventing them from obtaining credits or mortgaging their lands. In terms of cultural autonomy, communal traditions were respected and protected. This provided grounds for at least acknowledging the existence of customary law, but neither State officials nor *comuneros* have interpreted this statement as a recognition of non-State forms of regulation.

The legal representation of communities became an issue that was politically and theoretically debated. But the fact was that only after being recognized they could enjoy effective legal representation. Peasant Community Registers were based on principles taken from other forms of legal representation. Regarding the constitutional or non-constitutional status of registration, the Supreme Court issued contradictory rulings. Law professors such as Bernales and Rubio (1985) supported the idea that the Constitution did not request a foundational administrative act to recognize the existence of peasant communities. For them, the lack of administrative recognition did not inhibit the legal existence of the community.

2.7.2 Liberal and Populist Policies

The winning political party of the 1980 Presidential election was Accion Popular, headed by Fernando Belaunde Terry, the President deposed by Velasco in 1968. The new administration's economic policy was aimed at developing the national economy based on neo-liberal principles. Thus, the idea was to promote agrarian development through the intensive participation of private capital.

The implementation of the government's policy led to the rise of inflation and recession, with serious social, political, and economic consequences. In 1980, a subversive Maoist group, the Shining Path, appeared in the country. Some years later,

the pro-socialist MRTA also started its bloody activities²⁵⁾. Their actions deeply affected the stability of the country. Many rural areas were abandoned, because peasants were murdered either by terrorists or by military forces. The remaining communal authorities, threatened with death, were often compelled to work for the Shining Path.

Given the political and social violence, and the economic failure of Belaunde's administration, the 1990 presidential elections were won by Alan García, the APRA candidate, with an overwhelming majority. However, most of APRA's economic programme had already been carried out by Velasco's government. APRA implemented a "heterodox" economic policy, once again with a populist perspective.

The agrarian sector received top priority (i.e. loans without interests). The State's objective was to create a wide popular base among the peasantry. One of the direct mechanisms it used for approaching peasants and listening to their demands were the so-called *Rimanakuy*s²⁶⁾. In these meetings, delegates of peasant communities discussed their problems and debated with different State officials, sometimes even with President García himself.

However, in spite of the *Rimanakuy*s and its populist policy -the formulation of Laws 24656 and 24657- APRA's government was unable to obtain sustained support from the peasantry.

2.7.3 Peasant Communities Law 24656

Peasant Communities Law 24656, promulgated in 1987, was an expression of some government sectors interested in the peasant question. They sought a balance between modernization and respect for traditional communal structures. In fact, this law was the first one to deal with community issues without trying to impose alien models. Communities were considered to be democratic and autonomous institutions. Communal work was protected and promoted, stressing it should be regulated only by native uses, customs, and shared traditions. In general, any community rule was supposed to be respected and become part of its normative framework.

Communities were defined as public interest organizations, consisting of families living in and controlling territories based on ancestral social, economic and cultural relationships. These relationships could be communal land ownership, communal work, mutual help, or democratic government. According to this law, the normative principles regulating community life, were:

1. Equality of rights and obligations.
2. Protection of the community's interests.
3. Participation.

²⁵⁾ Movimiento Revolucionario Túpac Amaru (Túpac Amaru Revolutionary Movement).

²⁶⁾ From *Quechua*: Meetings, discussions.

4. Solidarity, reciprocity and mutual help.
5. Protection of the ecological balance, expressed in the promotion of reforestation.

Comuneros were classified in two groups:

- a) qualified *comuneros*, or adults who have lived for more than five years in the community and have never belonged to a different one;
- b) integrated *comuneros*, such as the spouse of a qualified one, who expressed his/her desire to be admitted.

Integrated *comuneros* only have the right to use communal goods and services²⁷⁾, while qualified ones also had the right to vote and to manage the land. Among the most important decisions regarding land management, allotment of vacant parcels was first. The vacancy of family parcels or the lack of direct exploitation was to lead to the reversal of the land to the community. This decision required a qualified majority in the General Assembly.

The State granted support and protection when natural resources (mines, forests, water) within the community's territory were to be exploited. In such cases, the establishment of enterprises even with third parties was allowed. Thus, the former "cooperative" model became modified. There were three kinds of associative systems:

- a) Communal enterprises: the communities organized themselves, generating productive units of communal goods and services.
- b) Multicommunal enterprises: private law legal entities, with limited responsibility and direct communal participation. Their goal was the implementation of productive, distributive, manufacturing, and industrial activities. These included the trading and consumption of goods and services required by communities.
- c) Partnership participation in both public and private sector enterprises. The idea was to encourage the involvement of *comuneros* in high-return economic activities.

The General Assembly, as the community's supreme institution, had some new attributes: to organize peasant patrols (*rondas campesinas*), a kind of communal self-defense organization; to elect Municipal Agents (representatives of the State); and especially, to propose candidates for posts of Justice of the Peace, Governor, and Lt. Governor within communal jurisdiction.

Communal work was considered a voluntary "contribution" of *comuneros* for the integral development of the community. Given its non-contractual character, labor legislation was not applied. Instead of wages, *comuneros* were supposed to receive the benefits of their effort in the form of collective services (health, education, technical advise, etc.).

²⁷⁾ This concept is very similar to the one used in the Peruvian legislation with regard to the national origin and the right to be elected.

The expansion of the national "agricultural frontier" was fostered by public funding. The goal was to undertake aggressively the distribution, preservation, and recovery of agricultural land. Several projects for recovering terraces (*andenes*) and building irrigation systems were also implemented. Government policy included setting up hydroelectric units and new rural settlements.

Improving livestock through technological support was also defined as a priority. Similarly, emphasis was put on the development of handicrafts. This activity was promoted by issuing Export Handicraft Certificates (tax refund to make products internationally competitive).

As part of its efforts, the government created the National Institute for the Development of Peasant Communities (INDEC). It was defined as "a public, decentralized, and multisectorial organization under the Ministry of the Presidency". INDEC had legal representation, and technical and administrative autonomy under internal public law. One of its prerogatives was to administer the "National Fund for Development" (NFD), aimed at providing financial support for the communities' integral development. The NFD raised funds through state contributions, donations, legacies and international cooperation.

2.7.4 Land Demarcation and Title Law 24657

The Land Demarcation and Title Law 24657 was also promulgated in 1987. It declared the demarcation of and title to communal territory a national need and a matter of social interest. Under this law, the community's territory was formed by the original communal land, by the one acquired according to agrarian and common law, and the land assigned to the community during the Agrarian Reform process. A special legal procedure was devised and applied when the peasant community lacked legal title to the land in its possession. The procedure was also applied when there was a disparity between the community's actual possessions and the ones referred to in its titles. Thus, a community could request the Regional Agrarian Bureau to survey its territory, present conclusive maps, and add whatever means necessary to prove the legality of its possessions: ownership titles, certificates or rough sketches. In turn, the Bureau could order a survey of the whole area to determine the borders between the applicant community and its neighbors.

This law is a procedural norm *par excellence*. It incorporates important accomplishments like the recognition of simple communal possession in order to avoid conflicts. It also acknowledges the use of any means to prove possession, a measure that represents a certain understanding of customary practices.

2.8 Summary and Conclusions

This chapter, as well as the next one, are crucial for understanding the complexities and the background of Paroccan and Ccachabamba, the two communities that will be studied in detail. Throughout this historical overview, I have stressed that certain important communal elements have a pre-Hispanic origin and a colonial imprint²⁸⁾.

The structure of the Inca state was based on the *ayllus*, which had important family and religious links. Their surplus was managed by the Inca administration. In turn, the Spanish Colonial system settled Andean people in *reducciones*, in order to impose a closer control over their political, economic, and religious affairs. For almost two centuries, Indians lived a silent and permanent adaptation process. Communities became an institution of resistance against the expansive *haciendas*.

Republican liberalism misunderstood the problems of the peasantry and tried to establish a market economy for the land. The outcome was that *haciendas* became even more powerful, to the detriment of the communities that were only trying to survive in such a hostile environment. As I have stressed, decision and law makers usually did not understand indigenous problems. Moreover, landowners were in close contact with central state officials and local authorities in order to protect and enhance their interests.

During the earlier part of this century, an *indigenist* school tried to present and preserve indigenous communities as part of Peru's identity. It influenced disciplines all across the board, from literature to the arts, and indigenism was also taken into account by the 1920 and 1933 Constitutions. Under a paternalistic framework, communities were forbidden to sell or lease their lands. This protective regime, assuming that change should be avoided, was not complemented by a development policy.

The 1936 Civil Code and other regulations supported the idea that communities were ancient institutions, that should be replaced by cooperatives or individual ownership. In general, their norms, as well as the intervention of many State agencies made the communities' recognition and title obtaining procedures even more difficult.

The Agrarian Reform represented an important effort to integrate communities into the national economy, although legislators and peasants had different goals. Law 17716 and the Community Statute tried to modify the communal structure following cooperative patterns. Official policies ignored or forbade autonomous social and cultural features.

The 1979 Constitution and recent laws have not meant any significant change in this trend. The peasant communities remain between two opposite political options: liberalism and populism. Some sectors still consider that *comuneros* ought to receive protective treatment in order to preserve their traditions. Neoliberal sectors perceive

²⁸⁾ For a comprehensive list of laws regulation the communities see appendix 1.

the communities as obstacles to the country's development. They would rather abolish them. What peasants themselves think about their development still requires in-depth research.

CHAPTER 3

The Regional Study Context: Cuzco

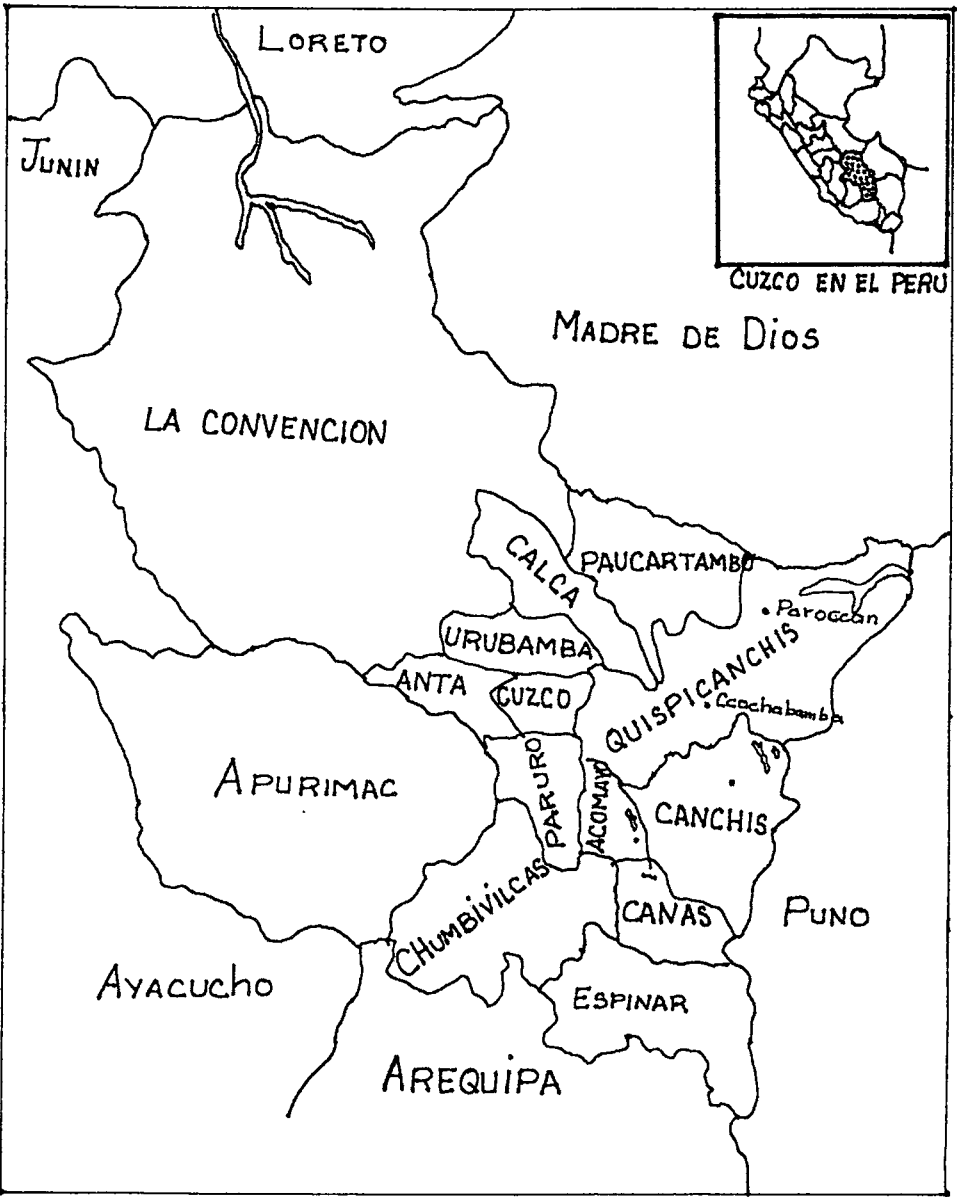
3.1 Introduction

The main objective of this chapter is to place the communities within their context, their ecological, geographic-administrative and socio-economic context. This raises the question of how to define, to delimit the regional context in a useful way. Earlier social scientists focused the study of the region on purely geographic factors. I suggest three different sets of criteria to develop this study: ecological, administrative and economic. This is also linked to my earlier discussion of space and spatiality in Chapter 1. In order to develop these ideas I start with the national level, then look at the regions in Peru, focussing on Cuzco, and finally concentrate on the microregional level in Quispicanchis, where my communities under study are located. Based on the historical and legal background already set out here, a study was made of the regional, subregional and local levels of the geographical, economic and social conditions relevant to Paroocan and Ccachabamba, the communities selected for my research.

Peasant communities are the product of a changing social, political and ecological process, in which they have always played a subordinate role. A main feature of the peasant economy is the combination of diversified activities at different times and in different spaces. The role of agriculture is essential when assigning time or obtaining resources, since it is usually the family unit's main activity (Kervyn 1988: 18). The diversification of productive activities also supplies resources for the exchange of goods. This gives the integration of communal families "substance", providing the "objective" element for the interaction of family related *comuneros*. In turn, this in itself is the material basis for the communities' existence.

The economies of communal families are "integrated" into the microregional level through "business" activities, such as the sale of Andean goods or their labor force. In terms of their spatial integration, peasant communities are usually linked to a large or small urban-axis (large or small towns) that are merging points for commercial and trading activities. Similarly, regions are linked through their city-axis, asserting their areas of influence through highways, commercial circuits, political and administrative

DEPARTMENT OF CUZCO



organizations, etc.

The implementation of state policies also serves as a catalyst for communal, microregional and regional integration. Through economic mediation, i.e. supply and demand of goods and services, or through its legal and administrative demands, the State is also a key factor in the articulation of the different productive units at a regional level.

3.1.1 Different Concepts of "Region"

Current definitions of a "region" tend to focus on geographical factors. Only a few studies have used a holistic approach to the analysis of economic, political and social characteristics of Peru's regional spaces (see Gonzales de Olarte 1986; Kervyn 1988; Guillén 1989).

In these studies we can find at least three different concepts of "region". The first one is geographical. "Regions" are defined in terms of their ecological features, i.e., climate, soil, flora, fauna. The second concept is economic. Regions are considered based on the existence of markets, productive forces, commercial circuits and, to a lesser extent, the presence of technological infrastructure. Finally, regions can also be politically defined, according to their administrative boundaries and to the degree of administrative and political autonomy they have vis-à-vis the central government.

All these definitions must be considered in order to get a more suitable concept of "region". In fact, they should not be taken as exclusive of each other. The size of the market, for example, as well as the kind of farm or dairy products available, will be greatly determined by the crops and products cultivated in the region's area of influence. Considering the ecological, political and social dimensions, the concept of "economic region" acquires greater analytical potential.

Using these criteria, it is necessary to clarify some key concepts before undertaking a brief analysis of Peru's "economic regionalization". First of all, the term "space" is for us a parameter for a sound "regional analysis" because it should be understood in terms of the socioeconomic relations of a given area (i.e. production, circulation, distribution). In this sense, it is a holistic concept that goes beyond the simple "geographical" connotation, incorporating time and social relations as key variables. Secondly, it is important to define a "region" within a given space according the economic, social and political relationships that unfold at a specific moment and place. Thus, the production and interchange of goods and services is the material support of regional space.

A third concept, that of "regional delimitation", derives from those elements which allow the limits of a specific regional space. The main elements defining this concept are:

- a) the existence of a market (where the supply and demand of goods and services is carried out)¹⁾;
- b) the existence of one standard of exchange between economic protagonists;
- c) the accumulation and investment of capital in a given space;
- d) the activity of non-capitalist economic agents (assuming capitalism as the predominant economic system for thematic unity); and, e) the presence of the State as an element for the diffusion of a homogenous economic and political system.

3.2 Ecological Regions of Peru

Former research recognized the existence of three natural regions: the coast, the Andes and the jungle. The criterion used for this classification was the central presence of the Andean mountain range (commonly called *sierra*). The coast (*costa*) and the Amazon jungle (*selva*) were only seen as the geographical regions located on each side of the Andes.

A new generation of geographers has criticized this classification and proposed alternative approaches. Considering a wider number of environmental factors, Javier Purgal Vidal defines eight geographical regions: *coast, yunga, quechua, suni, puna, cordillera, high forest and low forest*. Five of these regions are within what was known as the *sierra*: *yunga, quechua, suni, puna, and cordillera* (Figueroa 1987:25).

As this classification stresses, the Andean region is not homogeneous. As Julio C. Tello pointed out: "the *sierra* grants the existence of diverse climates, which vary from the tropical ones -present in the valleys and plateaus- to the Arctic-like ones found in the *cordilleras*" (in Figueroa 1987:25). Likewise, peasants also differentiate between the diverse "ecological levels" of their environment. The five regions mentioned above define the ecological areas of the *sierra*. Insofar as its altitude above sea level is concerned, the *yunga* region, with its warm valleys, is located at about 2,300 meters a.s.l. The *quechua* one is located between 2,300 and 3,500 m.a.s.l, and has the most moderate climate. The *suní* region is cold, and is located between 3,500 and 4,000 m.a.s.l. The *puna* region, or "land without trees", goes up to 4,800 meters. Beyond this altitude, the *cordillera*, due to its rigorous climate, shows no agrarian activity.

Javier Purgal Vidal stresses that each region has a "limited production." That is, only certain crops can be cultivated at each level. In the *yunga*, these products are: sugar cane and certain fruit trees (avocado, *lucumo*, custard apple, *guayabo*, and citrics). In the *quechua* region: maize and also certain fruit trees (cherries, peaches, apples, quince). In the *suní*, the main crops are beans, *oca*, *olluco*, *mashua*, and cereals (quinua, *cañihua* and *tarwi*). Finally, the *puna* allows, on a limited scale, only

¹⁾ Ministry of Economy and Finance (1973:155).

the cultivation of potatoes and barley (Figuroa 1987:28). The Andean ecological zones also restrict the possibilities of raising livestock. South American cameloids (llamas, alpacas) live mainly in the *puna*. Horses and sheep find their habitat in the lower regions.

It should be noted that, at each ecological level, there exist diverse micro-climates. Thus, the chance of obtaining a wider range of products (either crops or livestock), depends on the skillful management of the land parcels located at different levels, and on the micro-climate factor.

3.3 Economic Regions in Peru

Gonzales de Olarte points out that the economic regions in Peru were historically formed by the unequal penetration and development of the capitalist market. During this process, the regional geographical delimitation made no sense other than to arrange the administrative organization of the country and to limit local powers (1985:138)²⁾.

Each region is differently developed economically. In the case of Peru, there are two regional development features. First of all, in each region capitalist relations coexist with non-capitalist ones. Both are articulated by the labor and merchandise markets, and by monetary capital. Secondly, regional development has evolved differently, depending on the economic cycle. This has no homogeneity effect upon the regional economies involved³⁾.

The State's participation in regional development is uneven, due to its strongly centralist character in Peru. This determines an unequal distribution of income because a redistribution policy, based on coherent taxation, does not even exist. Most income is concentrated in the capital that also has the greatest concentration of population. However, there is a general trend towards decentralized investment of public resources.

A regional classification of the country, based on its geographical features, would form the following map:

- a) Coastal regions: essentially capitalist, they tend to create commercial spaces that permit accumulation of capital production.
- b) Highland regions: like the coast, these are also trading spaces, though with different accumulation rates. Their area of influence is asserted by city centres,

²⁾ Gonzales de Olarte (Ibid.) mentions that the main analytical variables for supporting his hypotheses are: area cultivated by rural inhabitants, per capita income, clear difference between the minimum wage in Lima and in each department, the consumption of electricity, and industrial specialization coefficients.

³⁾ Though it would seem somewhat contradictory, it is not at all true that regional financial resources are centralized in Lima. One of the causes is the existing relationship between regional production and financial development.

known as "microregions".

- c) Rain forest and high forest regions: these are recently colonized and settled areas, with a high degree of ecological deterioration in some areas.

On the other hand, Gonzáles de Olarte proposes the following comparison of features between the "central region" which in this case is the coastal region, and the "southern Andean region" which Cuzco belongs to.

Central Region

- a. This involves Lima as a central City-Centre with two different functions: leader of the region and centre of national development;
- b. Lima has about 30% of the nation's population and 35% of the Economically Active Population (EAP);
- c. It relies on its own financial resources (almost 80% of private capital originates in this region);
- d. It holds the highest number and rate of migrants because it is the most important and attractive centre for the labor force;
- e. It concentrates the highest industrial production, and its market consumes more than half of its own production. It also has the nation's highest accumulation rates.
- f. Its main activities are agriculture, agro-industry, industry, trade and mining. Its markets have different scales: agricultural production at the regional level; industrial output at the national and regional levels; and mining and agro-industry, at the national and international levels.

The remaining cities working as regional axes are also centres of attraction for the rural working force. This comes, mainly, from nearby microregions, where non capitalist relationships predominate.

Southern Andean Region

- a. Made up of restricted spaces ("microregions") and integrated by city-axes, these are, in turn, linked to several decentralized regions located on the coast. For example, Ica (city-axis for Huancavelica and Ayacucho); Huancayo, city-axis for the central highlands; and Cuzco, which covers the departments of Apurimac, Madre de Dios and Puno⁴⁾. These cities represent the main centres for economic and the public service activities (trade, banking and public administration).
- b. This region represents 31.5% of the nation's population, and 30% of the total Economically Active Population (EAP);
- c. The microregions involved do not have high migration rates, but provide a working force for the coastal regions mentioned above.

⁴⁾ This city, along with Juliaca, is a highland axis. Both have an important articulation with the international wool trade.

- d. Their contribution to the Gross National Product (GNP) amounts to only about 18%. Moreover, there exists no adequate coefficient between the agricultural economically active population (EAP) and its output. Agriculture employs 66% of it but yields only 33% of the total production.
- e. The most important regional activities are agriculture, animal husbandry, services, trade and industry.
- f. The predominance of non-capitalist relations is a distinctive feature of this region. This prevents an intensive accumulation process, and it implies an interaction between both systems - capitalist and non-capitalist.

Andean peasant communities represent 15% of the highlands' population in this region and are very important in the configuration of microregions. Interaction between the peasant communities and the microregions works in three different ways. First, those communities with scant possibilities for intensive economic exploitation are compelled to maintain production relationships based on a non-Western rationality (i.e. an aversion to risk). This economic logic prevents their integration into the market. Secondly, the market-oriented economy allows the coexistence of capitalist and non-capitalist relations. This is both a contradiction (one has to absorb the other), and a solution (one complements the other at several levels). Thirdly, as a result, relationships between the market and the peasant communities are mediated by a whole set of social agents and institutions: merchants, carriers, labor force agents (*enganchadores*), etc.

Although these data permit us a general concept of the southern Andean region, there exist some specific characteristics regarding Cuzco, which will permit us to analyse the role that this department plays in the region, and its economic place in the Andean space. Then we could analyse the micro-region of Quispicanchis, where our peasant groups are located. For more specific data showing the communities under study in their context we can see Tables 1 to 7 at the end of the present chapter. This data also shows the history of community recognition in the area, how the recognised communities relate to the ecological and economic zones, and how, in the different zones, the communities, peasant groups, CAPs and private properties relate to each other.

3.4 Regional Economic Aspects of Cuzco

3.4.1 *Cuzco as a Commercial Space*

Cuzco was not a true "region" in itself. It was a "commercial space". Historically, the city of Cuzco was the most important market of all for regional production. This trend was disturbed during the Republican period, when the city was deprived of its Colonial outlands, when these areas were put under the control of the coastal cities.

This situation was reversed when Cuzco was incorporated into the international market, due to its wool and tropical products trade.

In the Cuzco region, the more productive zones were the provinces of La Convencion and Lares, which gave rise to the development of important "trading houses" at the beginning of the present century. These trading houses centralized commercial mediation activities, to the point of reaching the accumulation levels needed for the formation of a "commercial space". Moreover, this situation was further consolidated by the action of other agents:

"Production development [...] does not suppose only the participation of the so-called "big houses". Many of the traders were also small merchants or former feudatories (*arrendires*). After having worked for years in the valley, they opened small specialized businesses in the city, especially for selling products from the high jungle: especially coca and brandy, but also coffee and tea in small amounts ..." (Brissau, quoted by Ruiz Bravo and Monge 1983:67).

The formation of Cuzco's market was the outcome of the shared action of those trading houses and small local agents, with the mediation of the *hacienda* owners. This market started to play the role of "consumer and redistributor of the regional production" (Ruiz Bravo and Monge, op. cit:69).

The city's urban development has a complex relationship with the regional process. At the beginning of the century, Cuzco was a small city. Urban demands were supplied by the commercial and exchange links established between the city dwellers and their country relatives dedicated to agriculture and animal husbandry. This consolidated the nature and small scale of the urban economy. Thus, the development of the city corresponded to the socioeconomic structure of the region.

Population growth, an expansion of the administrative agencies, and the increase of extra-regional trade broke the traditional dynamics of the Cuzco region. Moreover, the rupture of the social and economic orders produced by the Agrarian Reform is another process that explains the importance of peasant economies and their articulation in the Cuzco market.

However, in recent years, there has been no positive correlation between the slow increase in the productive supply and the significant growth in the regional demand. Only the tropical export products have experienced a significant take-off⁵⁾. Thus, the major urban demand has been satisfied by extra-regional products. Despite its current dependence on Arequipa's agroindustrial trade, the city of Cuzco is still the main consumer and distributor of the regional production.

Overall, the dynamics of a traditional small-scale trade added to closed cultural relationships, and to the secular patterns of shared development are the bases for a regional identity shared by wide groups of Cuzco's population (Ruiz Bravo and

⁵⁾ Data supplied by the Centro Bartolome de las Casas (Cuzco).

Monge, Ibid:78).

3.4.2 The Productive Features of Cuzco's Agrarian Economy

Here analysis is concentrated on Cuzco's regional agrarian economy, emphasising its relationships with communal economies. For this purpose, other productive sectors are ignored. The main source for this part of the study has been Guillén's (1989) detailed analysis of the economic evolution of Cuzco from 1900 to the late 80's⁶⁾.

Between 1950 and 1980, Cuzco's agriculture has grown annually at an average of 2.58%. This trend can be subdivided as follows:

- a) 1950-1956: a period characterized by a constant drop in production, due to droughts in the southern areas. However, production increased during 1957 and 1958, despite climatological problems.
- b) 1958-1967: a period of constant decrease in production, not even reaching the levels obtained during the previous period.
- c) 1968-1980: a period of sustained growth in production, reaching an average of 4.4%. It is important to stress that this increase coincided with the beginning and application of the Agrarian Reform.

3.4.2.1 Types of Products

Regional production can be divided in two kinds of goods: 1) Andean or highland products (potatoes, corn, wheat, barley, lambswool and alpaca wool); and 2) tropical products (coffee, coca and cocoa). The output of the former has suffered a serious reduction (especially wheat and barley). For example, taking the 1950 output as a reference, at the end of 1980 only 63% of same was obtained (Guillén 1989:272). Generally, this trend is not unique to Cuzco. In the case of tropical products, there has been a constant growth in their production, and they are the region's export goods *par excellence*. The average increase in their production for the period is 7.3%. Generally, when comparing the outputs of both Andean and tropical goods, it is clear that the former are undergoing a continuous decrease in their participation in the overall regional output.

This assessment reveals an important socioeconomic problem: the producers of "Andean" goods are part of the traditional and most economically depressed peasant sector. They are undergoing a constant lessening of their participation in the regional production and income, and this undermines their social and economic welfare.

⁶⁾ His work is based on the official data supplied by the Ministry of Agriculture (see 1989:265).

3.4.2.2 Production and Population Growth Rates

There is a correlation between production, income and population growth. The comparison between the population growth rates and production should only be made using the growth in the output of "Andean" products because the "tropical" ones are not destined to satisfy the regional food demand⁷⁾. It is a fact that the rate of population growth was higher than the increase in production. This generated a deficit in the regional supply that had to be satisfied by importing food. This shows, in the long term, that population, production and added demand differ for tropical and Andean crops.

Moreover, production is not directly related to regional income. This is due to both the ownership structure, and the distinct influence of market devices on production. In this respect, the participation of traditional (Andean) producers and capitalist producers (tropical export products) in regional income is highly disparate. Generally, between 1950 and 1980, there was an annual average increase of 0.90% in Cuzco's GNP per capita, compared to an annual national average of 1.93%. Likewise, population growth was also slow, with rates lower than the national average.

These results are consistent with my observations: the regional demand has a moderate influence over the internal production because the latter is more linked to extraregional markets. This also impedes greater production growth in communities linked to these markets such as Paroocan. This holds true even when the distorting effect of the tropical production is taken into consideration.

For my purpose, it is also important to study the regional demand in terms of its main components: population growth and income level. This permits clarification of three topics: the changes in the consumption patterns, the ensuing product substitution, and the levels of food prices.

3.4.2.3 Consumption Patterns

These patterns are defined by the whole set of goods and services used by the members of a community to satisfy their needs. They are shaped by the resources available and by the cultural constraints on the community. For Cuzco, a comparative analysis between the "consumer baskets" of 1959 and 1979 shows that the influence of local production on local consumption has deteriorated greatly.

For example, the increasing demand for "imported" poultry products -unknown in traditional patterns- shows the influence of the State's policy in promoting their consumption. The same occurs with fish and shellfish, and something similar occurred in the demand for mutton, compared to that for pork and beef. In general, "red meat" -a regional product- has been displaced by "imported" products. The massive presence

⁷⁾ This is important for avoiding false comparisons. Otherwise, those "added" rates would result in a higher productivity when compared to population growth.

of dairy products -i.e., powdered milk, yogurt- is a clear sign of these changes. Here, advertisement plays a crucial role because "imported" food is essentially presented as being "urban" and of a higher standard.

In the case of vegetables, some new products were added to the regional diet. However, the consumption of tubers such as potatoes has maintained its traditional importance for almost 40 years. At the same time, this gives evidence of the producers' sluggishness (i.e. communities and peasant groups). In cereals, barley and wheat flours ("*chaquepa*") are replaced by white wheat bread made with imported flour. There was also a downturn in the consumption of typical foods such as corn and quinoa. These were replaced by lower priced cereals.

Several new products show the higher consumption of "imported" goods: cocoa, instant coffee, filtered tea, colorants and seasoners, have been substituted for the traditional table chocolate, ground coffee, tea leaves, natural colorants and cooking herbs. Another important element in the displacement of traditional products has been the substitution of fuels, fire wood giving way to electric energy and petroleum by-products.

These changes can be understood as the result of manifold social processes: the growth of agroindustry, the imported food trade, the exhaustion of local domestic supply, commercial advertising and imitative behaviour being the main causes. In turn, the same basic "consumer basket" structure -that is, the participation of different products regarding income level- was influenced by other variables: changes in average income, in relative prices, and of consumers' changing tastes.

In the long term, there has been a reduction in food expenditure. This is the outcome of low increases in regional income. However, this decrease in food expenditure -particularly for Andean goods- permitted the transfer of income expenditure towards other forms of consumption, such as transport and communications, dining out and new goods and services (such as personal hygiene and luxury products). This is perhaps a consequence of Cuzco's urbanization process. A concomitant factor in this substitution process was the lower incidence of the regional supply of clothes and shoes, due partially to the higher cost of locally produced items compared to those manufactured in other regions.

The pathetic case of potatoes gives the clearest evidence of the changes in consumption patterns. These were replaced by rice, noodles and flour, among other foodstuffs. This shows the displacement of a traditional product by "urban interference". Moreover, the continued substitution of regional goods by "imported" ones has had a negative outcome: the deterioration in the nutritional level of Cuzco's population.

3.4.2.4 Price Levels of Peasant Products

Regarding price levels, the food branch was the one that underwent the highest increase compared to the rest of the basic consumer basket⁸⁾. Three conclusions can be drawn from this. First of all, there was a relative contraction in the demand for food. Secondly, the traditional food demand was replaced by lower priced products. Thirdly, this generated inflationary pressure.

To understand the agrarian situation in Cuzco, two additional facts have to be considered. One is the low productivity of the "traditional" sector, especially when compared with national and international standards. The other one is the protective State policy of "low priced food" for urban centers. In terms of relative prices of regional products, consumers purchased lower priced goods, or those having multiple uses. To a certain extent, this is a subjective decision based on the demonstration effect.

For example, noodles displaced potatoes because of their greater versatility. Compared to rice, potatoes were cheaper, but due to their low productivity, they became more expensive. Thus, their consumption was replaced even more. A similar situation was experienced by wheat producers when they had to compete with imported rice and noodles.

Finally, in the 1950-1980 period, real regional prices and exchange terms underwent the following processes:

1. The majority of products showed negative growth rates, except for white corn, barley and coca;
2. A direct relation was shown between the real and production prices' growth rates. Positive or negative growth rates correspond to positive or negative production price rates, but do not apply to coffee, alpaca wool or cocoa, in which there is an inverse relation;
3. Producers had to deal with highly unfavorable terms of exchange;
4. There were three different trends: positive (1950-1957), unstable (1958-1968), and unfavorable (1969-1987);
5. The overall impact of some factors -market competition, state policies and relative price variations- forced peasants to increase the commercial production of goods. Thus, they became more vulnerable to the unfavorable terms of exchange (i.e. more traditional products for equal quantities of "modern" ones). Social unrest and climatological conditions also played an important role in this trend;
6. Limiting factors for regional producers were:
 - The reduction in international coffee price (new producers, higher production and a rigid demand);

⁸⁾ During the period 1950-1980, the highest increase was produced in the varieties of "meat", compared to the lowest variation in the "potatoes" branch.

- A fixed monetary exchange rate and higher custom duties afforded artificial "protection" for national producers. This was advantageous only for those producers with high productivity rates;
- The greater participation of the commercial sector in establishing prices, at the expense of the peasant sector⁹⁾.
- Highland agriculture neither generated nor transferred resources to replace or develop its own productive structure. One of the main reasons for this is the subsistence economy, with low productivity and technology levels;
- Highland producers are not strongly integrated into the market (self-consumption allows certain freedom when interacting with the market economy).

3.5 The Microregional Context: Quispicanchis

3.5.1 Description

The most important data for placing the communities under study indicates that they are in a common economic and ecological area. Quispicanchis has good hydraulic capacity, a highly provincial population, agriculture is the main economic activity, an expansion of urban settlements and different use of technologies depending on the zone.

The peasant communities that are the focus of this study are located in the Province of Quispicanchis, in the department of Cuzco, in the southern Peruvian Andes region. Etymologically, Quispicanchis derives from two Quechua words: *Quespe*, that means glass, and *Canchis*, that means place. In other words: "the place of glass". The province of Quispicanchi is favorably located geographically in the Andean mountain range that begins in Carabaya and ends on the banks of the Wilcamayo River. Thus, its communities have an important hydrological resource to enhance their farming areas.

Quispicanchis is the juncture point for almost all of Cuzco's main provinces. The capital, Urcos, is the starting point of a highway that runs up to the District of Marcapata. It is bordered to the North by the provinces of Paucartambo and Calca, to the South, by the province of Canchis; to the East, by the province of Carabaya, and to the West by the province of Acomayo. Its geographical location is Latitude 13°25", and Longitude 17°5". The province of Quispicanchis has twelve districts. Among them are Andahuaylillas and Urcos, where Ccachabamba and Paroccan are located at approximately 3,054 metres above sea level. Even though Urcos and Andahuaylillas are not the most extensive nor densely populated districts of Quispicanchis, they are very important, due mainly to the fact that they are -together with Huaró- the three

⁹⁾ For example, for 31 years, 20% of the gross value of the agricultural and cattle raising production was transferred to other sectors, enabling their accumulation process (Guillén 1989:324).

districts closest to the main Cuzco highway. The province of Quispicanchis represents 9.36% of the total area of the department. It has a heterogeneous distribution in terms of extension and population. Within the department, Quispicanchis has a high population density per square kilometer that is due to its better access to social services and markets (based on road infrastructure).

Economic Areas

The province of Quispicanchis can be divided into three well-defined areas:

- a) The *Inter-Andean Valley Zone*, which embraces seven districts: Oropesa, Lucre, Andahuaylillas, Huaro, Urcos, Quiquijana and Cusipata. Together, they represent 31% of the microregional space. This area lies between the Vilcanota and Huatanay river rivers, both of which determine the hydraulic capacity of the zone. The population is concentrated in urban settlements with social, educational and health services, as well as with road infrastructure (asphalt roads, a railroad, trails and paths). Productive activities are intensive, the main economic activity being agriculture, followed by livestock (mainly poultry, pork and goats). The main crops are maize, potatoes, barley, wheat, lima beans, fruit trees (peaches, apples, pears, "*capulies*"), vegetables, and pasture for livestock breeding.

The Inter-Andean valley holds a large concentration of the provincial population (33.9% in urban areas and 66.1% in its rural areas). The zone sustains a great man/land pressure, and one of the results is the expansion of urban settlements (district capital cities). Another one is the diversification of productive activities, primarily the paying ones.

The geographical structure of the Inter-Andean valley determines the location of peasant communities on plateaus. This is also a result of the displacement of peasant communities by the landlords' pressure. Communities were compelled to move to poorer lands. The population groups that still have access to the valley floor (as in the case of Ccachabamba) owe this privilege to the establishment of settlements during the 1969 Agrarian Reform (Ccaijo 1983:6).

- b) The *High Plateau Zone*, in the basin of the Mapacho river. The population is dispersed and its main activity is livestock breeding. Human settlements lack adequate public services. Education is deficient. Only two small health centres (*postas sanitarias*) exist. Communications services are also inadequate. The road infrastructure (i.e. Urcos-Puerto Maldonado) is very poor. This zone covers over 60% of the province, and is mainly used for livestock breeding (cattle, sheep, alpaca, hogs). Crops, raised on a small scale, are mainly traditional or Andean: *quinua*, potato, *olluco*, *mashua*, *tarwi* and *oca*.
- c) The *Forest and Rain Forest Zones*. These occupy 36% of the microregional area. Dispersed settlements extend along the Araza river basin. The population is concentrated in areas favorable for the animal husbandry, which is basically aimed at self-consumption. Maize, chilis, bananas, yucca, rice and pineapples are also produced but on a small scale. Social services are seriously deficient. There is a

lack of transportation services and road infrastructure, and the area is isolated during the rainy season. Education and health services are very poor if provided at all. The area features mainly gold mining and timber extraction. These zones are far from dynamic regional development areas. They have scarcely any technological assistance and practically no incentives for agricultural and livestock activities.

Production in the Inter-Andean Valleys is influenced by improved -but not sophisticated- technology. The use of machinery, irrigation infrastructure, inorganic fertilizers and health and sanitation services are becoming more common. There is occasional technical assistance, through private projects and agreements, provided under the supervision of the Ministry of Agriculture. However, traditional tools are still widely used.

In the higher arable areas, the lack of irrigation and the freezing cold nights impose hard conditions for producing wheat, maize and potatoes. To overcome these problems, peasants have developed highly resistant varieties. In the high plateau areas, crops depend on the rainy season. When it comes, peasants start sowing the different varieties they had obtained from their previous genetic experiments.

The high plateau communities use traditional technologies and are extremely dependent on the annual cycle¹⁰⁾. The forest area communities, on the other hand, sow at any season of the year, obtaining higher yields in most cases. This is why the profitability of some of their crops is more attractive than that obtained for traditional Andean crops.

A quantitative analysis shows that maize is cultivated in an area of 1,433 hectares (about 2,570 acres). It is produced in the higher cultivated areas under irrigation. Potatoes cover up to 1,283 hectares, but of non-irrigated lands. Wheat covers 607 hectares, also of non-irrigated lands. Equally important, but on a lower scale, are the lands used for crops such as barley, lima beans, *olluco*, *oca* and onions.

Overall, production shows an almost total dependence on ecological conditions. Another limiting factor which should also be considered is the distance between the provincial and departmental capitals. This is crucial regarding access to transportation means and to technical assistance.

3.5.2 The Peasant Economy in Quispicanchis

In Quispicanchis, peasants produce for self-consumption, barter and trade, the latter being the main method used for goods in the market. Peasants exchange their crops

¹⁰⁾ This traditional technology refers to the use of traditional tools, like the *chaquitacla* (a kind of foot plough) and the oxen-pulled plough, to prepare the land. Manure is used as fertilizer. Harvesting is done manually, with the help of tools and animals.

with other peasants, and with local or outsider traders. Peasant production is a function of the different ecological levels controlled by each community. The main products of these ecological zones are:

Zone 1: Maize, vegetables, potatoes, meat, milk, cheese and eggs.

Zone 2: "*Tarwi*"¹¹⁾ maize and beans.

Zone 3: Potatoes, "*chuño*"¹²⁾, "*moraya*"¹³⁾, and "*oca*"¹⁴⁾; meat, wool and leather.

Goods usually bought or bartered for by the peasants include: groceries, plastics, alcohol, coca, kerosene, tools, pots, clothes, bags, natural and synthetic wool, shoes and, recently, also radios, cassette players, sewing machines and clocks.

Economic decisions relating to barter vary according to each ecological level. At the first level, production is primarily intended for trade. Most products are sold in the market ("*mahuay*", potatoes, "*miska*", vegetables). However, this decision-making process is not enough to improve production through market competition. In vegetable production there is a clearer market-oriented rationality, and this tends to raise productivity. Though it is true that the best part of the crop is saved for use as seeds for next season, the rest is traded. The poorest products, as is the case with some maize crops, are used to make *chicha* (a traditional alcoholic brew).

On the other hand, peasants inhabiting the second level reluctantly have to sell what they should keep for self-consumption, since their harvests are poor. They are forced to sell their production, and are not able to save enough food for themselves.

The situation at the third level is better than the others. As long as their potato crops are good, the peasants can sell them throughout the year. Moreover, while at the second level the production is mainly used for self-consumption, peasants at this level can use their crops for exchange, self-consumption, or for market trading.

3.5.2.1 The Unequal Access to Urco's Market

Urcos, the provincial capital of Quispicanchis, is the main market in the area. Neither Huaru nor Andahuaylillas have a market because they are too close to Urcos. The Urcos market actually dominates the whole region from Huayrapata to Piñipampa. It also attracts producers from Huacarpay and Sucre.

The frequency of the peasants' trips to the Urcos market depends on their needs as well as on their proximity to this town. People living in Urcos have easy access to Cuzco, due to the highway. There is also public transportation. This enables them to

¹¹⁾ A cereal native to the Piura highlands. Bot *Lupinus Mutabilis*.

¹²⁾ Quechua name for dried potatoes, used as a food.

¹³⁾ Potato submitted to a conservation process consisting of exposing it to the freeze for several days, then soaking it in a stream and leaving it dry in the sun.

¹⁴⁾ One of the oxalyidaceas, with a herbaceous stalk, upright and with branches. Its roots have yellowish tubercles and the taste is similar to that of baked chestnuts.

reach Urcos in a few minutes, taking their products whenever they need to. On the other hand, peasants living on other levels have to walk several hours to reach Urcos. They take their products on llama back, and can, therefore, only travel to Urcos occasionally. However, some peasants also travel to higher areas, to sell products such as sugar and rice. All the goods acquired in the highlands are later sold in the Urcos market. This is an interesting intermediate activity, which helps them increase their low income.

These communities are part of a dynamic process. They are closely dependent on the wider society and increasing integration into the market economy. This has been the outcome of the monetarization of their communal economy, the use of technified forms of production, the provision of credit, etc. Their strategy is aimed at reaching a specialized production, in order to obtain greater advantages in the market.

3.6 Conclusions

The historical and legal background provided in the second Chapter of this study aimed at explaining clearly State policies and legislation, as well as the peasant communities' response to these. This chapter has described the regional, sub-regional and local geographic, economic and social conditions that are part of the Paroocan and Ccachabamban context. The main characteristics of Quispicanchis' communities are as follows:

1. The peasant economy combines different activities at different times and places. Agriculture plays the most important role in the peasant economy.
2. Peasant communities are the product of a changing social process. The State's intervention promotes a communal, microregional and regional integration based on its economic, legal and administrative policies.
3. Communal resources, such as land parcels, located on the lower levels of the valleys are very integrated into the market. This is due to their proximity to the highways as well as to the peasants' ability in commercial farming (Malengreau 1985:6).
4. The second ecological level communities lie in the middle valley. Peasant communities located here are the poorest of all. Their organization, which follows ancient practice, cannot provide any improvement in their standards of living. Their control over the land is loosening, either because of the loss or the privatisation of land parcels. However, these communities manage to provide a diversified set of products in order to survive. But they are not able to improve their technical and productive processes. The communal organization is turning into just a formal structure. Moreover, families are increasingly faced with limited resources, hindering their entrance into the market. Their survival is based on self-consumption and job-migration.
5. The productive structure of the peasant communities located in the higher valley

lands -third ecological level- is based on a diversified set of products and activities. They have a high level of specialization in their activities, and this gives them a high status in the region. These organisations show the need to make connections with the external market. Their communal structure has been strengthened as a way of securing control over their lands. Their social organisation retains a strong Andean character, and is legitimized in part by the performance of communal projects. Despite their limited resources, they have achieved a balance between self-consumption and market trade. The communities on this level also show an important technological capacity that provides them with alternatives for improving their productivity.

COMMUNITIES OF PAROCCAN AND CCACHABAMBA

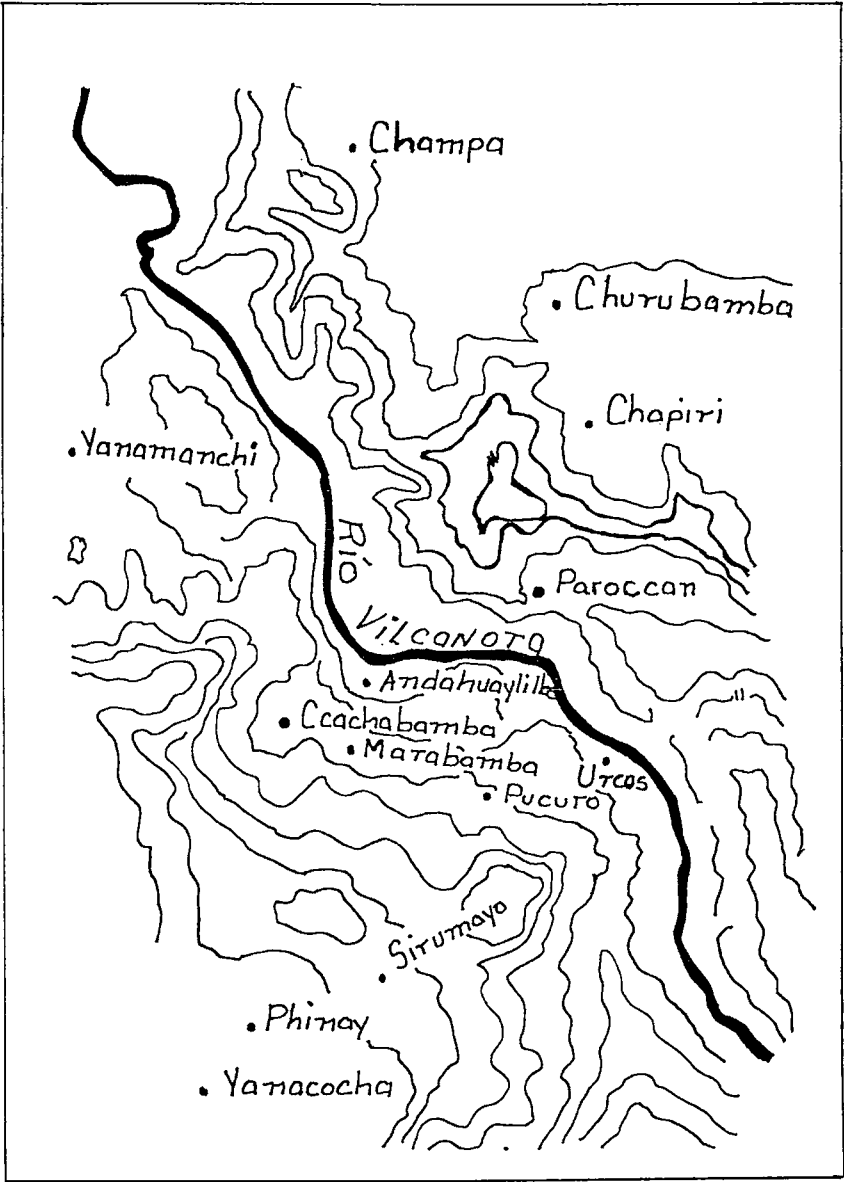


TABLE 1 PERU: REGIONAL ECONOMIES UP TO 1980

Types of Region (Regional City-Axis)	Natural Regions (predominantly)	Departments
CENTRAL REGION		
Lima	Costa	Lima
DECENTRALIZED REGIONS		
Arequipa	Costa/Sierra	Arequipa Moquegua Tacna
Trujillo	Costa/Sierra	La Libertad Ancash
Chiclayo	Costa/Sierra	Lambayeque Cajamarca Amazonas
Piura	Costa	Piura Tumbes
MARGINAL SPACES		
Ica	Costa/Sierra	Ica Ayacucho Huancavelica
Huancayo	Sierra	Junin Pasco Huanuco
Cuzco	Sierra	Cuzco Apurímac Madre de Dios
Puno	Sierra	Puno
COLONIZED REGIONS		
Iquitos	Selva	Loreto
Pucallpa	Selva	Ucayali
Moyobamba	Selva	San Martin

Source: Gonzáles de Olarte, Efraín: Regional Economies of Peru
Lima, IEP, 1985. pp. 236

TABLE 2 CUZCO: CHANGES IN CONSUMPTION PATTERNS MEASURED BY THE EXPENDITURE STRUCTURE 1966-1979

Large Consumption Groups	Structure Percentage	
	1966	1979
Food, drink and tobacco	59.52	55.10
Housing and Furnishings	18.87	18.44
Clothing and Shoes	11.87	7.69
Health and care Maintenance	1.30	1.55
Transport and Communications	1.30	3.83
Entertainment, Cultural Services, others	3.80	5.16
Other goods and Services	<u>3.26</u>	<u>8.23</u>
Expenses	100.00	100.00

Source: Gonzáles de Olarte, Efraín: Regional Economies of Peru. Lima, IEP, 1985. pp. 285.

TABLE 3 POPULATION DATA ON THE DEPARTMENT OF CUZCO (on an national level)

National Census			
	July, 2 1961	June, 4 1972	July 12, 1981
Census Population	611,972	715,237	852,500
Percentage of the National Population	6.2%	5.3%	4.9%
Population Density	8.0%	9.4%	10.9%
National Population Density	7.7%	10.5%	13.2%

Source: Arbe, Guillermo, et al. Diagnóstico General de la Zona de Trabajo del CCAIJO, mimeo. Cuzco, April 1990.

TABLE 4 POPULATION DATA OF CUZCO
(on a provincial level)

Total	Urban	Rural	Total	Urban	Rural	Total
Department						
100 (715,237)	100 (262,822)	100 (452,415)	100 (832,504)	100 (348,396)	(484,108)	
Quispicanchis	8.7	6.1	10.2	7.6	5.1	9.3
Cuzco	20.0	50.0	2.6	25.0	55.6	3.0
Acomayo	4.2	5.3	3.6	3.3	3.5	3.2
Anta	6.5	4.5	7.6	5.8	3.4	7.6
Ica	6.5	3.9	7.9	6.0	3.7	7.7
Canchis	10.6	9.0	11.5	10.0	9.4	10.4
Canas	4.4	1.4	6.2	4.0	1.1	6.1
Chumbivilcas	8.1	2.2	11.6	7.6	2.1	11.6
Espinar	5.8	2.2	7.9	5.3	2.3	7.5
La Convencion	11.8	5.4	15.5	12.8	6.1	17.6
Paruro	4.4	4.2	4.5	3.9	2.6	4.8
Paucartambo	4.2	1.4	5.8	4.0	1.3	5.9
Urubamba	4.8	4.4	5.1	4.7	3.8	5.3

Source: Arbe, Guillermo, et. al. Diagnóstico General de la Zona de Trabajo del CCAJO, mimeo, Cuzco, April 1990.

TABLE 5 DISTRICT OF QUISPICANCHIS

Population and Extension		
District	Extension Km ²	Population 1981
Urcos	362	8,145
Andahuaylillas	50	3,350
Ccarhuayo	212	2,084
Ccatcca	292	9,928
Cusipata	372	4,274
Huaro	58	3,387
Lucre	92	3,488
Marcapata	1,532	4,115
Occongate	1,131	8,686
Oropesa	132	4,172
Camanti	2,572	1,881
Quiquijana	332	9,426
TOTAL	7,138	62,936

Source: Arbe, Guillermo, et al. Diagnóstico General de la Zona de Trabajo del CCAIJO, mimeo. Cuzco, April 1990.

TABLE 6 QUISPICANCHIS' SETTLEMENT POPULATIONS
(by ecological levels)

ZONE I

a) Urban Settlements

Urcos
Andahuaylillas
Huaró

b) Peasant Communities

Mollebamba
Muñapata
Parocan
Senseccalla
Urcos Pampa
Ccachabamba

c) Agrarian Production Cooperatives (CAP)

Rinconada
Pucutu
Marabamba

d) Peasant Groups

Q'erohuasi
Chupahuaro

e) Annexes

Pinipampa (from Sallac, Andahuaylillas)
Urpay (from Huaró)

f) Private Properties

Huaylachayoc
Yahuasi
Marabamba
Bravo
Canchistabla
Muñapata
Urcospampa
Puyahuaylla

g) Domestic Unit

Q'ecchas

ZONE II

a) Peasant Communities

Churubamba

* Horogan

* Huancara

* Sallac

* Ttiomayo

* Yuthu

* Papacalla

b) Agrarian Production Cooperatives

Rayallacta (Sector I CAP Wiracocha)

c) Annexes

Ch'eqollo (Paroccan)

* Pukapuka (Sensencalla)

* Khununkunka (Muñapata)

d) Parcel lots (Parcialidad)

Ch'anka

e) Private Properties (Haciendas)

Mallqui-Mallqui

ZONE III

a) Peasant Communities

Huarohuaro

* Q'oñamuro

* Sullumayo

* Qollotaro

b) Peasant Groups

Mancco

* Yanacocha

c) Annexes

Arahuara (Urpay)

* Tinay (Palpacalla)

TABLE 7 OFFICIALLY RECOGNIZED PEASANT COMMUNITIES IN THE PROVINCE OF QUISPICANCHIS

Name	District	Date
Quehuar	Andahuaylillas	05.21.76
Salloc	Andahuaylillas	04.24.80
Seccosecalla	Andahuaylillas	11.16.80
Ttiomayo	Andahuaylillas	07.07.64
Atapata	Ccatca	07.11.66
Ccatca Pampa	Ccatca	01.24.66
Ccopi	Ccatca	08.10.43
Cuyuni	Ccatca	10.05.77
Chichina	Ccatca	07.13.78
Huarahuara	Ccatca	07.12.29
Kcauri	Ccatca	03.29.65
Q'espe Cruz de Ausaray	Ccatca	02.28.78
Quisinsaya	Ccatca	01.28.78
Sacayhuamán	Ccatca	12.29.77
Ulpo	Ccatca	01.05.78
Yaccacheta	Ccatca	12.30.77
Yurac Mayo	Ccatca	05.15.80
Chillihuani	Cusipata	03.21.57
Moccoraise	Cusipata	02.28.65
Pata Ccolcca	Cusipata	10.03.66
Tintico	Cusipata	03.08.62
Yaucat	Cusipata	06.18.65
Sullumayo	Huaro	03.19.80
Pucara de Ccolcaqui	Lucre	01.20.81
Collasuyo	Marcapata	02.11.27
Huarocconi	Marcapata	03.15.84
Marcapata Collana	Marcapata	11.21.55
Puyca	Marcapata	08.18.56
Sahuancay	Marcapata	02.11.27
Accocunca	Ocongate	07.13.78
Jullicunca	Ocongate	12.28.76
Lahua Lahua Chinchayhuasi	Ocongate	12.30.77
Llullucha	Ocongate	07.13.78
Palcca	Ocongate	03.23.82
Pinchimuro	Ocongate	08.31.81
Choquepata	Oropeza	03.11.27
Huasao	Oropeza	05.20.74

Pinagua	Oropeza	07.19.65
Accopata	Quiquijana	06.16.75
Callatiac	Quiquijana	02.14.40
Ccolcca	Quiquijana	11.30.28
Hayuni	Quiquijana	11.06.84
Huaccaytaqui	Quiquijana	07.04.66
Llampa	Quiquijana	11.18.27
Pata Qqehuar y Pampa Qqehuar	Quiquijana	10.27.36
Pata Sachac y Llacta Sachac	Quiquijana	03.07.46
Quiquijana	Quiquijana	07.19.65
Ttfo	Quiquijana	05.28.76
Urinccoscco	Quiquijana	11.25.42
Usi	Quiquijana	03.01.65
Ccoñamuro	Urcos	04.16.26
Ccata Camara	Urcos	08.03.28
Huancara	Urcos	09.23.68
Machacca	Urcos	04.22.68
Mollebamba	Urcos	04.17.80
Muñapata	Urcos	05.05.78
Pampa Camara	Urcos	07.12.29
Pampachulla	Urcos	06.15.76
Paroccan*	Urcos	03.13.74
Sonccomarca	Urcos	01.14.27
Umuto	Urcos	05.04.64
Urcospampa	Urcos	03.13.80

Source: Díaz Gómez, Jorge. "Economía Campesina y Desarrollo Regional del Cusco-Perú". Tarea, Lima, 1987, p. 155-156.

CHAPTER 4

The Peasant Community of Paroccan

The Peasant Community of Paroccan is located on the banks of the Vilcanota River, ten kilometres from Urcos, the capital of Quispicanchi Province. Geographically, it is located on a plateau between the hillsides which provide Paroccan with a large diversity of farm lands and products, its total area being 848.75 hectares. Actually, the community is in a privileged location, since the road passes through the community, connecting it with higher communities and settlements. All this makes Paroccan an important meeting point for merchants and peasants who travel to the Urcos market.

Paroccan is inhabited by 45 families and 163 registered comuneros in the Mother Community. Almost 50 families live in its two *anexas*: Ch'eqollo and Chiccani. The *anexo* is a small village near the peasant community, composed of members of the Mother Community, on which it is administratively and productively dependent. At present, the community has certain integration problems with Ch'eqollo, since some members of this *anexo* want to separate from the Mother Community.

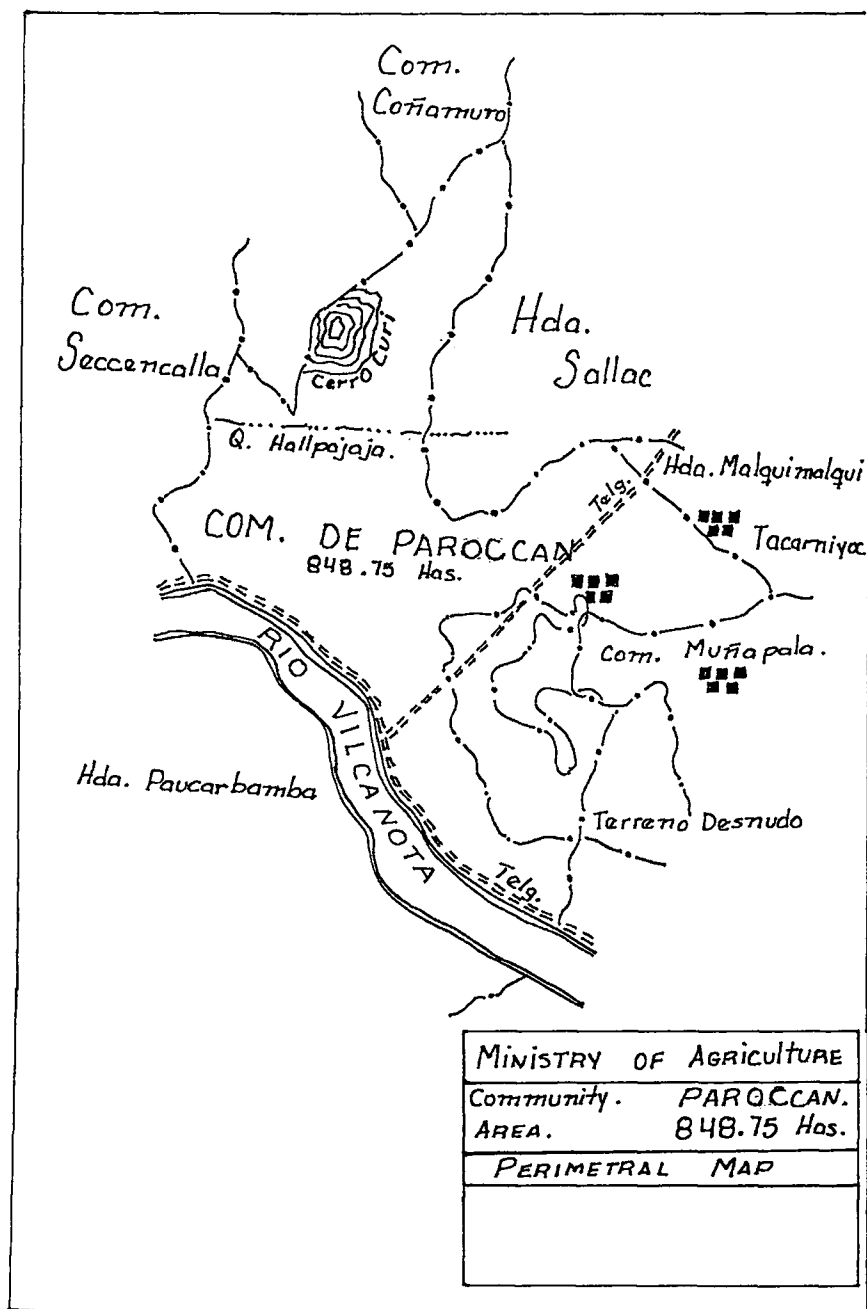
4.1 History

Historically, the geographical location of Paroccan has protected it from land usurpation by the *haciendas*. According to oral history, it has existed since Colonial times. Therefore, the community occupied its lands before the agrarian reform¹⁾ but was only officially recognized as a peasant community on March 13, 1974, during the Administration of General Juan Velasco, almost six years after the Agrarian Reform Law was enacted. The community finally obtained its title deeds in 1988.

The majority of the *comuneros* involved in the recognition of Paroccan have their roots in this community. Most of the *comuneros*' parents were born in Paroccan. Hence, historical kinship relations are part of their background.

¹⁾ However, we could not find a more detailed history of the community, due to a lack of sources, so we have focused our attention on its recent history.

COMMUNITY OF PAROCCAN



4.2 Infrastructure

This community is one of the most developed in the region, having electricity and running water in the lower level houses. The community has had electricity for fifteen years. They obtained this service with the help of Electro Sur and Ccaijo²⁾. Electro Sur, a State office that provides electricity to the southern region of Peru, contributed the equipment and the *comuneros* themselves took care of installing the connections. It also obtained running water and drains in the sixties, thanks to the economic help of *Cooperacion Popular*, a State institution established during Fernando Belaunde's administration, the principal function of which was to contribute to improvements in the peasant communities and urban settlements (*Pueblos Jovenes* or Human Settlements), with the direct cooperation of the beneficiaries themselves.

The *comuneros* have medical facilities at the hospital in Urcos, but have to walk about ten kilometers to see the doctor. However, they also receive periodic visits from medical personnel, who vaccinate the children and teach the *comuneros* some basic principles about first aid and preventive medicine. Paroccan also has some public buildings, like the Communal Centre (built with its own resources), which has room for Communal Assembly meetings as well as for social reunions and parties.

The peasants' illiteracy level is not very high (15%). Many of the peasants have attended elementary school, usually up to fourth or fifth grade. At the present time, the community has a PRONOEI -a communal kindergarten, where all the pre-school age children between three and five years old are educated. It also has an elementary school, built in the sixties by the *comuneros* themselves, with the assistance of *Cooperacion Popular*. Thus, children can attend school up to the fourth grade. The older children go to the State school in Urcos, located some twenty minutes walk from the community. A few young people go to college, and many others have finished their studies at technical schools, like the Police School, or have become agricultural experts. Such is the case of the present President of the "Club of *Semillaristas*" (Seeders).

Migration is low; almost all the *comuneros* work and live in the community, and there is only temporary migration, when youngsters between fifteen and twenty years of age usually migrate to Cuzco, Arequipa or Lima, or go to work temporarily in the gold mines of Puerto Maldonado (capital of the nearby department of Madre de Dios). Moreover, we even heard of a few youths who migrated to a farm in the midwestern United States a few years ago³⁾.

²⁾ A Non Governmental Organization which provides agricultural help and technical training to the zone.

³⁾ This is not a singular case: Altamirano (1992) shows that young Peruvians have migrated to the United States, Australia and Canada to become farm labourers.

4.3 Paroccan's Social Organization

4.3.1 The Communal Organization

The Community of Paroccan is formally organized according to the terms of Article 16 of the General Law on Peasant Communities (Law 24656). Its organs of government are: the General Assembly, the Executive Council and some Specialized Committees: the Irrigation Committee, the Roads Committee, the Groves Committee, the Seeders Committee and the Mothers Club. Each *anexo* is organized and ruled by the decisions of the General Assembly. Nevertheless, some of these anexos have a sort of internal communal organization.

However, the basic structure and dynamism of the legal organization are based on family relationships. Since the community has existed for a long time, the older families maintain possession of their plots of land. This, of course, strengthens the family position in the community, especially if the plots are of considerable size in terms of the community's territory. Furthermore, even when production is carried out on an individual basis, the exercise of each one's rights depends on the quality of internal relations, mainly through family alliances that might have developed.

The importance of the original families within the communal organization is also strengthened by State law. The General Law on Peasant Communities establishes different types of *comuneros* who participate in the communal organization. Article 5 of Law 24656 distinguishes three kinds of *comunero*:

- a) "*originarios*" (born in the community),
- b) children of these *comuneros*; and
- c) those integrated into the community.

Only a) and b) are qualified *comuneros*, provided they comply with the following requirements:

- a) To be of adult age
- b) To have lived for a minimum of five years in the community
- c) Not to be a member of any other community
- d) To be registered in the communal landholding census ("*padron comunal*")
- e) To comply with the conditions set out in the communal statutes.

Integrated *comuneros* are individuals who were not originally part of the community. They can be foreign males or females who have married -or are related- to a member of the community. There are also others who have applied for acceptance as *comuneros* by the General Assembly. This social differentiation is very important, since it determines access to land and participation in the above-mentioned communal organization.

The last legal requirement (to comply with the conditions set out in the communal statute) enables the community to establish more requirements and hence to control the incorporation of members. In Paroccan, for example, the statute establishes three requisites: residence in the place, direct exploitation of the plots allocated to them and participation in communal tasks. In this way, the organization of the peasant community allows the *comuneros* to rationalize communal production, to control management of resources and to have access to new ones.

As we will see, the external relations between communities and other agencies are a crucial aspect of their organization. Certain community authorities play a mediator's role between it and external entities or political authorities. They are particularly important in dealing with claims of local elite groups involving irrigation water and unpaid labour services, and in obtaining some advantages from the local, regional or national agencies, such as credits, food aid, etc., which could not be obtained otherwise. Therefore, these authorities -such as the the President of the Community- must comply with additional requirements, aside from those of State law, in order to perform their role, such as knowing how to read and write, have a high school or even college education, have political or union experience, etc.

4.3.2 *The General Assembly*

The General Assembly has various functions in the Peasant Community. It is the highest governing body, making the principal decisions affecting the life of the peasant community.

The General Law on Peasant Communities, in Article 18, gives this organ the power of decision-making, reform and interpreting the internal By-laws; to choose and remove members of the Executive Council and of the Specialized Committees; to approve the establishment of communal enterprises; to apply for adjudication of lands; to authorize sales or transactions of lands and to rule as defunct the possession of non-exploited family parcels. Besides these, the Assembly performs other tasks, such as deciding on the admission of new members, the elaboration of the annual agricultural schedule, and the settlement of disputes between *comuneros* that can affect communal life⁴⁾. The way the community's profits are distributed or used, is also decided at the General Assembly.

Consideration must be given to the degree of participation of community members in the administrative body. Usually there is no active participation that permits them proper management of communal resources. In the first place, it should be noted that according to State and local Andean law, only qualified *comuneros* have the authority to speak and vote in the decision-making process. Integrated *comuneros* have the right

⁴⁾ As a consequence, this organ also has the ability to punish those *comuneros* who do not fulfil (or execute) the communal agreements.

to participate but not to vote in the General Assembly. Thus, they may intervene in collective decision-making, but in a minor way.

In fact, the degree of participation is rather low. Many *comuneros* -either qualified or integrated- practically do not participate in any communal activity. Most of them do not have enough time or interest in attending constant General Assemblies. Thus, the dynamics of the communal organisation are based only on certain members, mainly those on the Executive Council.

4.3.3 The Executive Council

Although formally, the General Assembly is the most important organ in the peasant community, we find that the Executive Council and the President of the Community are the ones making the significant decisions concerning daily affairs affecting the community's life. This is because it is not so easy to call General Assembly meetings, and there are always short term problems to be solved.

In this way, the Executive Council not only has executive functions but also, and principally, decision-making functions. It is the entity that decides on the acquisition of land, the incorporation of new members, the distribution of communal tasks, the settlement of disputes -when appealed to- licences for *comuneros* who temporarily emigrate outside the community and management of the communal production, among other things. In some cases, the Council coordinates with the specialized committees to carry out the mentioned duties.⁵⁾

According to Law 24656, the Executive Council comprises at least six members: Chairman, Vice-Chairman and four directors. The composition of the Council in Paroecan is according to this Article. These posts may be held for a period of two years, and members may be reelected for a similar period. To be elected a member of the Executive Council, the *comuneros* must comply with the following requirements:

- a) To have the right to vote;
- b) To be a qualified *comunero*;
- c) To be registered in the landholding census
- d) To master the community's native tongue; and
- e) To enjoy all statutory rights and obligations.

However, there exist other factors apart from those mentioned, that are taken into account when electing authorities. In the first place, the qualified *comuneros* are the only ones who have access to important positions in the community. A second factor is their knowledge of the Spanish language, both officially and administratively. Sometimes, it is learned while holding a post, but in other cases some leaders have

⁵⁾ This role is also supported by State law: Law 24656 states, in Article 19, that the Directive (Executive) Council is the organ in charge of the government and administration of the community.

learned it thanks to previous market experience or experience with State agencies. A third important factor is that of contacts or influence that the elected directors have in these agencies, or in private entities, in order to obtain better profits than other communities. This prestige is achieved, among other things, by showing a great and willing capacity for participation in the administrative organization of the communities or in the political arena in the microregion.

Moreover, in Paroccan the traditional system of "job rotation" exists. The qualified *comuneros* successively assume, throughout their lifetime, various positions on the Executive Council, culminating in the position of Community President. Although this system prevents possible power struggles, it also prevents the possible emergence of other leaders.

4.3.4 *Specialized Committees*

The General Law on Peasant Communities only mentions these committees briefly. Nevertheless, there is enough room in the law which leaves organization and regulation to the *comuneros* themselves, through the local Andean Law and its By-laws. In this way, the administration and distribution of communal resources, especially of land and water, production activities, public services (like roads) and other aspects of communal life are carried out through these Committees.

For example, although water is a natural resource which constitutionally belongs to the State, its administration is usually carried out by the governing Irrigation Committees. These are community committees on water control recognized by the State.

In Paroccan, the Irrigation Committee is presided by the Arbiter of Waters, a *comunero* elected by the General Assembly. He organizes the irrigation shifts, according to the register, and distributes the "bills of irrigation" among the *comuneros*. This distribution organizes the agreed upon shifts for each parcel.

In other committees, like the Seeders Committee or the Mothers Club, young people are the leaders. This can be explained, because unlike the previous Committee, where the accumulated knowledge on irrigation and production is fundamental, what is needed in these latter ones is the handling of new techniques such as the use of sewing machines or seed production. In some cases this can create certain friction or conflicts in the community, since the "old" *comuneros* are the ones who usually occupy and dominate the important positions in the communal power structure. But these conflicts are usually soon resolved.

However, the presence of young people in these communal bodies leads to three important consequences: first of all, the young *comuneros* are far more vigorous, and, as a result, the community obtains better profits. In the second place, they have gained great experience in the management of communal affairs, which will make them more skillful when they finally take charge of the central bodies. And thirdly, the relationships between these committees and external agencies enable youths to initiate

bonds and alliances with authorities of private and public offices. Therefore, the Committees can be considered an initial phase within the community's power structure and job rotation system that permits youths to increase their social and political participation and channel their access to posts of greater responsibility within the community.

4.4 The Organisation of Land and Labour

4.4.1 *The Landholding System*

At the present time, the Paroocan landholding structure contains as many elements of local Andean Law as of State law. The relations between both allows us to see more exactly the way in which the system functions in Paroocan.

In terms of State provisions (for example, the By-laws for Peasant Communities, or the General Law on Peasant Communities), the community land, legally called territory, belongs to it as a legal entity. When the peasant community is recognized by the pertinent central State agency, the community is also considered as a legal entity. After its recognition, the Paroocan authorities could represent the community before the Municipality, the Ministry of Agriculture offices, and political institutions, and even contact any other individual or agency in order to request title deeds, credit, State aid, etc.

Paroocan's economic production, as in other communities in the subregion, is closely linked to the type and strength of the communal organization. The degree of communal influence is measured through the participation of individual households in farming land in compliance with the rules relating to the use of communal resources.

Land distribution, the farm calendar and the use of the communal labour force, are decided by Paroocan's communal authorities through the General Assembly. First of all, the annual distribution of land parcels is carried out according to the number of family heads. Some of the lands are redistributed each year, due to the quality of the land and in order to avoid erosion. There is a system for rotation of communal land or family parcels. In other communities the land is distributed each season in order to change those parcels which have been farmed recently and are fallow. This exchange of lands means they can be recovered and exploited once again. In this regard the community respects individual or family possession and in addition periodical redistributes part of the communal lands.

In Paroocan we observed that the community tries to distribute land according to the number of *comuneros* and their needs. When distribution is made, the location and features of the plots are taken into account. The community tries to provide each *comunero* with enough land to farm more than one product, women exercising the same holding rights over the land, although most plots are still held by men. Most

families kept the same plots, their size was respected, but in some cases families were given new rotating plots.

Under State law, the *comuneros* do not have ownership as individuals of the plot they hold, because it is a communal one. In this sense, each *comunero* has only holding and usufruct of a plot of the peasant community's land. Therefore, they cannot sell or buy any plot that belongs to the community.

However, according to local Andean law, the community's property is not an absolute right, because the *comuneros* believe that they, as individuals, own the property of the plot they are farming. This normative notion of Andean law is reinforced also by a practical aspect: the possibility that the *comuneros* have to decide the products they are to sow and how to market them, as we have seen above. The possession of land can be obtained in Paroccan by some Andean law institutions, which are recognized by the peasant community. They are:

a) **Recovery.** This means that if a parcel is not farmed by its usufructuary for more than seven years and another *comunero* farms it, the former loses his usufruct and the parcel is given to the one who cultivated it.

b) **Inheritance** occurs when a *comunero's* possessions are inherited by his children. As people in Parocana said: "When a *comunero* dies, his land is distributed among his children, who have all the rights that pertained to their parent...". Inheritance is carried out on a family basis and the community authorities respect these decisions. For inheritance purposes families are integrated by husband and wife and children. Widows and widowers have preferential rights over children.

c) **Assignment.** The General Assembly can assign lands to a non-land owning *comunero* who requests a parcel of land. As people in Paroccan said: "In the case of young *comuneros* who have no land we try to give them a small parcel here or at the *annexos*; "it is difficult for us to give land to youngsters, since what we have is scarce, so we try to recover lost parcels (those that are unused) to be farmed by the young"; "we do not have enough land to distribute among the youngsters. It is common for a plot to be farmed by two or more brothers...".

The question of the sale of parcels clearly shows the content of communal ideology regarding ownership of the land. At the present time, the sale of land is the most important way of transmitting land in Paroccan. Since the *comunero* believes that he has the right to transfer his plot, he can contract and sell his plot to another *comunero*. In this case he usually informs the communal authorities about the contract. He knows about and is influenced by the official law. Nevertheless, regarding ownership rights they do not necessarily consider the law official in their legal transactions.

In the past these transfers were made orally, since spoken language was the basis for local Andean law. In those times what was said was more important than what was

written. However, the progressive introduction of the written word as a new way of transfer -sale of lands- changed the meaning of oral forms, and sales were carried out in the form of written contracts.

In this process, we can find different responses from the different protagonists. On one hand, as a general rule, the peasant community authorities and members consider these contracts as legal, but only when both persons involved in the contract are *comuneros* of the same community. If the buyer is not a *comunero*, the community does not recognize the contract, unless there are certain pre-existing conditions regarding his integration into the community. These conditions are:

- a) To have lived five or more years in the community and have participated in the community's work; or
- b) To be married to a woman who is part of the community.

In a case where neither of these conditions was fulfilled, the community tried to recover the plot, and the buyer, to defend his "property". The matter was referred to the State Court, which handed down its decision that the buyer was not recognized as the owner, but would have the right to "hold" the plot. In other cases, the State Court decision is based on a different interpretation of State law which does not recognize the buyer as having any rights at all. In such case the transaction is not recognized as valid.

Again we observe contradictory behaviour on the part of the State agency as follows. Legally, the State agencies should consider this contract void, that is without legal effect, since the transferred plot did not belong to the *comunero*, but to the peasant community. Officially, the State and state law are supposed to protect the community, and avoid the accumulation of communal property through power concentrations. To sum up, the validity of sales in the community depended upon each particular case: whether the parties were members or not of the community, their social and economic position in the community and their prestige, etc.

The State courts, the Notary Public and the Justice of the Peace, in some cases legalize or recognize the contracts, in others they do not. Ambiguities in ideas and cases did not give us a clear conclusion about the behaviour of State Courts and the Notary Public. Although they have to take State law into consideration, in some cases they also legalize or recognise these private contracts in cases of controversy.

4.5 Production

Even though each *comunero* decides, according to his own needs, the product or products he needs to farm, the community establishes the farming calendar and the turn in which each parcel is meant to be farmed, taking into account, too, the turns for distribution of water. Each *comunero* is bound to help in the sowing and harvesting of each parcel, but the products of each one will belong to the *comunero* who benefits

from it. Not all the *comuneros* help all the others, but it might be so in Paroccan; but generally there are two processes: on one hand each *comunero* calls on his relations or neighbors to cultivate his lands -mutual aid or *ayni*- and on the other hand everyone participates when dealing with communal lands or tasks which correspond to everyone, such as cleaning the irrigation channels. *Comuneros* in Paroccan produce Andean products like potatoes, corn, wheat, beans, green peas, barley and lambs wool. They cultivate all these products on a family or a communal basis.

The community also decides the distribution of the labour force, in order to make sure each plot is farmed adequately and properly. Most of the peasants participate with their labour, in either the sowing or harvesting seasons, but during the rest of the agricultural period each *comunero* has to farm his own plot by himself. Cooperation in the farming process is an important aspect of the "community-effect"⁶, which is explained by Gonzales de Olarte:

"...the "work group" has a series of advantages over individual work, in terms of production results and in facing the more difficult stages of the production process" (Gonzalez de Olarte 1986:227).

As Long and Roberts argue, the persistence of these ways is best explained, not because they represent remnants of "traditional" behaviour, or of primitive communism, but because they are some of the basic means for ensuring continuity and survival of the peasant household system (1978: 308).

An example of this mode of cooperation is found in the communal garden. This garden is a parcel, property of the peasant community, which is farmed by all the *comuneros* and the products of which are divided equally among them, or sold to obtain resources for the community's needs (i.e. to build a communal school, to get public services, etc.). This land is farmed by all the male *comuneros* -and in some cases, by widows- who have to cooperate with this labour each week, usually on Saturdays. *Comuneros* who lack parcels also have to cooperate with the communal work; these *comuneros* are called "collaborators": "Once a week each *compañero* (companion) has to help with labour in the communal garden, in order to raise more resources for the community...". "Work in the communal garden is performed by all the male *comuneros*. Only in certain cases does a widow have to carry out the work which corresponded to her husband...".

The total production of all Paroccan members is distributed in three different ways: a large part is destined for self-consumption, and another part to barter for other products from nearby communities. In this case the *comunero* exchanges some products (*tarwi*, barley and maize) with nearby communities. Some of them travel to

⁶ Gonzales de Olarte defines the "community-effect" as the total of the higher economic profits (whether productive, income or welfare) that the peasant families can obtain by communal work, in contrast of working individually (1986:19).

the higher communities taking some products, such as sugar, rice, clothes and shoes, in order to exchange them for other products, that are not found in the lower lands.

Only approximately 20 percent of the total production is sold at the Urcos market. Here, marketing may be on an individual or communal basis, but the communal garden produce will be sold by the social organization. In the first case, the income goes directly to the *comunero* and his family. The *comuneros* travel once a week to Urcos with a few *arrobas* sacks⁷⁾, which they carry on mule or llama back. This production is sold to merchants from Sicuani and Juliaca⁸⁾. The *comuneros* also sell their products at the annual Urcos Fair, which takes place in early February. The community products sold at the market provide some income towards the community budget. Most of the communal garden produce is sold to obtain financial resources for the community, but should not all the production be sold, it is distributed equally among the poorest *comuneros*.

4.6 Paroccan's Recognition and Titling Procedures

4.6.1 The Recognition Procedure

At the time Paroccan initiated its application for recognition, a transition was actually taking place between the former Statute approved in 1966, during the first Administration of Fernando Belaunde (Supreme Decree 011-A) and that enacted in 1970 by the military government.

The first Statute was, in fact, a continuation of the early procedures for community recognition⁹⁾, incorporating additional changes. First of all, this Statute faced new requirements with respect to Supreme Decree No. 998. According to this, a community should present the following information: the community's timespan of existence; the original title deeds; the villages and *anexos* - which are part of the community; the total extension of the communal territory, indicating sources of water, lakes, ponds, springs, rivers and brooks which flow into and by it; highways, roads, paths and other ways of communication; types of crops cultivated (Art. 1). The new Statute also requires data on handicraft activities, as well as the community's natural

⁷⁾ **Arroba:** Weight of twenty-five pounds (about eleven and a half kilograms).

⁸⁾ Both cities are important commercial axis of the southern region. The first is located in Cuzco, and the second is placed in the nearby department of Puno.

⁹⁾ Which are: Supreme Resolution of August 28, 1925 (which created the Public Registries); Supreme Decree of June 24, 1938; Supreme Decree No. 008 of May 10, 1961 and Supreme Decree No. 1 of July 7, 1964. For further details of these laws, see Costa, 1981, p. 70-75.

resources (Art. 8)¹⁰⁾. Article 7 added to the obligation to prove possession of lands, the subsistence of communal work and mutual aid regimes among the *comuneros*.

As stated above, the legitimacy and existence of this law was out of touch with the promulgation of the Agrarian Reform Law in 1969, mainly because Article 124 of this law established that "special By-laws would regulate the organization and functioning of the peasant communities, ruling their economic regime, form of government, common services and other institutions pertaining thereto". These new By-laws were promulgated on February 17, 1970.

The peasant community of Paroccan applied to the Ministry of Labour and Peasant Communities for official recognition and registration on February 9, 1970, only eight days before the new By-laws were enacted. Therefore, at first, the application was not accepted, because the regional officers did not even know the terms of the newly enacted By-laws.

The peasant community once more presented its application, attaching the following documents:

1. A census record, certified by a Notary Public.
2. A certified Deed of the Minutes of the General Assembly, approving the communal decision to require its official recognition, by the majority of the Assembly members.

In this Deed, the community requested the Ministry of Labour and Peasant Communities for official recognition as a peasant community and appointed its representatives or attorneys. The attorneys played a key part in the proceedings. Usually, the attorney is a well-known and respected member of the community and he may or may not be a member of the Executive Council. He must have the people's trust; be literate and know how to deal with people and problems. He might have to travel to the State's regional authorities and even to Lima, where final decisions might be made.

All these documents were prepared during an extended preliminary stage, requiring the participation of the community members both during the carrying out of the census as well as at the General Assembly. At this time, the Executive Council was responsible for preparing the documents proving the community's ownership of the lands; and the census required by Article 14 of the By-laws of Peasant Communities (Supreme Decree 37-7-A).

During the communal census, a serious disagreement arose between the *comuneros* and the bureaucrats carrying out this task, about the criteria used for registration of

¹⁰⁾ According to Costa, the permanent increase in the information required "indicates the interest of the State in receiving more detailed information about the reality of the communities. In 1925 it asked for information about four issues; in 1938, about seven issues; in 1961, about ten issues and in 1966 about twelve issues" (1981:75). To us, the State's interest in these matters really shows a desire for more intervention, rather than better proposals.

parcel owners. There was a dispute regarding the criteria for considering a peasant as a registered *comunero* in the census. In principle, the responsible functionaries wanted to include in the census all those peasants who were in possession of a parcel. They were not always well informed of different land transactions which had been made in the community. They also did not invest too much time in seeking out all the details of these transactions. For their part, the communal authorities alleged that they should adhere to the communal landowner register, which clearly set out who were *comuneros* and who were not, since in many cases the peasants had rented their parcels to foreign or family third parties, with the risk that the latter might be considered to be *comuneros*¹¹⁾.

Finally, with the support of the Executive Council, these peasants were not considered members of the community. The Executive Council was an important source of information. This problem points to the fact that some conflicts also arose within the community. The struggle to be included in the census was important for all peasants, in order to acquire rights before the State authorities and to consolidate their status in the community. The disputes almost resulted in the failure of the process, but were finally solved by the local State authorities in charge of the process and the community's directors.

Thus, the desire to be recognized by the regional authorities forced the peasants to make concessions and agree among themselves, and to redefine their strategies. In the first case, internal disputes were suspended for a short period in order to facilitate the development of the legal process. On the other hand, the influence of the State's local authorities on the redefinition of the local legal criteria, show us how easily this semi-autonomous field could be penetrated by State law.

This need to be recognized can be better explained in the peasants' own words: "It started with the need to possess land, guaranteed in the face of anybody else who would like to take possession of our land; that is, to possess parcels without any legal threat or problem..."¹²⁾. "It was not the economic factor which brought us to the titling of our land, but a consequence of the uncertainty over the legality of the rights we have to these lands...". "The need to have access to the subregional market comes from the competition among communities of the zone, and from our legality...We only

¹¹⁾ The disagreement can be better explained in Lipsky's words: "Street level bureaucrats confront problems in which they must make significant decisions about people and complex situations, without being able fully to interrogate people or investigate the background of their claims. The assertions of other professionals who presumably know their jobs, and are charged with responsibility for making appropriate assessments in their own work, provide significant and legitimate cues to decision-making, in the absence of other sources of information." (1980:130-131).

¹²⁾ The belief that State officers could guarantee the process would secure the property of their land is based on the myth that things are done in order to help the applicant's welfare.

"One source of the myth of service altruism is social policy reformers who utilize the discrepancy between reality and stated policy intentions to mobilize support for change. Virtually all policy reforms are advocated in the name of achieving service ideals" (Lipsky 1980:72).

need to be accepted by our neighbours as a community which possesses certain well-defined boundaries: the development of the community will be a consequence of this..." "the legality of our lands is a common interest, since it is fundamental for the peasant to live linked to the land..".

When we asked about the political factors which influenced this decision, the peasants usually answered in the negative: "Politics is not seen in the countryside, it is marginalized: what is important to us is to develop the community without the intervention of politicians..." "The idea of tiling our lands was not influenced by our customs but by the State's norms..."¹³⁾.

On April 1, 1970, the community applied to the Director of the Agrarian Zone for recognition of its census. This officer applied to the Sub-Director of the Agrarian Reform and Rural Affairs, who then applied to the Head of the Office of Peasant Communities in Lima.

On April 20, 1971, the Office of Peasant Communities recognized the "communal attorneys", Agustin Ccarhuarupay Tito and Claudio Huaman Toma, but advised them to follow the provisions of Articles 11, 13 and 14 of the By-Laws for Peasant Communities. The norms for State recognition were the following:

Article 11

Unrecognized peasant communities can carry out the procedures for their recognition and registration by means of an attorney authorized by the Communal General Assembly and legalized by a Notary Public.

Article 13

For recognition, the community must:

- a) Have title deeds to its land, or otherwise prove its possession;
- b) constitute a social group, according to the norms of Article 2 of the By-Laws¹⁴⁾; and
- c) have the approval of two-thirds of the General Assembly participants.

Article 14

For recognition, the peasant community should enclose with its appeal to the Office of Peasant Communities, the above mentioned titles, along with the following documents:

¹³⁾ Some authors, such as Luis Pasara (1982) argue that the *comuneros* had little information about the existing legislation, but they knew that the State could recognize their property if they fulfilled all the legal requirements for the community's recognition.

¹⁴⁾ This article defined the peasant community in the following terms: "The peasant community is a group of families which possess and are identified with a defined territory, and which are also linked by common social and cultural features by communal work and mutual aid; and, basically, by agricultural and related activities.

- a) A census and other data, concerning its population, according to the requirements of this Office;
- b) a map of the communal area showing boundaries sketched by the Office of Rural Real Estate, of the General Agrarian Reform and Rural Settlement Office;

Nevertheless, Paroccan's attorneys had all the documents in order to continue with the legal procedure. Their understanding was: "We needed to secure our boundaries; the existence of the community is recognized by our neighbours, but if a landowner from Urcos is interested in our land, he will probably win the case. That is why we followed all the Ministry's demands, since the legality of our property has to be guaranteed by a State resolution..."

On 3 May 1971, the application of the community was rejected. However they were not formally notified. They heard of this decision because the "communal attorneys" went directly to the Office of Peasant Communities. Then they appealed. The community was told that its file had not been sent on to the Agrarian Reform Office in Lima. On 11 May, the community desperately asked President Juan Velasco for their recognition (Memoire No. 18581-5)¹⁵. Directorate Resolution of 7 July 1971, ordered the remittance of the community's file to the Agrarian Zone Office in Cuzco in order to continue its processing, according to the norms of the By-laws for Peasant Communities (Articles 10 to 22).

The usual procedure was that the Agrarian Administration in Cuzco was the office that had jurisdiction for solving Paroccan's request, before the case could have gone to Lima. Nevertheless the regional authorities followed specific directives from the central authorities in Lima in order to continue with Paroccan's processing.

According to Article 15 of the By-laws¹⁶, the Agrarian Reform Office notified the neighbours Maria Jesus Widow Solmes, the owner of the Paucar Hacienda, and Walter Luna Venero, attorney of the peasant community of Sallac of the Recognition of Boundaries Procedure. On December 21, 1971, the Office reported the following agreements:

- 1) Maria Jesus Widow Solmes did not oppose the recognition of the boundaries, since:
 - she recognized the long-standing existence of the community;
 - she argued that the boundaries between her property and Paroccan were clearly established and that there had never been any conflict regarding same.

¹⁵ In this Memoire the community argues that Paroccan had all the legal documents in order to be recognized as a peasant community.

¹⁶ This article ordered confirmation of the enclosed data by the Office of Peasant Communities, through a physical inspection of the zone, notifying the neighbouring owners, and the Office of National Properties of this act.

- 2) Landholder Widow Solmes ratified the maps of official real estate delimitation, sketched by the Agrarian Reform Office, which established the boundaries between both properties;
- 3) The peasant community of Sallac recognized the boundaries between them and Paroccan, as well as the maps of the official real estate records.

The Act of Recognition of Boundaries between Paroccan and the peasant communities of Conamuro and Munapata was signed on December 10, 1971. These communities also confirmed the legal recognition of Paroccan, and accepted their boundaries. The Acts of Delimitation of Boundaries between Paroccan and the Pre-Cooperative Santa Rita de Sallac, the peasant communities of Senceccalla, Conamuro and Munapata and the Paucar Hacienda, were later signed in different sessions.

Recognition of Paroccan by the nearby communities can be explained not only by its "long-standing existence" in the zone but rather by the economic relations it had with the other higher communities. This relation is understandable, when we observe that the road that joins these communities goes right through Paroccan, making this community the center of the zone's economic activity.

It is necessary to point out that, regarding Sallac, there were certain problems, since their boundaries were not well defined. This problem is not mentioned in the file, since it was solved by both communities privately, according to custom. As a peasant said:

"We had a problem with Sallac, but we did not apply to any State official or magistrate; we solved it by ourselves, according to our ancient custom..."

On the basis of these Deeds, ORAMS VII, the bureaucratic office in charge of this legal procedure finally recognized the peasant community of Paroccan and ordered its registration in the National Peasant Communities Registry.

4.6.2 The Social Significance of State Recognition

The legal procedure briefly described above permits us to analyze the relationships and practices existing among the social protagonists involved. Technically the recognition is a legal process in which a community has administrative existence for the State authorities. It is very important to the *comuneros* because official recognition gives access to important resources such as bank credits or State aid, and helps to achieve communal expectations such as being legally sure of their lands and a new status. For the State agencies, it is also advisable because, from the point of view of their administrative obligations it is easier to deal with a recognized or formal peasant community. The recognition of Paroccan was a significant step in the development of the social identity of this peasant community. They were paid more attention by State

authorities and their neighbours. For example, they began as a community to be considered in the State's social programs, or the peasants had greater expectations as individuals when they asked for credit.

Although the process took into account the boundaries of Paroecan, it did not imply the titling of the peasant community after it was legally recognized and entered in the National Peasant Communities Registry. The title deeds procedure could not be initiated until 1987. Nevertheless, the recognition and registration process was not just symbolic. The regional and central authorities began to give more importance to Paroecan's demands, because within the context of the agrarian reform, political, national and regional authorities were interested in the peasants' political support.

But we cannot find direct political or legal intervention practices by the State in Paroecan¹⁷⁾, since the *comuneros* are the ones who apply directly for recognition to the agrarian administration, and not the other way around. This can be explained partly because the State was more interested in the formation of cooperative enterprises than in recognizing peasant communities, whose social and cultural organization was not really understood by urban law makers.

But a type of intervention can be found, which we could call a "directive" -in Long and Winders' terms¹⁸⁾, since it is the State that establishes and enforces the requirements and procedures for the community's recognition. As we have shown, these requirements increase as time passes, and therefore they are increasingly difficult for the communities to comply with. The only space they had any possibility of negotiating was agreement with their neighbours on boundaries.

Regarding the behaviour of the State regional officers in charge of the legal procedure, we observed that they behaved eminently legalistic, that is, they only took care of the norms established by the By-laws for Peasant Communities, showing a bureaucratic position, without looking for the legal basis which supported the community's assertion. This behavior explains why they delayed the procedure on several occasions, both at the beginning as well as during the different stages of the legal process.

In the first phase, the regional officers had limited and unilateral information for processing the application, since the By-Laws had recently been promulgated. From my personal experience as a central State officer, I conclude that the way in which

¹⁷⁾ "Intervention" is seen in existing models as a discreet set of activities that take place within a defined time-space setting involving the interaction between so-called "intervening" parties and "target" or "recipient" groups. Such an image isolates intervention from the continuous flow of social life and the ongoing relations evolving among the various social protagonists (Long and Winder 1975:226-228).

¹⁸⁾ "Directive" change is characterized by centralized control and administration pattern, through which the objectives and implementation means are determined by government or international agencies. While this does not exclude the possibility of the beneficiaries or settlers participating in some decisions...all major decisions and the overall framework remain firmly in the hands of State officials..." (1981:82).

decisions are made by the Ministry of Agriculture is that the regional authorities usually expect internal directives or memoranda from the Central Government, after a general law is enacted.¹⁹⁾

Thus, Paroccan's peasants were confronted with regional versions of State law. One was the regional authorities' version, while another came from Lima. Thus, we can argue that within State law there are different versions or ways of interpreting the legal norm, due to either political, geographical or economic reasons. There might also be difficulties in understanding or transmitting them within the zone. These problems worsen when the norms are recent or might have important consequences on the social and political way of life. In such cases, the National Agrarian Reform authorities were especially interested in the recognition of the peasant communities. In 1971, the year Paroccan was recognized, this Reform was attacked by most of the political parties.

It should be noted that, in the second phase, when Paroccan appealed the first decision concerning its recognition, there was not in principle a clear decision as to which administrative level had to admit Paroccan's appeal. The community's two attorneys were sent from one agency to another without receiving any specific reply. This situation considerably increased the cost of the process, because authorities and members of the community had to travel back and forth to Urcos, Cuzco and Lima, inquiring about their legal procedure without getting any reasonable answers.

The recognition process turned into a political affair, since the community used different resources to pressure the central government such as some local and national authorities and other communities. The unified criteria and common interests of Paroccan, in this case helped persuade the new progressive central authorities to make the final decision, and order the regional administration to continue with the administrative process.

Another feature observed in regional State officers is that they did not inform the community of the real procedural conditions. We can understand the officers' explicit interest in deliberately delaying the process. However, it can be explained better as a sign of the "routinization" of the procedure, the same treatment being offered at all steps. Regional bureaucrats did not even know whether they had to enforce the new By-laws for Peasant Communities or not, or how to do so. This behavior might be better understood when considering Lipsky, who explains:

"Street-level practices ration service, organize the client's passage through bureaucracy and keep scarce organizational and personal resources...cases that deviate from routine proceedings are not exempt from "routinization",

¹⁹⁾ Hence, recognition of a peasant community is a political and economic process, in which general statements are expected from the Ministry or the President, as well as a specific budget in order to start the new process.

however. Instead, street level bureaucracies call on additional practices to manage first-round cost of processing people in routine ways. These practices function to absorb dissatisfaction with common procedures, thereby permitting agencies to continue processing most of the cases routinely" (1980:133).

After some cases have been solved, the State regional officers get used to enforcing a specific law, or giving them specific meanings and creating certain legal repertoires according to the regulations, memoranda and directives, the background of bureaucratic practices, the type of client they have, the difficulties of the application, etc. As a result, a local version of the State law is created. As F. von Benda-Beckmann states:

"Villagers are thus confronted with local versions of State, which often have nothing to do with the original version. Their reaction to the local bureaucrats' demands or decisions depends on how they interpret the local and not the original version..." (1989:135).

This local version is primarily based on the "routinization" of proceedings by the regional officers, but also on other factors. In the same way, the routinization might have been based on other motivations such as opposition of local elite groups to recognizing the legal capacity of the peasant communities and their organizations, since it gave them legal support in controlling the land. The central government's lack of interest in this recognition may be an additional factor explaining the "routinization" process at the regional level. Finally, we must say that the recognition process is not only a relationship between the community and the different levels of State administration. It is a socio-legal and political process although it is merely defined by State law as a technical procedure. The recognition process also requires a different type of agreement between the community and its neighbours, which may, in a legal, social and political way, previously recognize the community.

4.6.3 The Titling Procedure

Paroccan and other communities had to wait for more than fifteen years to gain access to titling of their lands. (As mentioned previously, this was promulgated in 1987). It must be noted that the 1970 By-Laws of Peasant Communities did not resolve this issue. Therefore the new law considered as its main goal the titling of peasant communities.

On 12 April 1988, Paroccan's attorneys applied to the Officer of the 20th Agrarian Reform Zone of Cuzco for the titling to their lands. According to Article 5 of Law 24657, the official publication of this application appeared in the official newspaper "El Peruano" and in the most important national daily in the zone, and adjacent

peasants were notified that the Map of the Community and the boundary limits would be sketched between February 23 and March 4 of the same year.

The reason for accelerating the titling of the community lands was to guarantee their property, to achieve certain autonomy from the State and to ensure strong integration of its members in communal life. As people in Paroccan said: "The titling procedure was promoted, since we needed to have the assurance that nobody could take away our lands, that is, to have "unthreatened" lands...". "Our rights over these lands were inherited by our parents...". "Communal life is similar to the *ayllus*", but our *comuneros* need to be grouped into an institution that can solve their problems, with the collaboration of its members; the legality of our property of the land is a communal interest, since the *comunero* lives in harmony with his land..."²⁰⁾ "Politicians never take into account the peasants' needs and desires: We are always marginalized by the people who come from the city: all we need is to improve our standard of living, without depending on State politics..."

This procedure was carried out under Law 24657, the Law on Demarcation and Titling, enacted by the Administration of Alan Garcia. The main characteristic of this norm is that it recognizes the long-standing possession of communal lands²¹⁾. The delimitation of their area had to be proved by its titles or, when these did not exist, by sketching the community's map and the delimitation of its boundaries.

The State's proposal concerning communal titles was to apply the legal principle of celerity to the proceedings. This principle implies that the administrative officers facilitate the formal requirements in order that the client continue a legal procedure and to reduce its costs. There was a limited fund for the titling process which had to be paid early otherwise the costs of processing might be raised and therefore never terminated. However, the application of the celerity principle has been very difficult, since State officers, as we have seen previously, tend to delay the execution of this process, with their constant penchant for "bureaucratising" and "routinizing" all the processes that come before them.

It should be pointed out that State officers recognize Andean laws ruling the possession of land in these communities. The peasant community's organization was the main basis permitting recognition of the communal existence by the State; the

²⁰⁾ Land constitutes, for the peasant societies, and particularly the Andean world, an element with a strong symbolic power and the essential support of the social identity; the role given to land is to secure the economic and social reproduction of the individual peasants, the family and the community faced with the insecurity of nature and of the relationships with the external world (Malengreau 1985:1).

²¹⁾ Article 2 states: "The communal territory is integrated by the community's original lands, those acquired according to civil and agrarian laws and those adjudicated to the communities by the Agrarian Reform. The original lands are those which are possessed by the community including the uncultivated lands and those recorded in their Titles..."

titling of its lands was apparently a secondary issue, since the community only wanted to secure its boundaries.

The boundaries between Paroccan and the peasant communities of Conamuro, Santa Cruz de Sallac and Munapata were recognized by all these communities. The only problem was with the community of Munapata, since in the zone between Cisilliyoc and Paroccan there was some overlapping of the usufruct and possession of lands by the *comuneros* of the anexos of Kunucunca and Ch'eqollo, which formed part of Munapata and Paroccan, respectively. But finally, both communities agreed that this overlapping usufruct would be respected, according to both communities' ancient customs. Once the respective agreements and delimitation of boundaries were made, the pictorial map was approved on June 6, 1988, ratifying the community's boundaries.

An important question is whether the titling procedure is really automatic as declared in Law 24657. This leads us to examine the problems of successful titling and how these problems could be overcome. One important aspect was that there had to be a specific budget to start the procedure in a certain area. There were political reasons for assigning the budget, depending on how many communities were requesting this process, how many peasants would benefit, what the electoral population was in each area, what economic effects from the State's point of view would there be in the microregion, among others. To the communities, these requirements made clear how strong they were in the political arena, and whether they had the necessary contacts with the political elite at the local, regional or national levels. Consequently, most of the communities were unable to initiate their titling process with State funds, but had to rely on their own. Since the budgets were not enough to initiate a national titling programme, only a few communities were titled, such as in the case of Paroccan.

State funds could be very significant, since this was a legal procedure run by the regional authorities, who appointed low level bureaucrats with influence in the titling decision. However, as in the case of recognition, the bureaucratic and routine behavior of the regional officers inhibited the titling law's expected effectiveness. On the other hand, having the agreement of the adjacent neighbours, either individuals, cooperatives, peasant groups or other communities, was a necessary step for obtaining title deeds. This involved a prior formal or informal process of recognizing each others boundaries, through negotiation or conciliation.

The reason for this is that, in the titling case, a clear delimitation of the communal boundaries was a more significant issue than in the official recognition case. In the latter, the boundary question was secondary, since the law permitted the *comuneros* to be recognized without a final demarcation of their territory. In Paroccan's case, it was facilitated thanks to its previous experience with its neighbours. Since the law has not been revoked, and there is no decision to stop the titling process, we feel that this legal procedure can be carried out on a peasant community basis: This means that each community will have to pay an expert to sketch the different maps, which then

have to be approved by another civil engineer, a regional administration functionary. Then, an official will go to the community and ask for the title deeds and will recognize the boundaries and confirm that there is an agreement between the community and its neighbours. This officer will have to be paid travel and lodging expenses and some fees. This is somewhat informal, but is done on a voluntary basis by the community making the application, and by the bureaucrats who agree to travel to the community. As we have seen, this does not necessarily guarantee that if the official gets paid by the peasant community to evaluate the application, he will give a positive recommendation to the higher authorities to grant the title deeds.

On the other hand, the possibility of bribing the official would be far too risky for him, should he report to his superiors on the basis of false data. Although it might be argued that lodgings could be provided directly in the community, the whole procedure, especially the technical stage which includes the elaboration of the maps, is very expensive for the peasant communities. Therefore, the financial issue hinders many of them from presenting their applications.

To sum up, both recognition and the titling process help the peasants to gain skills in the use and the understanding of State law, and also to check local and regional bureaucrats' interpretations and misinterpretations of different legal ordinances. At the same time, official society and the government begin to open up more towards the Andean socio-legal institutions.

Briefly, there was no automatic application of the Law of Titling and Demarcation. As previously explained, the law seen as a process allows us to understand the way in which people (peasant and bureaucrats) allocate political and social resources in the way they present their legal case in these administrative processes, to change or give content to the law or to obtain a specific goal.

Local Andean law, in our analysis, continues to give life to the community. The recognition and titling procedures show the interaction between State and Andean law. For example, the influence of changes and crises on the national economy, and the growth of the State apparatus during this period makes local law more receptive to different aspects of State law.

4.7 System for Resolving Conflicts

People have different options for resolving conflicts: negotiation, godparents' mediation, community agents, State agencies such as Justice of the Peace, or District courts. The patterns for resolving conflicts described here were found before and after the recognition and titling period and they are complemented in Chapter 6.

When a peasant enters a direct negotiation there is the intention to solve a problem quickly and privately. The godparents' mediation comes when parties have someone

whom they can trust. They think that they could negotiate and represent them better. Parties could also ask a community agent, or the community itself could intervene in resolving the conflict depending on the issue. But parties can also go to State agencies if they do not solve their problem through negotiation or mediation or if they are not satisfied with the community's authorities' decision. Moreover they can go directly to the Justice of the Peace or to the District courts. Going to the District court, however, increases the costs of the procedure and parties require the participation of lawyers. One has to take into account that the Justice of the Peace is a *comunero* who lives in the community.

For resolving cases, the parties' choice of the forum depends on the type of conflict: family, debts, land or misdemeanours. Each of these forums has different procedures, costs and sanctions.

Regarding the type of conflict arising within the community, those over land, family and debts were the most frequently found in Paroccan. An average of ten family conflicts are seen in one year, seven cases of land dispute and four of debt. Regarding land, the most frequent conflicts were:

- Boundaries;
- Recovery of parcel; and
- Compensation for damages to property.

Land problems are actually the most important problem. People in Paroccan illustrate: "An old widow of Ch'eqollo came to recover her parcel, which she had sold to another comunero; she argued that the parcel was hers, since the sale of land is forbidden". "Sometimes a peasant tries to steal a portion of land from his neighbour. When this occurs, we immediately call a General Assembly to decide what is to happen to the bad neighbour". "Last month, Mr. Y's cattle damaged Mrs. Z's crops. Therefore, she asked the President of the community to solve her problem...".

Most *conflicts over land* are resolved in the community; maybe the godparents, the Executive Council or the General Assembly intervened in resolving the conflict. In this case, the amount of compensation depends on the nature of the damage. For example the compensation would be different if a cow ate some grass or whether it ate some crops. But these decisions might or might not be accepted by the parties to the conflict. In the latter case, a party could then present his or her claim before the State courts. Also, parties could go directly to the State magistrate if they prefer to choose this forum, without seeking the intervention of mediators or the community's authorities.

In the case of *conflicts over money*, especially debts and damages, the money involved might be too significant to initiate a legal process in the State courts, besides not compensating for the time and money lost, since more time and money is spent on the proceedings than can be recovered. The *comuneros* know this, so they prefer to ask the community for a solution. In three cases of conflicts over money, lawyers

participated in two and not in the third, where the *comunero* presented the case before the Justice of the Peace.

In the case of *family conflicts*, alimony requested would be for a very small amount, because most peasants, even the "rich" ones, earn incomes below the regional minimum salary. Also in these cases the high costs of State justice makes it difficult for a significant number of family conflicts to appear before the State courts. Another reason is that kinship is very important in Paroccan. In this case, the family intervenes to protect children neglected by one or both parents.

As we can see, the resolution of conflicts in Paroccan may take either of two approaches:

1. In the first, the *comuneros* attempt an agreement; if it fails, then the godfathers participate, followed by the President of the community, the Executive Council, and finally, by the General Assembly. Most of the problems, however, are solved by the President.
2. In the second approach, the *comuneros* might go directly to the Justice of the Peace²²⁾, the Lieutenant Governor²³⁾, the Police or the Ministry of Agriculture, according to the nature of the problem, or to the extent of the conflict.

There was a case in which a *comunero* who was part of the Executive Council was always quarrelling with different peasants in the community, creating permanent conflicts and difficult conditions especially in the community working groups. This case was solved by the President of the Community. He had two possibilities for solving the problem:

- 1) To ask the General Assembly for the *comunero's* expulsion, and then ask the Ministry of Agriculture to take him off the community Register; or
- 2) To isolate him socially and physically. Instead of taking either of these two measures, and after several attempts to persuade this *comunero* to reform, the President asked the other *comuneros* to ignore him and nobody was to talk him until he changed his ways and began to reintegrate into the peasant community.

Here the President did not apply the local legality. Nor did he ask the State to sanction the *comunero* who had done things against the General Law on Peasant Communities. But we can analyse this case as one where a different aspect of local legality was exercised, namely that different sanctions are carried out against a *comunero*.

²²⁾ Although the Justices of the Peace are state authorities, nominated by the Superior Court of each Judicial District, they are persons who usually live in the area where they will resolve problems. It is a not full time job, and is not paid. It is an honorary position, which requires being a literate person, under Peruvian state official law. For more data, see Brandt, 1990.

²³⁾ The Lieutenant Governor is a communal authority, whose job is to represent the Prefect in front of the Community.

Another case was that of a "rich" *comunero* who had six plots in the community but left the community to go to Lima, and neglected to cultivate the land. This was seen by the Executive Council. In this case, the Community did not redistribute the land to other *comuneros*, but negotiated with the *comunero*: he could maintain some of his plots if he gave two of his plots and 20 cows to the community. Here the community authorities changed State and local Andean law which allow redistributing the land in cases like the one mentioned, and preferred to look for other legal solutions. The State authorities were not called into this case. But they regarded the community's decision as valid although it was not in accordance with State law.

The approach taken by disputants depends on the advantage that each jurisdiction offers the parties involved. Influence in the Executive Council or contacts in the State bureaucracy play an important role in choosing a jurisdiction. Therefore, peasants who are part of a conflict will seek the forum that is most favourable to their interests. (See K. von Benda Beckman 1981). The choice of the authority to solve the conflict is made by both parties. As people in Paroccan said: "We try to solve our problems ourselves. We talk and reach an agreement, but we seldom go to the General Assembly"; "when the *comuneros* have a problem they usually try to solve the conflict with a good deal; only when they cannot reach agreement do they apply to the President of the Community".

However, it is not always possible to make a clear distinction. Perhaps, in the case of family disputes the predominance of local Andean law is more important. An important role in the settlement of disputes is the one given to the *padrinos* or *compadres* (godparents or best man at weddings). They are *comuneros* who can solve internal family conflicts and are called by parties in conflict thanks to their affinity to them. This arrangement is preferred by some families or peasants instead of going to the President of the community or to the Executive Council, which also resolve some types of conflict.

A second factor to take into account is that of the cost of State justice. On many occasions the *comuneros* prefer to resort to their own courts of resolution due to the fact that they are less costly and closer, since in the case of choosing the second alternative, they would have to travel continually to Urcos, pay lawyers, and cover the costs of judicial proceedings, etc.

In the case of conflicts of a penal type, the situation is somewhat different, since in these cases the state courts cannot be left aside. Only lesser offenses or misdemeanors are solved by the President of the Community, who is usually a socially well-respected *comunero*. These acts, which create or recreate an Andean legality, reinforce the communal organization, since the latter recognizes these organs as having an important function. As Paroccan people said: "The President hears cases of misdemeanours, such as robbery or crop damage; when a *comunero* causes damage to

someone else's property, this case is seen by the General Assembly, which after sentencing notifies the Police of Urcos, which carries out the punishment".

More serious conflicts -such as robbery, assault and battery or physical abuse (as a consequence of fights), or those in which the resolution could affect the communal interests- are finally solved by the General Assembly. When this reaches a decision it is communicated to the Lieutenant Governor who in turn notifies the Prefect of Urcos.

Therefore, Paroccan *comuneros* can interpret and change the State law with their own local law, but only up to a certain limit. The procedures used to end conflicts and even communal decisions made under previous administrations, and Paroccan law decisions can be considered valid under the State legal system if they are not considered to be against the "public order". But in cases of murder, assault and battery, or other crimes, the parties involved generally go before the State's criminal courts. Criminal law in these cases is applied by the State justice system. *Comuneros* then find themselves subordinated to the State justice system.

Another aspect concerning the relationships between both State and local legal systems, is that of the "formalization" of communal decisions. As we have seen when dealing with land transfers, the *comuneros* seem more prone to use written forms than oral ones in their daily transactions. In the settlement of disputes, on the other hand, we found that in most local agreements the sanctions are made, executed and transmitted by word of mouth, a "gentlemen's agreement". Exceptions are certain conflicts which are solved before sessions of the Executive Council, and which, in principle, must be written up in a special book. The written form is also important in cases in which communal leaders are involved, like a President's rendering of accounts for his administration. There are other cases in which the authorities want to prevent people from expecting such decisions to be enforced in similar cases. In other words, although there is increasingly formal processing in communal decisions, the *comuneros* are still able to leave this aspect aside in certain cases. It depends on what type of deal is going to be made in order to know whether the peasants will go to the Notary Public or the Justice of the Peace. Most often, they go to the Justice of the Peace, who is a peasant with some bureaucratic functions, usually living in or near the peasant community. People are more or less obliged to go to the Notary Public or Justice of the Peace if they want to legalize some papers to be used before Magistrates at a higher level of the public administration. These papers might be photocopies of birth or marriage certificates, or of any public document.

Nevertheless, it is important to conclude that local legality has a source in traditional or customary practices, but also, that the communal authority is a person who usually knows or applies State law, or at least a part of it, according to the particular conflict to be solved.

CHAPTER 5

The Peasant Community of Ccachabamba

Ccachabamba is located in the district of Andahuaylillas, on the Vilcanota River, approximately thirty minutes from Urcos. The community lands lie on a prairie in the Vilcanota valley, surrounded by green hills, just like its neighboring communities: Pucutu, Marabamba, Rinconada and Rayallacta. Nevertheless, this geographical location has been the community's greatest affliction, for their rich farmlands and close access to urban settlements are constantly coveted by landowners. As will be seen further on, with this background we can easily understand the hardships undergone by the Ccachabamba peasants -through the years- in consolidating a social organization.

Ccachabamba is just a village, with a population of only 85 families, engaged mainly in agriculture. It is a very precarious peasant group lacking the most important modern services. This shows not only the little attention given by the State, but also that the peasants' lack the will to organise and request these services.

First of all, in Ccachabamba there is no running water or electricity. The community's water supply come from Pomacocha lake, and from water obtained from subterranean springs, each family digging its own well.

As for road infrastructure, Ccachabamba also lacks paved roads in the village. Each family constructs its own paths, usually hard-packed earth. The Urcos highway is also a long way from the area, causing the peasants a lot of problems in transporting their products to the main road.

The peasants also lack an efficient health service, since there is no medical post in the community. The *comuneros* have to walk to Andahuaylillas, to be treated by the only physician living in the District. As Ccachabamba people said: "When a child gets sick, it is difficult for us to take him to the doctor; it takes thirty minutes to walk to Andahuaylillas to see him."

The illiteracy level is very high in the adult population; almost all adults being illiterate. Few of them have ever gone to school and those who have, only reached the second grade of elementary school, since they had to go to schools outside the village if they wanted to study at all. Today, the older children go to Andahuaylillas' State school. Many of them have finished high school, and half a dozen attend the Police

School with some other boys. As I was told: "Almost all our children have finished high school. Both my daughters go to the State university in Cuzco¹⁾; we also have about ten boys who study at the Police School."

The educational issue becomes relevant, when we link it to the labour emigration rate from Ccachabamba. In this sense, we can see that few of the youths or adults have access to well-paid jobs in the cities -which require high technical qualifications, so they have to take low and unskilled jobs, or end up as informal street vendors.

5.1 The *Hacienda De La Torre*

What today is known as Ccachabamba was, at the turn of the century, once a part of the Pucutu *Hacienda*, which has existed since Colonial times, first mentioned in the XVII Century, when the Spanish owner, Juan Alvarez de Maldonado, had a census taken of the *hacienda* in favor of the Cathedral of Cuzco. Later on, the *hacienda* passed through many hands until the middle of the XVIII century, when the property was acquired by the Ugarte family, who expanded the *hacienda* by occupying the lands of neighbouring communities. This family maintained the property until 1858 when the proprietor was Maria Centeno (Gutiérrez et al. 1984).

In the 1950s, the lands which today form part of Ccachabamba were acquired by landholder Benjamin de la Torre, who bought the lands from other landholders, and from individual peasants the property or possession rights. Not all had title deeds. The peasants who sold their lands did so in order to pay or cancel certain debts owed for food, alcohol, coca leaves and seeds that the landholders had been supplying them. From that time on a group of these peasants continued working for De La Torre, in exchange for the right to possess and cultivate a piece of land in De la Torre's *hacienda* and the obligation to sell the products cultivated to De la Torre at cheap prices.

During this same period, the following *haciendas* existed in Andahuaylillas:

Name	Owner
Pucutu	Benjamin De la Torre Umeres
Yyahuasi	Benjamin De la Torre Umeres
Marabamba	Enrique Rojas
Ccompencia	Enrique Rojas
Mancco	Enrique Rojas
Qqechas	V. Velez
Yutto	Olliart Bravo family

¹⁾ The San Antonio Abad University.

Rinconada	Bravo family
Qquerohuasi	H. Vallenias
Rayallacta	Garmendia Alvistur

From this, we can infer that, before the Agrarian Reform, the District of Andahuaylillas was made up of both large and small private properties. However, setting up these *haciendas* was not an easy process. As Florence Mallon explains:

"One of the most important, violent, and ubiquitous struggles carried on in the villages (during the early 1900s) was over the issue of land: whether or not it should be privately owned; or, who had the best right to any given territory, and how the boundaries between the properties should be established. Even though it was not an easy process, the general tendency, throughout the decade, was towards privatisation and more careful and scientific demarcation of frontiers between the communities." (Mallon 1983:277).

Briefly, before the Wiracocha CAP period the Andahuaylillas area was covered by *haciendas*, small properties and some peasant communities, which were in constant conflict for possession of the best lands in the zone.

5.2 The Wiracocha CAP

During General Velasco Alvarado's government, landholder La Torre -foreseeing the imminent Agrarian Reform- sold the lands back to the peasants, all of whom afterwards became members of the Wiracocha (CAP) Agrarian Production Cooperative. Here, it is necessary to say a few words about this process within its historical and political background.

The military government had proposed a "restructuring" of the peasant communities, forcing them to adopt the organization of cooperatives²⁾. This was governed by Law Decree 17716 and Supreme Decree 240-39-AP (Bylaws of the Agrarian Cooperatives), which established that farm lands would be adjudicated to:

- Enterprises, which implied the existence of an entrepreneurial administration of the land by the CAPS, SAIS and Social Production Enterprises (EPS).
- Individuals: small parcels of land were awarded to peasants who worked them directly. Peasant communities, peasant groups, and individuals were included in this aspect.

The restructuring objectives of the reform included activating agricultural production, integrating the rural population into the regional and national economy, and using

²⁾ This organization model had been proposed before by Law 15037, during the government of Fernando Belaúnde Terry (1965-1968).

agricultural policy as a basis for industrial development. However, in the case of the peasant communities, the idealistic collectivistic vision of State legislators or scholars made it difficult to find an adequate legal way of doing this. Thus, one of the purposes of this Statute was to facilitate adoption by the communities of modern cooperative organizational and management forms. The Statute also had the legal objective of preventing certain contracts that were traditionally agreed upon between the "*comuneros*": the sale or rental of lands. Thus it was prohibited to purchase lands adjudicated to the community, except when Cooperatives or SAIS were the ones favoured by these contracts, since it would help these entrepreneurial forms to develop, which is what the Government wanted. The CAP (Agrarian Production Cooperative) can be defined as an indivisible unit in which ownership and benefit from all productive assets are collective. No individual production is permissible. The members, who all work on the collective enterprise, participate in the CAP's management through democratically elected bodies. The profits are only distributed after a series of obligatory deductions are made for reserves, investments, social security, education and development funds. The remainder is either distributed equally among members or according to the number of days worked..." (Kay 1980:20). Most of the cooperatives were created on the lands of the former *haciendas*.

In 1974, and as an attempt to bring such process into practice, the peasants belonging to the *haciendas* of Pucutu, Rayallacta, Marabamba and La Rinconada, as well as Guarnicion *Hacienda*, joined together in a new institutional form: the Wiracocha CAP (Dueñas 1991).

The establishment of the Wiracocha CAP did not come up to the peasants' expectations for several reasons. First of all, the land was given to the CAP, not to the peasants nor to their families. What is more, from a strictly legal point of view, the State was the owner of the goods adjudicated for agrarian reform reasons to the CAPs, and thus retained legal dominance over them until any agrarian debts the affected *hacienda* might have were paid off (González 1985). This resulted in a serious ambivalence on the part of the peasants who on the one hand felt themselves to be the owners of the land, but on the other were told the land was the property of the State.

Secondly, some plots of land were given to people who had not worked them before nor had done so during the existence of the De la Torre *Hacienda*. Thus, *comuneros* from other communities also became members of the cooperative. Many of these were interested in selling or renting the plots they possessed in the cooperative to other outsiders, although this was legally prohibited. Rather than supporting the peasant organization, the cooperative was a way of weakening it.

Thirdly, imposing the administration committee as principal department of the cooperative caused a lot of internal problems and conflicts. This committee was mainly constituted by outside technicians and bureaucrats, who did not have any knowledge whatsoever about local relationships. To many peasants, these people were seen as new patrons or masters, just like Benjamin De la Torre had been (Anrup

1990:113). In turn, these outside agents assumed paternalistic attitudes towards the peasants since they came from regional or local elites, or from coastal urban cities, and actually felt superior to the peasants. This led, in certain cases, to the peasants believing that they would be better off with the old *hacienda* owner (Anrup 1990:114).

Finally, the creation of this CAP - as in other rural areas under the Agrarian Reform- did not take into consideration the complex distinctions between peasants. Feudal tenants, *comuneros*, and paid workers, among others, were considered equal, in spite of their social and cultural differences (Huber 1990-1991). For example, each type of peasant had a different attitude towards the agrarian reform. The attitudes of a coastal *yanacona* (salaried worker) and of an Andean *comunero*, when considering the same political process, were very different.

The CAP Wiracocha never achieved its goals and objectives. There remained a constant struggle between a *central* organization -the administration committee- which was seen as strange and deficient, and organised groups of peasants in Local Production Committees. There never was any associative development of the land or livestock. Instead of promoting cooperation and integration among its members, the CAP facilitated the emergence of individualistic attitudes and interests.

Therefore, this organizational form benefited only a small group of people who were uninterested in any kind of productive association. The case of the President of this CAP, Hilario Wilca Huaman, is very illustrative: Although he was one of the former feudal tenants, he sold a great part of the cooperative lands to outsiders, including members of the police force. This had a very negative result on the attitudes of peasants in this area. General disillusion over any collective model -including the community- was common among a very large number of *comuneros*.

These problems were not restricted to the Wiracocha CAP, but were more or less common to all the cooperatives created during the Agrarian Reform period (Torre y Gonzáles 1985). For this reason, when the General Law on Peasant Communities was passed by the Peruvian parliament in 1987, the State definitely abandoned the idea of imposing cooperatives in the rural areas. The subsequent dissolution of the Wiracocha CAP by the State showed that peasants had not embraced the cooperative organizational model.

5.3 The Dissolution of the Wiracocha CAP: The Peasant Community of Ccachabamba

On March 24, 1987, the General Office of Agrarian Reform in Lima in charge of all matters regarding agrarian production and lands at the national level, enacted Directorial Resolution 192-87-DGRA-AR, proclaiming the legal dissolution of Wiracocha CAP. This decision was based on the deplorable organization and administration of the cooperative, the endless complaints about the Local Committees

and the illegal sale of lands by the former President, Hilario Willca Huaman.

Indeed, this formal act started an extended process of liquidating the cooperative enterprise, and reorganising ownership and possession of the land through a parcelling process carried out by the General Agrarian Reform Office. Part of the lands of the former Pucutu *Hacienda* were given to the Police Force to build their school. Land sales to the "Tupac Amaru" Association of Housing and to the Labor Union of Tricyclists of Urcos were similarly recognised. On the other hand, the land which had belonged to the Guarnicion *Hacienda* was returned to its original owners, the Febres family. Ccachabamba, along with Marabamba, Rinconada and Rayallacta remained peasant groups and established themselves in their original territories. Some of the CAPs' paid workers were paid off by being given some of the Cooperative's land as compensation for the loss of their jobs.

Once the dissolution of the CAPs had begun, the reorganization of the land created conflicts between the communities and the individual ex-members of the cooperative regarding possession of it. Problems arose mainly when sharing out certain cooperative goods, such as machinery, tools and tractors, which had been in common use. Another problem was the sale or transfer of lands which some ex-leaders of the CAP or those charged temporarily with the administration of the CAP continued to do. Also there was a lack of territorial definition of peasant sectors which was still being articulated since the restructuring of the former CAP. The process of dissolution of the Wiracocha CAP was followed by a procedure for recognition process initiated by a group of peasants in Ccachabamba which will be described later (see 5.5.5).

5.4 The Landholding System and Production

The Landholding System

Within the Ccachabamba area, the property of the land is individual, since each peasant owns the land he possesses (by purchase or inheritance). Communal lands do not really exist in Ccachabamba; that is to say, there are no parcels that belong or are farmed by the peasants collectively³⁾. Parcelling was carried out at the time of the crisis in the cooperative. Most of the peasants have their title deeds: some of them since 1960, when they bought them back from Benjamín La Torre, while most recent owners have obtained theirs by means of the adjudication decrees, issued by the Ministry of Agriculture.

Villagers in Ccachabamba not interested in the recognition of the community usually have other lands in the same province of Quispicanchis or in other areas. Although they could cooperate for some purposes with the pro-community group, this was not done with the intention of changing their landholding system. Therefore,

³⁾ The pro-community group has a collective garden, which is managed by the Mother's Club, but which does not constitute a collective or communal land holding.

transactions are not made with the objective of having a collective territory as a peasant community.

Each peasant owns small land parcels (consisting of one or two *tupus* (plots)); some peasants do not even possess a parcel. Consequently, in Ccachabamba land purchasing is not very frequent. Only in very difficult situations, such as when the male head of the peasant family is unemployed for a long period of time, are the peasants compelled to subscribe to a leasing contract. The way peasants acquire land is either by inheritance or rental among members of the same community.

The scarcity of land and the small size of plots have also created great social pressure in the area, since the younger generations claim lands of their own. One way of diminishing this pressure consists of migration by the younger peasants, in order to look for a paid job in Cuzco or another town. However, as we have seen, it is merely an individual and temporary escape valve, because the jobs obtained in the labour market do not permit them to improve their standard of living, or to save enough money to buy a parcel of land.

Production

In the Andahuaylillas valley generally, to which Ccachabamba belongs, two types of products have been introduced and grown, and have greatly changed the previous agricultural situation, which had been dedicated mainly to producing corn and barley. These new products are vegetables and forage, the latter due to the development of livestock (Dueñas 1991:33).

During the time of the Wiracocha CAP, producing cattle and by-products (milk, butter cheese, meat, etc.) was a priority, and less attention had been paid to agricultural production. This change of pattern was due to the imposition the Military Government's agrarian policy in the area of Andahuaylillas. Today, the area's production is limited again to producing crops of corn and beans, due mainly to the present market demands, which offer a better price for these products. However, besides these, each peasant individually chooses other products he will grow, according to his family's needs. This production is aimed at self-consumption and the Urcos market. In this way, they obtain other products, such as *tarwi*, potatoes and cereals; the rest of their economic needs are met with the money obtained from tilling in Cuzco and in other villages.

It is true that each peasant sows his own plot of land in his own way and when he considers it necessary, but some important forms of coordination can be found in the productive system. First, one form of coordination is in irrigation. Since irrigation channels are common to all the parcels of land, the peasants organize and coordinate a watering schedule, through the Board of Irrigators. Less intensive and extensive than in Paroccan, or in other recognized communities, we found in Ccachabamba other forms of cooperation which are embodied in the following contracts:

- a. The "*Ayni*" consists of reciprocal help between the peasants. A *comunero* helps his neighbour farm his plot, in exchange for help with agricultural jobs.
- b. The "*Minka*" involves collective farming in the parcel by a peasant's neighbours. All the participants are obliged to help the others farm their lands.
- c. "*Al Partir*" (sharing) means farming a parcel by an agreement made between the owner of the land and another peasant, in which the former provides the land, the latter the seeds and labour. The produce is divided into two equal parts. This institution is frequently used by two brothers, who share ownership of a parcel.
- d. The "*Jornal*" (daily wage) consists of a peasant, who can afford to pay daily wages, hiring members of the group to do the work.

These contracts or agreements -the "*ayni*", "*minka*", "*al partir*" or the "*jornal*"- are institutions of Andean law. In many contexts, these and similar contracts and agreements could strengthen the economic and social resources of the peasants, creating an important "communal-effect" in Ccachabamba. Therefore, these forms provide a reason for considering Ccachabamba as a peasant community, principally because these contracts are used both by pro-community peasants and other villagers who live in the area of Ccachabamba. These type of relations also include cooperation between the pro- and the anti-community group.

To sum up, we have found two characteristics which should be emphasized in the relationships between the pro-community peasants and the other villagers who live in the area: the practice of contracts that enhance cooperation, and the common interests of a strong group that make it even more dynamic than well established communities. All this has made possible its quasi-recognition as a peasant community by the municipality, certain public enterprises, and some of the neighbouring communities.

5.5 Ccachabamba's Social Organization

5.5.1 The "*Communal*" Organization

The historical process described above has had a strong effect on this village's social organization. For the Ministry of Agriculture, Ccachabamba is not a peasant community, it is a township called *parcialidad* or small town. For these authorities most of the people who live or are registered as living in Ccachabamba do not want to be recognized as a peasant community. But the internal organization in Ccachabamba is similar to that established for the peasant communities by State legislation: Thus formally, its main organs are the Executive Council and the Communal Assembly. There are also special committees, which undertake certain activities in favour of the whole community. But, unlike Paroccan, this organization is not the result of integration between its members, but rather a sort of mask that permits them to hide their inner conflicts from the outside, and also allows them to obtain certain benefits

from State agencies.

Ccachabamba is a small village in which we find a group of peasants that wish to be considered a peasant community, while others do not. Both groups are residents or landholders in the territory.

The pro-community group has a certain dynamism in the Executive Council and the Communal Assembly of the community. Nevertheless, their decisions are not followed by the anti-community group.

This feature can be seen by analysing the participation level of the peasants in the above mentioned organs. In Ccachabamba we find two relatively well-defined groups of peasants: those who want to develop a communal life, and those who are opposed to the idea. The first group (more or less 35 heads of family) which is interested in being recognized as a community is influenced by the "communal-effect" of other neighbouring communities, or is firmly influenced by the State law concerning peasant communities⁴⁾. Most of them are also influenced by other peasants, NGOs and political authorities, who encourage the peasant organization and who want to avoid the concentration of land in Ccachabamba. All of them share the belief that the community is the "natural" organisational form for the peasantry.

The second group (about 45 families) that refused to be part of a peasant community, is very heterogeneous. Some of them are peasants who have previously been members of similar communities; others are members of the police force, and most of them have other plots in nearby localities or want to start an urbanization process in the zone. Still other villagers feel that the previous cooperative experience was a very bad one, and therefore they do not hesitate to reject any associative or communal land administration. This group shares the feeling that they can easily sell their plots on an individual basis, but believe that under a communal organization it would be harder to sell their lands. They also share the idea that they do not want to have obligations towards a community, since they live most of the time outside Ccachabamba. Therefore, this group's most important feature is that the community represents to them an obstacle to social expansion and economic progress. They have other roots, different origins, and other land properties.

The anti-community individuals prefer to dedicate their time and efforts to activities which can give them greater economic profits, rather than promoting communal life. They pay more attention to paid work in neighbouring cities, or at the brick factory which stands near Ccachabamba. The little time they spend in Ccachabamba is dedicated to farming their small parcels of land, which gives them practically no time to participate in the organization.

⁴⁾ However, as Kervyn says: "Changes in work relations lead to the transformation of family and communal relationships, like the redefining of the women's role, generational gap conflicts, etc... Therefore, the family and the community, from "islands" or "refugees", characterized by solidarity and reciprocity, become the ground for conflicts, where roles and functions are redefined"(Kervyn 1987:53).

On the other hand, the pro-community group is also trapped in the dilemma of whether to participate more fully in communal activities or to dedicate themselves to more economically productive activities. But in any case they always try to maintain a certain level of participation. This has led, for example, to the fact that within this group an important role is played by women. The women of Ccachabamba are the most active in producing and reproducing a type of communal life: they are the ones who seek credit and economic help from the State and private agencies, who participate in the different organizations created to improve their living conditions⁵⁾, along with organizing their daily communal life and other tasks. This task compensates for the lack of the men's presence in the communal life, when the men leave home to undertake other activities.

Briefly, we find in Ccachabamba two main problems with regard to participation in village organizations: the presence of two antagonistic groups: a pro- and an anti-community group; and the family's need to survive through development of nonagricultural activities outside Ccachabamba's area, which leaves little time to participate in the social organization. However, this lack of participation is partly filled by the mobilization of women, who become the main central point of "communal life".

Only the first group of peasants are part of the community's administrative agencies, and thus respect the decisions taken by them, although with some difficulty. The other group -or groups- show no degree of organisation, nor do they feel linked or obliged by the decisions taken by the first group. However, some participate in certain committees directed by the first group, since they carry out activities in favour of everyone. Therefore, it is very difficult to talk about a "communal" organization in Ccachabamba, just as it is difficult to talk about the community bodies.

5.5.2 *The Executive Council*

As in Paroocan, the Executive Council in Ccachabamba is actually the main body of the pro-community group, since it makes the most important decisions. The General Assembly is seldom summoned, and even the pro-community peasants only attend when it serves their needs or they have the spare time, as already mentioned.

The organization of the Executive Council is formed by the President, Vice-president, Secretary and Treasurer. The directors are usually adult peasants, about 35 to 40 years old, elected from the members of the General Assembly for a period of two years.

Even though Ccachabamba is not officially recognized as a peasant community, some of its organizations, such as the Mother's Club, has a administrative or political recognition by some State offices and other recognized communities. But the lack of

⁵⁾ Like the Water and Electricity Committees, and especially the Mothers Club.

recognition actually prevents Ccachabamba from having access to benefits which apply to other juridical bodies, such as credits or economic aid, whose official beneficiaries are, on the other hand, individual peasants.

In other words, the Executive Council in Ccachabamba does not have the same power and faculties found in the recognized communities (for example, communal job programming or control of land acquisition). Nevertheless, the Executive Council's main function seems to be a symbolic one: it serves as a point of reference for the peasants who want to be part of a peasant community, and also for the external agencies who want to help these peasants.

5.5.3 *The Specialized Committees*

Besides the mentioned administrative agencies in Ccachabamba, other organizations function, such as:

- a) The Pro-Electricity Committee, which is integrated by almost all the members of the village since it is a service that benefits all groups. This committee's objective is to obtain electricity, with the help of the Andahuaylillas City Hall, as well as Electro Sur;
- b) The Committee for Running Water and Drainage;
- c) The Association for Housing: this association works to build blocks of housing, in a grove near the boundary with Pucutu;
- d) The Mothers Club, which is the most dynamic organization in the community, as we mentioned before, has about 59 women who support the Andahuaylillas City Hall, in the Glass of Milk Programme⁶⁾. In order to help solve the community's economic problems, this Club has also obtained help from Ccaijo (a Cuzco NGO), by purchasing or borrowing food, seeds and fertilizers, since the great freeze of 1989.

As we have already mentioned, even anti-community individuals participate in these organizations, because they are also interested in obtaining electricity, running water or food. Other types of people, like the young singles or married couples also participate quite actively in these associations. An additional factor that has helped to strengthen these organizations is the implicit acknowledgment they receive from private and State agencies, such as the Andahuaylillas municipality, Ccaijo, Electrosur, Sedapal, among others. This recognition makes it possible for Ccachabamba to be seen as a community, and not only as a peasant group.

⁶⁾ The Glass of Milk Programme (Programa del Vaso de Leche) was established in 1981 by the Mayor of Lima, Alfonso Barrantes, and its object is to help feed the poorest sectors of the national population with the mutual help and direct administration of each district's City Hall and the women who integrate each Local Committee in every neighborhood throughout the country.

5.5.4 System for Resolving Conflicts

The lack of a strong organization in Ccachabamba also affects the way in which conflicts are resolved within the locality. This differs from other peasant communities -like Paroccan- where most of these conflicts are solved by or discussed in the social institutions.

In the case of family conflicts, only a few are brought before the Executive Council by the pro-community group, and the Council's decisions will be respected only by this group. Relatives intervene only if they are asked to by any pro-community or other villager in the area, which occurs only very occasionally. If family conflicts arise in the other group, they are solved by the Justice of the Peace of Andahuaylillas, under whose jurisdiction Ccachabamba falls.

In the case of land or neighbourhood problems, we should point out that there are two different types of conflict which sometimes occur in Ccachabamba:

- a) Conflicts regarding compensation; for example, when cows damage a neighbour's crop.
- b) Another conflict, which occurs frequently, is that which involves both the Ccachabambinos and the members of nearby communities setting boundary limits for the parcels. As a peasant in the zone told us: "A woman belonging to the peasant community of Marabamba, tried to steal a neighbour's land; she pulled down the land parcel's landmarks, and tried to place her own cattle and horses in it..."

These conflicts are usually solved by the Justice of the Peace of Andahuaylillas, who in the case just mentioned helped them reach an agreement. This institution is mainly responsible for handling the conflicts that arise in Ccachabamba. However, as mentioned previously, this does not mean a clear preference for State courts, since the Justice of the Peace does not function according to formal criteria of the State, but is rather an informal court.

5.5.5 Ccachabamba's Recognition Procedure

In 1987, the year in which the Wiracocha CAP was finally dissolved, a significant number of Ccachabamba's families started a procedure to be recognized as a peasant community. They applied to the Regional Office of the Agrarian Reform and Rural Settlements. Since Ccachabamba did not have any previous title deeds, the main document in support of their application was a map showing the delineation of its boundaries.

The need of the Ccachabambinos to be recognized can be explained by their wish to obtain credit from the Agrarian Bank as a community. They were also encouraged by other communities, NGOs and political parties, which would give them greater recognition as a social organization than as individuals. Furthermore, most of them

only had the lands they possessed and farmed as economic resources. As people in Ccachabamba said: "The only thing we have is our land, which has been acquired according to our ancient customs. Each son inherits the land his father possessed and left to him. Long ago, these lands were the property of the De La Torre family; then they became part of the Wiracocha CAP. At the present time, the land is being distributed among the workers of the cooperative - they are in the middle of the liquidation and inventory process".

Unlike Paroocan, this procedure was started while Law 24656 -General Law of Peasant Communities- was in effect. This law had created a new office, INDEC⁷⁾, to be in charge of the official registration and recognition of peasant communities, and whose function was "to elaborate the National Real Estate Office for Peasant Communities, and keep it permanently updated" (Art. 40). Later on, the By laws of this institution⁸⁾, stated that "while organic laws of Regional Governments are enacted, the Departmental Development Corporations (CDDs), assume, *according to INDEC norms and commands*, the following functions:... e) to confer recognition on the peasant communities, and to register them in the respective Registry".

Moreover, the formal procedure to obtain the title deeds was also changed: all cases were concentrated in the hands of the CDDs, the President of each Corporation having the final word at the administrative level⁹⁾. However, the legal requirements were not changed. Thus, the main intention of this legal change was to dissolve the Bureau of Peasant and Native Communities -created during the military government- and hand its functions and attributes over to a new institution¹⁰⁾. This new attention to the community's development in State policy, in contrast to the cooperative proposals in the previous Statute, made an institutional change necessary to permit carrying out the new development promotion role even better.

However, these changes did not have any effect at the Cuzco regional level. Although the new law had been proclaimed a few months before, the Regional Office of Peasant and Native Communities of Cuzco was still in charge of carrying out the legal recognition procedure.

The Ccachabamba proceeding failed since ex-members of the Wiracocha CAP, who lived in Pucutu, Urcos, Andahuaylillas and Huaró -but who possessed lands in Ccachabamba- blocked the process. Some of these peasants obtained individual title deeds from the Ministry of Agriculture, which actually ended up proving their ownership over those lands. As people in Ccachabamba said: "The community cannot

⁷⁾ See chapter II, page 64.

⁸⁾ Supreme Decree No. 014-87-MIPRE of June 24, 1987.

⁹⁾ First Transitory Provision of Supreme Decree no. 014-87-MIPRE.

¹⁰⁾ The legal provisions were very clear with regard to this assertion: the Sixth Transitory Provision of the Bylaws stated that: "furniture, equipment, documentation and respective archives of the Bureau of Peasant and Native Communities should be transferred to INDEC; and those corresponding to the Sub-Bureaus of Peasant Communities, or similar entities, should be transferred to the DDCs".

obtain its titles, since some members of the cooperative appear at the proceeding and block all our efforts. People within the community, who come from Andahuaylillas, Huaró and Urcos, also obstruct our land title procedures". "Besides, our *comuneros* do not have much land, since the *mistis* usually come to give us food in exchange for portions of our land parcels. We believe we can obtain recognition of our community, since we are not divided among ourselves at the present time. There were certain people who deceived us two years ago, because they made us believe that the recognition of our lands, proposed by the Ministry of Agriculture official, Marco Cuba, would only mean more taxes for us to pay". Thus, the pro-community group in Ccachabamba could not obtain legal recognition, since they did not fulfill the legal requirements, and due to the fact that there existed opposing interests within the community.

It should be pointed out, however, that during this period a spirited discussion took place concerning whether or not it was necessary for the communities to be formally registered in order to attain legal capacity. The second position would have been more beneficial to the pro-community group, because this option would have permitted developing as a community before the outside world without the need to pass through a formal recognition process.

The debate started because there existed a contradiction between the terms set out in Article 161 of the Constitution of 1979 and Article 135 of the Civil Code, passed in 1984. On one hand, the Constitution gives legal representation to the communities, simply because they exist. However, the Civil Code stated that: "For the communities' existence to be legal, their official recognition is required¹¹⁾ aside from their registration in the respective real estate registries". In other words, did a community have legal standing since its inception, simply due to the fact that it was constitutionally recognized? Was it also necessary to have a State decision on this matter? Obviously, the second interpretation gave the State greater control over the communities. The other option finally appeared in Law 24656, which was considered to be a special law, despite the fact that it did not adapt to the constitutionally fixed terms.

Some jurists, such as Figallo, maintained that only the decision of its members is required to act legally as a community, without requiring the acceptance of the State. However, this legal interpretation did not prevail at either the normative nor jurisprudential level.

This means that in most cases, for the State authorities legal recognition -which is an administrative procedure- is indispensable to consider a peasant group as a community.

Does this mean that the needs and expectations that were to be achieved through recognition were not obtained by this group? Although the Ccachabambinos achieved

¹¹⁾ On the other hand, official recognition contradicts Article 77 of the Civil Code, which establishes that legal companies under private law have legal existence since their registration.

some advantages -such as incorporation in the Government's social support programmes, for example, the Glass of Milk programme, they had no success in other programmes such as the special credit programme that the Government granted to communities. In this case the peasants had to seek other sources of credit, of an informal nature, or seek work which in turn weakened the organization even more.

Finally, an important development in the Ccachabamba area occurred in 1989 when, due to the loss of the harvest because of the freeze, the Mothers' Club was founded, as were several social organizations at the national level. Although this Mothers' Club had a pro-community attitude in Ccachabamba, it worked together with the different peasants, including the anti-community ones, in order to obtain economic aid from State authorities, or seeds or milk for the area.

5.5.6 The Lessons of Ccachabamba's Legalization Process

Ccachabamba's experience teaches us several lessons with regard to the social conflicts evolving in the process of legalising a peasant community.

The first lesson refers to the diversity and the struggle of interests concerning legal recognition. This struggle is expressed through formal opposition at the beginning of the process. As we have seen, there existed different groups of people in Ccachabamba: one sought a communal way of life; the other was mainly concerned with its own interests, and there was no control or intervention by a "community". Past experience with the CAP made possible the emergence and power of the second group. The lack of communal control over the transfer of land allowed outsiders to appear within a territory that was not subject to social control by the first group.

This problem leads us to the second lesson: the importance of a strong communal organization to stand up against such opposition. Ccachabamba's peasants were not traditionally linked as a community. Before the Agrarian Reform, domination by the landlords prevented communal administrative bodies from functioning, because they had paternalistic and individual relationships with their feudal tenants. During the Reform, the imposition of the Executive Council prevented any real democratic experience inside the model cooperative. At present, the rejection of all cooperative models has finally prevented any possibility of associative designs. This made it harder for the peasants to develop the conditions needed to support a social organization that could successfully apply to the State for official recognition as a community.

The pro-community group which failed in its legal proceedings -confronting poverty and difficult life conditions- has several forms of organization, like the Mothers Club, the Committee for Electricity and for Potable Water and Sewage, and the Association for Housing, and some of their proposals and activities are recognized

as part of the peasant community. However, we see that these entities are temporary¹²⁾, and there is no continuity or tradition of the group as a solid institution¹³⁾.

Thus, we arrive at the third lesson: whether or not one can define Ccachabamba as a peasant community, and what are the effects of such a definition, insofar as legal recognition is concerned. As mentioned above (Chapter 1), the existence of a peasant community does not depend on whether it has a long-standing tradition, but on the administration of its resources and social recognition. However, this characteristic is not fully met, because not all of Ccachabamba's landowners participate in the collective management of the social resources. The absence of an organizational group in which most of the peasants participate in community fashion, leads the State to recognize Ccachabamba only as a group of peasant families. According to an explanation by a State official, Ccachabamba was not a peasant community, but a parcelled lot that is, a locality where different types of peasants are found, but not having the characteristics of a real peasant community.

The Ccachabamba example leads us to reconsider the different social concepts regarding the peasant community, even in the same semi-autonomous social field. The definition of Ccachabamba as a peasant community is determined by the perspective of different official entities, which may either narrow or wide. Therefore, for some State offices and certain NGOs, Ccachabamba *is* a peasant community, since they do not view it from a legal perspective. To other entities, such as the Ministry of Agriculture, however, Ccachabamba is only a peasant group, or parcelled land, because it has no formal recognition. However, after the dissolution of the Wiracocha CAP, the Ministry of Agriculture tried to consider Ccachabamba as a peasant community, but the office itself did not approve the legal proceedings for such recognition.

Other agencies that work in the zone, like the municipality of Andahuaylillas, unofficially recognise certain organizations (like the Mothers Club), not as a community, but as a "popular organization". The aid the State grants the peasants is usually delivered to them individually. We also observed that, within the peasant group, there is no organization to solve the internal or external conflicts which usually tend to arise in any group of people.

Conclusions: From "Directive" to "Non-Directive" change

The General Law on Peasant Communities (Law No. 24656) was passed when the process of agrarian reform ended, and its results were questioned by peasants, political

¹²⁾ "Social relations always exist, regarding particular topics or problems. If the topic of problem disappears, so will the relationship" (Adams 1962:423).

¹³⁾ "These groups result from the need to cooperate at the production level, and are the basis for the reproduction of the group and its members, so they are not institutions which perpetuate abstract ideals of kindred and equality" (Golte 1987:31).

parties, jurists and other groups. However, Law Decree No. 17716 was officially still in effect until 1991, when President Fujimori's government finally revoked the Land Reform Law in the wave of liberalizing the Peruvian economy.

Was the General Law on Peasant Communities necessary to replace the 1970 Statute? One might consider that after seventeen years and the relevant changes in the rural social structures -including the adjudication of several *ex-haciendas* to cooperatives and peasant communities-, a new law would be necessary in order to recognize the new social reality. To break down this question, we should, first of all, consider that the main associative idea of land reform was to create big cooperative or agricultural society units (SAIS), the latter based on the cooperation of different peasant communities. Therefore, the first aim was not to develop peasant communities, but cooperatives or SAIS.

Moreover, the State promoted the change of some communities into rural cooperatives. The By-laws of Peasant Communities did not have an anti-peasant community flavour, but presented the cooperative model as preferable. On the other hand, Law 24656 focused its attention on the peasant community itself, seeking integral development and greater autonomy for them. This law did not try to impose a specific model of entrepreneurial organization on the community (Long and Roberts 1978).

As observed before, the peasant communities did not reject this law, although there has been no explicit support. At least, it respected the social organizations and the law traditions of the peasant communities, and was passed by Parliament along with the Law on Titling and Demarcation, seen by State law as complementing one another.

Secondly, the 1979 Constitution had created some space for legal pluralism in diverse legal domains, such as that of commercial, family, property and criminal law. Although the new peasant law was protectionist-oriented, it recognized some of the Andean law institutions that have been described previously. Nevertheless, the supposed protectionist issues are currently being criticized by some liberal politicians and intellectuals, who visualize the peasant communities as obsolete institutions.

Paroecan community members, since they were already recognized, tried to follow the provisions imposed by law in order to obtain their title deeds. State law and the State legal repertoire were invoked in this case by Paroecan.

In the case of Ccachabamba, the boundary issue and the opposition of a significant group of peasants and villagers blocked recognition and registration. There was no strategy for confronting the challenges and requirements of the new procedures. Thus, it is important to take into account the historical problems and the geographical features of the Ccachabamba zone, and especially the role of the opposing interests of the peasants living inside and outside the community.

CHAPTER 6

Paroecan and Ccachabamba: Changes and Continuities

In this chapter, we describe and analyse the economic, social and political changes in the communities being studied, after all the legal processes of recognition and titling had finished. As we have demonstrated, the social protagonists -*comuneros*, peasants, regional and central officers, private agencies- had high expectations regarding these proceedings, which oriented their actions and their use of several legal and non-legal means in order to achieve their objectives. For the *comuneros*, it meant the community standing up against unfavourable or demanding State policies, the routinized practices of street-level bureaucrats and the opposition of their neighbours, and even members of the community itself. Finally, it also meant modifying their social and political organization, their internal relationships and their productive systems.

What changes really took place? What characteristics of these communities were not -or only slightly modified, and why? How were the communities after the legalization? Which of the changes was a result of this process, or were they the consequences of other social processes during the same period? We attempt to answer these questions in this conclusion.

6.1 Changes and Continuities in Law and Legal Life

6.1.1 *The Changing Role of State Law*

One of the factors that helped us to see how the relations between State law and Andean Law varied during the period under study is the State's changing attitude regarding the communities, which went from moderate intervention in community life at the beginning to recognition of certain levels of social and legal autonomy of the community later. Throughout this period not only did State norms referring to communities change but also the role they fulfilled within the State activities generally. Following this idea, two important sub-periods stand out in our study:

- 1) From 1970 to 1974, after the enactment of the Agrarian Reform Law and the Statute of Peasant Communities. As has been mentioned, although these legal provisions were not aimed at promoting peasant communities, they allowed, in a limited way, the communities' demands and applications regarding their recognition and registration.

There is an explanation for this: From the government's point of view the peasantry was a politically important social group that could support its reformist policies aimed at restructuring the rural system, especially the *hacienda* system. The instrument favoured by the State in carrying out these changes was precisely the law, both through promulgation of new legal rules as well as the creation of new judicial tribunals -such as the agrarian courts- for supervising and ensuring compliance with the new norms. It must also be borne in mind that these norms and institutions were legitimized through a new judicial discourse, which was widely disseminated, and which received general acceptance. In other words, law and institutions created by legal provisions were considered important instruments for social and political change.

The most important effects of both laws coincided in time with Velasco's Administration. But after the internal coup in the military armed forces, the government of Morales Bermudez did not carry out the reformist policies of the previous government. Radical speech was no longer used, the land reform law was halted, and the administrative offices that had tried to control the agrarian and peasant changes were dissolved. Although the new government did nothing to return to the political conditions reigning before 1969, it developed policies that widened the gap between bureaucrats and peasants.

However, this reformist experience was to have important effects within communal life, since -as we saw in the case of Paroccan and Ccachabamba- what happened during this period set the conditions for the later problems or achievements of these communities. However, the greater contact with State law, both at the local as well as institutional level, enabled the communities to form a better idea of the law, incorporating it in a much clearer way within their legal culture.

- 2) The second sub-period can be considered to be between 1985 and 1987, during the government of Alan Garcia. A provisional expansion of the economy granted the government the political support of different social groups during these years. The situation was probably not very different from Velasco's government, but with an important difference: even most of the entrepreneurial groups supported the initial policies of Garcia's government.

Just as in the first period, the government was interested in gaining the political support of the peasantry, but in this case greater importance was given to peasant communities. This was due as much to the bad previous experience as to the greater relevance given to these forms of organization within the APRA party's

ideology. This was done through mechanisms such as special meetings ("Rimanakuys") between the charismatic President and the peasant communities, the allocation of some specific funding given directly to these organizations, and the approval of new legal provisions in Congress, such as the laws on boundaries and land titling. Therefore, the law was not considered the principal instrument of social change, but only as one of the mechanisms within a policy of support to the peasant and communal organization.

It is important to state here that, in these years, the regional governments played an important role in applying governmental policies. But the enforcement of these laws did not last too long, although they were not abrogated until 1992. The reasons behind this are found in the economic development, since the process of hyperinflation and recession created strong problems in the implementation of such policies.

But not only the economic crisis neutralized the application of State law. The regional bureaucracy could have had their relative autonomy in creating policies or in implementing the central State law, but there is still no tradition, on a regional level, to implement a general policy without Central State directives. This dependency impeded bureaucrats at the regional level from giving support to the peasant communities, even though some regional groups were interested in enforcing the laws.

6.1.2 The Changing Significance of the Community and Titling Legislation

Why was Paroccan interested in its recognition and titling procedures in 1970? Were there specific reasons motivating Paroccan's interest in starting legal proceedings?

Before the Agrarian Reform Law was passed in 1969, there were some State laws that enabled communities to request recognition. The key difference from the previous period is that State policies and the political and legal discussions created an environment for social mobilization of certain peasant groups.

As was shown in the historical context of this research, the land reform period was very controversial, and several conflicts between social groups and with the State were seen at different levels. These struggles were both horizontal and vertical. Moreover, within the State apparatus, there was a political struggle to direct the political process. Even in the capitalist groups, there existed contradictions as to whether to support land reform or not, as well as other social changes.

During this period there existed different attitudes towards the agrarian reform issue. Before land reform, there were several conflicts between the social protagonists in regions such as Cusco. In some parts of this department (La Convencion and Lares), the consensus was broken by massive occupation of *hacienda* lands by the peasants while in others, such as Quispicanchis, there was no apparent conflict. Nevertheless, quite a few peasants benefitted from land reform. Most peasant groups decided to organise themselves in communities instead of in cooperatives (although we

do not have specific data about this point). Others, like Paroccan, which existed as a peasant community even before land reform, underwent different conflicts and struggles in order to organize their social space during different political periods.

This space was maintained and acquired informal recognition by other communities and owners before land reform. Initially, before the legal proceedings, the expectations of recognition or titling were associated with the idea of "legal security". Peasants had been told -by State authorities, by their neighbours, by politicians- that recognition and titling would ensure and formalize their property. They had also been told that they could ask for loans if they were formalized. This can be considered as part of the official statements used by other different social protagonists, not only by State authorities. Another important factor to take into account is the peasants' previous experience with State Courts and administrative offices. Thanks to this experience, they knew that there are usually some disadvantages, if they do not have their titles or are not registered: rejection by the administration of their applications for processing, lack of legal capacity, or ability to benefit from the State's adjudications and concessions.

In this way, the community received a handful of concepts, ideas and definitions of law. It was also informed of the government's policies regarding the community, and basically of the significance -for the central State- of recognition and titling procedures. This conceptual package permitted the Paroccan communal authorities -just like the pre-recognition group in Ccachabamba- to build and utilize, together with elements of their own local Andean law, a discourse favouring legalization, in order to obtain support of the other members of the community.

On the other hand there were a few peasants who really were not interested in these proceedings, since they considered that their property rights were already sufficiently respected by people and institutions outside the community. Furthermore, because the legalization process implied specific expenses for each *comunero*, this group achieved certain support for their position, questioning the position of the communal authorities seeking such recognition. It also would mean a political strike against the whole community if the procedures would fail, because the recognition procedures involved the good reputation of the community, at least at a subregional level; an argument which was used by those opposing legalization.

In the case of Paroccan, the legal and political discourse of the communal authorities was successful, permitting the initiation of the process and overcoming the difficulties it faced. This success strengthened the political positions of the communal leaders and their families, and also permitted State law to carry out a symbolic and integrative role, since it gave the community certain temporary tranquility in the normal internal conflicts usually found in a social organization.

In the case of Ccachabamba it was seen that the idea of "legal security" had a totally different meaning, since some peasants already had individual title deeds to their lands, which also gave them the legal capacity to face administrative and legal

action by the State. This might explain the lack of success the legal security-discourse had in this particular space. In short, although these processes were not considered as fundamental for Paroccan's survival or its members' self-identity, they helped the community to consolidate their organization officially, especially in the presence of conservative authorities, who always asked for recognition or title deeds, in order to start any legal action such as a contract.

6.1.3 *Changes in the Community's Land Tenure System*

While the *comuneros'* principal expectations regarding the recognition and titling processes were linked to greater security in land holdings, it is necessary to understand in what measure these expectations were or were not fulfilled, or whether the role that they fulfilled was merely symbolic. However, the changes and continuities in Paroccan's landholding system are key topics to understanding the changes made in other aspects of its social life. In this sense, we analyse three issues below: the actual consolidation of communal property, the strengthening of the idea of private property and the opening up of a land market.

1. The first important issue to deal with is whether or not the titles contributed to the existence of the communal lands. Before recognition and the titling process in Paroccan, there existed in the community a combination of different forms of landholding: communal and private. Although legal recognition did not imply the State's acknowledgment of the communal lands, it gave the community the legal ability to defend its lands. In this sense, this process reinforced the communal ownership of the lands. But there was an important change in 1987 regarding the laws of peasant communities, which recognized the above forms of landholding. Nevertheless, it is important to take into account that the recognition process took place before these laws and the subsequent titling process.

The Law on Titling Peasant Communities, passed in 1987, did not solve these boundary problems, but formalized the property of the communities so they could handle any agreement with their neighbours. Such was the case of Paroccan, which finally obtained titles to its land from the State. The title deeds guaranteed the community's property rights, and enabled Paroccan to defend its lands against bureaucrats or other individuals who might profit from a situation of uncertainty.

In short, the legalization process consolidated communal property in the outside relations of the community, but not inside it. On the contrary, the tendencies to consolidate possession of individual landholdings were reinforced after legalization, but it did not mean the disappearance of communal or familiar landholding. Additionally, the fact that this private way of looking after their plots was accepted by more *comuneros* did not necessarily mean that the peasant considered him or herself as standing outside the community.

2. From interviews and conversations held with *comuneros* themselves, it can be stated that most of the time there are definite barriers differentiating between the communal and the private, although the titling process in Paroccan reinforced in some cases the idea of private property in the community.

It is clear that, in view of the very little technology they have, productive tasks are always going to require the collaboration of neighbours and relations, which strengthens the communal nature of the productive process. But they feel that the parcels they possess, as well as the products that they generate, are part of their individual or family goods.

However, there are times in which the *comunero* is identified with the community in transactions in which he apparently acts as a lone individual in the market. In the latter case, for example, Paroccan's members learned how to ask for loans individually. Generally speaking, loans could be requested from the Agrarian Bank as a *comunero*, and also in a communal way. Nevertheless, the titling process gave property rights only to the community. To grant loans to *comuneros* as individuals, the Agrarian Bank usually asked whether the *comunero* was registered as a qualified community member.

Another consequence of the communal property's legalization in Paroccan was an increase in contracts for selling and leasing of plots of land -even though this was forbidden by the law: contracts between the community and mercantile intermediaries, and contracts or agreements with diverse State agencies, in order to obtain services for the community. Plots were sold for higher prices after the titling process. This is explained by the legal security effect granted by the community's title deeds, compared with the insecurity deriving from untitled lands.

Briefly, the ideology of property and the diffusion of transactions -always within the context of a limited market- was more remarkable after the legalization of the communal land property. Titling and title deeds granted citizens legal security, and enabled them to make different kinds of transactions. People were able to ask for credit and offer collateral or mortgage securities, if they transformed their possession into property rights. Thus, the title deeds, in a context of semi-integration into the market, were symbols or values that somehow actually eased certain transactions. Persons or institutions not part of the community also learned about these interactions of relations and symbols and participated in them as well. Therefore, the legalization process stimulated the relation to the market and the world outside generally.

3. The question of a land market in the communities has been closely related in Peru to the discussion concerning whether the State should protect the community or not. Mostly, as we have seen, the discussion has had radical aspects. On one hand, some Administrations have asked for the dissolution of the peasant communities, since they considered them obsolete institutions, preventing the emergence of a free market for land. On the other hand, the community was seen as a historical

institution where peasants lived, one which was in its own way integrated into the State and society and therefore should be protected from people and groups who were integrated into society (as individual citizens). This protection should -basically- prevent the selling and buying of communal property.

Both policies regarding communities have been applied until the period under study, but have been predominantly protective. Consequently, the State did not recognize, in principle, the possibility of opening up the marketing of land. However, as we have seen before, the peasants practised unofficial ways of trying to open up such a market.

These practices, however, were not the cause for starting a process of micro-fragmentation of land in Paroocan, because the social organization, in this case, applied different measures of social control in the prevention and also in the repression of most of the actions that could endanger the integrity of the community's territory. However, in other communities -before, during and after the legalization-, a process of micro-fragmentation began, promoted not only by individual *comuneros* but also communities themselves.

6.1.4 Changes in the Conflict Resolution System

Here we will describe some changes in resolving conflicts, and some changes in the interaction between Andean law and State law in some procedures, which occurred differently in Paroocan and Ccachabamba.

One important aspect of our research concerns the role of the juridical power in the settlement of disputes in the communities studied, before and after the legalization process. From a legalistic point of view, the legalization should imply acceptance of the State's jurisdiction over the various conflicts existing within the community. But due to the previous existence of another conflict resolution system, based on local Andean law, what actually took place in the community was the strengthening of what K. von Benda-Beckmann calls "forum shopping"; which is the ability of the disputants to choose between several institutions to solve their conflicts (1981:117).

Before the recognition process, there were certain family or land conflicts that were first solved by the President of the community, secondly by the Executive Council, and finally, by the General Assembly, in terms of community justice. But these were not obligatory or formal steps for settling a dispute, because, according to the nature of the problem, the President, taking into account whether or not it was a hot issue, could refer it to other authorities. Therefore, a higher level of authority eventually may have the actual jurisdiction. However, it is also important to point out that an agreement could be settled beforehand, by the *comuneros* in conflict. This usually did not occur when a delicate issue was involved; that is, when the case was beyond family control and required the intervention of a higher power.

On the other hand, the peasants also had the right to apply to the Justice of the Peace. This judge was directly appointed by the Higher Court of the Judicial District,

and formed a part of it, but he is usually elected from among the *comuneros*, and was assumed to have an excellent reputation in the community. He could deal with certain civil and criminal problems of lesser importance usually after, or instead of the community's authorities. In fact, he is part of local law, because his decisions are mainly much more strongly based on the community's legal repertoires than on State legal terms (Brandt 1990). For example land or family conflicts are decided through direct mediation or by the decisions made by this Justice of the Peace.

In turn, the higher judicial courts resolve certain types of serious conflicts, such as murder, according to the existing hierarchy within the Judicial Power in Peru.

In other cases, peasants could ask for the direct intervention of the civil, criminal or agrarian magistrates, instead of trying to solve their problem in the local communal way. The selection of the State way could be for various reasons, such as: a) previous experience of the *comuneros* in these courts; b) the need to give the solution to the existing conflict a more formal nature; and c) the internal convictions and the strategies of the parties involved in the issue. These factors are illustrated through some cases which took place in Paroccan:

First case¹⁾: *Conflicts over possession of land*

Pablo, who is a peasant and stranger to the community, "bought" a plot of land from a qualified *comunero*. He cultivated it for a period of time, and obtained the certificate of possession from the Ministry of Agriculture regional authorities. The community did not isolate him from its organization, but waited for a signal showing he was willing to integrate into the community, at least to a certain degree.

As has been said earlier, the community only allows these contracts under certain conditions. They finally found out that Pablo had been doing the same thing in other communities, in order to sell the plots later on to other strangers to the community, who could pay high prices for them. In this case, the community tried to recover the land, and give it to a *comunero* who did not have any plot of land at all.

Both Pablo and the communal authorities knew that if they went to Court, they would be subject to the State's laws that prevent the "sale" of communal land. The community did not want to reach an agreement, because it claimed that the land belongs to them, and that under the Political Constitution and State regulations for Peasant Communities, community land cannot be sold.

On the other hand, Pablo knew that State law also favours people who work the land, and that the community therefore could not dispossess him. He also knew, from State law, that he could not sell the plot he possessed, because although he was the holder, the plot belonged to the community. Therefore, he did not want to discuss the validity of the sale before the Court. He wanted to discuss his right to continue in

¹⁾ Following the anthropological tradition, all the names have been changed or altered.

possession of the land. In the meantime, the community advised outsiders not to buy the plot.

Although none of the parties were certain about who was going to win the legal suit, they decided to go to Court. We must add the current "uncertainty" regarding the decisions of the judiciary in the Peruvian legal system, as several studies have repeatedly demonstrated (Pásara 1982; De Belaúnde 1991; and recently Bustamante 1993:54-55). This feature, however, is not strange to the parties; on the contrary, it is sometimes, but seldom, used by one of the parties to "scare" and constrain the other in order to reach an agreement, even when it is non-profitable for the latter.

An interesting point is that both parties rely on State law -and not on the local law- to defend their claims, even though this conflict can be defined as an "internal" one. However, the Community will also claim that under Andean law it has the right to allocate and distribute land according to the resources available and the needs of each family.

As indicated previously, there are two issues which are of special interest: First, the reasons why the parties in conflict go to Court and fail to solve their problems before the communal authorities. Second, why State courts, and therefore, State law, is chosen as the place to resolve the conflict between the parties. Law has different meanings, depending on the objectives and the type of conflict involved. But we cannot generally state that State law functions "the" weapon of each party, because in the meantime Andean law, political alliances or corruption will be weapons as well, to be used in this conflict.

Will the courts rest on Andean law to solve the conflict? This depends on the magistrates' perceptions of the problem, especially on which legal repertoire they consider the more important one for their decision. This makes sense when we realize that Andean law is not monolithic, and can be interpreted accordingly by each judge. Besides, it is important to recall that State law itself incorporates important aspects of Andean law, and vice-versa.

Although this case occurred after the recognition process, we have been told that similar cases occurred before it, with different and contradictory results.

Second Case: *Inter-community land conflicts*

Another case illustrates the role of the judiciary in inter-community land conflicts. In this case, both communities had a boundary problem and tried to present their problem before the Agrarian Court. One of the communities was legally recognized by the State and had title deeds, while the other was not. Here, the recognition issue proved to be very important in order for the judge to make a formal decision, and it enabled the recognized community to win the case concerning the boundary in dispute.

But when a court makes the final decision, supporting the recognized community, and the one that has title deeds, such decision usually cannot be enforced, even if

there is violence. When a court decision is not accepted by one of the communities, the police will try not to intervene, in order to avoid violence, especially from the community members that have lost the case. But a more or less peaceful solution can be reached, usually through mutual concessions under in a formal agreement between the communities in dispute.

As we have seen, the State Court decisions are not really enforced in this case. What is really important, is the ritual of Andean law, even if it is later formalized by a Notary Public, a Judge or a State officer.

Third case: *Taking domestic conflict to State courts*

The following is a case of "forum shopping", concerning the selection of the Court within the judicial State system. The case involves the termination of a plot-leasing contract between two *comuneros* in the period under study.

In this case, the *comunero* who is the formal landholder according to the community's registry wants his plot back, but the lessee wants to continue using and exploiting the land. However, he is not a member of the community. There is a conflict of interests, in which the community members go to the Justice of the Peace.

In local legal practice, the community member has the right to lease his plot to other community members, or to anyone else. Therefore, we can understand why the qualified *comunero* chooses to go to a "State" authority, who will surely decide in his favour, giving him the right to recover his plot. He does not choose the community as a forum, because he knows that the other party will go directly to any State judge to present his claim. In this way, the qualified *comunero* undoubtedly should win the case. However, the lessee presented the case before the Agrarian Magistrate. The community member did not go to the Justice of the Peace. As we have seen, State law protects the real worker and holder of the land, and it does not matter if it actually belongs to the community. In this way, the lessee ended up winning the case.

What happened in this case? Formally, land conflicts are solved by the Agrarian Magistrate, and not by the Justice of the Peace. The lessee officially won the case, but since he wanted to maintain good relations with the community, he negotiated with the *comunero*, within a context in which the community intervened. Negotiation implied here an extension of the lease, and after one year the lessee returned the plots to the *comunero*.

Fourth case: *Conflicts over the distribution of lands: The criterion of wealth*

Social differentiation is part of the community's social organization. A case in which we appreciate the influence of this phenomenon is the following: A *comunero* -who is considered to be rich- wants to buy more land in the community; however, other members are reluctant to accept his having more land, since they think that what he already has is enough.

In this case the Executive Council disapproved of the idea of this "rich" *comunero* of acquiring more land in the community. The President of the community advised him not to create a negative social environment with the other *comuneros*. This intervention finally prevented him to continue with his projet.

Usually, State law establishes, in the first place, that the community assigns -on a family, collective or individual basis- the community's land. But our field research shows that land distribution depends on several factors, such as each family's needs, the history of the family's good reputation and influence, among others. Therefore, some *comuneros* acquire or possess additional land, depending on their ability or money accumulation. Progressively, they become different from the "poor" ones, who have just one plot.

A reprobation of the community, regarding this "excess" in the concentration of land is a commonly practised form of social control, exercised by the community, and is basically applied to the *comunero* who tries to exceed what is considered the limits of the appropriation of land.

The Ccachabamba case

In order to analyze the role of the judicial power in the conflicts that arise in Ccachabamba, one has to differentiate between the stages used to solve conflicts between the group of peasants that tried to gain recognition as a peasant community, and the group that did not want to participate in this experience.

Conflicts always surfaced in both groups, but the peasants of the first group usually tried to reach an agreement. Even though they did not always succeed and often finally went to the State Courts, they always made an effort to prevent the Court's decisions from ending their social relations or diminishing their goals to be recognized as a community.

With respect to the second group, we found very different attitudes, depending basically on the kind of people we were dealing with. This group consisted of policemen, teachers, and peasants who were members of other peasant communities, or just individuals who owned different plots. Policemen were more likely to go to Court, since they considered themselves more able to deal with the legal process. On the other hand, there were some peasants who tried to reach an agreement at a first stage before deciding to go to Court.

Since Ccachabamba was formed basically upon the existence of plots which had specific owners, it did not have a boundary problem with other communities. Was the above situation different, when the CAP Wiracochan existed? In principle, the situation has changed. In the beginning the cooperative experience did not work out, and as internal relations cooled down, members of the cooperative went directly to Court when problems arose, trying at the same time to avoid any intervention by the cooperative's authorities. In this case, the judicial authorities were summoned for even small domestic problems.

6.1.5 Changing Interaction between State and Andean Law

Differing interpretations of the law at the various levels of State administration, regarding Andean community law, mainly concern the issue of recognition of the community.

Some of these agencies, at the intermediate or regional level, usually follow a literal or restricted interpretation of the Articles of the community recognition law. So they asked the applicants to prove and present all requirements, in order to be recognized. On the other hand, at the local administrative level, (for example, City Hall or the Agrarian District agency), there sometimes was a semi-official recognition of a group that had some of the features of a peasant community, even though they did not fulfill all the official legal requirements. By this continuous and good relationships between the community and these local institutions are built. Such is the case of Ccachabamba.

These facts cannot be exclusively understood through the distant or close relation existing between the community and one or another State agency, or because of a special interest of the latter in recognising the community. The different interpretational attitudes that state agencies adopt also play an important role. One has a restricted, blind attitude towards the requirements of the legal provision; the other knows, by own experience, that it is difficult to fulfill all legal requirements, even in long-standing recognized communities. For example, the requirement to be "traditional" is not necessarily found in all communities, because many of them are not ancient or traditional organizations; they have been formed during the land reform, or after. There are some cooperatives or peasant groups that have transformed themselves into peasant communities, and then asked for recognition. Moreover, some of the registered communities are traditional, since they existed before the Republican era; but they no longer function like actual communities. They have a formal organization before the State authorities but not as real life organizations. On the other hand, Ccachabamba's recognition was denied at the intermediate level, because it was not a "traditional" organization, even though there is a consistent group within it that acts, produces and interacts as a community.

The above paragraphs show the changes in the interactions between State law and Andean law at the local level during the periods studied. First of all, during the Agrarian Reform, the State created a new legal structure, sustained in turn by a radical legal discourse based on a new concept of law and of justice that sought to unite traditionally excluded social groups such as peasants. This discourse penetrated deeply into these sectors, thanks to its dissemination not only by State agencies but also by private ones such as NGOs.

The process of legalization gave the community a lesson on the concept of law managed by street-level bureaucrats, and at the higher levels of State administration. The protagonists managing their own concepts and interests have learned that they will

have to struggle -for example, against attempts to formally block recognition of Paroocan- or to negotiate with others -in the case of the inscription of *comuneros*- in order to gain certain positions. In each struggle, one actor learns from another, and probably, in many cases, the different actors internalize part of another's language.

This learning process helped to create a different concept of local law, in which values and ideas emerged from both the State and the community were combined. For example, legalization introduced a concept of a State property in these settings: the State was the one that adjudicated or recognized the community's property; it was the ultimate owner of the land and natural resources, not the community.

The peasants in charge of the legalization procedure identified themselves with local versions of State law, and it seemed -on some extreme occasions- that the only law they knew was State law. This occurs, for example, when the peasants or their attorneys hide their legal discourses, which are really based on their values and legal norms, in the State's language, especially if the decision must be made by the State authorities. But, in our opinion, this was merely a strategy to succeed in the titling and recognition process.

Therefore, Andean law remained valid throughout this period although incorporating some elements of State law. Thus, there were some elements of Andean law used by the *comuneros* of Paroocan in order to be recognized and gain access to title deeds, such as their historical existence as a peasant community, the landholding system, recognition by local authorities and other communities. But it would be one-sided to say that only Andean law permitted Paroocan to be recognized; the State law's regulations also qualified Paroocan to be registered. However, the permanence of Andean legality can be seen in certain forms of contractual agreements on property and availability of communal lands and in the maintenance of their own space by resolution of conflicts. Hence, Andean or State law are not different blocks of normative structures, with an isolated set of values. Thus, the period under study showed different features of legal pluralism, in the interactions between the various levels of the State and local Andean law.

The later deactivation of the Agrarian Reform and the course of State legal policy of changing institutions did not change the level of interaction between both laws, but it did give it a new meaning. The State stopped promoting a socializing, cooperativist model inside the communities, in order to promote a much more liberal ideology based on the principles of private property and individual autonomy. This affected the organizational structure and landholding not only in the communities -where there was already a tendency in this respect due to market effects- but also in the rural world in general. Although during the government of Alan Garcia there was an attempt to protect the communities from this process, giving them greater autonomy and making their communal social control mechanisms more powerful, this process continued developing as is clearly shown in the case of Ccachabamba.

6.2 Changes and Continuities in Social, Economic and Political Organization

If we address the consequences of the legalization process for the recognized peasant communities, we certainly can note that it has wrought changes in several aspects of the organization, such as in the landholding system, in the peasant community's form of internal and external relations, and in production and productivity. At the same time, however, we find certain continuities in the organization of Paroccan's social life, which allows us to understand and determine the real social effects that the law has had concerning social change. Besides, we should ask ourselves whether the perceived changes were actually effects of the recognition and titling procedures, or if they were a result of other significant social processes, among which legalization had only a secondary role.

6.2.1 *Changes in the Socio-Political Organization*

A central question regarding the consequences of the legalization process is whether there were any changes in the social relationships within the community's organization. A first consideration is that although Paroccan preserved its informal way of organization, in principle the community had to adjust its formal organization to the structure established by State law. But at the same time this structure was not strictly followed: the important decisions were made by the President of the Board, secondly, by the Executive Council and finally by the General Assembly. In this way, the Executive Council, and especially the President of the Community, consolidated their position as leaders of the organization, since they were the ones who had to obtain the resources to try to solve the problems, or work with the social or political groups or contact persons that helped the community in the legal procedures.

Power relations also changed in the community, since these leaders strengthened their positions and good reputation. Also the delegates elected by the community to start and continue the legal procedures were well respected members of the community. As long as they could solve some of the difficulties involved in these processes, they gained an even better reputation. The *comuneros* who had good lands also got better prices from them, since the formalization process had a direct effect on the market value of the community's territory.

Another issue is whether the legalization meant more dedication by the *comuneros* to the community, in terms of time, energy, financial investment, work, etc., due to the legal security that their new legal status must have provided them. There are two sides to this important question: whether the *comuneros* invested more in themselves and allocated more resources in order to exploit their plots of land, or whether they invested more in the community's plot or duties; or, finally whether they invested more in both the community and their own plots?

It is very hard to generalize in order to answer each question, because it depends on several variables, such as the effects of the national or regional economy on the

community, and whether there were good prices for their products. For example, a bad situation in the national or regional economy usually forced the peasants to migrate temporarily to the big cities, and therefore to dedicate less time to their plots or to communal affairs.

There were also other factors that influenced the energy and time devoted by the peasants to the community, related to the family's economy: if the peasant had other interests, like a small business, another plot in a distant locality, or if they had a job, this influenced the dynamics of each *comunero* and his family, because in most cases the family is going to allocate energy and time to their own benefit, making the community's sake secondary. There was probably not enough time to participate in the community's duties. In this case, only a few families in this situation invested time and money to improving the community. The centre of the family was therefore its own economy. The *comunero*, his wife and children, were all involved in sustaining the family's economy.

The peasants who had only their plots as a material source were more able to dedicate themselves to the community. Their investment of time, energy, labour and money in the community was significant. Their expectation was to gain access to another plot by adjudication or to participate in activities that created different types of reciprocal relations. The services to be received would solve the gaps in their economy. One point that has to be mentioned is that these reciprocal relations were carried out between rich peasants as well as poor ones. Reciprocity really created a system and different sub-systems of asymmetric relations, in which some peasants reinforced their position in the community, others did good business, and some just solved a specific material problem, even when they had not made a good deal.

Thus, few peasants became wealthy thanks to their access to land and other resources in the community. In this situation, the peasants tried to maintain, consolidate and make their children reproduce their roles. They also developed other interests outside the community, but remained strongly linked to it.

6.2.2 *Changing Role of Women*

Another question is whether the role of women changed with or after the legalization process. A comparison between Paroccan and Ccachabamba shows differences in womens' role during this period.

According to Casas (1987), the *comunera* has an important role in the production and reproduction of communal life, since the division of labour was limited essentially to the difference between sex and age. Hence, within the family she not only is responsible for the care and raising of the children, but also carries out a series of productive tasks. For example, she is the one in charge of guaranteeing the quality of the seed during the sowing season, of convening the families with which there are reciprocal relations, of organizing and feeding those who collaborate during the "*ayni*", and of helping her parents or her husband and children during the harvest

(1987:31-34). Casos also indicated that it is generally the women who are responsible for the sale or barter of the products obtained in the market, thus guaranteeing the family subsistence.

Despite this, the participation of women within the communal power structure -General Assembly and Executive Council- has been and is still rather limited. Usually, the representation of the family in Assemblies is by the husband, although in some cases -such as when the latter are working outside the community- their wives replace them, their presence becoming increasingly notable. Similarly, the posts of authority are traditionally assumed by men, although Casos mentions the case of a woman, Quintina Hombre, who was Vice President of the Vigilance Council for four years in the neighbouring community of Munapata (1987:91). However, neither in Paroocan nor in Ccachabamba has a similar situation yet arisen.

In Ccachabamba, the productive and political roles of women were more remarkable than in Paroocan, because the men often had to migrate temporarily to complement their scarce resources. Faced with a lack of men, women had an active role in the social organization, in production and in the daily problems of the community, occupying many places that traditionally were taken by men.

In the case of Paroocan, the role of women remained more or less the same as before, during and after the legalization process. There were periods when the women played a more active role, especially when the community was in trouble, or had to deal with important aspects of communal life, for example in the struggle to obtain services from the State. But the legitimacy obtained by the male communal leaders after legal recognition has inhibited even more the possibility of women having access to posts of authority, and then had to maintain more traditional roles. On the other hand, this process did not change the participation of women in the transactions that made it possible for them to have access to land. There were relevant precedents, in which women and men were able to qualify as *comuneros* in the community, having equal rights and obligations. But this was not a situation without conflicts of gender.

6.2.3 *Changes in Land Tenure and Migration*

An important question relating to the changes produced by the legalization of the community is the migration issue. In principle, we do not have exact statistics on this point, but generally the migration process has various causes, such as the low productivity of the lands, the need for complementary income, the dynamics of the labour market itself, the lack of job possibilities in the zone itself or the search for a better future, either individually or for the family.

In the case of Paroocan, one element that strongly motivated emigration, especially of the young, was the increase in the population density versus the scarcity of lands, and not so much the different or even opposite values or practices between generations, as was the case in other rural Andean regions. Young people felt frustrated when they did not achieve their goals, and specifically when the community

did not assign lands to them.

We should distinguish here between educated and non-educated youngsters. In principle, formal education gave young people a good reputation, status and recognition, enabling them to obtain skills and knowledge that differentiated them from the *comuneros* who did not have any formal education. Nevertheless, this did not mean automatic access to land or to leadership positions. They had to follow the routine forms of land acquisition: buying, renting or inheritance. But only when they carried out special services for the community, using their skills and knowledge, did they achieve a favourable environment for receiving some of the community land by adjudication, or some other resources. In some cases the young people attempted to take over certain posts of authority in their social space, based upon their social accomplishments. But most of them preferred to get jobs in the cities, working for private enterprises or State agencies.

On the other hand, young people who did not receive a formal education most of the time simply had to emigrate, unless they were adjudicated a little parcel of land by their parents. Due to their lack of education, this group had only very limited possibilities of getting good jobs in the places they migrated to, such as in the centre of Cuzco, some parts of Madre de Dios where gold panning is a common practice, or in Lima. In the case of Madre de Dios, the terrible labor conditions of gold panners forced the youngsters, in many cases, to return home within a few years, however often with the necessary capital to acquire some land.

After the legalization process, the communal authorities tried to find ways to meet the demands of the young *comuneros*. Thus, the Executive Council, with the support of the NGO Ccaijo, promoted some productive projects within the community, in order to create conditions to expand the economy for the new generations. These projects consisted of the assignment of specific plots for feeding small animals like chicken, rabbits and others, in order to enable the young people to make some profits. They were also invited, and paid to participate, in the reforestation and tree protection project. However, these projects failed to obtain the desired results.

Nevertheless, the initial enthusiasm triggered off by the legalization of the community was important. The recongnition and titling processes produced something like a magic charm. The legalization of the property in particular influenced the return of some *comuneros* to the community. However, problems like unemployment and access to land for the youngsters continued.

6.2.4 Changes in Production and Productivity

Initially, the recognition and the titling process was favourable for obtaining better results in production quality and intensity. Therefore, in this respect the legalization had an important role, especially the first years concerning community life. After some time, however, the communal production began depending on other factors, such

as relationships between the *comuneros*, weather conditions, the amount of water for irrigation, diseases that might affect animals or plants, among others. Nation-wide factors such as the economic recession, the relative prices of Andean and other products also influenced the increase or decrease, as well as the quality of products and productivity in general.

On the other hand, after the recognition process, the consolidation of a micro-regional market made the peasants more active in their relationships with the State's apparatus, the financial circuit and the Urcos merchants. New or improved roads connecting the community with the highway also facilitated more intensive relationships with external agencies and individuals. "Market" in the context of the sub-region of Urcos means a specific space in which different types of transactions usually take place, such as informal loans, selling agricultural products and animals, selling and renting of plots, etc. The small scale of Paroccan's economy did not allow the peasants to reach out beyond the sub-regional market, but kept them bound to the conditions and transactions which were part of the financial and economic sub-regional circuit. But the sub-regional market was quite active, and attracted different types of commodities. Here different individuals and institutions engaged in various types of transactions in which State contract law as well as Andean contract law (as barter) constantly merged and overlapped.

6.2.5 The Changing Material Conditions of Life

Combining the historical and material aspects of the peasant economy and the communities under study, we can note that there is some evidence of an improvement in the material conditions of the legalized community of Paroccan.

Generally speaking, the regional and national economic conditions - like more attention given by the State to the different social actors, or the economic crisis - are important factors for understanding the improvement of material conditions. For instance, specific temporary socio-economic programs implemented by the national government at the regional and sub-regional level improved the quality of life in the peasant groups under study. Another important element was the effort made by the community's own members to improve their material conditions before and after legalization.

There are no specific studies dealing with the impact of the land reform or the legalization process on schooling, food, or health conditions in the area, because the agrarian reform has usually been studied by looking at social structure or at the (changing) prices, quantities or qualities of products. But generally it can be said that educational conditions improved for the poor during the second period (1985-1987), since the State was strongly interested in investing in elementary schooling. This period was also not bad for the development of health services; not so much because the government had any consistent health policy but because the economic crisis that began in 1987 towards the end of Alan Garcia's administration had not yet reached its

greatest depth. This crisis did not prevent some short periods during which the material conditions at the sub-regional level were improved. Better prices for the peasant economy's products did not depend exclusively on the national economy, but also on prices on the international market for specific products. The improvement of material conditions in the sub-region is, for example, visible from the increased number of children attending school, especially after 1975. There was also greater access to medical doctors in town.

6.3 Conclusions

When the different governments enacted the peasant community legislation they had certain expectations regarding changes or the continuities in these social institutions. In the different periods they wanted to integrate them into the national or regional market, to improve the community's production or living conditions, or merely to reinforce its organization in order to maintain its autonomy.

The peasants or *comuneros*, on the other hand, also had their own expectations with regard to legalization. In some cases, such expectations were identical to those of the government, but in other cases, they were not. The peasant motivations with respect to legalization actually reacted to the conviction or belief that legalization was a way or mechanism for resolving certain problems significant to them and their social life.

The changes and continuities registered here are therefore in part the result of the combination of the governments' and the peasants' expectations, but also of their frustrations. And we say, "in part", because, as we have clearly seen, most of the changes produced in these communities were finally the result of wider social processes, which in those years modified the structure of power and the market, at a regional and local level.

In this sense, the legalization process helped to support some processes -like strengthening the good reputation of the community's organization, or the acquisition of credit, but also to block others, mainly in the non-recognized communities. Legalization thus was not a neutral process in the communities under study, even though it did not carry out the objectives or goals expected.

CHAPTER 7

Summary and General Conclusions

In this final chapter we see how the legalization of the community and its lands -or the failure to achieve this situation- managed to push, modify or stop some social processes which had been taking place within the communities being studied. Some of these changes were expected by the *comuneros* while others were not. Nevertheless these processes should be seen from a wider point of view, to permit us to draw conclusions about some key questions presented in the investigation. For example, what, finally, is the idea of community that predominates within the State and for the *comuneros*? Is our idea of legal pluralism adequate or not to explain all these processes? Did socio-legal interactions between peasant and State bureaucrats end with the legalization, or did they assume another form? What can be expected from this relation achieved between communities and the State?

Although some of these questions have already been touched upon in the previous chapters, we wish here to draw up a final synthesis to permit us to draw theoretical conclusions on the subjects of our research. To this end some important empirical conclusions are presented, arising from the earlier analysis, in order to go back to the theoretical ideas presented initially, re-elaborating them and amplifying them in some cases.

7.1 The Effects of Legalization on the State and the Community

With the Agrarian Reform process, State recognition began to be important to the peasants. Authors like Brandt (1987:b), Costa (1981), Del Castillo (1987), Figallo (1986) and Pásara (1978 and 1988) have written about legalization earlier. But they see the importance of this process mainly in the sense that recognition is a legal resource of the communities to avoid any abuse by or conflict with *haciendas* or other elite local and regional groups. However, my study analyses legalization differently, in a wider process, relating it to ideas of legal pluralism and socio-legal interactions between peasants and the State, among other issues.

The liquidation of the *hacienda* regime began to give this possibility new meaning:

the legalization began to be seen also as a way to ensure a response from the State to a set of problems that had begun to confront the *comuneros*: lack of lands, migration to urban centres, lack of basic services, loss of authorities' legitimacy, individualism, etc. Hence, recognition, registration and titling of lands began to be considered as an important issue by the communities.

As shown in previous chapters, the legalization process influenced several aspects of communal life, such as communal infrastructure, irrigation systems, financial aid, productivity, etc. Most of these improvements would not have been made without the State's intervention, which shows that, to a certain degree, the *comuneros* achieved their objective of ensuring State aid through these mechanism. However, not even this aid could reverse some of the processes -such as the pressure to migrate- that were based on more global factors.

Secondly, to be successful in the legalization process, the *comuneros* had to have the right "spirit". This turned out to be an important factor, because it permitted various problems encountered during the process to be resolved. In this sense, the historical factor and the geographical features play an important role, because they permitted maintaining certain forms of integration and identity among the members of the community, which had been fading away due to the problems mentioned above. The success of legalization strengthened the communal spirit and also provided the communal organization with new vitality.

Thirdly, the legalization process also played an important role in the change and transformation of the Andean cosmo-vision. New patterns of conduct, attitudes, beliefs and values are being constantly introduced, changing the shape of peasant communities. This influence can also differ between communities located near the roads going to important markets, and others located in very poor Andean zones.

Finally, although Paroccan did not have significant problems with its neighbours concerning boundaries, in most of the rural zones there were constant conflicts between communities or with third parties over the possession of lands. This meant that the stages of agreements were dismissed, or that the State Court decisions did not end the conflict. The Law of Titling of Peasant Communities, passed in 1987, did not solve all these boundary problems, but only formalized the property of the communities that could reach agreement with their neighbours. Such was the case of Paroccan, which finally obtained title deeds from the State.

However, the communal organization was not the only beneficiary of the legalization. The State also managed to partly reinforce its legitimacy and importance within legalized communal spaces, as can be seen in the case of the conflict resolution system. The cases presented in the preceding chapter show that the the selection of State courts to resolve conflicts was greatly stimulated, and it even stopped being foreign to the community. Nevertheless, most of the *comuneros* kept on choosing the local conflict-resolving system. Moreover, legal pluralism is weak in the cases of felonies or crime, unlike in other countries. For example, in penal conflicts, there is total subordination to State law; in land conflicts both systems prevail; in family

conflicts the local Andean law has priority.

7.2 The Land Tenure System in the Communities

The land tenure system has changed considerably within the peasant communities. There are several issues to take into account when explaining these changes. The first is to consider the geographical area in which the community is located, its accessibility and the type of resources that a community has, the ecological levels found there, etc. A second issue is formed by the common features that peasant communities have in a specific region or sub-region, and the relationships between them and with other social actors on a regional level. A third important issue is to understand the categories and concepts used in the description and analysis of the Andean land tenure system. The concepts of "individual" or "collective" are easier to explain in a western economy, but not in the Andean one.

During the Inca period, the *ayllus* were developed within a context in which the concept of "property" was associated with the idea of "State". Social differentiation was clearly established between the Inca's family, the military, the priesthood, State officials and the Indian population, and it certainly existed also within the *ayllu* itself, despite its apparent homogeneity.

The same assumptions have been made in studies about the Indian communities during the time of Spanish rule. The whole society was socially differentiated, because differences were considered inherent to humanity, and differentiation was a policy followed by the Spaniards. The land tenure system changed during this period, the best lands being awarded to the Spaniards while, after the concentration of the indigenous people in *reducciones*, their territorial rights were recognized but this did not necessarily signify a collective property of the land.

Concerning the Republican period, we recall that the *criollos* gained control of the government, Spanish rule ended and important changes in the social and political structure took place. Here the social and political differentiation was no longer primarily upheld for racial reasons, as during the Spanish rule, but rather was based on wealth, contacts in the different economic and political spheres, handling of knowledge and technology and the ability to transport goods both horizontally and vertically.

In this period, the land tenure system was based on the existence of large landholders and owners of sugar *haciendas*, who controlled political power until the land reform of 1969. Many of these *haciendas* and big landholdings were formed at the time of the appropriation, through legal and extra-legal ways, of communal lands. Communal lands were finally reduced to the poorest and highest lands, such as occurred in Cuzco. The constitutional recognition of the communities as from 1921 which granted communal lands their inalienable character, did not stop this process which could only finally be stopped by the Agrarian Reform.

In this reform, the communal organization was considered an important element in the landholding system. The communal domain was respected, since it had been decided that the communities should regain unexploited parcels. The community's primacy in the organization of activities dealing with agricultural production was also allowed. That is to say, the Agrarian Reform recognized the community as a unit of production. But it also recognized that other associative forms, like the cooperatives, could exploit farming lands, and preferred this model to the communal one in order to apply it to the peasants' community. Perhaps the Statute on the Peasant Communities contains the widest recognition of customary norms. It authorized the ruling of the community's regime by traditional norms, but also limited the customary rights over lands, pastures and waters. This meant a restriction on the operation of customary law, since it minimized its effectiveness and objectives.

The land tenure system in Peru has changed significantly since the land reform. Most of the cooperatives and other associative forms such as SAIS have now been dissolved, different social types of small landowners have been created. The large extensions of landholdings have not been completely abandoned, however, especially since the economic crisis deepened in the 1980s and the presence of terrorist groups such as Shining Path was felt. Nevertheless, in recent decades the communities have shown an extraordinary capacity for survival.

7.3 Andean Law and Conflict Resolution

Andean law becomes manifest concretely in my research locations. Because it may be rather different in other Andean regions which make no part of my research, the following ideas refer to the notion and assumptions over possible manifestations of Andean law rather than a descriptive analysis.

Andean local law does not need external enforcement. It is legitimised and enforced by the same social groups that enact it. People identify themselves with their rules, procedures, sanctions and decisions. When one of their institutions is old fashioned, peasants just change it. That is why Andean law is alive and continuously changing.

This allegiance to their legal institutions does not mean they would not look also for State law support when necessary. However, the peasants deal with it in a contradictory way. While asserting the value and effectiveness of their own legal institutions, they feel also an urgency to anchor their claims and positions in official law. There seems to be a functional division in this regard. Peasants do not apply the Civil law framework to their marriages, transactions or work contracts, but they employ State law in emergency cases, once conflict or disagreement has developed. Consequently, the *peasants do not* ignore State law, as some scholars note, but they are somewhat reluctant to accept it completely. As I have observed, even in processes aimed at benefitting peasant communities there is resistance towards exogenously

originated procedures.

Comuneros do not consider State law as a way of preventing conflicts. They mostly use it as an *a posteriori* device, probably because cultural reasons prevent them from incorporating State legal structures. Some scholars suggest that peasants not only ignore State law, but do so deliberately from ignorance.

Peasants usually do not trust judges and State officials. Their experience when dealing with them has been quite distressing. State authorities, in most cases, supported the *hacendados* against the interests and possessions of the peasantry. Even though *haciendas* have disappeared, State officials have still failed to understand and support peasants. When there is a power or wealth differential vis-à-vis non-local parties, *comuneros* expect judges and authorities to favour the richer parties.

Within this context, peasants are willing to submit their grievances to their own institutions and procedures. After all, their conflict resolution mechanisms have important advantages over the official ones: easy access, low expenditure, absence of delays, shared language and cultural code and closeness of the people involved. At the same time, peasants can approach their traditional authorities with less awe and feelings of uncertainty than state authorities.

It is important to point out that peaceful coexistence is a permanent goal in peasants' interactions. In most cases, proceedings try to find the real problems behind the explicit demands and claims. This method allows the opponents to recognize the deep causes of their controversy and to seek a satisfactory agreement. If they cannot find it, the authority's final decision usually is to propose a compromise. The parties have to make concessions to each other. And both receive a partial solution to their claims.

Using the same logic, peasants try to solve not only the problem *sub litis*, but to prevent new disagreements from arising. Therefore, authorities pay special attention to victims' situation, and to the need to compensate them for damages. Sometimes compensations can be just symbolic, but they express a way of solving moral or non-material problems. In some cases the answer is not to propose any solution, but to delay the decision of the authority. Peasants think this will allow the parties to examine the matter more carefully and less passionately in order to reach a solution through direct bargaining.

When there is an action opposed to the communal interest, the sanction is aimed at reintegrating the trespasser into the community. *Comuneros* give their verdicts an educational purpose. Changes of attitude can be achieved by the imposition of a fine, by forced communal work or by a short period in the communal jail. A common psychological punishment is based on public humiliation that induces shame in the trespasser. Punishments are applied with an admonitory objective. Physical punishment is still present in some communities. If the transgressor does not show a real desire to better his conduct, he can receive the strongest sanction of all: expulsion from the community. In the Andean world, this is almost as serious as a death

sentence, because nobody can survive alone. Thus, other sanctions can be considered as ways of preventing the trespasser from being cast out by his social group.

The enforcement of sanctions is not universal. Unlike occidental law, peasants do not set the same abstract measure of punishment for everyone. Their decisions are based on all they know about the subject involved, on the personal characteristics and individual and social background. Consequently, when the transgressor is a foreigner, the decision is also different. Peasants often see the foreign trespasser as an aggressor against communal order and the *comuneros'* goods and lives.

7.4 Common Problems, Common Solutions

We can point out several problems shared by the communities being studied, and which should be solved soon. These problems relate principally to the communities' integration into the market and their relationship with the Central State. The solutions necessarily have to involve a redefinition of the relationship existing between the Andean and the State legal systems.

As we have seen, the communities studied have their own particular problems, but they share certain other problems which affect most of the peasant communities in Peru. Among the latter problems we can point out three of the most relevant quandaries: the weakening of the communal organization, the scarcity of lands and the great expectations of the *comuneros* regarding State aid. We can add a fourth, which derives from the above mentioned three: the absence of alternatives.

The first problem -the continuing weakening of the communal organization- is caused by the lack of participation in labour and communal work groups, lack of interest in attending communal assemblies, tension and struggles among the different power groups, the migration of adults and youngsters, the generation conflict and growing distrust of directive authorities. As we can see, many of these factors have nothing to do with the internal dynamics of the community, but with external causes, like the rising cost of living and the lack of job opportunities within the community.

This results in increasing hardships for communities like Paroccan that experience, for instance in the application of social control mechanisms over its members and their resources, a tendency towards breaking-up of the communal bond that holds the members of the community together. On the other hand, what really matters is the fact that, like in Ccachabamba, the *comuneros* themselves have noticed how important it is to obtain or keep a communal organization capable of defending themselves against common problems, such as the drop in market prices for the crops they cultivate, thereby filling a gap which the State is not interested in dealing with.

The second problem is also shared by both the communities we have studied. This refers to the lack of available lands within the community. It is a problem that gets worse in those cases where there is great number of youngsters, poor quality land and the impossibility of expanding the boundaries of the communal territory. The

consequences, as we have seen, are increasing tensions among the *comuneros* (or peasants, in the case of Ccachabamba). These tensions are present among the rich and poor (criteria established regarding how much land each one holds), or between the younger and older *comuneros*. When there is a strong organization, as in the case of Paroccan, it can mediate in order to reduce or even stop the conflicts, but there is not much it can do to solve the real conflict, in which a solution can be achieved only by acquiring more land.

As Hopkins (1990:17) points out, when it comes to this problem, the peasants usually propose that in the first place there should be a restructuring or redistribution of the communal lands. In the second place, they propose more intensive usage of agricultural lands, by means of new cultivating techniques. However, their first suggestion would require a restructuring parallel to the power relations within the community, something that is very hard to achieve without breaking the communal unit itself. The second suggestion, besides requiring training and infrastructure, will not solve the problem of land distribution.

We feel that the above is a problem which requires even more attention than the scholars are giving it, mainly because we feel that it would be in touch with the government's objectives for incorporating communal lands into the land market.

This leads us to the government's role in the communities' issue. In his work, Hopkins concludes that:

"The peasant expects too much from the State. Many of the alternatives proposed depend directly on the government's actions. This is expressed in economic problems, and in technical and social aspects as well" (1990:19).

Our research shows the truth behind this assertion. In this way, the peasants' quest for recognition and titling is just one way to secure an answer to their problems from the State. But we have also seen that this answer depends a great deal on the interest or needs which the State has in this social sector, which is why these expectations are not met most of the time, or when they are, in a very restricted way.

Consequently, legalization of the community should not be the only goal. What the community requires is to strengthen the communal organization's mediator role in relation to the State, using it to demand more access to land, credits, supplies, technology, training, etc. This turns out to be even more necessary in a political context in which the State is trying to ignore its social role in the most needy sectors.

Finally, we have the problem regarding alternatives: in other words, in what way can the *comuneros* find adequate solutions to these and other serious problems affecting them? Hopkins is not optimistic about this: to him, the peasants show little capacity for finding solid and precise alternatives (1990:15). We have seen, however, that after various centuries of domination and imposition, the communities have always found creative and talented ways for survival. Because of this, we believe the

communities will finally find the way to keep their autonomy and their vitality, even though this seems practically impossible, considering the actual context (Bonilla 1987; Caballero 1990; Figueroa 1987; Gonzáles de Olarte 1986; Mallon 1983).

7.5 Theoretical Conclusions

7.5.1 *State Bureaucracy and Peasant Communities*

In our research special attention is given to the behaviour of the different levels of bureaucratic offices in charge of communal demands, and to strategies developed by the peasants in order to achieve their objectives.

Considering this issue, we think that the varied behaviour of the State's administration, on its different levels, must be more deeply analysed. There are two issues that deserve special attention: On the one hand the form in which the different levels of public administration in Peru organize and make connections; and on the other hand, the rationality that dominates this organization. One of the main features of the Peruvian State is its centralism. It is Lima -thus referring to a particular region- where the most important decisions are made, where development models and the normative framework of such models are elaborated. Then, the central authorities try to impose these models in the different regions, through local bureaucrats, regardless of whether the model is adequate to that reality. In this case, what they are trying to do is adapt the reality to the model, not the other way round (Giesecke 1989).

Centralism, and the supremacy given to the model over the reality, impedes smooth communication between the different bureaucratic levels, and between bureaucracy as a whole with society. Problems that can emerge at the local level are not seen as deficiencies in the model, but as errors or incapacity of the officials charged with applying it. Depending on each particular case, this conception can have the consequence that the lower levels -street level bureaucrats- become more accessible, because they do not want their superiors to realize how incapable they are to carry out the established developed model; or on the contrary, namely that they, as in Ccachabamba, strictly adhere to the normative framework ordered from above without taking into account the demands of the individuals or organizations which should be the beneficiaries of the law.

As we saw there is a mutual conditioning dynamism in the role law plays in State-peasant community relations. Andean law is influenced by the different levels at which State law operates, and this depends on different variables like migration, market relations, the history of the peasant group. Also, State law borrows some elements from Andean law, without openly acknowledging it. State officials are probably not conscious of this concession to legal pluralism, but their decisions are very useful for understanding the dynamics of Andean law.

We also saw that in the case of Paroccan, the national level was more accessible at

one stage than the regional one. The Paroocan attorneys appealed precisely to the space where a decision of this type might be taken. Therefore, we can say that the relationships which can be established between the State and the Peasant Communities do not necessarily have to go through strictly following State law and the rules for the legalization process. On the contrary, these relations must be studied from different perspectives that complement each other. Perhaps the final fate of peasant communities in Peru is very related to the results and proposals that might result from these studies.

7.5.2 *The Concept of Community*

One of the most important conclusions in our study is that the term "community" denotes different realities, and is used by the social protagonists with several meanings. We cannot say that the peasant community is the homogenous, monolithic and romantic institution imagined and created by the indigenists at the beginning of the XIX century. We can find authoritarian relations and domination among the peasants, but also order and common values which allow them to build the idea of a "community" and extend it to the external world.

Unfortunately, this diversity is not even perceived by lawyers. But it is important to explain the different effects and answers concerning the community's legislation, in each concrete case or region, together with the characteristics of the bureaucracy in the country. In this way, the concept of community that predominates at the level of power will be moulded in State norms, and this concept then will be disseminated in turn throughout the different levels of State bureaucracy. This concept is the one the communities will face when wishing to initiate their legal recognition and titling of lands by the State, and it will not always be equal to what the *comuneros* themselves handle and with which they identify. In turn, the *comuneros* will try to have their own idea of community recognized by the State. Therefore, the definition of the community is subject to a dynamic and continuous process that shows, in turn, the role played by law as the space for defining and redefining social roles.

7.5.3 *Law and Legal Pluralism: Rethinking the Concepts*

In the introduction we gave our concept of the law, saying that it is a social product created by man to satisfy his need for social togetherness. But, as we could see from the study of Paroocan and Ccachabamba, this social "living together", commonly speaking, is very difficult to achieve. The problems and obstacles which will be met by legal institutions in order to fulfill this function are very difficult indeed to overcome and at times, cannot be overcome at all. Therefore, a first proposal is the possibility of looking at law from a conflict perspective, rather than from a balanced one, in order to understand the way the law will react at different social levels.

This does not mean that our dynamic conception of law must be totally discarded:

at least at local level we can see in some cases, like Paroccan, that the law (Andean local law, to be precise) is the result or expression of shared values among the actors, and that it can carry out an effective social control among the *comuneros*. But we have also seen that this task is increasingly complicated for those charged with maintaining and reproducing this law. It is important to point out that in some difficult situations the appeal to common (Andean) legal values is abandoned in order to utilize direct or indirect coercion mechanisms that are seen as slow, costly and insecure, such as the threat of having recourse to State courts to resolve conflicts (Brandt 1987; Peña 1991:a). In other cases, the communal authorities were forced to have recourse to negotiation with "infractors" in order to avoid even greater problems for the community and to maintain the social togetherness. This shows the existence of a local, Andean law based, adjustment process in Paroccan, with the objective of achieving a greater capacity to confront the present community's problems.

In this sense Ccachabamba is an extreme case of local law not based on shared values. The effects of social processes like individualism, migration, the presence of urban values, a major presence of the State and integration into the market, among others, have destroyed this community. Thus, although Andean law governs certain practices of a certain social group within a certain space, for example, agricultural labour forms, this is permanently questioned by the other group of peasants, who appear to prefer the repertoires of State law to regulate their conduct. Nevertheless, some members of this group adopt forms such as the *ayni* to carry out their agricultural tasks, just as some peasants in the first group handle concepts and values corresponding principally to State law. Therefore, there remains the task of studying more profoundly the chances for Ccachabamba to become a community, the conditions for a more fluid and dynamic interaction between both laws, and also in what ways this interaction could facilitate certain levels of social togetherness. From this point of view, the mutual influences we have found between both legal systems, the Andean Law and State Law, have to be seen from different perspectives. The interaction between both systems can be beneficial, but in some cases also harmful.

The mutual influences between both legal systems leads us to the question of juridical pluralism and to the relations that may be maintained by State law and Andean law at different levels of social organisation. In the case of our study, the State establishes from the beginning a legal repertoire which is going to interact with the community's own legal repertoire during certain small processes like the legalization process, but also in other social processes. The State knows that the decision to legalize is finally in the communities' own hands, but in turn, the *comuneros* know that they can only obtain their legalization after going through the State bureaucracy and its red tape. Therefore, the peasant communities incorporate some of the State's requirements into their local legal repertoires, and vice versa.

Thus, the legalization process not only influences the behaviour of individuals and groups participating in the process, but it also puts into effect a *symbolic* process which transforms or gives new sense and significance to legal values, both for the

community as well as for the State, especially those related to legal security, registration and property values. This allows us to criticize certain classical statements which assume that Andean law concepts are necessarily different, isolated and alienated from western or State legal ones. This deterministic view clashes with our concept of local law in Paroccan and Ccachabamba, which describes various types of interrelations between State and Andean community law within the context of a specific social process.

The legalization process, which brought about some important legal quandaries for the actors, also led to an interaction of knowledge on the part of the different actors. This was a difficult process in which each one learned about the other's social patterns or repertoires. It was certainly not a unilateral process. Perhaps, this aspect of the interaction has a greater significance than the material aspect of the legalization process. Consequently, scholars should give more attention to this aspect. Therefore, the legalization process brings about a link between the State and the peasant communities which goes deeper than the formal bond. The peasant community turns into a legal institution. This link may extend through time in a continuous interaction process, usually at a regional or local level, but also at a national one when peasants mobilize to demand certain profits from the State. In this case the respective legal repertoires change once more.

Briefly, we can state that legal pluralism, at least from what we can conclude from our study, is a process of adaptability between legal systems in a complex process in which their boundaries are continuously redrawn. But this process of adaptability must be studied in a separate form on each social and spatial level, because we can find, as in Ccachabamba, that at the national level Andean law has more autonomy and recognition, while at a local level this law is being destroyed by the action of the State's intervention.

BIBLIOGRAPHY

- Adams, Richard N., 1959. *A community in the Andes: Problems and Progress in Muquiyauyo*. Seattle: University of Washington Press.
- Adip, Amado, 1975. *Conflicto entre Ley y Costumbre*. Lima: Editorial DEPALMA S.A.
- Ambia, Abel Adrian, 1989. *El ayllu en el Perú actual*. Con un estudio de las normas tradicionales de la comunidad campesina de Amaru, Cuzco. Lima: Pukara.
- Arguedas, José María, 1968. *Las comunidades de España y del Perú*. Lima: Universidad Nacional Mayor de San Marcos.
- Arguedas, José María, 1975. *Formación de una cultura nacional indoamericana*. México: Editorial Siglo XXI.
- Auroi, Claude, 1986. Las frustraciones de la participación agraria en el Perú. Pp. 85-128 in *Identidades andinas y lógicas del campesinado*. Lucy Briggs, Chana Llanque y otros. Lima. Mosca Azul editores.
- Anrup, Roland, 1990. *El taita y el toro: en torno a la configuración patriarcal del régimen hacendario cuzqueño*. Estocolmo: Nalkas Boken Farlag.
- Altamirano, Teófilo, 1984. *Presencia Andina en Lima Metropolitana*. Lima: Pontificia Universidad Católica del Perú
- Altamirano, Teófilo, 1992. *Exodo. Peruanos en el exterior*. Lima: Pontificia Universidad Católica del Perú.
- Alvarez Vita, Juan, 1990. *Diccionario de Peruanismos*. Lima: Ediciones Studium.
- Baca Tupayachi, Epifanio, 1985. *Economía campesina y mercados de trabajo. El caso del Sur Oriente*. Cuzco: Centro de Estudios Rurales Andinos Bartolomé de las Casas.
- Ballesteros Gaibrois, Manuel y María Del Carmen Martin Rubio, 1979. Supervivencias del "ayllu" andino y sus características (Comarca del Cuzco). Pp. 431-460 in *Economía y Sociedad en los Andes y Mesoamérica*. Madrid: Revista de la Universidad Complutense, Año XXVIII, No. 117.
- Ballon Aguirre, Francisco, 1978. *Comunidad Nativa, Costumbre y Sistema Legal*. Tesis (Br). Lima: Pontificia Universidad Católica del Perú, Facultad de Derecho.
- Ballon Aguirre, Francisco, 1980. *Etnia y Represión Penal*. Lima: Centro de Investigación y Promoción Amazónica.
- Ballon Aguirre, Francisco, 1989. Sistema jurídico aguaruna y positivismo. Pp. 345-368 in *América Indígena*, Vol. XLIX, No. 2. México: Instituto Indigenista Interamericano.
- Barrenechea, Carlos, 1988. *Descentralización y gobierno regional*. Lima: Fundación Friedrich Ebert.
- Basadre, Jorge, 1937. *Historia del Derecho Peruano*. 1984. Lima: Edigraf S.A.

- Basadre, Jorge, 1983. *Historia de la República del Perú*. Lima: Editorial Universitaria.
- Basadre, Jorge, 1985. *Perú, Problema y Posibilidad*. Lima: Ediciones COTECSA.
- Bejar, Héctor, 1983. "Reforma Agraria y Participación Popular". Pp. 709-739 in *El Perú de Velasco*. Lima: CEDEP.
- Beteta Menacho, Christiam, 1989. *Comunidades Campesinas y Nativas del Perú. Legislación nacional e internacional*. Lima: Organización Internacional del Trabajo y Centro Interamericano de Administración del Trabajo.
- Belaunde, Victor Andrés, 1965. *Peruanidad*. Lima: Editorial Librería Studium.
- Belaunde, Javier de, 1991. Aproximación a la realidad de la administración de justicia en el Perú. Pp. 21-39 in *Poder Judicial y Democracia*. Lima: Comisión Andina de Juristas y Centro para la Independencia de Jueces y Abogados.
- Benda-Beckmann, Franz von, 1989. "Scape-Goat and Magic Charm: Law in Development Theory and Practice". *Journal of Legal Pluralism* 28:129-148.
- Benda-Beckmann, Franz et al., 1989. "Interfaces and Janus-Faces: A critical appraisal of the Interface approach in development sociology from a socio-legal studies perspective". PP. 205-220 in Norman Long (ed.) *Encounters at the Interface: A perspective on Social Discontinuities in Rural Developments*. Wageningen: Pudoc.
- Benda-Beckmann, Franz von and K. von Benda-Beckmann, 1991. "Law in Society: from blindman's-buff to multilocal law". *Recht der Werkelykheid*. Special issue, pp. 118-139
- Benda-Beckmann, Keebet von, 1981. "Forum Shopping and Shopping Forums: Dispute Settlement in a Minangkabau Village in West Sumatra". *Journal of Legal Pluralism*, No. 19:117-159
- Bernales, Enrique and Marcial Rubio, 1985. *Constitución y Sociedad Política*. Lima: Mesa Redonda ditores.
- Bonilla, Heraclio et al., 1987. *Comunidades Campesinas. Cambios y permanencias*. Chiclayo: Centro de Estudios Sociales Solidaridad.
- Brandt, Hans Jürgen, 1987a. *Justicia Popular: Nativos Campesinos*. Lima: Fundación Friedrich Naumann y Centro de Investigaciones Judiciales de la Corte Suprema de Justicia de la República.
- Brandt, Hans Jürgen, 1987b. Derechos Humanos, Servicios Legales y Desarrollo. Comentarios sobre la teoría y la práctica. Pp. 25-54 in Diego García-Sayán (ed.) *Derechos Humanos y Servicios Legales en el Campo*. Lima: Comisión Andina de Juristas y Comisión Internacional de Juristas.
- Brandt, Hans Jürgen, 1990. *En nombre de la Paz Comunal. Un análisis de la Justicia de Paz en el Perú*. Lima: Fundación Friedrich Naumann y Centro de Investigaciones Judiciales de la Corte Suprema de Justicia de la República.
- Bustamante Belaunde, Alberto, 1993. *Justicia Alternativa*. Lima: Instituto de Libre Mercado.
- Burga, Manuel, 1976. *De la Encomienda a la Hacienda Capitalista. El Valle del Jequetepeque del Siglo XVI al XX*. Lima: Instituto de Estudios Peruanos.

- Burga, Manuel, 1988. *Nacimiento de Una Utopía*. Lima: Instituto de Apoyo Agrario.
- Burga, Manuel and Alberto Flores Galindo, 1980a. *Apogeo y crisis de la República Aristocrática*. Lima: Editorial Rickchay.
- Burga, Manuel and Alberto Flores Galindo, 1980b. Feudalismo Andino y Movimientos Sociales 1866-1965. In *Historia del Perú*. Tomo XI. Lima: Ediciones Mejía Baca.
- Bustamante, Alberto, 1974. Legislación sobre Reforma Agraria y Cooperativas Azucareras. Lima, DESCO.
- Caballero, Víctor, 1990. El modelo asociativo en Junín y Puno: Balance y perspectivas del problema de la tierra. In *La Reforma Agraria, 20 años después*. Chiclayo: Centro de Estudios Sociales Solidaridad.
- Camino, Alejandro, 1980. Tiempo y espacio en la estrategia de subsistencia andina: un caso de las vertientes orientales sud-peruanas. Pp. 11-35 in *El hombre y su ambiente en los Andes*. Osaka: National Museum of Ethnology (Senri Ethnological Studies 10).
- Casos Huaman, Victoria, 1987. *Participación social de la mujer en comunidades campesinas. Perspectivas a partir de una experiencia en la zona de Urcos*. Cuzco: Universidad Nacional San Antonio Abad, Facultad de Ciencias Sociales. Tesis de Licenciatura.
- Castro Pozo, Hildebrando, 1973. *Del Ayllu al Cooperativismo Socialista*. Lima: PEISA.
- Comision Principal de Constitucion, 1979. *Diario de Debates*. Asamblea Constituyente 78-79. Tomo II. Publicación Oficial. Lima: Congreso de la República.
- Comision para la Reforma Agraria y la Vivienda, 1960. *Reforma Agraria en el Perú*. Lima: Comisión para la Reforma Agraria y la Vivienda.
- Cotler, Julio, 1978. *Clases, Estado y Nación en el Perú*. Lima, Instituto de Estudios Peruanos.
- Costa Santolalla, Gino, 1981. *La función legislativa del Estado frente a la comunidad campesina entre 1920 y 1980*. Tesis (Br.) Lima: Pontificia Universidad Católica del Perú, Facultad de Derecho.
- Del Castillo, Laureano, 1987. El campesinado peruano y los servicios legales. Pp. 251-262 in Diego García-Sayán (ed.), *Derechos Humanos y Servicios Legales en el Campo*. Lima: Comisión Andina de Juristas y Comisión Internacional de Juristas.
- Del Castillo, Laureano, 1992. "Tienen futuro las comunidades campesinas?". Pp. 39-53 in *Debate Agrario*. N. 14. Lima: CEPES.
- Del Castillo, Laureano (comp.), 1989. *Comunidades Campesinas y Nativas. Normatividad y Desarrollo*. Lima: Fundación Friedrich Naumann y Servicios Educativos Rurales.
- Delran, Guido, 1981. *Historia Rural del Perú*. Lima: Centro de Estudios Bartolomé de las Casas.

- De Zutter, Pierre, 1975. *Campesinado y Revolución*. Lima: Instituto Nacional de Cultura.
- De Zutter, Pierre, 1988. *Mitos del Desarrollo Rural Andino*. Lima: Ed. Horizonte-Grupo Tinkuy.
- Dirección General de Reforma Agraria y Asentamiento Rural, 1971. *Ley de Reforma Agraria y Reglamentos*. Lima: Dirección General de Reforma Agraria.
- Dobyns, Henry, 1970. *Comunidades campesinas del Perú*. Lima: Editorial Estudios Andinos. Serie Monografías Andinas No. 6.
- Dollfus, Oliver, 1981. *El reto del espacio andino*. Lima: Instituto de Estudios Peruanos.
- Dueñas Davila, Alexis, 1991. *Lógicas de funcionamiento de los sistemas agrícolas en comunidades campesinas de la sierra sur. Andahuaylillas-Cuzco*. Cuzco: Centro de Estudios Rurales Andinos Bartolomé de las Casas (Trabajos del Colegio Andino 3).
- Figallo Andrianzen, Guillermo, 1986. *Política Agraria*. Lima:
- Figallo Andrianzen, Guillermo, 1988a. *Aportes del Derecho Andino al Derecho Agrario y los Derechos Humanos*. Lima: Cultural Cuzco Editores.
- Figallo Andrianzen, Guillermo, 1988b. "Rescatando el Derecho Andino". Pp. 13-19 in *Socialismo y Participación*. No. 42. Lima: CEDEP.
- Figueroa, Adolfo, 1987. *La Economía Campesina de la Sierra del Perú*. Lima: Pontificia Universidad Católica del Perú. 2nd. edition.
- Flores Galindo, Alberto, 1983. "José Carlos Mariátegui: Sociedad Campesina y Socialismo indoamericano". Pp. 125-134 in *El Perú de Velasco*. Tomo I. Lima: Centro de Estudios para el Desarrollo y la Participación.
- Fuenzalida, Fernando, 1970. "Estructura de la comunidad indígena tradicional: una hipótesis de trabajo". Pp. 219-265 in Matos Mar, José (ed.), *Hacienda, Comunidad y Campesinado en el Perú*. Lima: Instituto de Estudios Peruanos.
- Fuenzalida, Fernando, 1982. *El desafío de Huayopampa: comuneros y empresarios*. Lima: Instituto de Estudios Peruanos.
- Galvez, Modesto, 1987. El derecho en el campesinado andino del Perú. Pp. 233-249 in *Derechos Humanos y Servicios Legales en el Campo*. Diego García Sayán, ed. Lima: Comisión Andina de Juristas y Comisión Internacional de Juristas.
- Gallo, Fernando, 1987. *Tenencia de la tierra en la comunidad campesina de Simirís*. Tesis (Br). Lima: Pontificia Universidad Católica del Perú, Facultad de Derecho.
- García Calderon, E., 1942. *Constitución, Códigos y Leyes del Perú*. Lima: Librería e Imprenta Gil, 4th edition.
- García-Sayan, Diego (ed.), 1987. *Derechos Humanos y Servicios Legales en el Campo*. Lima: Comisión Andina de Juristas y Comisión Internacional de Juristas.
- García Sayan, Diego, 1982. *Tomas de Tierras en el Perú*. Lima: Desco.
- Giesecke, Alberto, ed., 1989. *Burocracia, Democratización y Sociedad*. Conversaciones sobre la Administración Pública Peruana. Lima: Fomciencias y Centro.

- Guevara Gil, Jorge Armando y Joseph Thome, 1992. Notes on Legal Pluralism. Pp. 75-102 in *Beyond Law*, Vol. 2, No. 5. Bogotá: Instituto Latinoamericano de Servicios Legales Alternativos.
- Ghose, Ajit Kumar, 1986. "Agrarian Reform in Developing Countries: Issues of Theory and Problems of Practice". Pp. 3-28 in Ghose, A.K., *Agrarian Reform in Contemporary Developing Countries*.
- Golte, Jurgen, 1987. *La racionalidad de la organización andina*. Lima: Instituto de Estudios Peruanos. 2nd. edition.
- Gonzales de Olarte, Efraín, 1984. *Economía de la comunidad campesina*. Lima: Instituto de Estudios Peruanos.
- Gonzales Zuniga, Alberto, 1985. Cooperativismo agrario y parcelación en la costa del Perú. Pp. 75-142 in *Las parcelaciones de las cooperativas agrarias del Perú*. Chiclayo: Centro de Estudios Sociales Solidaridad.
- Gonzales Zuniga, Alberto y Germán Torre Villafane, 1985. *Las parcelaciones de las cooperativas agrarias del Perú*. Centro de Estudios Sociales Solidaridad.
- Griffiths, John, 1986. What is legal pluralism?. *Journal of Legal Pluralism* 24:1-55.
- Grondin, Marcelo, 1978. *Comunidad andina: explotación calculada*. Santo Domingo: Secretaría de Estado de Agricultura.
- Guillen Marroquin, Jesús, 1989. *La Economía Agraria del Cusco 1900-1980*. Cuzco: Centro de Estudios Rurales Andinos Bartolomé de las Casas.
- Gutierrez, Ramón, Carlos Pernault y otros, 1984. *Notas sobre las Haciendas del Cuzco*. Buenos Aires: Fundación para la educación, la Ciencia y la Cultura.
- Guzman Ferrer, Fernando, 1982. *Código Civil*. Lima: Cultural Cuzco Editores.
- Guzman Ferrer, Fernando, 1983. *Código Civil. Exposición de Motivos y Comentarios*. Lima: Cultural Cuzco Editores.
- Hopkins, Raúl et al., 1990. *La opinión de los campesinos sobre la política agraria. Problemas, alternativas y rol de la organización*. (Documento de Trabajo No. 37). Lima: ARARIWA-CEDEP Ayllu-IEP.
- Huamani, Giselle, Martín Moscoso y Patricia Urteaga, 1989. Rondas Campesinas en Cajamarca: la construcción de una alternativa. Pp. 63-86 in *Debate Agrario*, No. 3. Lima: Centro Peruano de Estudios Sociales.
- Iguíñiz, Javier (ed.), 1986. *La Cuestión Rural en el Perú*. Lima: Pontificia Universidad Católica del Perú. 2nd. edition.
- Inkari, 1987. *Legislación de Reforma Agraria*. Lima.
- Kapsoli, Wilfredo, 1987. *El Campesinado Peruano 1919-1930*. Lima, Universidad Nacional Mayor de San Marcos.
- Kervyn, Bruno, 1988. *La Economía Campesina en el Perú: Teorías y Políticas*. Cuzco: Centro de Estudios Rurales Andinos Bartolomé de las Casas.
- Klaren, Peter F., 1970. *La formación de las haciendas azucareras y los orígenes del APRA*. Lima, Instituto de Estudios Peruanos.
- Kruijt, Dirk, 1989. *La Revolución por Decreto*. Lima: Mosca Azul Editores.

- Lynch, Nicolás, 1979. *El Pensamiento Social sobre la comunidad Indígena a Principio del siglo XX*. Cuzco: Centro de Estudios Rurales Andinos Bartolomé de las Casas.
- Lipsky, Michael, 1980. *Street-Level Bureaucracy. Dilemmas of the individual in public services*. New York: Russell Sage Foundation.
- Long, Norman and Bryan Roberts, 1978. Peasant Cooperation and Underdevelopment in Central Peru. In Long, N. and Roberts, B. (eds.), *Peasant Cooperation and Capitalist Expansion in Central Peru*. Institute of Latin American Studies. Austin: University of Texas Press.
- Long, Norman and David Winder, 1975. From Peasant Community to Production Cooperative: An analysis of Recent Government Policy in Peru. *The Journal of Developmental Studies* 12, No. 1:75-94.
- Long, Norman and David Winder, 1981. The Limitations of Directive Change for Rural Development in the Third World. *Community Development Journal* 16, No. 2:82-87.
- Lumbreras, Luis Guillermo, 1980. "El Imperio Wari". In *Historia del Perú*. Tomo II (Lima: Editorial Mejía Baca).
- Malengreau, Jacques, 1985. *Tierra, territorio y parcela en la reproducción social andina*. Paper presented to the Primer Congreso Nacional de Investigaciones en Antropología. Lima: November 24-28.
- Malpica Silva Santisteban, Carlos and Gustavo Espinoza, 1970. *El Problema de la Tierra*. Lima: Ediciones el Amauta.
- Mallon, Florence E., 1983. *The Defense of Community in Peru's Central Highlands*. Princeton: University Press.
- Martínez, Héctor, 1980. Las empresas asociativas agrícolas peruanas. Pp. 105-153 in *Realidad del campo después de la Reforma Agraria. 10 Ensayos Críticos*. Lima: Centro de Investigación y Capacitación.
- Mariategui, José Carlos, 1975. *Siete Ensayos de Interpretación de la Realidad Peruana*. Lima: Editorial Minerva.
- Marroquin, Alejandro, 1972. *Balance del indigenismo*. México: Ediciones Especiales del Instituto Indigenista Interamericano.
- Mathews Salazar, Delia Patricia, 1984. *Comunidades Campesinas: Problemas y posibilidades en torno a la tenencia de la tierra*. Tesis (Br). Lima: Pontificia Universidad Católica del Perú, Facultad de Derecho.
- Matos Mar, José, 1981. *Reforma Agraria: Logros y Contradicciones*. Lima: Instituto de Estudios Peruanos.
- Matos Mar, José and José Manuel Mejía, 1980. *La Reforma Agraria en el Perú*. Lima, Instituto de Estudios Peruanos.
- Merry, Sally Engle, 1988. Legal Pluralism. *Law and Society Review* 22:869-896.
- Millones Santa Gadea, Luis, 1987. *Historia y poder en los Andes Centrales: desde los orígenes al siglo XVII*. Madrid: Alianza Editorial.
- Ministerio de Gobierno y Policía, 1962. *Anuario de Legislación Peruana*. Tomo LIV. Edición Oficial. Lima: Ministerio de Gobierno y Policía.

- Mishkin, B., 1960. Los Quechuas contemporáneos". *Revista del Museo Nacional* XXIX:160-221.
- Moore, Sally Falk, 1973. "Law and social change: The semiautonomous social field as an appropriate subject of study". *Law and Society Review* 7:719-746.
- Moore, Sally Falk, 1978. *Law as Process: An Anthropological Approach*. London: Routledge and Kegan Paul.
- Monge, Carlos, 1988. "Cuzco: Regionalización y desarrollo regional". Pp. 101-121 in *Debate Agrario* No. 3. Lima: Centro Peruano de Estudios Sociales.
- Montoya, Rodrigo, 1979. *Producción parcelaria y Universo Ideológico: El caso de Puquio*. Lima: Mosca Azul Editores.
- Murra, John V., 1975. *Formaciones económicas y políticas del mundo andino*. Lima: Instituto de Estudios Peruanos, Serie Historia Andina 3.
- Murra, John V., 1979. Derechos a las tierras en el Tawantinsuyu. Pp. 273-287 in *Economía y Sociedad en los Andes y Mesoamérica*. Madrid: Revista de la Universidad Complutense, Año XXVIII, No. 117.
- Ossio, Juan, 1983. "La propiedad en las comunidades campesinas". Pp. 35-59 in *Allpanchis*, No. 22. Sicuani, Cuzco: Instituto de Pastoral Andina.
- Ossio, Juan, 1986. "El estudio de la estructura social en las comunidades andinas". Pp. 165-190 in Javier Iguñiz (ed.), *La cuestión rural en el Perú*. Lima: Pontificia Universidad Católica del Perú.
- Ots Capdequi, J.M., 1957. *El Estado Español en Indias*. México: Fondo de Cultura Económica.
- Pareja y Paz Soldan, José, 1984. *Derecho Constitucional Peruano y la Constitución de 1979*. Lima: Justo Valenzuela Editores.
- Paerregaard, Karsten, 1987. *Nuevas Organizaciones en Comunidades Campesinas*. Lima: Pontificia Universidad Católica del Perú.
- Pasara, Luis, 1978. *Reforma Agraria: Derecho y Conflicto*. Lima: Instituto de Estudios Peruanos.
- Pasara, Luis, 1982. *Jueces, justicia y poder en el Perú*. Lima: Centro de Estudios de Derecho y Sociedad.
- Pasara, Luis, 1988. El campesino y la legalidad. In *Derecho y Sociedad en el Perú*. Lima: Editorial El Virrey.
- Pease, Franklin, 1993. *Curacas, reciprocidad y riqueza*. Lima: Pontificia Universidad Católica del Perú.
- Pease GARCIA, Henry, 1980. "La Reforma Agraria en la Crisis del Estado Oligárquico". In *Estado y Política Agraria*. Lima, DESCO.
- Peña Jumpa, Antonio, 1991. *Justicia Comunal en las comunidades aymaras de Puno: el caso de Calahuyo*. Tesis (Br). Lima: Pontificia Universidad Católica del Perú, Facultad de Derecho. 2 tomos.
- Peña Jumpa, Antonio, 1991b. Justicia Comunal en Calahuyo. Sus órganos de resolución de conflictos. Pp. 269-303 in *Allpanchis*, No. 37. Sicuani, Cuzco: Instituto de Pastoral Andina.

- Renique, José Luis, 1991. *Los sueños de la Sierra. Cusco en el siglo XX*. Lima: Centro Peruano de Estudios Sociales (CEPES).
- Revilla Vergara, Ana Teresa y Jorge Price Masalias, 1992. *Administración de Justicia Informal: Posibilidades de Integración*. Lima: Fundación Manuel J. Bustamante de la Fuente.
- Rostorowski, María, 1981. La voz parcialidad en su contexto en los siglos XVI y XVIII. Pp. 35-45 in *Etnohistoria y antropología andinas*. Amalia Castelli, Marcia Koth de Paredes y Mariana Mould de Pease, comp. Lima: Museo Nacional de Historia.
- Rostorowski, María, 1988. *Historia del Tawantinsuyo*. Lima: Instituto de Estudios Peruanos.
- Rostorowski, María, 1993. Las macroetnias en el ámbito andino. Pp. 201-218 in *Ensayos de Historia Andina: Elites, Etnias, Recursos*. Lima: Instituto de Estudios Peruanos y Banco Central de Reserva del Perú.
- Rostorowski, María, 1993. Nuevos datos sobre la tenencia de tierras reales en el Incario. Pp. 105-146 in: *Ensayos de Historia Andina: Elites, Etnias, Recursos*. Lima: Instituto de Estudios Peruanos y Banco de Reserva del Perú.
- Ruiz Bravo, Patricia and Carlos Monge, 1983. *Cusco: Ciudad y Mercado*. Cuzco: Centro de Estudios Rurales Andinos Bartolomé de las Casas.
- Sanchez Enriquez, Rodrigo, 1981. *Tomas de tierras y Conciencia Política Campesina*. Lima, Instituto de Estudios Peruanos.
- Simpson, Lesley Byrd, 1970. *Los Conquistadores y el Indio Americano*. Barcelona: Editorial Península.
- Starn, Orin, 1991. "Con los llanques todo barro". *Reflexiones sobre Rondas Campesinas, protesta rural y nuevos movimientos sociales*. Lima: Instituto de Estudios Peruanos (Colección Mínima).
- Sousa Santos, Boaventura de, 1977. "The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada". *Law and Society Review* 12:5-125.
- Sousa Santos, Boaventura de, 1980. "Law and Community: the changing nature of the state power in late capitalism". *International Journal of Sociology of Law* 8.
- Sousa Santos, Boaventura de, 1987. "Law: A Map of Misreading. Toward a postmodern conception of Law". *Journal of Law and Society* 14, No. 3:279-301.
- Stavenhagen, Rodolfo, 1989. Derecho consuetudinario indígena en América Latina. Pp. 223-243 in *América Indígena*, Vol. XLIX, No. 2. México: Instituto Indigenista Interamericano.
- Tamayo, Ana María, 1992. *Derecho en los Andes*. Lima: CEPAR.
- Trelles, Efraín, 1989. *Lucas Martínez Vegazo: funcionamiento de una encomienda peruana inicial*. Lima: Pontificia Universidad Católica del Perú.
- Thorp, Rosemary y Geoffrey Bertram, 1985. *Perú 1890-1977: crecimiento y políticas en una economía abierta*. Lima: Mosca Azul editores.

- Trivelli, Carolina, 1992. "Reconocimiento legal de comunidades campesinas: una revisión estadística". Pp. 23-37 in *Debate Agrario*. No. 14. Lima: Centro Peruano de Estudios Sociales.
- Urrutia, Jaime, 1992. Comunidades campesinas y antropología: Historia de un amor (casi) eterno. In *Debate Agrario*. Lima: Centro Peruano de Estudios Sociales No. 14.
- Urquieta, Debora, 1993. *De campesino a Ciudadano : Aproximación Jurídica* Cusco: Centro de Estudios regionales Andinos "Bartolomé de las Casas".
- Valderrama, Ricardo and Carmen Escalante, 1982. *Del Tata Mallku a la Mama Pacha. Riego, Sociedad y Ritos en los Andes Peruanos*. Lima: DESCO.
- Valcarcel, Luis E., 1927. *Tempestad en los Andes*. Lima: Biblioteca Amauta.
- Valcarcel, Luis E., 1981. *Memorias*. Lima: Instituto de Estudios Peruanos.
- Vargas Gavilano, A., 1989. *La Revolución en Cifras*. Lima: Centro de Estudios para el Desarrollo y la Participación.
- Villavicencio Terreros, A. Felipe, 1988. Mecanismos naturales de regulación social en comunidades andinas y amazónicas peruanas. Pp. 179-192 in *Debate Penal* No. 4. Lima: AFA.
- Wray, Alberto, 1987. "Derecho, Costumbre y Comunidad". In Diego García-Sayán (ed.) *Derechos Humanos y Servicios Legales en el campo*. Lima: Comisión Andina de Juristas y Comisión Internacional de Juristas.
- Yambert, Karl A., 1980. "Thought and reality: Dialectics of the Andean Community". Pp. 55-79 in ORLOVE, Benjamín y G. CUSTRED (eds.), *Land and Power in Latin America. Agrarian Economies and Social Processes in the Andes*. New York.
- Yrigoyen, Raquel, 1992. Rondas Campesinas y Pluralidad Jurídica. Pp. 39-56 in *Boletín de la Comisión Andina de Juristas* No. 34. Lima: Comisión Andina de Juristas.

APPENDIX ONE

The following table lists a number of laws that regulated communal life in different aspects:

- I) Regarding the members of the Board:
 - 1930 Board or a three member Committee.
 - 1966 The functions of the former were broadened
 - 1970 Election Committee was integrated into the 1930 Law.
- II) Regarding the communal representatives' mandate:
 - 1941 Mandate extended to 4 years.
 - 1966 The secret vote was established.
 - 1970 Period once more restricted (to two years).
- III) Regarding acknowledgement of legal representation:
 - 1938 Registration does not constitute rights.
 - 1961 The registration stands.
- IV) Regarding communal authorities:
 - 1938 Community authorities are legal representatives and coexist with the Board.
 - 1970 System of Cooperative Administration (Executive Council and Supervision, General Assembly and Specialized Committees).

Indigenous Communities Legislation

- i) Law 1183 (Forbidding intervention of political authorities in indigenous workers' contracts).
- ii) Law 2285 (indigenous minimum wage)
- iii) Regional Law 605 (Forbidding the granting of free services in southern Peru).
- iv) Supreme Decree of 7.18.46 (Protection of underage indigenous domestic servants).
- v) Law 11061 (Excluding community land from abandoned land sanctions)

- vi) Law 10862 (Declaring land on the shores of Lake Titicaca as communal property).
- vii) Law 8547 (Creating the Bureau of Indigenous Affairs)
- viii) Supreme Resolution of 7.8.35 (Creating the Higher Council of Indigenous Affairs).
- ix) Supreme Decree of 11.23.36 (attributes of the Higher Council of Indigenous Affairs).
- x) Agreement with Bolivia on indigenous peoples 9.14.36.
- xi) Law 7904 (Excluding Communities from declaring the value of uncultivated land).
- xii) Supreme Decree of 9.13.54 (Creating the Commission for Indigenous People).
- xiii) Supreme Decree of 11.18.61 (Creating the Subdirectorate of Indigenous Affairs and Conflict Settlement).
- xiv) Law 7589 (Public Attorney's pronouncement on communal patrimonial matters to be obligatory).
- xv) Supreme Resolution of 10.10.57 (Procedures, complaints, appeals, review, and reconsideration of indigenous matters).
- xvi) Legislative Resolution 13467 (Agreement on the protection of the indigenous population).
- xvii) Directorial Resolution of 1.21.88 (Creating Regional Divisions of Indigenous Affairs).
- xviii) Laws 14646, 14648 (Ruling on the expropriation of land for communities).
- xix) Supreme Decree of 12.31.63 (Law 14648).
- xx) Law 14669 (Community agents must attend the Municipal Council).

DUTCH SUMMARY

Deze studie behandelt de uiteenlopende, moeizame en veranderende verhoudingen tussen de staat en boerengemeenschappen (*peasant communities*) in Peru. Hierbij staat de overheidswetgeving betreffende de juridische erkenning van gemeenschappen en de uitgifte van grondenrechtstitels alsmede de gevolgen ervan centraal. De studie concentreert zich hierbij op de periode van 1969-1988 en richt zich speciaal op twee gemeenschappen in het Departement Cuzco, Paroccan en Ccachabamba.

In genoemde periode vonden in de Peruaanse landbouw structurele veranderingen plaats. Deze begonnen tijdens de Agrarische Hervorming onder het militaire regime van Juan Velasco Alvarado (1968-1975) en van Francisco Morales Bermudez (1975-1979). Het hervormingsproces had als voornaamste doel:

1. het op grote *hacienda's* gebaseerde productie- en grondbezitsysteem af te breken en
2. nieuwe, op de beginselen van zelfhulp en georganiseerde samenwerking gebaseerde organisatiepatronen op te bouwen.

De regeringen van Fernando Belaunde Terry (1980-1985) en Alan Garcia Perez (1985-1990) implementeerden later een verschillend landbouwbeleid. Hierbij was het eerste meer gericht op een actieve participatie van particulier kapitaal en een geliberaliseerde grondmarkt. De tweede was sterker gericht op een populistisch beleid dat overheidsorganisaties dynamischer maakte en goedkoop krediet aan boeren verstrekke om hun steun te krijgen.

Tijdens deze regeringen vonden onder intellectuelen en politici heftige ideologisch geladen discussies plaats over de rol, betekenis en toekomst van "inheemse" gemeenschappen. Deze discussies werden door twee standpunten beheerst. Eén stroming ging ervan uit dat rurale gemeenschappen verouderde instituties waren en daarom een obstakel op de weg naar een "echte" ontwikkeling van het land (de "disintegratieve" mening). De andere bracht naar voren dat gemeenschappen de bewaarders van het culturele, en sinds kort ook van het ecologische, erfgoed waren en zouden moeten zijn (de "beschermende" mening).

Een belangrijk doel van dit proefschrift is om te laten zien hoe deze twee ideologische perspectieven de basis hebben gevormd voor voortdurend veranderende normatieve ideeën van de staat en zo de aard van de verhoudingen tussen staat en gemeenschappen in de loop der jaren hebben beïnvloed.

Analytisch begon mijn onderzoek met de verhoudingen tussen recht, politiek en sociale verandering. Ik beschrijf het recht als schakel tussen de staat en de boerengemeenschappen, waarbij ik "recht" vanuit rechtspluralistisch oogpunt bekijk en de interacties van de bij deze verhouding betrokken actoren benadruk. Ofschoon deze analyse zich op de juridische overheidsprocedures concentreert, poog ik ook andere

voorstellingen van recht van de boeren in de Andes te laten zien.

Het centrale concept in deze studie is de juridische erkenning (legalisation) van de boerengemeenschappen. Deze houdt in dat de gemeenschappen door de staat officieel als rechtspersonen erkend en geregistreerd kunnen worden en titels voor hun grond kunnen krijgen. De erkenningsprocedure vormt een belangrijk terrein om de verschillen en veranderingen in de houding van de staat tegenover boerengemeenschappen te analyseren, en de aard van het overheidsbeleid te bezien dat de staat formuleert en implementeert.

Uit het oogpunt van de *comunero's*, de leden van de boerengemeenschappen, is de erkenning tevens een mogelijkheid om van publieke en private instellingen te kunnen profiteren, zoals de verstrekking van financiële hulp, leningen, openbare diensten, als ook een verhoogde rechtszekerheid met betrekking tot hun landbezit. Ofschoon erkenning door de staat geen absolute voorwaarde voor het bestaan van boerengemeenschappen is, brengt de betekenis van erkenning de boeren er toch toe om verschillende hulpbronnen te mobiliseren en strategieën te ontwikkelen om deze erkenningsprocedures succesvol af te wikkelen. Dat maakt het mogelijk om in deze studie ook het door de gemeenschappen ontwikkelde organisatie-vermogen te laten zien, en ook de processen van herstructurering en interne verandering, die de aanpassing aan het door de staat geformuleerde gemeenschapsmodel met zich mee brengen.

Ten derde wijst het erkenningsproces niet slechts naar de formele door overheidsrecht geconstitueerde procedures en naar de verwachtingen van de gemeenschappen daaromtrent, maar ook naar de sociaal-juridische interacties tussen boeren onderling, en tussen boeren en bureaucraten op de verschillende bestuursniveaus.

Tenslotte laat de erkenningsprocedure de complexe verhouding tussen overheidsrecht en Andes-recht binnen lokale ruimtes zien. In sommige gevallen laat de staat ruimte voor een grotere autonomie voor de gemeenschappen en bevordert op deze wijze rechtspluralisme (Griffith 1986). In andere gevallen doen gemeenschappen zelf het uiterste om lokaal Andes-recht te laten prevaleren. Voor de analyse hiervan gebruik ik twee complementaire concepten: Semi-autonome velden (Moore 1978), om de interrelaties tussen de twee rechtsvormen tijdens de erkenningsprocedure te begrijpen, en "forum shopping" (K. von Benda-Beckmann 1981) om de hieruit voortvloeiende gevolgen in het gemeenschapssysteem van conflictbehandeling te analyseren.

Hoofdstuk 1 behandelt enkele centrale theoretische problemen, beginnend met het begrip "gemeenschap". Daarna wordt het begrip "recht" besproken en wordt op de problemen rondom "recht in de maatschappij" ingegaan. Afsluitend wordt het begrip "Andes-recht" gedefinieerd. Deze discussies gaan uit van de noodzaak om de sterk geïdealiseerde en eenzijdige voorstellingen over Andes-gemeenschappen te overwinnen. Daarom zeg ik dat een gemeenschap "bestaat" als er door een groep van boeren

een interne organisatie is ontwikkeld die de hulpbronnen van de groep controleert en administreert. Deze definitie maakt het ons mogelijk om deze twee centrale aspecten in het erkenningsproces te bestuderen, en het helpt ons verder om de Andes-gemeenschap als een sociale ruimte te beschrijven die semi-autonoom is in het genereren en handhaven van recht.

Hoofdstuk 2 geeft een historisch overzicht over de ontwikkeling van de relaties tussen staat en boerengemeenschappen. Dat betekent echter niet dat wij de historische continuïteit tussen de pre-koloniale *ayllu* en de tegenwoordige gemeenschappen accepteren die door sommige antropologen en historici wordt gesuggereerd. Sinds de tijd van de Inca's, en vooral tijdens de koloniale periode, hebben de oude *ayllu*'s ingrijpende economische, sociale, culturele en territoriale veranderingen ondergaan.

Hoofdstuk 3 behandelt de regionale en micro-regionale context van de twee onderzochte gemeenschappen: het departement Cuzco en de provincie Quispicanchis. Daarbij ga ik niet van een politiek-administratieve indeling, maar eerder van een economische conceptualisering van "regio" uit. De keuze hiervoor heeft een belangrijke reden, want zij houdt rekening met een van de grootste problemen van de huidige boerengemeenschappen: hun ongelijke integratie in de markt. Een beschrijving en analyse van de samenstelling en structuur van de markt is daarom van groot belang.

Hoofdstukken 4 en 5 beschrijven de belangrijkste kenmerken van de twee onderzochte gemeenschappen Paroccan en Ccachabamba. Ondanks het feit dat zij dicht bij elkaar zijn gelegen, laten zij zeer uiteenlopende historische processen zien. Paroccan heeft een zekere organisatorische eenheid en controle over hulpbronnen, terwijl Ccachabamba daarentegen geteisterd wordt door twee antagonistische sociale groepen, en er nauwelijks gemeenschapscontrole over hulpbronnen bestaat. Landgebruik en -verkoop in Ccachabamba bijvoorbeeld hangt af van individuele besluitvorming en is derhalve aan de dynamiek van de markt onderworpen.

De redenen voor deze verschillen liggen grotendeels in de erkenningsprocedure die beide gemeenschappen hebben gevolgd. Een eerste onderscheid ligt in de historische fase waarin de gemeenschappen met de procedure begonnen. De Paroccan gemeenschap begon met het proces tijdens de Landhervorming. Dat maakte het hun mogelijk om de door de overheid ontwikkelde management modellen af te wijzen en eigen controle over hun land te behouden. Ccachabamba, aan de andere kant, werd in de dynamiek van de staat betrokken. De tegenstrijdige belangen maakten het hen onmogelijk om voldoende solidariteit op te bouwen, met het gevolg dat hun erkenningsverzoek niet werd geaccepteerd.

Hoofdstuk 6 behandelt de veranderingen in de gemeenschappen tijdens en na de beschreven processen. Toen de gemeenschappen besloten de erkenningsprocedures te

starten, werden zij door bepaalde verwachtingen gedreven: meer rechtszekerheid met betrekking tot hun land, betere mogelijkheden om krediet te verkrijgen, meer toegang tot overheidsdiensten. Tot op welke hoogte werd aan deze verwachtingen voldaan? Wij behandelen hier een aantal problemen die de gemeenschappen sterk hebben beïnvloed: overbevolking, schaarste aan land en werkgelegenheid, lage produktiviteit etc. De belangrijkste conclusie is dat de erkenning, in het geval van Paroccan, vooral de versterking van de communale organisatie en de autoriteitsrelaties binnen de gemeenschap en naar buiten toe beïnvloedt. Met andere woorden, zij fungeerde als sociale controle en machtsbron. Zij maakte ook een soepele verhouding met overheidsinstellingen mogelijk, ofschoon andere gemeenschappen, zoals Ccachabamba, ook op informele wijze enige steun van de overheid konden verwerven.

Hoofdstuk 7 vat de meest belangrijke conclusies van het onderzoek samen. Het gaat terug naar de in het begin behandelde vragen en hypothesen. Empirische conclusies en theoretische conclusies worden apart besproken. De uiteindelijke conclusie is dat de verhouding van de staat met de boerengemeenschappen op juridisch niveau opnieuw gedefinieerd moet worden. Om dat te bewerkstelligen zal aan drie voorwaarden moeten worden voldaan: a) een objectievere en diepere kennis van de verschillende werkelijkheden van de gemeenschappen, b) het uitgaan van een lokaal perspectief, en c) de vervanging van het instrumentalistische idee van recht door een pluralistisch perspectief op recht dat zowel het niveau van regels en beginselen omvat alsmede dat van rechtsprekende instellingen.

CURRICULUM VITAE

Pedro Germán Núñez Palomino was born on October 15, 1956 in Callao, Perú. From 1974 to 1981 he studied Law and Education at the Catholic University in Lima (B.Sc. and Professional degree in Law and Education). From 1979 to 1981 he was a counselor at the Research and Counseling Center (CIDAP). From 1982 to 1984 he studied Law at Tulane University in the United States of America and obtained his LL.M. degree. From 1984 to August 1985 he was a full-time lawyer at the Peruvian Centre of Social Studies. From September 1985 to August 1986 he worked at the Amazonic Research Centre (CIPA).

From 1986 he has been associate professor at the University of Lima and the University of San Martín de Porres. From 1989 to 1994 he was Ph.D. student at the Department of Agrarian Law at Wageningen Agricultural University. During this period he published several articles on agrarian law and legal history and education. He did fieldwork in Cuzco from 1989 to 1991. In 1993 he published the book *Peruvian Political Ideas*. In 1992 served as General Director of Legal Counseling at the Ministry of Agriculture.