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# A Comparative Study of Land Tenure, Property Boundaries, and Dispute Resolution: Examples from Bolivia and Norway

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# **A COMPARATIVE STUDY OF LAND TENURE, PROPERTY BOUNDARIES, AND DISPUTE RESOLUTION: EXAMPLES FROM BOLIVIA AND NORWAY**

by

**Mark R.G. Goodale and Per Kåre Sky<sup>1</sup>**

## **1. INTRODUCTION**

In this paper we compare and contrast patterns of land tenure, property boundaries, and dispute resolution regarding property using examples from two diverse social and economic regions: Bolivia and Norway. Although we focus our discussions on the two examples in their own contexts, the goal of this paper is essentially a comparative one. By placing the examples of Bolivia and Norway side by side, we hope to shed light on common strategies while recognizing the diversity to be found in the ways that people relate to land. In a concluding section, we will draw out the similarities between the two examples as we see them; but we want to emphasize that our strategy is to develop the two examples such that the reader will be able to make his/her own evaluations and also be able to compare the material here with other examples from other regions. Because of this comparative purpose, we want to acknowledge at the outset that this paper will not be a comprehensive analysis of the land tenure patterns, property boundary usages, and dispute resolution processes of either of the two countries; for that, the reader should look to other more in-depth works, either by the authors of this paper or by others. We also do not seek to construct a typology based on the areas to be discussed. Classifications of this sort are usually overly general to the point of being unhelpful for future applications, and examples from only two countries would be inadequate for such a systematic theory in any case.

But we do believe that by using data based on field research and related methods from two regions starkly distinguished from each other by language, socioeconomic levels, political histories, and extent of integration into world markets, we will be able to present a fairly rich

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picture of how people interact with their bounded environments and the various meanings that they construct *through* such environments. Norway has one of the highest standards of living in the world and is in many ways a model of economic and social efficiency; Bolivia, by contrast, is characterized by extreme ecological zones and has struggled for most of its 170 years of independence to both maintain its population at the most basic of levels and to achieve social stability. Yet, despite these significant historical and contemporary differences, the ways in which people relate to land in both countries are often remarkably similar, particularly in rural areas.

## 2. AN INTRODUCTION TO LAND TENURE IN BOLIVIA AND NORWAY

### 2.1 BOLIVIA<sup>2</sup>

Bolivia is a nation of fairly recent origin but with ancient roots. It achieved its independence from Spain in 1825 and came of age in a time when classically liberal economic and legal philosophies were dominant in both Europe and the Americas. Throughout the 19th century, most national legislation was consciously modeled on European and influential American exemplars, especially the United States and Mexico (Trigo 1958). This meant that in relation to land tenure, efforts were made to ensure the free alienability of property and otherwise support the development of “private property” with all that implies, both socially and economically. These governmental efforts to create a nationwide structure of private property in the 19th century must be seen in light of two contrary land tenure forces, both of which predated the emergence of the Bolivian nation-state.

First, a system of landholding was prevalent in Bolivia called *latifundia*. A *latifundio* in the Bolivian context is a large landed estate created during the colonial era when Spaniards took advantage of various destabilizing policies vis-à-vis the large Indian population, and an overall decrease in the Indian population due to disease and other factors, to appropriate large tracts of the most fertile land. These estates, or *haciendas*, depended on the labor of Indians, who migrated to the haciendas and lived and worked there in exchange for usufruct rights. Although the hacienda system did not extend to, or survive in, many regions of Bolivia—for example, the north of Potosí Department—it did remain an important factor in many of the inter-Andean valleys, like the fertile Cochabamba Valley in the central part of the country. The hacienda was obviously a challenge to policies that sought to create a nation of freeholders—both Indian and non-Indian—because it concentrated landownership in only a very small percentage of the population, while keeping the much larger percentage in a position where they lived and worked essentially as serfs with neither the ability to alienate land, nor leave the land they had usufruct rights in.

Second, a prehispanic system of land tenure played—and continues to play—an important role in questions of land tenure in Bolivia. In the highland areas of Bolivia particularly—including most of the north of Potosí Department—Indians lived within politico-legal structures called *ayllus*. An *ayllu* is a macro-regional, fictive kinship unit that was probably created to deal with the challenges of living in the extreme ecological zones in the Andes (Murra 1972, 1975). The *ayllu* has been the basic unit of Andean social organization since prehispanic times. Particularly in the north of Potosí, *ayllus* retain many of their prehispanic features, including “an internal organization based on dual and vertically-organized segments, communal distribution of

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<sup>2</sup> In this and the following sections, land issues in Bolivia will be discussed based partly on fifteen months of field research in a town called Sacaca, located in the north of Bolivia’s Potosí Department. This region, which has been called “the heart of indigenous Bolivia” (Zorn 1997), is important because most of the uniquely Bolivian land tenure patterns are still found there.

resources, and a ‘vertical’ land tenure system which includes the use of non-contiguous *puna* (highland) and valley lands” (Rivera Cusicanqui 1991; see also Platt 1982). The internal organization of ayllus can be conceptualized as a set of “Chinese boxes,” with each territorial and kinship unit part of an ever larger set of ethnic units, which culminate in one grand unit, itself divided into two moieties, which relate to each other as complementary opposites (Platt 1982).

For our purposes, what is most salient regarding ayllus and land tenure is the fact of non-contiguity, which is quite different from traditional forms of private property, where an owner’s property is bounded within a single plot, meaning that a single, measured piece of land will be enclosed by four sides, and bordered by other distinct pieces of property, owned either by others or the same person. In ayllu land tenure, by contrast, recognizably distinct pieces of land will spatially leapfrog over sometimes great distances, with several or many bounded plots within the recognized property, but none of which are contiguous with the other. A way to envision how this works is to imagine a large quilt, covered with many different patches. One ayllu’s land might include 10 out of the 30 patches, with none of the patches contiguous with each other. What this means is that land boundaries in many parts of rural Bolivia are not understood by people spatially, but rather conceptually. Property is not something that is seen primarily as land divided on geometric principles, but rather as a set of continuing relationships regarding access to agricultural products that happen to be grown in widely diverse ecological niches.

One more feature peculiar to ayllu land tenure should be mentioned. This conceptual understanding of property results in land tenure within the ayllu that is a mixture of both ownership and usufruct rights. The ayllu technically “owns” its land, and within the ayllu’s property individual families “own” their divided plots in the sense that they can exclude other ayllu members from using them and can seek damages in the non-State dispute resolution system (see part V) for trespasses and damages to their property. In this sense the ayllu’s relationship to land is that of ownership. But, although the ayllu owns ayllu lands and individuals have an ownership-like relationship to divided lands within the ayllu’s properties, neither the ayllu itself nor individual members can sell their land. The ayllu is bound by unwritten customary law to prohibit outsiders from buying into an ayllu’s properties, the object being to maintain land within individual families so that the families can be sustained in perpetuity.<sup>3</sup> Thus, although the ayllu owns its land, the boundaries remain the same, with the exception that the land tends to undergo periods of micro-division<sup>4</sup> when the rural population swells or economic conditions cause urban-rural migration (usually in the form of sons moving back from the cities because of lack of work, or returning to their hamlets after the quasi-mandatory period of labor in the coca rich Chapare region). In this sense, individuals within the ayllus experience property the way those who have only usufruct rights do.

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<sup>3</sup> The division of land by families within ayllus is a complicated matter that will not be fully explored here. In part V we touch on this subject within the context of dispute resolution processes, since many problems arise over land division. In rural Bolivia, where the land is generally poor, and the rural areas experience periodic rural-rural, rural-urban, and urban-rural migrations, relationships to land exist in an almost constant state of conflict.

<sup>4</sup> In this sense, we can say that ayllu boundaries periodically change spatially but not conceptually. Although actual boundaries in the form of rock walls, etc., are shifted, the existence of the ayllu’s lands remains solid and individual understandings of its scope and extent do not undergo significant change. See part III for greater elaboration on this point.



Despite the history of classical liberal (now neoliberal) economic policies with regard to land in Bolivia, a major historical event in the modern era was characterized, in part, by efforts to modify existing land tenure structures: the 1952-1953 National Revolution and Agrarian Reform. With the historical inequalities over landownership resulting from the latifundia system as a principal factor, the radicalized MNR party (National Revolutionary Movement) seized control of the State, nationalized the mining and other major industries, and, acting through armed Indian militias and rural community organizations, appropriated the large landed estates that formed the core of the latifundia system (Klein 1982: 234-237).<sup>5</sup> With respect to land tenure, the result of the events of 1952-53 and the aftermath was the complete abolition of the latifundia system, a redistribution of formerly landed estates among Indian communities, and the requirement that newly won lands be titled and registered.

One side-effect of the requirement that titles be registered was the further disintegration of ayllu land tenure in areas where haciendas and ayllus co-existed. The reason for this is that the new land titles—and the way that the land itself was measured and recorded—had to conform to State notions of property, which were modeled on doctrines that emphasized free alienability of land and contiguity of parceling. But in rural areas in which the haciendas had not been strong the ayllus were not as affected by the agrarian reform because large tracts of new land did not suddenly come into the possession of Indians.<sup>6</sup> The result was that the country can be characterized by two fundamentally different and usually opposed forms of land tenure: the ayllu land tenure system and the non-ayllu State-supported system (and increasingly NGO-supported), which revolves around the principle of free alienability. Although the overall effectiveness of the Agrarian Reform over time in increasing agricultural output and otherwise raising the standard of living for rural Bolivians is questionable (see Antezana 1999; Solón 1997), it did manage to destroy the feudal latifundia system. The unintended consequence regarding land tenure was to weaken indigenous patterns of land tenure in areas where haciendas and ayllus had existed together.<sup>7</sup>

## 2.2 NORWAY

In the Middle Ages a unique system of property ownership was developed in Norway. In this new system, rights in property were not linked to actual tracts of land but to shares in the rents

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<sup>5</sup> As Klein says regarding the distribution of land on the eve of the 1952 Revolution in Bolivia: “the 6 percent of the landowners who owned 1,000 hectares or more of land controlled fully 92 percent of all cultivated land in the republic. Moreover, these large estates themselves were under-utilized, with the average estate of 1,000 or more hectares cultivating but 1.5 percent of its lands. At the opposite extreme were the 60 percent of the landowners who owned 5 hectares or less . . . which accounted for just 0.2 percent of all the land and were forced on average to put 54 percent of their lands into cultivation” (1982: 228).

<sup>6</sup> The 1952-53 reforms nevertheless impacted the north of Potosí in significant ways that are outside the scope of this paper. For example, it was during this time period in which many communities were reorganized into *sindicatos*, or rural peasant unions, which would come to exert a fundamental change on local power structures.

<sup>7</sup> In 1996 a major new law was passed that was supposed to reform and revitalize the reform legislation of 1953. This initiative of the National Institute for Agrarian Reform (INRA) along neoliberal lines has been subjected to trenchant criticism in one important study (Antezana 1999); in another, it receives a better review, yet still within the context of much skepticism as to both the motivations behind it—the desire to make land available for large centralized companies—and its effects—less participation of peasants in decisions over land (Solón 1997).

derived from the land. In the period 1660-1850, Norwegian land tenure gradually underwent a shift from this system of owning shares of rent in land to landownership proper. Accordingly, the structure of Norwegian peasant society changed during the course of the 18th century. It evolved from a relatively homogenous peasant society—in terms of land tenure—to a stratified society where different types of landowners came into being, for example freeholders and cottars (Sogner 1976).<sup>8</sup>

The ownership of agricultural units before the transition to freeholding was typically divided among many people, but there was, according to Sogner (1976), great stability and continuity in the actual boundaries of the units themselves. A unit might have had many owners without this leading to it being physically divided.

The enclosure movement came to Norway later than to the other Scandinavian countries; for example, by 1800, the enclosure movement was well-established in Sweden and Denmark (Tønnesson 1981). This is significant in light of the fact that it was not until 1821 that Norway's land consolidation system was officially created, and not until the end of the 1850s that the actual land consolidation process gathered noticeable momentum (for more on land consolidation, see below).

During the 19th century a long standing drive towards full occupancy was completed in Norwegian agriculture, and the owner-operator became firmly established as the dominant type of farmer (Sevatdal 1986a). Today, more than 96 percent of all farm units are owned by private owners.<sup>9</sup> There are also three main types of commons in Norway: state common land, parish common land, and land jointly owned by estates.

Norway's farm units are small. Jacoby's (1959) comparative analysis of land consolidation in Europe concluded that Norway was one of the countries in which subdivision has been relatively extreme and where restrictions on fragmentation had been introduced relatively late (in 1955). The average size was 8.4 hectares in 1983 (Norway 1983 Agricultural Statistics). Furthermore, the actual number of farm units has decreased in Norway since the mid-1950s. The overriding goal in Norwegian agricultural policy is to create, and then ensure the stability of, economically viable farm units. Agriculture is still heavily regulated and subsidized by the government; it is also highly mechanized.

To understand the structure of property boundaries of "infields" in Norway, it is important to understand that many farms have shares in jointly owned estates. More than 50,000 farms hold shares in jointly owned land (Sevatdal 1986c). In these cases, the infields are subdivided and the outfields are kept in joint ownership. Each new farm established by a subdivision gets a share in the outfields. The various uses (grazing, hunting, fishing) of the outfields are treated as an estate

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<sup>8</sup> Sogner (1976: 185) describes the Norwegian farmer and cottar in this way: "The farmer (called in Norwegian *bonde*, *gårdsmann* or *oppsitter*) was a man who lived in one place and supported his family by working a farm. His farm was taxed on the basis of a certain assessed value and was entered in the official land register as a separate and independent unit. The cottar also lived in one place and made a living by working a farm, but his farm was not separately assessed; instead, it was entered on the land register under the assessment of the larger estate on which it was situated. The cottar was the farmer's tenant and he paid his rent either in cash or through labour."

<sup>9</sup> A "farm unit" is a measurement used in Norway to describe both the actual land owned by someone—which can be fragmented within a given area and, importantly, non-contiguous—and the rights of the same property owner, which include rights over his/her own property, but also sometimes rights to use property owned by another in the same area. The land area portion of a farm unit is usually measured in decares or hectares.

and are subdivided in various ways. One therefore finds different layers of property boundaries in the same area and this fact also complicates efforts to alter land use patterns in areas that feature this “dual” property division. But it is always possible for one or several shareholders to apply for land consolidation.

The predominant settlement pattern in Norway historically comprised the single farm. Even though the farm areas were large in terms of actual hectares, most of the areas were often not under cultivation.<sup>10</sup> The successive subdivisions of farms, clustered villages, or hamlets has been continuous, particularly in the coastal and the fjord areas. In these areas, whole villages have disappeared through the process of land consolidation.

The leasing of land has grown from minor importance in the first half of the 20th century to playing a major role today in Norway’s land tenure system. The leases in the first half of the 20th century were often between the owner and his successor, usually between father and son. This was a normal part of the transfer of ownership from one generation to the next. Leases typically covered the entire farm unit. Today, by contrast, leases are characterized by informality—they are often oral—and usually cover short periods of time, usually from year-to-year, but they are sometimes more prolonged. In addition, leases in recent years in Norway have covered the arable land only, not the farmstead or use rights on adjoining property.<sup>11</sup>

A recent report presented to the Norwegian parliament (Stortingsmelding No. 19 [1999-2000]) shows that the number of farm properties has been stable in recent years, but the number of *active* farm units has been decreasing. Further, the number of farms with fewer than 20 hectares has been decreasing, but the number of farms with more than 20 hectares has been increasing. On average each farmer “operated” (owned or leased) 13.5 hectares in 1998, which is an increase of 3.5 hectares since 1985. In 1999, 21 percent of the farms in Norway were leased. In addition, over 90 percent of all transfers of agricultural and forest lands take place within the same extended family. This fact—together with an official policy of price regulations regarding transfers of such land—means that there are fewer alterations of property boundaries than would otherwise be the case.

Land consolidation in Norway is normally carried out for all the holdings in a specific, geographically limited—but defined—area.<sup>12</sup> The size and scope of land consolidation varies from minor adjustments of boundaries between two holdings, to complete rearrangement of

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<sup>10</sup> For example, it was not unusual to find farm areas with only about .2 hectares per person under cultivation.

<sup>11</sup> See above on what a farm unit can fully encompass.

<sup>12</sup> Land consolidation as a process was established by acts of parliament in Norway in 1821 and 1857. It allowed parties to apply for consolidation to dissolve joint ownership and, in order to reduce fragmentation, to reallocate property through the exchange of land (1857). The first land consolidation court was established in 1859. In this first period after the establishment of the formal court system (1859-1897), there were no formal requirements for the judges’ training, but they typically had some knowledge of land consolidation procedures, the layout of farm areas, surveying, and mapping. In 1897, the Agricultural University started to give formal courses in land consolidation. In 1935 the land consolidation courts were further charged with adjudicating very specific cases regarding the marking and description of property boundaries. In 1979, the Highways Department and the Norwegian State Railway received permission to begin applying for land consolidation when circumstances became “unfavorable” as a result of building, improvement, maintenance, and operation of public roads and railways. Finally, in December 1998, the most recent major change to the body of land consolidation legislation was passed. Public authorities can now apply for land consolidation in connection with general, non-agricultural development in agricultural areas, “natural” areas, or recreational areas.

hundreds of holdings with planning and investment in the new resulting infrastructure. At a fundamental level, the land consolidation process is intended to restructure outdated or inefficient ownership patterns.

One of the main techniques that Norway's land consolidation courts have traditionally used has been the dissolution of the joint ownership patterns through which land and use rights are jointly owned by estates. This strategy was based on the official doctrine that ownership in rural Norway should be individualized at all levels whenever possible. Land consolidation judges were taught that individualization of ownership in the infields also "rationalized" farming in the outfields. Both the practice of dissolution and the underlying attitudes toward the commons in general by policymakers and judges have changed. Currently, the trend is to regulate areas that are subject to joint use by estates but not transform them into individualized plots.

Finally, we should mention that Norway has a computerized cadastre that consists of both a land information system and parcel maps. These two elements are not yet fully integrated. The land information system itself is divided into two parts: the judicial Real Estate Register and the Land Register.

## 3. IMPORTANCE OF PROPERTY BOUNDARIES

### 3.1 BOLIVIA

Sacaca is in many ways a typical town in the north of Bolivia's Potosí Department. Created in the 1570s, during Viceroy Toledo's infamous "reductions," in which thousands of ayllu-dwelling Indians were forced, or "reduced," into the Spanish-style towns that are found throughout the Andes, it is the capital of the province Alonso de Ibañez. The 1992 Bolivian census lists the population of the town of Sacaca itself at about 2,000 people; the remainder of the province's 21,000 people live in the almost 200 hamlets spread over the province (Instituto Nacional de Estadísticas 1992). Sacaca is one of the few towns in the province that has regular motorized transportation to a major city—Oruro—and it features electricity (since the early 1980s), potable water, and, as of the early 1990s, television, complete with daily reruns of "The Simpsons" in Spanish. The town itself is surrounded by fields owned by the townspeople, and the fields are usually separated by stone walls on all four sides. Because Sacaca, like the rest of the region, is at such a high altitude (about 12,000 feet), crop production is limited to the high altitude cultivars like potatoes and quinoa, with crops like corn being grown in a few of the province's lower intermontane valleys. Apart from agriculture, townspeople, like everyone in the province, have an assortment of animals which they pasture, including llamas, cattle, sheep, goats, burros, and pigs.

But outside of Sacaca, where the ayllus are predominant and people live in hamlets<sup>13</sup> of varying sizes,<sup>14</sup> the picture is different. The hamlets lie at varying distances from Sacaca, and the

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<sup>13</sup> "Hamlet" is the best word in English to describe the aggregations of families who live outside Sacaca in the province. The words "town" or "village" convey a sense of size and structure that is inappropriate as applied to these aggregations. The hamlet dwellers themselves use words in either Quechua or Aymara to describe where they live; in Quechua, the word *llajta* is used, preceded by the name of the hamlet, for example "Jankarachi llajta." But *llajta* is best translated as "place," which is not definite enough for wider application. The Spanish words used in Alonso de Ibañez for the hamlets are either *ranchu* (a Quechuanization of *ranch*) or *estancia* ("farm" or "cattle ranch"); *comunidad* ("community") is also sometimes used. Because these Spanish words are used in legal documents, they have been widely adopted by the people in the hamlets themselves, to the point where they have replaced *llajta* with either *ranchu* or *estancia* when discussing their hamlets among themselves.

<sup>14</sup> Although both *ranchu* and *estancia* are used interchangeably by the authorities in Sacaca and at the regional and national levels to refer to the ayllu hamlets in Alonso de Ibañez, the terms are not synonymous to the hamlet dwellers themselves, a fact that seems to have been overlooked by both Bolivian census workers and researchers (both Bolivian and foreign). To the *runa* ("the people" in Quechua, the term used by people in many parts of the Quechua-speaking highlands to refer to themselves in their own language, which they call *runa simi*, "language of the people"), both *ranchu* and *estancia* can refer to their hamlets according to common usage (see footnote 13). But the word *ranchu* is reserved for the bigger of the hamlets, usually one of the major cantonal centers (Bolivia's political jurisdictions are based on the French model, hence the smallest unit is the canton). *Estancia* is used for everything else. The confusion lies in the fact that strict guidelines are not used when calling one hamlet a *ranchu* or *estancia*; one "just knows" which hamlets are *ranchus* and which are *estancias*, and this intuitive knowledge can only be accessed by asking people in as many hamlets as possible. Although he did research in 40 out of the approximately 200 hamlets, Goodale is still unable to list a definite set of criteria in this regard. Despite this, it is possible to say that most of the hamlets that are called *ranchus* have 30 or more families in them (the unit of measurement for people when describing the size of their hamlets).

distances are measured in “leagues,” a league being understood in the region as the distance that a healthy adult can walk in one hour (it works out to about 3 miles). The closest hamlets are at about 1 league from Sacaca and the farthest are at about 15 leagues or more (see figure 1). If one walks over 15 leagues, one will cross the provincial borders; to the north and northwest, one will be in another Department, in other directions one will be in another province within Potosí Department. The topography is extreme by any measure; long river valleys cut through the province from southwest to northeast, bounded by mountain peaks that reach over 15,000 feet at many points. The soil is generally poor because of both the high altitude and overgrazing by Old World animals (who tend to pull plants up by their roots, as opposed to llamas, who eat the stems and leave the plant intact); periods of micro-division of land also impoverish the soil because of the pressure to plant in fields that have not lain fallow long enough.

All of the hamlets are also part of an ayllu (see above). Individual families within hamlets have plots of land nearby the hamlet and at varying distances from the hamlet based on the non-contiguous ayllu land tenure structure. Families almost always use rocks to create boundaries, and, like in Sacaca, they usually erect rock walls on four sides of their fields. But this is not always the case. In many areas—usually in fields not directly adjacent to the hamlet itself—fields are placed at such steep angles that rock walls are not possible. In such cases, often the side located closest to the route of access will be walled with a short structure that marks the location of the field more than serves as a barrier to entry; the other sides, sometimes located flush against a sheer cliff, will be left open. Even though a casual glance over the province’s topography reveals a forbidding, steep, eroded, moon-like landscape, on closer inspection it becomes clear that nearly all surface space that is not vertical or close to it is either under seed or lying fallow. Indeed, the sight of a lone farmer, perched on a field at a dizzying height, using his *chaki t’ajlla* to plow the hard soil just as his fathers did in the time of the Inca, is a sight not soon forgotten. Given the almost endless diversity in locations for fields, therefore, it is not surprising that the types of property boundaries are also diverse.



**Figure 1: Typical hamlet in Alonso de Ibañez,**

Having said this, it is true that, whenever possible, people from the hamlets bound their fields on all four sides with rock walls, and they do this for one simple reason: rock walls are the best way—and really *only* way, given the almost complete absence of wood—of keeping wandering animals from invading fields (see figures 2 and 3). “Invasions” (as they say) of fields by animals, and the resulting damage they do in the form of trampling and eating crops, are the single most common source of intra-hamlet conflict in Alonso de Ibañez.<sup>15</sup> In some areas, small

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<sup>15</sup> We should point out that this section along with IV and V are based on field research the results of which have not been published before now. Moreover, Goodale’s work in Alonso de Ibañez was the first long-term study of land tenure and “customary law” in this region of Bolivia.

plants with very sharp thorns are sometimes used in place of rock walls, but these are not as effective as rocks against animal invasions. The problem is that some of the (especially Old World) animals can easily scale even the highest rock walls because the rock walls are obviously not smooth like cement but are rocks piled on top of each other; the result is that for goats in particular, they are more like ladders than barriers.



**Figures 2 and 3: Bounded fields in Alonso de Ibañez, Bolivia**

The reason why field boundaries are so important is that a small herd of goats, for example, can cause damage that can be literally life-threatening for an entire family. Although an emergency system of sorts exists within hamlets, and even within individual families, for food shortages, the destruction of a significant part of a year's crop provokes a serious crisis. This problem is compounded by the fact that animals are very often given to small children as young as five years old to herd. Though children "grow up" much faster in rural Bolivia than in other places and face severe physical reprisals for negligence, these child-herders very often let their animals wander into other people's fields. And it is not only children who allow their animals to damage others' fields; although not as common, older people who are tending animals will sometimes allow them to invade another's field. This type of invasion usually occurs during festivals when there is widespread heavy drinking.

In section IV, the cultural *meanings* related to these issues regarding property boundaries will be more fully explored.

## **3.2 NORWAY**

In Norway many different types of property boundary markers are used in rural areas. The types of boundary markers vary according to the time the property was established and the rural district they are in. At present, they even vary between different land surveyors in the same district. Some boundary markers are very difficult to discern because they blend into the natural landscape, are relatively small, or are known only to those for whom they are immediately relevant. Other boundary markers can be seen from a long distance; for example, it was a common practice in some districts for surveyors to cut off the top of a tree (often a pine) in order to mark property divisions.



The issue of moving boundary markers is a very delicate one in rural Norway and has been the cause of countless disputes and even violence in some cases. By customary practice a boundary marker will be a large stone (sometimes notched with a cross; see figure 4) that is further marked by the presence of two “witnesses” (*vitner*), which are usually smaller stones placed to either side of the larger one. The unauthorized moving of boundary markers is both illegal under Norwegian law and a violation of long-standing local customary practices in all rural districts. Because of the inherent delicacy and powerfully charged nature of the issue, it is not surprising that neighbors will sometimes accuse each other of moving boundary markers surreptitiously. When this happens, there are several ways in which this type of dispute is resolved (see part V).



**Figure 4: Stone boundary marker, notched with a cross, Norway**

Throughout rural Norway, boundary markers from very ancient times can be found alongside more modern markers. Although farmers do not oppose the introduction of modern markers, they will continue to adhere to older markers as long as they are not moved or destroyed or superceded by newer ones. For example, one can find boreholes, stones notched with crosses, stone hedges, and other older styles of boundary marker used along with more consciously standardized styles, like pegs of aluminum with symbols that indicate which authority was responsible for erecting the boundary marker (land consolidation court, municipality, etc.).

Finally, property boundary descriptions in rural Norway usually are dependent on a special topographical feature that the surveyor chooses, for instance the edge of a precipice or the deepest channel at the bottom of a river. However, the high number of disputes over boundaries in Norway indicates that despite attempts to use special topographical features by officials, both the resulting boundary descriptions and the use of boundary markers that accompanies it are never foolproof in preventing validly different interpretations by parties who later have conflicting interests in the property in question.



## 4. PROPERTY BOUNDARIES AS PLACES

### 4.1 BOLIVIA

Even though the Quechua-speaking *runa* living in Alonso de Ibañez's hamlets *use* property boundaries functionally, this does not mean they *understand* property boundaries only functionally, i.e., simply as a means to prevent animals and others from invading their fields. As might be imagined for people for whom the land is their primary source of sustenance, the place where their gods and ancestors' spirits live, and the place where every generation has been buried, land and all objects on it—including property boundaries—can never be understood only functionally.

In the last few years, a number of scholars have tried to untangle the complex conceptual knots represented by the notions of “place” and “space.”<sup>16</sup> “Space” and “place” are no longer synonymous terms that refer to geographical or imaginary areas; rather, “space” is reserved for the geographical marker and “place” is what results from a cultural process by which humans invest spaces with meaning, negotiate these meanings over time, and manipulate local understandings of place for strategic purposes. Because on this view the most important level of meaning regarding places is framed at what can be called the metaphorical level, things like rocks and trees and villages are understood in the final analysis abstractly, not empirically. This seeming paradox (i.e., when one falls off a wall, is not the meaning in that act exhausted by the pain caused by the fall?) vanishes when one considers the fact that culture operates as a filter through which all experiences must pass in order to be understood. If this is true, then it is not only the more obviously elaborate activities that are understood finally at an abstract level—like religious ceremonies, political events, etc.—but *all* experience. The key, then, is not to waste time debating whether or not things like property boundaries *are* in fact invested with complex meanings, but to try to discover, if possible, *what* those meanings are.<sup>17</sup> The issue becomes a technical one related to methodology first, and secondly one of interpretation—what anthropologists mean by “ethnology.”

Given this, then, what meanings are suggested by the use of property boundaries in Alonso de Ibañez? Before attempting an answer to this, a brief digression is required regarding understandings of “urban” and “rural” in the province and Bolivia generally. In Bolivia the terms “urban” and “rural” are clearly relative, meaning that they do not correspond to fixed criteria that are applied consistently by people, either people on the street, or administrative officials. This situation is complicated by the fact that in Bolivia—and Latin America more generally—urban areas (described with various words like “ciudad” and “pueblo”), and rural areas (almost always

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<sup>16</sup> See, e.g., Clifford 1997; Friedland and Boden 1994; Gupta and Ferguson 1997a, 1997b; Morley and Robbins 1995.

<sup>17</sup> These issues have received careful attention from a number of scholars besides those cited in footnote 16. Robert Sack has explored the issues of space/place from within geography (1980, 1992). The 1991 English translation of Lefebvre's great work on “the production of space” approaches these issues from the point of view of philosophy. Finally, Blomley's 1994 work examines issues of space/place from a legal perspective, or, more specifically, from within what he calls “critical legal geography.”

referred to as “el campo” [“the countryside”]), are not thought of as geographical regions in the first instance, but rather as locations where certain moral values, political practices, legal processes, etc., are to be found. Sometimes one can predict which geographical area will be labeled in a certain way. For example, La Paz is certainly always thought of as urban. Most of the time, however, the situation is more ambiguous, particularly when considering whether a region or aggregation of people is “el campo” or not. Things become even more difficult when one understands that in Bolivia the countryside almost always carries with it negative connotations because it is the place where Indians are. This means the countryside is a symbol in national discourses of the past, underdevelopment, criminality, pre-modernism, backwardness, in short, the exact opposite of everything national discourses—and, even more, ideologies—seek to encourage for the nation.<sup>18</sup>

From the point of view of people in La Paz, Oruro, Cochabamba, and the few other clearly urban areas in Bolivia, the province Alonso de Ibañez—and indeed the whole north of Potosí Department—is without question “el campo,” and is invested with all the characteristics normally ascribed to the countryside. For this reason, “el campo” is to be avoided at all costs, and one when explains to *paceños*, for example, that one is voluntarily leaving for the north of Potosí Department, one is assumed to be either a missionary, an “engineer” (the word used for the ubiquitous technicians of various types who work in the countryside on projects), or, a “gringo loco” (a crazy outsider with no common sense). But standing in the central plaza of Sacaca, in the heart of “el campo,” the picture changes. *Sacaqueños*, though very aware of how they are perceived by people in Oruro and La Paz, nevertheless self-consciously reproduce the same urban-rural dichotomy, but this time with Sacaca serving as the “urban” center and the 200 or so hamlets (i.e., not-Sacaca) becoming “el campo.”

Because of this, although all of the people in Alonso de Ibañez lead essentially the same type of life in practice—a combination of subsistence farming and pastoralism, bi- (and sometimes tri-) lingualism, religious and festival practice that is syncretistic—those in Sacaca believe that they are much different. This belief manifests itself in important (mostly symbolic) ways. Although technically part of an ayllu, the town of Sacaca itself embraces private property notions without reservation, and part of this bundle of notions is the idea that property is freely alienable and separable from other properties without reference to larger entities like the family or community. In practice, however—and this should not be surprising given the fact that land is scarce and heavily impacted in Sacaca as well as in the hamlets—land is not as freely alienable in Sacaca as in say Oruro or La Paz. Even though Bolivian law does not restrict alienability officially to a significant extent, in practice land is kept in the family in Sacaca for generations and by custom various restrictions exist that govern the delicate subject of sale to people outside the circle of immediate relatives.

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<sup>18</sup> It is interesting to note that this process by which the countryside in Bolivia is made the negative Other, i.e., used by dominant groups as a mirror to reflect their darkest fears about themselves and express their anxieties in relation to the First World, is not a universal process. It would seem that in the United States, for example, the countryside receives the opposite treatment: it is site of the “true” America, the place where real American values are preserved against the corrupting influences of the cities. Although obviously outside the scope of this paper, one can look as far back as James Fenimore Cooper’s *Leatherstocking Tales* to see evidence of this. Although this romantic endorsement of the countryside has appeared briefly in some parts of Andean Latin America—most notably during the “indigenism” movement in Peru in the first part of the 20th century—it has certainly been the exception.

As discussed above, property in Sacaca is almost always separated by walls on four sides walls to an extent that is qualitatively different from usage in the hamlets, where walls are only used functionally to keep animals from invading fields. In Sacaca, by contrast, walls are seen as necessary as a matter of principle, because to wall off one's fields is to endorse "modern" notions of land tenure which are seen as more prestigious than the "backward," mixed land tenure system of the surrounding ayllus. Now I am able to bring this section's discussion full-circle and answer the question I posed at the beginning: what meanings do property boundaries have for people in the hamlets? It is not possible at this point to say what types of meanings existed in the past with relation to property boundaries, at least not based on the research which informs this paper. But at the present time, property boundaries in the hamlets are understood by people as a symbol of their advancement, of their participation in "urban" ideas about how land should be divided and maintained. Because private property : ayllu land tenure :: urban : rural, and the fact that the first part of each of these constructions is almost always associated with more social value and prestige, the pressure to alter cultural patterns in the hamlets *toward* the "urban" and "modern" is intense. The extent to which people in the hamlets are increasingly abandoning the more distinct and non-contiguous—even if quite fertile—lands within the ayllu land tenure system, the increased prevalence of smoother, cement-like walls as property boundaries and the willingness to accede to governmental and NGO demands to "develop" are all evidence of this process.

## 4.2 NORWAY

In Norway, the user of arable land has the legal right—since 1991—to receive a special subsidy from the government to protect or take care of the "cultural landscape," which refers in this case to aesthetic and environmental considerations regarding land. This right also carries with it reciprocal obligations *not* to do certain things that would adversely affect the cultural value of rural landscapes. This means, for example, that a farmer cannot cut down trees that stand at the edge of a plot or in the zone between plots if these trees are considered aesthetically or environmentally important.<sup>19</sup> The same principle is applied to stone hedges and streams. Even though the land is consolidated or bought from a neighbor, a farmer runs the risk of losing the special subsidy if he/she removes certain objects in the zones between the two plots. Any

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<sup>19</sup> Section 29a of the Land Consolidation Act (1979; as amended 1988, 1998) provides that the land consolidation courts around the country should take objects that are deemed part of the cultural landscape into consideration in order to preserve them whenever possible. The decision as to what will be considered part of the cultural landscape is left up to local district officials who are part of the Department of Agriculture—not the land consolidation system. In practice, these local officials do not regularly tour their districts to determine whether objects deemed part of the cultural landscape have been destroyed or moved, but each district is typically small enough that changes of that kind would be noticed. In addition, landowners must file an application each year to renew their subsidies—which form a large portion of their yearly earnings and are crucial to their economic survival as farmers in many cases—and during this application procedure they must voluntarily provide information regarding changes to any culturally important objects on their lands, an obviously poor way of actually learning of any such changes. (It should be mentioned regarding economic survival that there are quite a few part-time farmers in Norway.) In truth, the subsidies to farmers in Norway are less directly related to the preservation of the cultural landscape—although official policy asserts that they are—but rather linked more directly to broader geopolitical issues related to the European Union and Norway's relationships with their trading partners, issues that take us outside the scope of this paper.

landowner can apply to the local agricultural authorities to get permission to remove what he/she views as obstacles, and in many cases he/she is allowed to. But the main point here is that the use of the special subsidy as both positive and negative reinforcement results in aesthetic landscape patterns that differ from what they would be if only property boundaries and efficiency models were followed.

A property boundary has three different functions in rural Norway according to common understanding, both in the land consolidation courts and among landowners: the legal, the practical, and the visual (or aesthetic); this last function is also where cultural considerations come into play. The extent to which land consolidation judges and others emphasize one function of property boundaries over others is largely a matter of personal attitudes, preferences, and training. In land consolidation cases, the practical—and, to a lesser extent, the legal—function has been by far the overriding concern. This is because economic viability and other factors conducive to statistical modeling are subsumed within the practical function. But this is changing as more land consolidation judges debate the extent to which a narrow focus on “practical” concerns—which means factors relating to land that can be modeled—results in reshaped boundaries that prove satisfactory to all the parties. In one recent article, we have argued that social and cultural factors must be given equal weight during the lengthy investigation process that precedes land consolidation decisions and during the mediation process that accompanies the decision itself (Goodale and Sky 1998).<sup>20</sup>

Another issue that is important in any discussion of property boundaries in rural Norway is fragmentation. This is the process by which respect for aesthetic and cultural concerns—backed by the use of the special subsidy—along with the non-contiguous fields which exist because of the joint estates, cause fields to appear irregularly spaced in a given area. On the one hand, fragmented property boundaries cause less efficiency in land use, especially when the plots are small and have irregular shapes. It can also be argued that fragmentation, even if the result of past land consolidation efforts, leads to future boundary disputes. But these irregularly shaped boundary lines—marked by hedges, stonewalls, ditches, etc.—favor biodiversity and, as mentioned above, are also very often important elements in the cultural landscape.

Before concluding this section, we would like to return briefly to the issue of moving boundary markers. As we stated above, the issue is very delicate. Accusations and counteraccusations in this area not only create intense conflicts in the short term but often lead to what are nearly irresolvable intra-village conflicts in the long term. Such accusations are certainly not forgotten in single lifetimes and are commonly passed down through the generations. At one level, it is easy to see why the issue of moving boundary markers is so highly charged: in areas where fields bounded on four sides by fences are uncommon, boundary markers that are placed—or are naturally located—at only four points marking the limits of a given property create a much more ambiguously defined area in practical terms. The illegal moving of boundary markers only increases this ambiguity.

At another, more profound level, boundary markers are also symbols in rural Norway of something much more important than simple geometric clarity: they represent an unwritten agreement that exists between all members of the same rural community. This agreement says

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<sup>20</sup> Because Sky is also a chief land consolidation judge in western Norway, there is some hope that the position advanced in this paper will actually be realized in practice in the near future.

that even though individuals own land privately, all members of a community are bound to honor each other's rights in both private lands and the land held in common. Boundary markers can therefore be seemingly inconspicuous to the eye because it is not the actual object that is marking the property, but the memory of rights of some over certain areas and not others, and, even more, the collective respect accorded to these rights. In this sense, the surreptitious moving of boundary markers is not so much an attack on the boundaries themselves, but an attack on the community's cohesion which is expressed, in part, *through* boundary markers.<sup>21</sup>

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<sup>21</sup> In O. E. Rølvaag's great book about Norwegians settling the American West in the 19th century, *Giants in the Earth* (*I De Dage*, 1927), one of the most powerful episodes involves the moving of a boundary marker. A group of Irish settlers infringes on the area staked out by a group of Norwegians, but it turns out that the Irish had already staked out the territory with boundary markers some time before. The main character, Per Hansa, surreptitiously and with much guilt moves the Irish boundary markers to preserve the Norwegians' claims. His wife Beret discovers this treachery: "No, she could not ask such a question! . . . It was so hideous, so utterly appalling, the thought which she harboured; God forgive him, he was meddling with other folks' landmarks! . . . How often she had heard it said, both here and in the old country: a blacker sin than this a man could hardly commit against his fellows!" Here Rølvaag (or the translator, it is unclear) adds a footnote in the English version of the book for the benefit of his English language readers: "In the light of Norwegian peasant psychology, Beret's fear is easily understandable; for a more heinous crime than meddling with other people's landmarks could hardly be imagined. In fact, the crime was so dark that a special punishment after death was meted out to it. The visionary literature of the Middle Ages gives many examples" (1927: 124).

## 5. DISPUTE RESOLUTION

### 5.1 BOLIVIA

In both the town of Sacaca and in the province's hamlets, disputes over land are common. Indeed, in relation to land, one could say that people in both areas live in a constant state of conflict. But with Sacaca and the hamlets, there are significant differences between the types of conflicts over land and the ways they are resolved.<sup>22</sup>

Because Sacaca is the legally-recognized capital of the province, the typical representatives of the Bolivian government are found in the plaza: an *alcalde* (mayor), a sub-prefect (again, because of the French administrative model), notary public, public registrar, a police official, and the *juez instructor* (lit. "instructor judge"; "JI"), a judge who is the second lowest judicial official in the Bolivian jurisdictional hierarchy. The JI is usually the only judicial official in remote rural areas like Sacaca, and under Bolivian law he/she (there has been one woman JI in Sacaca's history) functions as sort of an investigator and judge at the same time; that is, he/she has quasi-police responsibilities even though a police officer lives and works in Sacaca as well. Both civil and criminal cases are heard in Sacaca's court, with a right of appeal to the next higher judicial level (*juzgado de partido*) in a court that is about 12 hours away in another town. The JI is always a titled lawyer who receives his/her appointment from the head of Potosí Department's highest court, which would be the equivalent to a State supreme court in the United States. Sacaca's JI is where all matters involving Sacaca residents are brought and matters arising between *sacaqueños* and non- *sacaqueños*.

The JI technically has jurisdiction for all civil and criminal matters arising in the province, but as can be imagined, the 90% or so of the province's residents—ayllu members who live in hamlets outside of Sacaca—do not resort to the JI to resolve most disputes, especially disputes of a certain kind: disputes regarding land. These conflicts are resolved by the "natural" ayllu authorities and/or hamlet officials who do not hold an ayllu political position but who have a "non-natural" political position that also carries with it official links to the State through Sacaca's sub-prefect. Through a "fiesta cargo" system, most men in hamlets who are not mentally ill or obviously incompetent in other ways—excessive and regular drunkenness, for example—are required by custom to rotate through both the natural and State-acknowledged political authority positions for their entire adult lives, the various positions being located within a recognized hierarchy of importance and prestige.<sup>23</sup>

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<sup>22</sup> Because of limitations of space and the purposes guiding this paper, this section is a very abbreviated discussion of the disputing process in Alonso de Ibañez. The full account can be found in Godale 2000.

<sup>23</sup> See Rasnake (1988) for a description of this process from another part of Potosí Department. This intricate system of authority positions has undergone tremendous change in Alonso de Ibañez in the last 10 years for reasons that include: national legislation that has created new authority structures in rural areas, the advent of NGOs that typically interact with the "political" as opposed to the "natural" authorities, thereby inverting the traditional scale of importance, and a general decline in ayllu structural cohesion.

With disputes that are resolved by the JI in Sacaca, formal procedures are followed that include service of process, appearance at preliminary hearings, service of witnesses, testimony on record, formal notification of results, issuance of fines if necessary, etc. In short, the process in Sacaca is more or less what one would find in larger centers. In the hamlets, the dispute resolution process follows a different trajectory. For one thing, in intra-hamlet disputes over land, the disputants are all well-known to each other and form part of a tightly controlled, organic entity—the hamlet—that is usually not more than 20 families and 100 or so people. In Sacaca, the town of 2,000 is just big enough to produce a certain relative distance from people living in the upper and lower parts of the town, such that a dispute between different people or families does not immediately affect the cohesion of the whole town. In the hamlets this is not the case. Every dispute, no matter how apparently trifling to an outsider, is considered serious and is dealt with accordingly.

The single most common source of disputes regarding land in the hamlets are invasions of fields (either fallow or under seed) by animals. When an invasion occurs, and the damage is found out—usually in the form of trampled plants or eaten crops—the “owner” (see above) of the field will simply walk over to the person who owns the animals and ask for redress in the form of seeds, help in repairing walls, or, in certain cases, a percentage of yield of future crops corresponding to the amount deemed to have been damaged. The owner of the animals is usually known because in the hamlets all animals have distinctive markings and everyone knows which markings correspond to which family. Likewise, most invasions are witnessed by someone, because animals are penned up at night and so most invasions take place during the day when animals who are “legally” pasturing are negligently allowed to enter another’s fields.

On most occasions, the owner of the animals denies they caused the damage and so the aggrieved party will then search out the responsible official. The official, who fulfills both political and judicial functions at the same time, tells the parties to come back at a time that is convenient for all—not based on written rules, but according to the unwritten rule that the time for meeting should be as soon as possible without causing anyone to miss work or an appointment in Sacaca or elsewhere. At the appointed time, the parties will meet at the house of the official in the entrance area that serves to receive visitors (marked by a stone bench and stone table, on which a blanket is placed to indicate an official visit has begun). The aggrieved party will bring any witnesses—and there always seem to be witnesses—and will briefly relate what happened. The owner of the animals will offer an alternative version if there is one, and if there are witnesses that support the owner’s version they will be there and will speak. Usually the fact of invasion is not disputed, because the damage will be obvious and *someone’s* animals were responsible. What usually happens is that the owner of the animals attempts to mitigate responsibility, for instance by claiming that the field’s walls were too low in the first place, that the children were negligent because they are “bad,” or even by admitting being drunk and not able to tend to things properly.

The official might wait for some days before making a decision, but usually the decision is made right then and there. For example, the decision might be that the animals’ owner must compensate the field’s owner by helping to repair the wall and giving up a bag of potatoes corresponding to the amount eaten. These decisions are hardly ever appealed, because they were made outside the Bolivian judicial system in the first place and to appeal them means to walk to Sacaca and start the process over again while incurring the enmity of other hamlet dwellers in the

process (because of failure to obey the local officials, placing internal disputes in front of outsiders' eyes, etc.).

To end this section, we should mention that certain types of disputes over land, which are much rarer than invasions, are routinely taken to Sacaca in the first instance. These are disputes over land boundaries between hamlets, between ayllus, or between cantons.<sup>24</sup> The reason for this is the following: although ayllu authorities are charged with resolving disputes between *members* of the same ayllu who live in different hamlets (one ayllu will encompass as few as 2 and as many as 20 or more hamlets) disputes over land boundaries between larger entities like hamlets, ayllus, and cantons are felt to require the involvement of Sacaca's authorities for two main reasons. First, disputes framed at these larger scales have often accelerated into violence between members of the different sides and only the involvement of a "neutral" outsider is thought to be able to resolve them. Second, because land on a collective level is involved in these types of disputes, the Sacaca authorities become interested because land at this level is usually registered, while the smaller plots within a hamlet are not. This interest by Sacaca officials is linked to the history of micro-management of rural land that followed on the heels of the 1953 Agrarian Reform.

## 5.2 NORWAY

Compared to the other Nordic countries, Norway has a large number of property boundary disputes per year.<sup>25</sup> When a dispute arises over land in rural Norway, the normal use of land is hindered in several ways: owners do not utilize opportunities to start building, cut down timber if needed, or otherwise continue to invest in their properties.

In Norway, land consolidation courts are organized within the judicial system.<sup>26</sup> The jurisdiction of the courts includes both land consolidation planning and the resolution of boundary disputes.<sup>27</sup> Any disputes concerning boundaries, rights of ownership, rights of users, or other matters, must be resolved in the land consolidation courts if such a resolution is necessary for the purpose of land consolidation; such disputes *may* also be brought before the land consolidation court as an independent case. Boundary disputes comprise approximately 50 percent of the caseload in the land consolidation courts. Compared to the ordinary civil courts in Norway, the land consolidation court is less formal both in relation to procedural issues and in

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<sup>24</sup> In the year 1998-1999 disputes over "cantonization"—the process by which agglomerations of hamlets seek to become an official canton—were particularly acrimonious because of the recent Law of Popular Participation (1994, 1995), which significantly altered both the jurisdictional structures in rural areas in Bolivia, and, even more, the financial benefits accruing to newly recognized political units.

<sup>25</sup> In Denmark, for example, 269 cases involving boundary disputes were handled between 1990-1996 by the "chartered surveyors" (*landinspektører*), the group charged with resolving such disputes. By contrast, the land consolidation courts in Norway heard 359 cases involving boundary disputes in 1996 alone.

<sup>26</sup> As far as we have been able to discover, Norway is the only country in the world that has a special land consolidation court system that is a part of the judicial system. The typical practice in countries that have significant land consolidation issues is to handle them through administrative bodies, with right of appeal to normal civil courts. Boundary disputes can also typically be brought in the first instance to the civil courts.

<sup>27</sup> Again, note how this dual jurisdiction is unique.



the manner in which cases are resolved.<sup>28</sup> Indeed, the land consolidation courts in Norway are particularly useful settings for studying the ways mediation as a dispute resolution technique functions in relation to land issues, mediation being the primary method that judges use in resolving disputes.

By law, the landowner has the right to choose to bring boundary disputes before the ordinary civil courts or before a land consolidation court in the first instance. Despite this legal option, most boundary disputes are heard in the land consolidation court system for the following reasons (Sevatdal 1986b): the case has not developed into a real dispute in the legal sense, such that it should be heard in a civil court; the legal situation regarding the land is obscure, and one of the owners wants an independent institution to investigate the matter; the land consolidation court procedure has the advantage that parties need not be represented by a lawyer; finally, the land consolidation court has the technical equipment and competence that is needed for all the cadastral work that typically follows upon a verdict of the court.<sup>29</sup> This is not true of the ordinary courts. After a verdict in a boundary dispute in the ordinary courts the parties have to request a survey from the surveying department in the municipality.<sup>30</sup>

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<sup>28</sup> The following are statistics from 1996 for all of Norway's land consolidation courts. There are 41 land consolidation districts in Norway, each with its own court and related administrative units. There are also 5 land consolidation courts of appeal.

- The land consolidation courts closed 992 cases.
- The land consolidation courts of appeal closed 61 cases.
- On average there were 7.5 parties per case (the largest case involved 260 parties).
- The average lifespan of a case from beginning to end (1996) was 2.7 years.
- 29,470 hectares were consolidated in 1996 (= 72,791 acres).
- 951 fragmented plots were eliminated.
- The construction of over 250 km (155 miles) of forest roads was authorized.
- Over 600 disputes were resolved through either mediation or voluntary settlement by the parties. (A dispute in this context means an element of a land consolidation case that is in question or is challenged by one or more of the parties. Some cases do not feature any disputes, and some are highly contested, especially regarding property boundaries. It would help the reader at this point to remember that a land consolidation case is not like a case in the ordinary legal meaning, in the sense of parties coming together because of a dispute to have the dispute resolved. Some land consolidation cases are amicable and are instigated by farmers in an area in order to create what they see will be more efficient uses for the land they own or have rights in. Some cases are not amicable and are instigated by some parties against others; these resemble more traditional court cases in the sense of opposing interests and winners and losers.)
- At the end of 1996, the courts had a backlog of 2,406 cases (these cases have been in the system for an average of 2.4 years).

<sup>29</sup> To practice as a land consolidation judge in Norway, one must have a specialized degree from the Agricultural University of Norway (in Ås). The minimum degree is a master's, and the course of study comprises a variety of relevant subjects, including surveying, mapping, cadastre, law, and land consolidation. Much more rarely, a student will earn a Ph.D. in this course of subjects after completing the normal requirements for a doctorate; there are fewer than 15 people in Norway who have ever done this. In contrast to civil judges, a land consolidation judge is an expert in the substantive issues of the disputes, and, in contrast to private mediators, the land consolidation judge can also adjudicate if needed.

<sup>30</sup> Results from a comprehensive research project regarding mediation in land consolidation courts can be found in Rognes and Sky (1998). Among other things, the authors identified 35 different techniques used in the mediation of boundary disputes. They also found that without exception the court and disputing parties always physically inspect the disputed area or boundary. Rognes and Sky found that during these personal inspection sessions, mediation proved to be particularly successful. Regarding the mediators themselves, experience in land disputes seems to be

The process used by the land consolidation courts in boundary disputes can be outlined in the following main stages:

- (1) An owner may request the land consolidation court to clarify, mark and describe the boundaries of his/her property.
- (2) The request is then brought to the attention of all parties who have, or will have, an interest in the case.
- (3) A time limit may be imposed for the submission of written statements, but the parties may also be summoned to take part in preliminary oral proceedings.
- (4) The court session: the court will first attempt mediation in the case and may suggest arbitration as an alternative.
- (5) If a mediated solution is not found, the court will proceed to render a verdict on its own. Approximately 35 percent of the cases in 1996 were settled through mediation, which is typically the preferred result.
- (6) Marking of property boundaries (see figure 5).
- (7) Formal conclusion of the court proceedings.
- (8) The case can be appealed to the circuit court of appeal (normal civil court).<sup>31</sup>



**Figure 5: Engineers marking boundary markers, Norway**

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the critical factor underlying successful mediation, particularly experience in expropriation and negotiations with landowners.

<sup>31</sup> For cases involving land consolidation and not boundary disputes, cases are appealed to the responsible land consolidation court of appeal.

To conclude this section, we would like to return to the issue of accusations over the moving of boundary markers, a special case that, as mentioned above, is highly charged. As we described above, such accusations are very delicate and usually form the foundation of many long-standing intra-village conflicts. Such accusations are never simple. When one neighbor accuses another of moving boundary markers, the first thing that happens is that the two sides attempt to resolve the matter among themselves; indeed, they are encouraged by land consolidation officials to do so. When this approach proves unsuccessful—as in most cases—the parties come to the land consolidation court to seek a resolution.

First the judge will ascertain the facts of the case by simply listening to both sides. Frequently this will be all that is needed, because a neutral listener can often hear something that was not heard during the intense pre-court meetings between the parties. For example, sometimes the boundary marker *will* have been moved, but unintentionally; this can happen during land moving or other improvement projects. If this is not the case, and the accusation of illegal boundary moving remains, then the court will attempt to independently locate where the boundary marker was supposed to be. Usually this can be done because the court is familiar with the records of boundary descriptions and has the expertise to use them in mapping out the original boundaries.<sup>32</sup> Usually this results in the boundary marker being “re-discovered”; perhaps it was hidden by some natural process, or perhaps it was intentionally hidden. (Often an engineer from the Land Consolidation Service [not a member of the court] will go with the disputing parties to look for the “hidden” boundary markers [see figure 6].) In either case, the boundary marker is restored to its proper place. In rare cases where this process does not result in restoration up to this point,<sup>33</sup> then the land consolidation court will render an independent finding about the boundaries, which might very well result in new boundaries being set.<sup>34</sup>



**Figure 6: Engineers from Land Consolidation Service searching for disputed boundary marker, Norway**

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<sup>32</sup> Even during independent findings, the court places emphasis on the evidence presented by the parties.

<sup>33</sup> This can happen at times because some older boundary descriptions are quite vague. For example, it is not uncommon to find a piece of property described by indicating that its boundaries “run from the largest boulder to the south, to the highest point in the south,” and so forth.

<sup>34</sup> In this situation, the land consolidation judge would call witnesses and attempt to make findings as to good faith usage of the land, duration of ownership, or any other factors relevant to the case.

## 6. COMPARISONS

Several major similarities between Bolivian and Norwegian land tenure suggest themselves. First, both countries' systems underwent significant changes during the last century, which resulted in multi-layered land tenure schemes in both cases. In Norway, lands were finally enclosed and the classical owner-operator landholder became the dominant type. In this sense, by the mid-1800s, Norway had firmly embraced the prevailing liberal economic models that called for private and individual ownership. In Bolivia, the early 19th century brought formal independence from Spain. The early legislators sought to wrench Bolivia out of its past and into the modern age, and this meant, in part, the conscious adoption of "modern" land tenure patterns based on private and individualized plots and the phasing out of the commons.

But despite this drive toward classically liberal land tenure patterns, the reality in both cases was that mixed land tenure structures outlasted these efforts at homogenization, and have indeed lasted to the present. In Norway, despite the fact that the private plots are statistically predominant, jointly-owned estates are also important, in which many different farmers share rights in common to certain lands for purposes of grazing, hunting, fishing, and other activities. Moreover, in addition to these joint estates, there are two other types of commons that are found in rural areas: state common land and parish common land. In Bolivia, the ayllu land tenure system has lasted through many different governmental drives to abolish it, and today NGOs and governmental agencies often work *with*, not against, ayllus; this includes supporting land initiatives that recognize the uniqueness of features associated with ayllu land tenure, particularly non-contiguity.

The third important similarity between Norway and Bolivia in relation to overall land tenure patterns is the fact that in both countries, rural properties are inevitably small in absolute terms. As we described above, because of excessive fragmentation, rural farms in Norway tend to average about 8 hectares (1 acre = .4 hectares). In Bolivia, because of the complexity of ayllu land tenure, particularly in relation to restrictions on alienability, family lands tend to be even smaller, although we do not have exact statistics in this area. Further, in periods of urban - rural "back" migration, the impact on family lands leads to a type of micro-division that resembles the fragmentation found in Norway.

In both Norway and Bolivia, farmers in rural areas do not often enclose their fields on four sides with walls, although in Bolivia this trend is changing as "urban" land tenure patterns—which place an emphasis on enclosed properties—become more prestigious and influential, even in remote areas. Despite this, lands will be either fenced or walled where it is functionally appropriate to do so; in the case of Bolivia, where the threat of invasions by animals is real and significant. In Norway, most lands are not used for grazing but rather for lumber, hunting, and fishing, so this purpose is less central. Landowners in Norway rent out their lands for hunting (mostly deer and European moose), and so walls and fences would actually be a disadvantage in many cases; this situation does not exist in Bolivia.

But moving from the functional to the symbolic level, objects on the land in both rural Bolivia and Norway are highly valued and serve as markers of more than just property boundaries. In Bolivia, walls are now linked in people's minds with "development," and they will frequently build them where the threat of animal invasions is minimal. Indeed, it is not

uncommon to see a hamlet member packing in an aluminum door on donkey in order to have a door to the most prized field, even if the door is permanently shut with adobe and no one ever intends to enter the field through it. In Norway, as we have seen, boundary markers serve as symbols of community solidarity, representing the common agreements between people over land that bind them together and link them to the past.

Finally, in both countries disputes over land in rural areas are resolved using remarkably similar strategies. In Bolivia's Alonso de Ibañez province, there are two dispute resolution systems that operate simultaneously: the court in Sacaca that is the representative of Bolivia's judicial system, and the many different hamlet authorities that resolve the majority of intra-hamlet disputes over land outside the State system. For these hamlet authorities, the actual dispute resolution process can most accurately be called mediation, in which a neutral authority listens to both sides in order to *facilitate* a resolution rather than adjudicate one. Mediation in this setting is much more commonsensical, especially given the sensitive personal context in which conflicts in such close quarters are embedded. But because the hamlet authorities resolve disputes outside the State judicial system, their actions can still be called "alternative," even if they act with the tacit acknowledgement—and approval—of local State officials.

In Norway, by contrast, mediation has been made an official part of dispute resolution procedure. As in some part of the United States—where both mediation and arbitration have become official avenues for courts<sup>35</sup>—in Norway the informal has been formalized based on a careful assessment as to the relative merits of the various dispute resolution techniques (including the more traditional adversarial court proceeding). Mediation, which is still considered an "alternative dispute resolution" device in most countries (including the United States), has been made part of the mainstream judicial system through the land consolidation courts in Norway.

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<sup>35</sup> Having said this, a distinction between Norway and the United States in this regard must be made. In the United States, mediation and arbitration are still not used in the courts themselves; rather, judges are allowed to refer the parties to outside mediators/arbitrators in order to increase the chances of resolution and, more importantly, to streamline the process and reduce backlog. In Norway, land consolidation judges are qualified to both mediate *and* adjudicate, and they do both, even if mediation is the preferred technique for most cases.

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