

Tinterillos, Indians, and the State: Towards a History of Legal Intermediaries in Post-Independence Peru¹

Carlos Aguirre

Introduction

The study of law and legal institutions in Latin America is currently undergoing significant change, which promises to shed light on a number of quite important historical and contemporary issues. Anthropologists, historians, political scientists, and legal scholars are engaged in lively debates about the law and its connection to power, hegemony, culture, and politics. Scholars are showing increasing awareness about the many layers and dimensions of legal systems, the need to look beyond the institutional settings and the normative aspects of the law, and the importance of incorporating culture and politics into the analysis of legal phenomena (see, for example, Aguirre and Salvatore 2001).

Generally speaking, however, scholars have not paid sufficient attention to some of the most critical agents in the actual operation of the law, i.e. those who interpret, apply, and disseminate legal norms and who, in fact, play the role of mediators between state law and ordinary people: judges, magistrates, lawyers, scribes, legal clerks, and others. Although important research has been done about the highest echelons of the justice system—magistrates, high courts and the communities of lawyers, for example—very little has been written on less prominent judicial instances such as justices of the peace. Even more obscure formal and informal legal practitioners—*escribanos* (legal clerks), *tramitadores* (facilitators or legal

1 A number of friends and colleagues commented upon earlier versions of this paper and helped me refine some of my arguments. I want to thank in particular Ricardo Salvatore, Alejandro de la Fuente, Rebecca Scott, Charles Walker, Juan Manuel Palacio, Carlos Ramos, José Gálvez, Marc Becker, Stefan Kirmse, and José Ragas for their criticism, encouragement, and assistance with different types of materials. None of them is certainly responsible for the limitations and errors that readers may identify.

assistants), notaries, and *tinterillos* or *leguleyos* (pettifoggers or informal attorneys)—have received even less attention.²

The importance of studying these legal intermediaries can not be exaggerated. Understanding their social and cultural background, interests, tactics, and political and social networks could shed light on a number of issues. First, it would help us understand the actual ways in which ordinary and disenfranchised people experience, understand, and use state law. Second, it will help us comprehend the mechanisms of dissemination, appropriation, and refashioning of notions of justice, rights, and legality among the lower classes. Third, it would allow us to analyze the creation of networks of power at the local level, the forms and nature of intermediation and struggle between elites and subalterns, and the connections between national, regional, and local clusters of power. Finally, such a study would improve our understanding of the complex negotiations between oral and written cultures, white/*mestizo* and indigenous groups, and the urban and rural worlds. In sum, it will make it easier for us to understand the formation and transformation of what have come to be called “legal cultures,” especially among those whose access to state law was greatly hindered by differences of language, location, and social and economic status.

One of the most conspicuous of these legal intermediaries in Peru, especially for the period between the mid-nineteenth and mid-twentieth centuries, was the *tinterillo* or pettifogger (also known as *leguleyo*, *papelista*, *papeluchero*, *picapleitos*, or *chupatintas*). A *tinterillo* was a legal practitioner who lacked a diploma—and in most cases, did not have any kind of formal professional schooling—but still performed the duties of an attorney, advising and representing litigants. He was, in short, a fake lawyer. There must be very few characters that have been more vilified than *tinterillos* in literary, political, and historical accounts. And yet, we actually know very little about them. This article poses some questions about the place of legal intermediaries in social, legal, and political struggles in post-independence

2 For valuable social and political histories of lawyers in Latin America, see Uribe-Uran (2000) and Pérez Perdomo (2006). For Peru, see the multi-volume, encyclopedic study by Ramos Núñez (2000–2012). *Tinterillos* have been the subject of a few studies, including Lira (1984) and Becker (2010). On other forms of legal intermediaries, see Palacio (2004) and Scardaville (2003). A masterful account of legal intermediaries in China is Macauley (1998).

Peru and suggests some directions for research about their role in the making of legal cultures.

Understanding legal intermediaries in post-independence Peru also addresses some of the issues that preoccupy this volume as a whole. The formation of a national, state-centered legal system based on the universality of the law was a process shaped not only by inherited colonial notions of race, status, and power/knowledge, but also by newly-acquired liberal concepts about the rule of law and citizenship rights. As a result of this, the Peruvian legal system was “notoriously fractured,” to borrow a term that Lauren Benton has used to describe the situation in post-independence Spanish America (2002, 211). The difficulties that Peruvian state-makers encountered in creating a solid institutional basis for the republic (economic limitations, constant political stability, *caudillo* struggles, foreign wars, and regional and ethnic fragmentation) were widely amplified when it came to building a national legal system. First, there was the issue of developing an entirely new set of codes and norms with which to replace the colonial legislation. That would only begin to take place in the 1850s and 1860s, more than three decades after gaining independence. Second, state officials had a difficult time creating the network of institutions and agents that would fulfill the needs of the new legal structure (tribunals, courts, local magistrates, schools for the training of lawyers, and others). And finally, there was the complicating factor that the majority of the population belonged to different ethnic and linguistic indigenous communities that were considered inferior and unworthy of citizenship rights by those in charge of administering the state. This created a post-colonial quandary as well as a terrain for the contestation of legal and political boundaries. After all, the law, as anthropologist John Comaroff has put it, “may serve those who contest authority as well as those who wield it” (1994, x). It is at this juncture that the role of legal intermediaries becomes very significant. They played a central role not only in bridging the gap between the state and ordinary people (and, by doing so, helping to cement a relationship that would otherwise have been much more disconnected) but also in shaping a culture of contestation using the very instruments that were put in place to maintain order and domination. They were the “lubricators” of the legal system, to borrow a term used by Gilbert M. Joseph (2001, xvii).

One Law for All? Post-Independence Legal Systems in Peru

From very early in the colonial period, indigenous peoples learned how to “work the system to its minimum disadvantage” and began to litigate on all kinds of issues before different types of Spanish courts (Hobsbawn 1973). As Steve Stern has suggested (1993, 115), by the 1600s indigenous groups “had developed legal forms of struggle into a major strategy for protecting individual, *ayllu*, and community interests;” they “earned a reputation as litigious peoples.” They litigated on issues of land, labor, and the administration of local affairs, including suits against abusive authorities. They lost time, money, and many of their cases, but still “won important local victories” (*ibid.*, 116). Some indigenous people “master[ed] the art of defending themselves in alliance with appropriate bureaucrats or colonial powers” and even went on to display a “more aggressive manipulation of the juridical system to sabotage the colonials” (*ibid.*, 119, 121). The law became, in effect, a contested arena where indigenous people attempted to limit colonial abuses and defend their autonomy. According to historian David Cahill, “the main form of indigenous resistance during the colonial period was not public protest in riots, rebellions, or land invasions; it was, instead, litigation through the corrupted judicial system, basically at the local level” (1988, 115).

The Spanish colonial legal structure, in congruence with the official separation between the “Republic of Spaniards” and the “Republic of Indians,” included not only special legislation but also separate courts for “Indians” (*juzgados de indios*). These were created only in Cusco and Lima, which meant that Indians who wanted to bring their cases to these special courts had to travel to one of those two cities.³ The law also mandated that Indians were to be “favored and defended by ecclesiastical and secular courts,” a stipulation that undoubtedly encouraged Indians to pursue justice by all means possible and before all types of judicial and ecclesiastical authorities.⁴

3 To my knowledge, there is no study of these courts.

4 *Recopilación de leyes de los reynos de las indias* (1774, 188). This *Recopilación*, first issued in 1680, was a compilation of the body of Spanish legislation enacted to administer colonial affairs. Its Section VI included all the norms related to indigenous peoples, their rights, and especially their obligations. Not surprisingly, the more benevolent elements of this legislation tended to be ignored in real life and indigenous persons

For indigenous peoples and communities to engage in such massive legal effort, assistance was needed from Indian and non-Indian intermediaries such as notaries, lawyers, scribes, and others. The specific dimensions, conditions, and effects of this intermediation have not yet been studied in great detail, so we know very little about the actual negotiations and maneuvering that accompanied indigenous litigation. Informal legal counseling by *tinterillos* most likely happened, but we lack any studies about it for colonial Peru.⁵ What is most remarkable is that individuals from within indigenous communities became highly skilled in the arts of litigation and promoted a very active legal campaign in defense of indigenous rights.

Alcira Dueñas has reconstructed in detail the extraordinary case of Vicente Morachimo, who claimed to be a descendant of the Chimú lords in Northern Peru, and who appeared as “diputado general” and “procurador de naturales” before courts not only in Lima but also in Madrid in representation of several indigenous individuals and communities (Dueñas 2010, 62). Morachimo was well trained in both law and judicial procedures and became “an intermediary between the upper officials and the Indian elites and communities under the jurisdiction of the Audiencia of Lima” (*ibid.*). Morachimo’s duties included “a substantial amount of writing, typically judicial *memoriales*, lawsuits, and reports to the King.” In these documents, Morachimo denounced abuses against Indians—the *mita* or forced rotary labor, the expropriation of communal land, the *repartimiento de mercancías* or forced sale of goods, the unjust imprisonment of Indians, and other forms of mistreatment (*ibid.*, 62–3). His denunciations were not limited to his own communities in Northern Peru but included cases from as far as Azángaro, in the southeastern corner of the viceroyalty. His most famous document, filed in 1732, was the “Manifiesto de agravios y vejaciones,” a damning report on the abuses against Indians and a powerful defense of the rights of native elites. This *manifiesto*, writes Alcira Dueñas, not only constitutes “an important document for the study of Andean legal culture and discursive formation,” but it “helped shape other writings of the period as it circulated among rebels,

and communities were generally left at the mercy of abusive authorities, landowners, and other powerful Spaniards.

5 For references to *tinterillos* in colonial New Granada, see Uribe-Uran (2000, 28).

providing a legal foundation others could use to demonstrate the legitimacy of rebellion as a means to achieve justice when the colonial system failed to redress Indian subjects" (*ibid.*, 63, 65). Morachimo is but one example of what must have been a large group of native intermediaries operating in the interstices of the colonial legal system and helping promote indigenous rights.

There was also a group of state-appointed intermediaries named *Protectores de indios* (Protectors of the Indians), a type of ombudsman whose function was "to protect the Indians, alleviating them from abuses, promoting their conversion to Catholicism, and trying to enforce the laws that mandated their good treatment." They were in charge of shepherding Indians' cases through the appropriate bureaucratic and judicial channels (Ruigómez Gomez 1988, 29, 32). The *Protectores* were expected to provide legal counsel and help Indians litigate before courts, but their duties were not restricted to the legal arena since they also included assisting Indians in their attempts to make state authorities change norms or practices they deemed particularly unfair. Not surprisingly, many *Protectores* took advantage of Indians or did not adequately defend them from abuses. *Protectores* generally resided in the capital or in major provincial cities, and only occasionally in rural and remote areas of the viceroyalty, which limited their effectiveness. Still, there is evidence that some of them took their job very seriously. A *Protector* named Don Francisco de Valenzuela reported in 1650 that he had processed twelve thousand cases in his ten years in that position (*ibid.*, 109).

After Peru obtained its independence in 1821, the colonial legal system—which included, as we have seen, norms based on ethno-racial distinctions—was replaced by a new legal structure in which all "Peruvians" were considered citizens regardless of their ethnic background. Equality before the law was invoked as an ideal although, as is well known, there were plenty of exemptions to and restrictions on these principles.⁶ At the same time, the laws, codes, and procedures inherited from colonial times continued to inform the day-to-day administration of justice until at least

6 Most constitutions written in the aftermath of independence restricted citizenship rights to literate male adults, thus leaving out women and a large segment of the indigenous population, who were not literate in Spanish.

the 1850s and 1860s, when the first republican Codes were enacted.⁷ Thanks to the accumulated experience with colonial legal procedures, institutions, and agents, Indians were able to navigate the intricate labyrinths of a new legal system that, in theory, accorded them the same rights that any other Peruvian enjoyed but in practice treated them as inferior and marginal. For that, they had to count on the help of legal counselors, that is, professional lawyers.

The lawyers' guild (*Colegio de Abogados de Lima*, founded in 1808) was one of the most powerful corporations of the time and had a decisive role in state and public affairs in the aftermath of independence. Lawyers had a visible presence not only in the juridical realm, but more generally as members of what Angel Rama has called "the lettered city" (Rama 1996).⁸ According to Rama, "the corpus of laws, edicts, and codes swelled further in the independent countries that emerged from Spanish and Portuguese colonialism, conferring an important role on lawyers, notaries, court clerks, and bureaucrats" (*ibid.*, 30). A *Manual del abogado americano* (Handbook for the American Lawyer) published in Paris in 1827 and reprinted with corrections and updates in Peru in 1830 and 1834, offers an interesting if indirect window into the doctrinal formation and practical training of lawyers in the immediate aftermath of independence.⁹ Although little is known about the author (who signed only with his initials, D.J.E. de O.), the Peruvian editions, as Carlos Ramos Núñez has emphasized, "reflect an effort to adapt the original version to the still incipient Peruvian legislation" (Ramos Núñez 2000, 77). The Manual essentially followed the Spanish codification and juridical concepts, but the Peruvian editors inserted a few significant modifications, in particular a decidedly republican rhetoric and a few comments about the more egalitarian nature of the Peruvian legal system when compared with the Spanish colonial one (*ibid.*, 84). When describing the legal sanction of the distinction between nobles and plebeians, for example, the Peruvian editors noted: "This distinction has been abolished among us" (*ibid.*, 87).

7 Although there were various earlier projects, the first Civil Code was issued in 1852 and the first Penal Code in 1862.

8 It is not a coincidence that the term *letrado* designated both a "man of letters" and more specifically a lawyer. See also Mignolo (1989, 73).

9 The two Peruvian editions were printed in Arequipa (Imprenta del Gobierno, 1830) and Lima (Imprenta de Pascual Ramírez, 1834).

Although still forced to work under the colonial legal procedures, lawyers were thus beginning to receive training under a different framework, one in which republican and liberal ideas began to gain visibility. The *Manual* was the standard text used to train future lawyers until at least the 1850s and 1860s, when other authors (and new codes) offered additional instruments for legal practitioners in Peru.

During the early post-independence period most lawyers graduated from the University of San Marcos in Lima and, like their counterparts in most of Spanish America, belonged to Spanish or Creole families of relatively high social status (Mirow 2004, 121). In 1833, there were 127 lawyers registered in the membership roster of the *Colegio de Abogados de Lima*, 89 of which (70 percent) lived and practiced in the capital. The other 38 had their domicile registered in other departments.¹⁰ We do not have reliable figures for the number of lawyers serving each department and even less each city or town, but it is clear that in rural areas and small villages, where the majority of indigenous peoples lived, no or very few certified attorneys were available. Local residents thus had to rely on an increasing number of skillful but informal legal practitioners, the ubiquitous *tinterillos*.

The role of the *tinterillo* in the early years after independence needs to be linked to a larger process of the privatization of power at the local level, wherein functions such as the legal defense of the Indian, formerly considered an obligation of the colonial state, fell into the hands of private individuals. As Andrés Guerrero has noted for the case of Andean Ecuador, the process involved a paradox: the growth of the national state was paralleled by the increasing centrality of local forms of power and expertise. In Guerrero's words, "the administration of the indigenous population in the Republic was no longer a function of the central state" (Guerrero 1996, 200). There was a growing disconnection between the state and indigenous peoples, who were now much more vulnerable to powerful local authorities and landlords. This in turn created a situation in which, according to historian Mark Thurner (1997, 141), "Indians would have to

10 The rest were distributed as follows: 6 in other parts of the Department of Lima, 14 in Arequipa, 4 in Cusco, 10 in La Libertad, and 4 in Junín. This list does not include those lawyers who were acting as "dignitaries" in various positions such as Supreme Court Justices (*Matrícula del Ilustre Colegio de Abogados de esta capital*, 1833).

rely increasingly upon non-Indian intellectuals and literates for the realization of supralocal political goals and for the defense of their interests.” They were, Thurner added, “significantly more dependent on non-Indian intellectuals in their dealings with the state” (*ibid.*). Needless to say, *tinterillos* were among those “non-Indian intellectuals”. In this context, the national network of courts, tribunals, justices of the peace and other agents of state justice became, at once, ever more important. They were, however, increasingly shaped in their day-to-day application by local agents, including the *tinterillos*, who had become almost always the first and necessary instance in the process of seeking justice by the indigenous population, through litigation but also through other forms of negotiation with the state.

Lauren Benton (2002, 211–213) has called our attention to the way in which a culture of legality shaped the emergence of Spanish American republics in the early nineteenth century. Law and legal institutions, Benton argues, were made central to the process of nation- and state-formation: “Even before the borders of the new republics had been fixed, political leaders embraced strong legal institutions as a nationalist project.” This project was “national” only on paper (and even then, not fully inclusive): rural and indigenous groups were kept on the margins of the hegemonic national project. “Legal rhetoric,” according to Benton, “was central to emerging, contrastive images of urban and rural cultures” in the early post-independence era in Spanish America. What this means is that the distance between, and the differing status attributed to, urban and rural populations were in part constructed through legal discourses and practices. Legal authority was “notoriously fractured” and litigation, especially on the part of subaltern agents, “quickly revealed the weaknesses of legal orders that remained decentralized and fragmented.”

Simultaneously, post-independence state-makers embraced the notion that citizenship rights should be contingent on literacy. In an important book about writing and other recording practices among indigenous peoples, Frank Salomon and Mercedes Niño-Murcia (2011, 292–293) emphasize that independence added a new political function to literacy, namely “literacy as a ‘national’ project leading toward the transformation of Indians into citizens.” They add: “Alleged illiteracy and ignorance of the language in which official literacy had been vested made ‘Indians’ seem

poor prospects for this sort of citizenship.” And yet, “by this era a lot of the culture usually styled Andean or traditional or indigenous was already being mediated and reproduced by writing.”

Thus, on the one hand, the law—with its institutions, norms, procedures, and agents—was made central to the process of ordering society and building a national project. On the other hand, writing and literacy were adopted as defining elements of the allocation of full citizenship rights. Access to both, while certainly not impossible or unprecedented, was clearly challenging for indigenous peoples. It is at the very intersection of legal and writing practices, understood as arenas of contestation around rights and power, where *tinterillos* and other legal intermediaries came to play a crucial role.

Tinterillos thus filled an important gap: the legal mandate to create a national structure of justice was not met by the existence of a community of lawyers able and willing to operate over the entire national territory. University-trained lawyers were simply not available in smaller villages and towns, especially in the highlands. Pettifoggers had existed since colonial times and, following independence, the law actually allowed them to represent litigants in towns and villages where no (or very few) certified attorneys existed.¹¹ When lawyers *were* available, they were not always affordable (or even perhaps approachable, given the existing social and linguistic distances) to the poorer members of the local society. *Tinterillos* made legal representation possible for them, thus fulfilling a role that would not have been satisfied otherwise. Without them, a large sector of the population would have been even more deprived of legal (and political) representation. In addition, the highly formalized and potentially confusing rhetoric and theatrical display of the justice system could intimidate ordinary individuals, indigenous or not, unfamiliar with them. As de Trazegnies noted with a bit of hyperbole, “it is possible to imagine the psychological distance that an indigenous peasant could feel inside the courtroom, when he saw attorneys eloquently arguing and elegantly dressed; and then found judges and magistrates in public official events,

11 A decree of April 27, 1848, had established that in places with less than six lawyers, litigants were not required to hire a certified lawyer to be defended before judges and tribunals. Later, in 1854, the *Reglamento de Tribunales y Juzgados* increased the minimum to ten. See Ramos Núñez (2002, 366).

dressed with a black jacket, embroidered with silk, and wearing a little sword, a cane, and a high hat” (1980, 192). *Tinterillos* helped to connect these two worlds in some way, and by doing so became agents of mediation between indigenous peoples, the state, and local elites; between the oral and the written world; and between urban and rural spaces.

Defensa Libre, or the Mother of All Evils

In June 1855, President Ramón Castilla, who had recently abolished Black slavery and would soon do the same with the Indian head tax—a remnant from colonial times—enacted a much less well-known reform: he decreed *defensa libre* (“free defense”), that is, “the right given to litigants to defend themselves before judges and tribunals, without the need of a lawyer that can promote their cases” (Fuentes and de la Lama 1877, 371).¹² Predictably, an avalanche of protests and denunciations was launched by the established community of lawyers, especially in Lima. Legal journals published dozens of articles and editorials against such reform. They blamed the government for creating chaos in the administration of justice, failing to guarantee a fair trial to every citizen and, ultimately, putting at risk the very legal foundations of the Peruvian republic. Although a thorough analysis of both the motivations and ultimate effects of Castilla’s decree is beyond the scope of this article, it seems clear that it marked, if not the beginning, certainly an occasion to reinforce and magnify the bad reputation of *tinterillos* and other informal legal practitioners. Sporadic attacks against *tinterillos* appeared on the pages of Lima newspapers in the years after independence, but it was only after the enactment of *defensa libre* in 1855 that the legal establishment saw their profession in real jeopardy. By attributing to the *tinterillo* exclusively negative traits and by blaming him for all the problems that marred the operation of the judicial system, lawyers tried to convince public opinion that only established and professional lawyers could guarantee a fair application of the law and, more importantly, protect the legal foundations of the Peruvian republic.

¹² An earlier proposal to adopt *defensa libre* had been presented and discussed at the National Legislature in 1849, but was not approved. See Labarthe (1958, 16).

Manuel Atanasio Fuentes, one of the most prolific writers in nineteenth century Peru and author of numerous legal treatises, used one of his sarcastic *Aletazos del Murciélago* (“The Bat’s Wing Flaps”) to condemn the *defensa libre* reform. He argued that it brought a more dilatory administration of justice, higher costs for litigants, and a system that only benefited the rapacious *papelistas* or *tinterillos*.¹³ Another prominent lawyer, Ramón Gutierrez, also criticized the effects of this reform, focusing on the *juzgados de paz* (district courts), which he called *palenques de rateros* (“nests of thieves”).¹⁴ There, he wrote, clients were abused by those that “not having a profession and lacking, many of them, any notion that could enable them to exercise good judgment, can never deal with questions of legal importance, and nonetheless, exercise as defenders of laws that they don’t know.” In these courts, he added, “a disgraced mob is accustomed to exploiting its miserable clientele, who seek them as counselors, when they are just leeches.”

Defensa libre was revoked in 1862, but in localities with less than eight certified lawyers litigants were still allowed to use non-professional counselors.¹⁵ Although we do not have statistics about this, the number of towns and cities where there were less than eight lawyers must have been significant, and thus *tinterillos* still had plenty of opportunity to exercise their trade “legally.” Because of that, and also because lawyers wanted to make sure that *defensa libre* would not be legalized again, their aggressive campaign against *tinterillos* continued. In July 1865, for instance, attorney Antonio Iturrino, writing in *La Gaceta Judicial*, suggested that neither honor nor property should be placed in the hands of a “miserable leguleyo.” Without proper representation by established lawyers, he added, “juridical disputes would become a marketplace discussion” (*una polémica de verduleras*). *Tinterillos*, he concluded, were “moths that rot the established order of trials.”¹⁶ Manuel Atanasio Fuentes and Miguel Angel de

13 Fuentes even wrote some verses about them: “Such *tinterillos* / As San Andrés said / Have claws in their hands / Have claws in their feet.” See Fuentes (1866, 28).

14 Ramón Gutierrez, “Abusos y reformas del poder judicial,” published in several issues of *La Gaceta Judicial*, June/July 1861.

15 The decree of October 30, 1862, set at eight the minimum number of certified lawyers required to make it obligatory the participation of one of them in the legal defense. See de la Lama (1873, 65).

16 Antonio Iturrino, “La defensa libre,” *La Gaceta Judicial*, July 18, 1865.

la Lama insisted on the same point years later: “When *defensa libre* was decreed, a horde of *tinterillos* took over as defenders,” and in their hands, the Civil Code became “the cadaver of the law” (1877, 4). *Defensa libre*, they insisted, introduced chaos and discredited the administration of justice. In opposition, they described certified lawyers as “men of enlightened consciousness [and] jealous of their honor and reputation.”

The virulent campaign to discredit *tinterillos* and portray them in the most negative way reflects the efforts by the established community of urban lawyers to defend their privileges. Any shortcomings in the administration of justice were attributed to the presence of *tinterillos* or to the corrupt practices of justices of the peace. The protection of the lawyers’ corporate interests was not the only motivation behind these allegations, however. As Fernando de Trazegnies has suggested, *defensa libre* empowered intermediaries, most conspicuously the *tinterillo*, who “served other social classes (even when he also profited from them) or, at least, represented an obstacle to the interest of the dominant groups with the purpose of obtaining personal gain” (1980, 123–4). This is indeed a critical issue, one that would be even more central in the latter part of the nineteenth century and the first few decades of the twentieth century, when the social and political oligarchic structures were shaken by a wave of indigenous mobilization, as we will see below.

There was at least one dissenting voice from the lettered community, however, and a very significant one. Francisco García Calderón, a prominent lawyer and the author of the very influential *Dictionary of Peruvian Legislation*, was a critic of *defensa cautiva* (literally, “captive defense,” the name given to the obligation to have a certified lawyer in order to litigate). He suggested that the limitations of the Peruvian legal system could not be attributed to *defensa libre*, that it had not caused the ruin of lawyers, and that the campaign against it was motivated by lawyers trying to protect their turf and economic interests. García Calderón’s position was framed by his overall defense of *libertad de industria* (freedom of industry) and his critique of monopolies; all economic and productive activities, García Calderón thought, should be free for everybody to exercise. “Anybody that works to make a living, no matter what type of activity it is, has the right to enjoy the same freedom given to the rest” (Ramos Núñez 2002, 369). As legal historian Carlos Ramos Núñez has inferred, García Calderón’s

position, which reflects his “authentic liberal convictions,” constituted an implicit defense of *tinterillos*’ right to exercise their trade (*ibid.*, 366–372).

Tinterillos, Indians, and the State during an Era of Mobilization

The images of the *tinterillo* offered by prominent Limeño lawyers that I have summarized above would reverberate powerfully decades later among intellectuals, state officials, and social and political elites, especially during the period from 1885 to 1930. One particular group, *indigenista* intellectuals, can be credited with shaping and disseminating the most widely accepted images of *tinterillos*. *Indigenismo* was a literary, cultural, and political trend among non-Indian urban intellectuals, artists, and activists that aimed at redeeming Indians from oppression, incorporating them into the nation, and helping them preserve or recover their traditions, culture, and languages.¹⁷ *Tinterillos* are featured in prominent novels such as Clorinda Matto de Turner’s “Birds without a Nest” (1889), Ciro Alegría’s “Broad and Alien is the World” (1941), and José María Arguedas’ “Yawar Fiesta” (1941). They are also portrayed in numerous Indigenista works of social analysis such as those written by Luis E. Valcárcel (1972), Luis F. Aguilar (1922), Hildebrando Castro Pozo (1924), or the Mexican Moisés Saenz (1933). Not surprisingly, *indigenismo* also influenced new generations of jurists who embraced the critique of the exploiter *tinterillo* and promoted the cause of redeeming the Indian through paternalistic legislation and education (see Ramos Núñez 2006, 207–274).

In these works, the *tinterillo* was generally depicted as a totally unscrupulous male character, a real master of legal trickeries who responded only to his own personal greed.¹⁸ He particularly (but not only) abused indigenous people, semi- or illiterate peasants, who knew very little Span-

17 The literature on *indigenismo* is enormous. See especially Deustua and Rénique (1984), Lauer (1997), de la Cadena (2000), Coronado (2009).

18 *Tinterillos* were overwhelmingly male, and were portrayed as such in most of the literature reviewed in this article. Only by exception does one read about women practicing the trade. In Puno in the 1920s, a local intellectual reported that “if the husband is weak, or when he has vices, the woman tirelessly works in the fields, in commerce and in all activities of life...even as *tinterillos*” (Castillo 2009, 159).

ish and even less so the intricacies of legal jargon and procedure. He would initiate or foster legal complaints not for the purpose of seeking justice or repairing inequities, but for personal gain alone. He repeatedly and endlessly asked for money from his clients, and when cash was not available, he would seize chickens, potatoes, land, or anything else he could take away from peasants. He usually had a close relationship with various types of legal personnel—judges, scribes (*escribanos*), public defenders (*fiscales*), and others—and would often use them as accomplices.

Tinterillos were particularly scorned in *indigenista* literature for serving the interests of *gamonales*, large landowners that exercised enormous political, economic, and social power in the Andean highlands and imposed quasi-feudal mechanisms of control and labor exploitation over their indigenous laborers.¹⁹ *Gamonalismo*, as Marxist intellectual José Carlos Mariátegui suggested, was not just a social or economic phenomenon, but also one that involved multiple dimensions, including cultural and legal mechanisms of domination. It was forged not solely by the *gamonal's* personal ambition as it also involved “a long hierarchy of officials, intermediaries, agents, parasites, *et cetera*” (1971, 30). The *gamonal's* unjust but usually “legal” appropriation of communal land, these critics posited, was almost always carried out with the help of a *tinterillo*, who deceived naïve peasants into signing documents that would eventually give *gamonales* legal and effective ownership of the land. The ensuing trial, which was inevitably won by the *gamonal*, would include all sorts of tricks and maneuvers by the *tinterillo* in order to convince Indians that he was helping them in their *asunto* (case) while, in reality, he was making it easier for the *gamonal*/judge partnership to pillage them.

The moral and political depiction of the *tinterillo* in *indigenista* literature was usually accompanied by physical descriptions of him. These writers, influenced by nineteenth-century physiognomic and anthropological theories in vogue by the final decades of the nineteenth century, seemed to want to establish an association between physical appearance and moral character. In Alegría's “Broad and Alien is the World”, the *tinterillo* Bismarck Ruiz—who betrays the community in their struggle against the landowner—is described as follows:

19 For an early analysis and critique of *gamonalismo* see Mariátegui (1971). See also Burga and Flores Galindo (1980); Manrique (1988).

He was a pudgy little man with a red nose, who called himself “juridical defender.” Rosendo had found him sitting at a table heaped with papers, holding a dish of stewed meat and a bottle of corn liquor (1941, 17).

On another occasion, the same character is thus depicted:

The lawyer wore a greenish suit, heavy rings on his fingers, and across his stomach, from one vest pocket to another, stretched a chain of gold. His eyes were bleary with drink and he reeked of brandy as though he had been soaked in it (*ibid.*, 73).

In the same novel, another *tinterillo*, Iñiquez, aka “araña” (spider), is portrayed as follows:

He was small and skinny... He spent his time in his office surrounded by sheafs of stamped paper, on which he and his two aides scribbled assiduously in the thick fog of the strong tobacco he smoked. His skin was yellow and drooping mustache and gnarled fingers were still more yellow from tobacco stain (*ibid.*, 163–4).

Because of his “scrawny body sunk between his long legs and his skinny arms he really did look as though he belonged to the spider family” (*ibid.*). This image of the *tinterillo* as an “arachnid” was indeed quite pervasive.²⁰ One of the first writers to use it was Abelardo Gamarra, otherwise known as “El Tunante,” one of the most acid critics of turn-of-the-century Peruvian society. In his book *Cien años de vida perdularia* he described the *tinterillo* or *papeluchero* as “a spider that was tireless in weaving webs to trap all the flies that would fall” (1921, 176).²¹ Prominent Cuzqueño indigenista writer Luis E. Valcárcel called the *tinterillo* “law’s arachnid” (*el arácnido de la ley*) (1927, 39).

These motifs appeared not only in works of fiction, but also in books written by *indigenista* social critics. Hildebrando Castro Pozo, another classic *indigenista* author, described the *tinterillo* as follows:

20 There is an old tradition of equating the law with a spider web. Anacharsis is quoted by Plutarch as saying to Solon that “laws resemble spiders’ webs, and would, like them, only entangle and hold the poor and weak, while the rich and powerful easily broke through them” (Langhorne and Langhorne 1801, 202).

21 One of the stories in this book offered the same plot that *indigenistas* would reiterate over and over again: a litigant named *Justo* (“Just”) falls in the hands of the *tinterillo*, named *Sanguijuela* (“Leech”). After so much pain and cost, Justo loses the trial.

He's a white, *mestizo*, or Indian individual, not very well dressed, with a briefcase full of papers under his arm, a purpled face due to the signs of alcohol consumption, and always followed by a delegation of Indians, or even the whole village (...) [H]e lives a life of permanent drunkenness and cynicism (1924, 38).

It is worth mentioning here that local judges, particularly those operating in the highlands, were also portrayed in very similar terms by social critics.²² According to the standard portrait, the local *juez de paz* (justice of the peace) was not interested in dispensing justice but was instead a highly corrupt individual. He was usually portrayed as one of the members of the *trinidad del Indio* ("the Holy Trinity of Indians"), the infamous exploitative trio of authorities who exercised power and abuse in rural villages throughout the Peruvian Andes: the *gamonal*, the priest, and the justice of the peace (or, alternatively, the *subprefecto*).²³ One of Abelardo Gamarra's stories was that of Juan Pichón, a mediocre lawyer from Lima who managed to get appointed justice of the peace in an Andean town. He brought along an assistant, a "come-tinta" also called *Sanguijuela*, and together started the usual chain of abuses via which Pichón became wealthy and powerful. Gamarra describes Pichón as "a man of wide body, powerful lungs, good stomach, and a better bladder; his eyes are always injected with blood, his voice is throaty (*ronca*), his nose is reddish, his hair is long and without care, his beard disheveled, and always has the appearance of having been partying" (1921, 187). In his study on liberal professions in Peru, Manuel Vicente Villarán commented that there were 2,000 justices of the peace in the country, "almost all of them professional *leguleyos*," a contradiction in terms and an exaggeration that nonetheless illustrates the very low reputation enjoyed by local judges (1900, 15).

The targets of *indigenistas'* attacks, it is worth highlighting, were usually the lower-ranked agents of state justice: justices of the peace, *escribanos*, and *tinterillos*. They operated in geographical and social spaces that were

22 In fact, the legal profession in general was a favorite target of satirical writers and social critics such as Manuel Atanasio Fuentes, Abelardo Gamarra, and Manuel González Prada. Ernest Stowell (1942) found two hundred references to legal issues in the "Peruvian Traditions" written by noted nineteenth-century satirical author Ricardo Palma, most of them containing "invectives" against lawyers, *tinterillos*, and other legal practitioners.

23 See, for example, the novel by José T. Itolararres (José T. Torres y Lara), *La Trinidad del Indio o costumbres del interior* (Lima: Imprenta Bolognesi, 1885).

distant from the centers of economic and political power, and were blamed for all the iniquities that Indians and other subaltern groups suffered.

The inevitable companion to the standard portrait of the *tinterillo* was that of the ignorant Indian, the eternal victim of the *tinterillos'* trickery. In these narratives, indigenous persons and communities appear as childish litigants who, despite the fact that *tinterillos* and other legal agents abused them and that they very rarely won their cases, persisted nonetheless in seeking "justice" through lengthy and costly litigation efforts. Indians, according to this portrait, did not understand how the justice system worked, had a blind faith in lawyers, *tinterillos*, and judges, and did not quite understand what was at stake at any stage in the trial. They were almost "inborn litigants" ("") *pleitistas*). In the highlands, wrote Manuel Vicente Villarán, "there is no book that is more widely read than the Code" [of Civil Procedure], and added that "even Indians, when they come to Lima, buy a copy of it" (*ibid.*). *Indigenista* writer Luis F. Aguilar offered this essentialist and derogatory portrait of "the Indian":

Not just his ignorance, but also the organic shyness of the Indian are the reason why he can not defend himself against oppressors, and thus his faith in justice and his tendency to litigate. He blindly believes in the efficacy of such social mechanism, organized for the common good (...) [S]quatted before the entrance of the courts and other offices, begging, imploring everybody, he awaits patiently and resignedly to receive news about the status of his *asunto*... [E]ternal victim of the exploitation of unmerciful *tinterillos*, serving for months as servants for the attorney or even the judge, working hard during his free hours to make a living, his fate as an indigenous litigant is to wait: that is the news, the consolation, the counsel, and the command that he receives from everybody: wait! And the Indian sighs, elevates his hands to heaven, and waits... (1922, 29–30).²⁴

24 See also Sáenz (1933, 200, 202, 285). This interpretation of Indian litigiousness has been somehow refashioned in what we can call a "fetishist" explanation. According to legal historian Fernando de Trazegnies, for example, it was the Indians' sort of fetishist faith in the judicial system and their "irrational" tendency to litigate which allowed for the advent of the *tinterillo*. There was, he argues, a "farfetched" diffusion of liberal ideology, which "contaminated" indigenous mentality with the idea of individual rights and of a state whose duty was to protect them. Gradually, though, this "social faith" turned into a "magical ingredient" in the "political-ritual" battle that the indigenous peasant carries on. And this was so because "the magical and the ritualistic correspond to the Andean cultural matrix" (1980, 185).

Although it could be argued that *indigenistas* were simply reproducing the nineteenth century urban lawyers' stereotype of *tinterillos* referred to above, there is an important difference: this time the terms of the debate were framed not by the dispute, triggered by *defensa libre*, between professional lawyers and informal practitioners, but by early twentieth century racialized discussions about the "Indian" question in Peru.

As a number of studies have demonstrated, most intellectuals in early twentieth century Peru, including *indigenistas*, tended to offer a very negative portrait of the Indian "race." Indians were presented as submissive, hypocritical, lazy, alcoholic, reluctant to civilization, degenerate, and so forth. Unlike previous versions of anti-Indian racism, however, *indigenistas* offered a sort of "optimistic" prospect: Indians were indeed redeemable through a civilizing process that included, among other things, the spread of education and the enacting of paternalistic legislation (Portocarrero 1995). Under this scheme Indians were to be treated as minors and their crimes judged and punished with special consideration to their uncivilized status. Suitable legislation would help them overcome the many defects attributed to their "race" (Encinas 1920; see also Poole 1990). In the same vein, and unlike extreme, "scientific" versions of racism, this new approach emphasized the role exploitative structures (such as colonialism) and agents (such as local authorities and landlords) had had in shaping the Indians' state of prostration. Within this framework, many of these writers took issue also with cultural (and racial) intermediaries, who were accused of serving the interests of those exploiters. One of those intermediaries was of course the *tinterillo*, who was usually literate, politically savvy, fluent in Spanish, and connected to local networks of political and economic power. "Defending" the Indian thus implied for *indigenistas* a critique of this intermediary, who was often presented in racialized terms: the *tinterillo* was almost always described as an opportunist *cholo* or *mestizo*, that is, a person of mixed racial background. Valcárcel, for instance, stated that "the *leguleyo* is the best product of our *mestizaje*," thus implying that racial mixing produced degenerate and morally low characters (1927, 39).

The purely negative depiction of *tinterillos*—with its racist undertones against both Indians and *mestizos*—was a motif that permitted lettered and upper-class *indigenistas* to present themselves as the "authentic" de-

fenders of Indians and to construct them as eternal and powerless victims of all types of abuses. What most of these *indigenistas* failed to recognize was that a powerful wave of indigenous mobilization and protest was taking shape right before their eyes, and that some *tinterillos* and other legal and political intermediaries had a critical role in its development. Historian Alberto Flores Galindo called this massive mobilization of peasants “a seismic wave,” which shook especially the southern and heavily indigenous departments of Cusco and Puno (2010). In only four years, between 1919 and 1923, fifty rebellions took place in this area. This “veritable social earthquake” included attacks on haciendas and land occupations. There were also protests against “heavy or unscrupulous fiscal burdens, arbitrary political demarcations, pressure to move provincial or district capitals, merchant usury, and broken political promises” (*ibid.*, 161, 167–8). More importantly, rebellions “called peasant servitude—the very foundation of *gamonalismo*—into question” (*ibid.*, 169). As Mark Thurner wrote, “the negation of the historical agency of republican Indians opened an ideological space that would be filled by an early twentieth-century indigenism which ultimately essentialized Indians as prepolitical, indeed prehistorical” (1997, 152). The image of the passive and subservient Indian disseminated by *indigenistas* does not hold. The trope of the *tinterillo* as a purely negative and exploitative character must be subjected to scrutiny.

Red Tinterillos

Although far from denying that there were in fact cases of *tinterillos* that match the unflattering portrait offered by the *indigenistas* and literati, there is enough evidence to suggest that, especially in the period between 1885 and 1930 (that is, between the end of the War of the Pacific and the end of the authoritarian and modernizing administration of Augusto B. Leguía), *tinterillos* played a much more active and positive role in promoting the rights of indigenous peasants and communities and helping them navigate the intricate layers of national and local political and judicial structures of power.

Despite the rarity of *tinterillos* in the written records—which can be explained by the informal nature of their trade and the fact that they had to work almost always in the shadows—a few examples will illustrate their role in helping Indians and peasants foster their agendas. In the aftermath of the 1885 Atusparia rebellion, one of the most violent of the post-independence period, a series of “remarkable petitions” written by *alcaldes ordinarios* (local indigenous authorities) were presented to state authorities, including the President of the Republic. Thurner emphasizes the importance of these documents as they can illuminate some of the motives of the peasant rebels that are otherwise very difficult to discern given the lack of documents containing their own “voices.” These petitions reveal an astute appropriation of the legal rhetoric and discourse of liberalism to promote a defense of peasants’ land rights. (*ibid.*, 144, 150) One question remains: who wrote these petitions? Thurner does not offer a definite answer but hints at the existence of a group of scribes that he deems as “radical red *tinterillos* with long experience as defenders of Indians in the local courts” (*ibid.*, 144).

Other studies about peasant politics in nineteenth century Peru have highlighted the importance of the legal battles peasants fought against state authorities, landowners, or other rural agents. *Tinterillos* do not usually appear in these accounts, but we can almost “see” them operating in the shadows.²⁵ From the 1920s, we know of the case of José Carmona, a *tinterillo* who offered legal support to *ayllus* (indigenous communities) in the province of Vilcabamba in Southern Peru (Flores Galindo 2010, 178). In this and other areas, communities had established a type of cooperative scheme, known as the *rama*, to collect funds that were used, among other things, to procure legal advice and promote litigation against landowners (*ibid.*, 177; Mayer 1917). Communities used these resources to pay for *mensajeros* (messengers) and *personeros* (legal proxies) that would accompany or represent them before state and judicial authorities. In a recent dissertation, Victoria Castillo refers to this as representing an “explosion of formal petitions to the state” by indigenous *mensajeros* (2009, 1). Relatively affluent indigenous families in Puno used their own resources to sue local *gamonales* (Rénique 2004, 96). In the Cusco region, *tinterillos* were

25 Cecilia Méndez, personal communication, June 11, 2001. See, in particular, Méndez (2005); Jacobsen (1993).

hired by Indian communities to prepare *memoriales*—petitions sent to authorities, including those in Lima, to request protection against abuses by *gamonales* (Rénique 1991, 39).²⁶ “These traveling petitioners interacted with *indigenista* activists (generally white or *mestizo* pro-indigenous intellectuals, feminists, artists, and journalists) to pressure government officials to respond to specific complaints and even implement pro-indigenous legislation” (Castillo 2009, 1). Although there were *tinterillos* and messengers that betrayed the communities’ trust, others sided with Indians to the point that landowners considered them “agitators” (Rénique 1991, 39).

The best-known case of a “red *tinterillo*” is that of Ezequiel Urviola, a *mestizo* from Puno who became “Indianized” and embarked on a tireless political and legal defense of Indians during the 1910s and 1920s. He was the son of an impoverished landowner who had apparently lost his land to a powerful *gamonal*. Ezequiel was a very sensitive young student in the early 1910s, when a series of massacres of Indians took place in Azángaro, the province in which he had been born in 1895.²⁷ In 1914 he moved to Arequipa to study law at the University of San Agustín. He became deeply interested in social and political issues. During his vacations he frequently returned to Puno, where he began to denounce in local newspapers the abuses against Indians and promoted the formation of a committee to improve the social conditions in the department. Around 1920 he was already working as a local organizer in haciendas, where he formed *núcleos de la libertad* (freedom cells) and began to discuss taking concrete actions to protect Indians. He spoke Quechua and gained the trust of indigenous peasants. Furthermore, he actually began to “act” as an Indian, dressing like one and even learning what a witness described as “the subtle art of mimicry, duplicity, and pretense,” the alleged features of indigenous behavior (Rengifo 1977, 193). Contemporary observers testified that Indians “looked at him with superstitious respect” and “blindly obeyed him” (*ibid.*, 192). The next step was almost predictable: he decided to drop out of law school because, as he explained to a friend, he did not want to get a

26 Peruvian citizens, according to the 1867 Constitution (article 28), had the right to submit petitions, either individually or collectively, to different branches of the government.

27 Most of the biographical information on Urviola presented here comes from Rengifo (1977). See also Arroyo (2004).

degree in a profession that “has been used to deprive Indians of their land and to annihilate them” (*ibid.*).

Urviola became a peasant agitator and organizer as well as a legal defender of indigenous communities. Accurately speaking, he was a *tinterillo*. He also wrote petitions to the Peruvian Senate in Lima advocating the cause of indigenous peasants. Because of all this, he was the target of accusations and threats by local authorities and landlords, which forced him to leave Azángaro and move to Lima, where he joined the *Comité Pro-Derecho Indígena Tahuantinsuyo*, an organization that fought for the rights of Indians. Urviola continued working as a legal advocate for indigenous peasants who went to Lima to present their cases before the courts and other state offices. In October 1922, for example, he wrote a petition to the president of the Chamber of Deputies complaining that, while Indians were received in Lima by the highest authorities, in the provinces, “because of the intimate complicity of *gamonales* and authorities—who are *gamonales* themselves—all our complaints are dismissed and the legal mandates are disobeyed” (Rénique 2004, 93–94). He wrote numerous such *memoriales* in which, as José Luis Rénique has suggested, the tone was far from submissive and appeared rather threatening. Urviola was not alone in this. A “memorial” presented by messengers from the province of Lampa (Puno) warned President Leguía that “we came for the last time to demand justice, and in case we do not receive it, Mr. President, we will have to achieve it by ourselves in order to save our family from hunger, shame, and dishonor, or emigrate to some other Republic, where the constitutional guarantees are not meaningless.” Furthermore, “if we had wanted to take justice into our own hands, as we were resolved to do, and did not because of the observations, promises, and advice of Dr. Rubin, what would four to five hundred *gamonales* and eight to ten sub-prefects achieve against four hundred thousand indigenous people?” (Castillo 2009, 99). As Castillo has written, “even within a framework of paternalism, the indigenous messengers expressed a sense of entitlement, recognizing their rights to appeal to government officials for the protection of their rights and livelihoods. They were unwilling to accept the injustices they faced because they knew they were citizens, even though they were often not treated as such” (*ibid.*, 14).

While in Lima, Urviola lived a very frugal life and his health began to deteriorate. He died of tuberculosis in January, 1925 at the age of thirty. His funeral was a massive demonstration of grief for someone who had acquired an almost legendary status. At least twenty speeches were given at the cemetery during his burial ceremony, which included representatives from labor unions, peasant federations, and groups of radical intellectuals. José Carlos Mariátegui, who had met him in person in 1923, called Urviola “the Indian from Puno” and offered the following portrayal of him: “This encounter was the greatest surprise Peru offered me when I returned from Europe. Urviola represented the first spark of a coming fire. He represented the revolutionary Indian, the socialist Indian. Sick with tuberculosis and hunched, he fell down after two years of indefatigable efforts. Today, it does not matter that Urviola is no longer alive. It is sufficient that he has existed” (1927, 10).

Urviola was one of many such legal and political intermediaries who played a key role in fostering peasant and indigenous agendas during the early decades of the twentieth century. Such mobilization included both peaceful actions (litigation, *memoriales*) and episodes of rural violence (riots, rebellions). The aftershocks of this “seismic wave” reached Lima at a time of intense political activism, both in support of the Indian and in favor of revolutionary social change (Flores Galindo 2010, 152–196). José Luis Rénique notes that there was a well-developed network of Indian and non-Indian activists and organizations (committees, leagues, federations), an “interconnected leadership” of people who were “well-read and well-spoken” and who bridged the legal efforts in both local courts and Lima’s tribunals with the social battles taking place on the ground against abusive landlords and authorities (Rénique 2004, 97). These intermediaries did not threaten the livelihoods of indigenous peoples or communities. They did not belong to the “trinity of the Indian.” They joined Indians in their attempts to “work the system to its minimum disadvantage.” What is worth highlighting is that these “red *tinterillos*” built upon a long tradition of legal intermediaries who effectively worked as “hinges” between rural and indigenous peasants and the state, and whose role was not as negative as the standard, hegemonic narratives about them would have us believe.

Conclusion: Towards a Social History of Legal Intermediaries

By questioning the standard interpretation of *tinterillos* this article advances elements to refine our understanding of subalterns' views of the legal system and its agents. As decades of social and political history "from below" have amply demonstrated, indigenous peasants were not unaware of national or local political debates, were capable of appropriating and reshaping notions of liberalism, justice, rights, and republicanism and, most importantly, were creative and active pursuers of their own agendas.²⁸ With this understanding, it would have been quite incoherent to expect that those same subjects were so blind and even stupid when it came to their relationship with the law. Peasants' approaches to law and legal intermediation were much less naive than what the standard literature portrayed. In the 1980s, Peruvian legal scholar Luis Pásara conducted a survey of peasants' attitudes towards lawyers. According to the results, peasants consider lawyers necessary, for they could really make a difference and help them foster their cases. However, peasants also believe that lawyers can be abusive: they may delay trials and overcharge them, for instance (1988, 95–104). This poll showed that peasants' views about the judicial system and its agents are not necessarily naive or blind but quite pragmatic, proactive, and lucid. They realize what is at stake, what their chances are, who is on their side, and what can be accomplished. Lawyers (as well as *tinterillos*) could be allies as well as foes. Though they can not be always trusted, *tinterillos* were usually available when needed, while lawyers were not. Novelist Ciro Alegría, a harsh critic of the *tinterillo*, recognized nonetheless that he could represent a "formidable arsenal of defense within its fortress of stamped paper" (1941, 163).

The study of *tinterillos* and other such legal practitioners sheds light on a number of issues. In particular, it illuminates one of those "contact zones" that current historiographical trends consider key to understand processes of historical and cultural change. Intermediation—in this case, legal, but also cultural and political—is critical in particular in countries such as Peru, where different racial, cultural, regional, and linguistic groups coexist in almost permanent tension. This re-thinking of legal in-

28 A representative sample of this scholarship on the Andean region can be found in Jacobsen and Aljovín de Losada (2005).

termediation also strikes at the heart of debates about subaltern representation. Both Thurner and Guerrero address this issue in relation to local intermediaries in nineteenth century Andean societies. Thurner (1997, 144), after wondering who those “red *tinterillos*” were, posed a pertinent question: “What was the process of translation and approbation? In what sense do these petitions speak for the subaltern who cannot speak in the juridical ‘republic of letters’ for historical reasons of marginalization?”

Addressing a similar quandary, Andrés Guerrero (1996) has come up with the image of the “ventriloquist” to refer to these intermediaries who made the subaltern speak, as he says, mostly in *papel sellado* (stamped paper). These intermediaries, Guerrero argues, “re-wrote” the peasants’ transcript, thus critically altering it in that process: “A scribe not only writes down what he hears, what others want and can tell him, and what he can infer. His activity is not constrained to the passive role of writing on official paper what others tell him, even translating that from Quichua to Spanish (...) In that process, he surpasses the confines of the mere transcription, converts the demands of the Indians into strategies founded upon juridical codes and adequate to the political-bureaucratic correlation of forces.” In other words, he, like any other ventriloquist, “makes the Indians speak...in the language of the white-*mestizo* Republican state” (*ibid.*, 202–203).

These are important reflections that help make us aware of the complexities behind the relationship between indigenous people (and, more generally, subaltern groups) and the state. I am not sure that the *tinterillo* voice would necessarily mute that of his clients: the ventriloquist image implies that the other voices do not exist or are never heard, an assumption that I would like to question. But can we hear, in the end, the subaltern’s “voice” in legal contestation? On the one hand, there is a truth that we must face: except for isolated instances of accused individuals presenting their cases before criminal judges and tribunals (and even these are quite problematic, since they are influenced by the oppressive environment, if not by direct coercion and even torture), the subaltern’s “voice” is almost totally erased from the written legal record. What we hear is what others—the judge, the police, the prosecutor, the witnesses, the counselors, the messengers, or the *tinterillos*—say (or write) about them. Does this mean that the subaltern’s “point of view” is impossible to recover? Not

necessarily. Despite some scholars' agonizing reflections on the impossibility of "recuperating" the subaltern's voice, I still believe that historians can reconstruct—though always imperfectly—the point of view of the subordinate, as decades of research in social history demonstrate (Guha 1983, 2009; Mallon 1994).²⁹

The study of legal intermediaries must be a critical step in the reconstruction of the operation of legal systems and the formation of legal cultures, in particular in societies with persistent social, ethnic, and linguistic fractures such as post-colonial Peru. As this article has demonstrated, beyond the written norm and underneath the surface of legal procedures laid a highly complex network of legal and political agents engaged in myriad forms of negotiation without which the legal system would not have worked. Legal intermediaries were the lubricators of the judicial machinery. They had their own agency and worked to advance their own interests, but they were often quite instrumental in helping subaltern litigants work through the complex and frequently hostile theaters of the legal system. At the very least, they facilitated access to litigation, which was a very important form of contestation, especially for disadvantaged groups. As Melissa Macauley wrote in relation to China, "litigation-masters cases thus reveal that resorting to the formal courts empower weaker actors as well as those ideologically favored in the law codes and society" (1998, 6). The latter (the power wielded by the ruling classes) was a given due to structural forms of cultural and political domination; the former (the empowerment of weaker agents) was the result of persistent individual and collective efforts. Indigenous people in Peru systematically engaged in such efforts. They were not powerless victims of landowners, state officials, and judicial authorities; neither were they always blind prey of unscrupulous *tinterillos*. This article has shown that the relationship between indigenous groups and individuals, intermediaries, and the state, was much more complex than what standard accounts suggested, and that the Peruvian legal culture has been crucially shaped by the agency of both indigenous actors and legal intermediaries.

29 Ranajit Guha's now classic methodological suggestion of "reading against the grain" (1983) is quite pertinent here.

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