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Hunter-Gatherers' Self-Governance: Untying the Traditional Authority of Chiefs from the Western Toba Civil Association

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Abstract

The Integral Law for Aborigines (426/84) was the first legal instrument in Argentina systematically addressing indigenous peoples' rights. It was modeled on the Paraguayan Law for Indigenous Communities (901/81). Both granted collective property rights. I discuss Article 9 of Decree 574/85 in Law 426, requiring that former hunter-gatherer bands would form civil associations, like those in the non-profit sector. The policymakers later amended the clause on governance inserting the authority of chiefs along that of democratically elected delegates. I describe the Western Toba's journey to obtaining collective land title by introducing characteristics of traditional leadership, discussing local antecedents leading to the law, comparing it to the Paraguayan law, and analyzing the process through which the Toba complied with legal requirements.

Keywords

hunter-gatherers, self-governance, Western Toba, Gran Chaco, Argentina, Paraguay, Law 426/84, Law 901/81

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Hunter-Gatherers' Self-Governance: Untying the Traditional Authority of Chiefs from the Western Toba Civil Association

A rare video documenting an event that happened on July 11, 1984, was uploaded on YouTube in 2009 (Audienciadigital, 2009). The video shows hundreds of Indigenous people in front of the provincial House of Representatives in Formosa, Argentina. Many participants are carrying signs; some are dressed in traditional attire; others are beating drums. Governor Dr. Floro Bogadois addresses the crowd. After his discourse, the representative of the Indigenous people hand-delivers a paper with proposed revisions to the draft bill for the Integral Law for Aborigines (*Ley Integral del Aborígen*) (Ley 426, 1984). The person receiving the paper is the Head of the House of Representatives of the Province of Formosa and the individual who delivers the paper is the President of the Indigenous Committee of 21 (*Comisión de los 21*)—a working group formed by seven Wichí, seven Toba, and seven Pilagá representing the largest Indigenous groups in the province. Among the signs held by the people on the street, a hand-written one identifies the presence of *Tobas del Pilcomayo Sombrero Negro*, who are also represented in the Committee of 21. The sign names the villages of Churcal, Rinconada, and Vaca Perdida. Immediately after the Head of the provincial House of Representatives receives the paper with the proposed revisions, someone in the crowd shouts in Spanish: “¡El pensamiento indígena!” (The Indigenous thought!). Listening to such an impromptu statement when I watched the video for the first time in 2014 inspired me to write this article.

Passing the Integral Law for Aborigines (*Ley Integral del Aborígen*) in the provincial legislature was a momentous achievement for Indigenous peoples. The law was published in Boletín Oficial, the legislative journal of Formosa, on November 20, 1984. It became the first legal instrument in the country addressing Indigenous peoples' rights in a coherent and forceful manner (Inter-American Development Bank, 2010). Law 426 (1984)—as it has been known since then—granted Indigenous people access to judicial power so they could obtain property rights over land, as well as access to education, healthcare, and welfare benefits. Law 426 specified that giving “public” land back to the communities was an act of *reparación histórica* (historical reparation, redress, or compensation). The Indigenous peoples, who were all former hunter-gatherers, wanted to have the land in collective property—a model of land ownership different from individual property—sometimes called customary or consuetudinary law (*derecho consuetudinario*). Customary law regarding collective property rights had been endorsed for Indigenous peoples in neighboring Paraguay as well (Chase Sardi, 1990). Because the Argentinean legal system did not contemplate collective property rights, Law 426 required that Indigenous groups first obtain legal status (*personería jurídica*) as civil associations. The law also mandated that the provincial administration should create a new institutional framework to implement the transference of land to Indigenous associations.

The video of the historical event described above documents the political influence exerted on lawmakers by the Toba, Pilagá, and Wichí people, and their allies who were able to stage a massive public event on the stairs of the provincial legislature, with the participation of the Governor and the legislators. In this article, I introduce some qualities of the traditional leadership among the Western Toba (to give a measure of the extent to which these people have changed and adapted to current political circumstances), discuss some of the immediate antecedents of the law for Indigenous people (describing the political milieu in which the Indigenous people's vote made a difference), and compare the provincial law to the Paraguayan Law 904 for Indigenous Communities—both policies were the

product of local populism and *indigenismo* (supporting or promoting Indigenous cultures) that gradually displaced militarized conservatism in Paraguay and Argentina (Foote & Horst, 2010; Stunnenberg, 1993). I also analyze the steps taken by the Western Toba to comply with the governance requirements in Law 426, show how they formed a civil association and were able to obtain title over a considerable parcel of land—larger than the pieces of land secured by other groups.

Until the early twentieth century, the Western Toba trekked over the same ranges—reduced in size and impoverished in resources—that they had foraged since before the arrival of European colonization. Threatened by settlers and by the nation’s military forces, in 1929 the Western Toba asked Anglican missionaries from England to establish a mission with them. In 1975, after an extraordinary flood of the Pilcomayo River destroyed the buildings of El Toba Mission, the missionary staff relocated to the town of Ingeniero Juárez (about 25 miles south of Toba land). Most of the people who were living in hamlets and still trekking the land, resettled in three main villages. A number of extended families also moved to the outskirts of Ingeniero Juárez, forming a *barrio*. In 1984, the Western Toba population numbered about 1,200 individuals. The prospects of obtaining collective property title, and also getting access to elementary schools, public health services, and other welfare benefits, excited everyone. Extended families began splitting from the main villages and forming new hamlets on land they had trekked before.

As an ethnographer, I worked on and off with the Western Toba between 1984 and 1995. I witnessed some of the actions described here. However, at that time, I was unable to grasp the ripple effect that untying the traditional authority of the chief from the new system of governance would have on the Toba association. By re-examining the process today from the privileged position of a retrospective observer, I am amazed by, as Marshall Sahlins (2013) has said, “How small issues are turned into big events” (p. 161). I will focus on what may appear as a small issue, the amendment of Article 9 of Decree 574/85 in Law 426, which regulates the election of delegates (similar to Board members in non-profit organizations). Article 9 includes traditional chiefs in the governance of civil associations along with delegates elected for fixed-term positions. I argue that by separating the traditional (culturally embedded) authority of chiefs from that of other representatives, the Toba of Western Formosa Province set the basis for a civil association adapted to their time and place. The Toba case study demonstrates once more that Indigenous self-governance is “contingent, conditional, and dependent on the particular contexts in which Indigenous peoples act in the real world” (Borrows, 2010, p. vii).

To illustrate the differences between democratically elected officers in a civil association and caciques in hunting-gathering bands, I will discuss below some characteristics of traditional leadership among the Western Toba. As far as adult Toba could remember, in the early 1990s all their caciques (*jaliaganacá*) had those qualifications in the recent past.

An Indigenous Theory of Leadership

The Indigenous inhabitants of Formosa are former hunter-gatherers who trekked the land moving seasonally across overlapping territories. Distinct Toba, Pilagá, and Wichí bands trekked territories delineated by shifting buffer zones. These groups made alliances, traded, and fought one another, with colonists and with the army of the state. Anthropological discussions of band societies underscore collective behaviors that—operating as levelling devices—contribute to give people equal access to resources. People also use fission and mobility to resolve disputes. These behaviors appear to have the

effect of minimizing differences of wealth and power among individuals, thus avoiding one another's "exploitation" (Kelly, 2013, p. 243). For example, people in band societies often (a) secure unrestricted access to land for everyone in the group, (b) make food and goods available to wide networks of kin through sharing and distribution, and (c) work to build consensus in decisions that concern the well-being of the group.

Egalitarian band societies have been described as societies in which each person is his or her own boss. Individuals who showed wisdom usually enjoyed prestige and influence but they would not use their prestige to gain power over another member of the band. Band members were attracted to individuals who had talent and charisma, leading people by persuasion. Power worked by attraction, and the slightest tip in the balance from trust to coercion caused contention. Leaders of bands (male and female) not only excelled in some particular skills, but they also articulated moral attributes appreciated by the people, such as laboriousness, generosity, reliability, and prudence.

The leader or chief was expected to mediate in internal disputes of his group, be an arbitrator between antagonistic parties, and make alliances with other Indigenous groups as well as with the non-Indigenous. In the old times, the Western Toba leader was expected to help organize revenge parties when such alliances or negotiations failed. The old leaders did not take a large share of the goods and commodities otherwise available to them.

The authority of traditional Western Toba leaders was grounded in the hunting and gathering subsistence of the past and in a particular cosmology that viewed the world as animated by moral and mystical forces. The *jaliaganacá* (chiefs or caciques) would incorporate the same kind of spiritual power that defined the role of shamans, yet the *jaliaganacá* did not practice curing. They were chosen to protect and defend people from human enemies, much the same as shamans were expected to protect and defend people from supernatural beings and from the spirits of the dead. Moreover, the *jaliaganec* (male singular of *jaliaganacá*) was carefully chosen from among morally good individuals who had shown personal courage and commitment to the welfare of the people. The Toba said during ethnographic interviews (Mendoza, 2002) that old leaders were (a) qualified and moral individuals with a companion spirit (whenever the person sang in solitude, the people said that he or she had "a song," or "a secret"); (b) with charisma, courage, and commitment ("the *jaliaganec* loved his people"); and (c) male leaders were warriors who had obtained a human scalp.

Other Indigenous groups in the Gran Chaco region, such as the Eastern Toba, Pilagá, Mocoví, Nivaclé, and Macá held notions of leadership similar to that of the Western Toba and were described by their neighbors as warlike (Altamirano, 1993). Yet, some other Chacoans, such as the Chorote, Wichí, and Enxet, instead of highlighting the strength of their chiefs as warriors would emphasize the charisma of caciques as mediators and seekers of compromise (Kidd, 1995; Palmer, 2008; Siffredi, 1984). Particularly among the Wichí, a group that places great value on reaching consensus and avoiding open confrontation, meeting the terms of the policies in Law 426, and organizing the extended families in civil associations turned to be a highly disruptive process.

For example, in a study of land tenure and governance among the Wichí of Western Formosa, anthropologist Sergio Braticovic said that infighting for power and resources weakened the heads of

families that otherwise would have preferred to show goodwill and avoid confrontation. Braticevic (2009) said:

This [the amendment of Article 9 of Law 426] opened the doors to the possibility of collision among the members of the group; while at the same time, it created optimal conditions for co-opting, and later fracturing the leadership of various subgroups within the community. (pp. 100-101, my translation from Spanish)

Thus, after the 1985 protocol for the Law 426 for Aborigines was completed, the Indigenous communities in the province of Formosa struggled to find ways to meet the governance requirements. Many communities found it as challenging to self-organize as associations because they had difficulty establishing long-term national and international alliances with other Indigenous peoples in the region (Braticevic, 2009; Combes, Villar, & Lowrey, 2009; Matarrese, 2011; Salamanca, 2011; Spadafora, Gómez, & Matarrese, 2010).

Law 426 for Aborigines in Formosa, Argentina

Following the grassroots event documented in the video described above, the provincial legislature in Formosa sanctioned the Integral Law for Aborigines, the first indigenist land act in Argentina (Stunnenberg, 1993). Empowered by their recently obtained electoral strength after years of military dictatorship (1976-1983), distinct hunting and gathering Toba, Wichí, and Pilagá communities across the province participated in political mobilizations demanding legal property titles on the lands where they lived. Although Argentinian settlers and ranch owners occupied some lands, most were considered public or fiscal lands, owned by the state.

In 1983, Indigenous people obtained national identification cards that enabled them to participate in the democratic process and vote along with other citizens to elect new federal and provincial administrations. After the elections, the people suddenly found eager bargaining partners in elected officials genuinely interested in advancing Indigenous rights in the province, as well as in politicians who were nurturing future electoral gains—aiming at keeping seats for their political parties in the legislature and also in municipal councils. The politicians were aware that the year before hundreds of Indigenous youth had been recruited as soldiers to fight in the Malvinas/Falklands War (April to June 1982). The young men who returned to their communities, and those who died in the islands, were honored as patriotic warriors. The Malvinas/Falklands War also prompted the abrupt exit of British Anglican missionaries from the region. They temporarily resettled in Paraguay and Bolivia, leaving their advocacy work in the hands of Argentinian mission staff. The Anglican mission staff, as well as personnel affiliated with the Catholic Church, played key roles as allies in the local movement towards Indigenous autonomy and land rights (Horst, 2007).

During the 1984 to 1985 legislative sessions, empowered by newfound opportunities for exercising democratic rights, Wichí, Toba, and Pilagá leaders engaged in lobbying and activism. The leaders in the so called Committee of 21 got together frequently to discuss the proposed statute, met with the Governor and with influential members of the civil society, and lobbied provincial legislators at the capital. Indigenous people and their supporters organized public assemblies that kept the momentum

alive, aiming at infusing in the new policies the point of view that people called “the Indigenous way” of thinking (Stechina, 2012).

After five months of intense negotiations, the policymakers completed the protocols of Law 426 (Decree 574/85), which were published on May 6, 1985 in the official journal. This decree spelled out the terms and conditions for the implementation of substantive Indigenous rights in the province, including land ownership, access to health care services, public education, and welfare benefits. However, instead of proposing models of self-determining autonomy, the legislators ultimately exercised administrative convenience and used a “one-size-fits all approach to governance that in the end ensured bureaucratic control and managerial efficiency” (Maaka & Fleras, 2008, p.73).

The policymakers decided that Indigenous communities had to self-organize following the pre-existing legal model of civil associations (*asociaciones civiles*). Civil associations are neither private companies (working for profit) nor public organizations (e.g. part of local or national government). Today, with a much more strengthened civil society, numerous non-Indigenous voluntary associations in Formosa provide human and social services to low-income families, and also promote the arts, sports, and recreational activities. Some are faith-based associations; others are created by groups of friends and neighbors. Citizens who form non-commercial or non-governmental associations register their organization with the provincial inspectorate of legal entities (Inspección General de Personas Jurídicas), and periodically update the records on officers and membership. The guidelines for the provincial inspectorate of legal entities, which are still current, were established during the military rule in Decreto Ley 564/77 signed in 1977 by then Governor General J. C. Colombo.

To comply with Law 426, the provincial agency for the colonization of public lands (Instituto Provincial de Colonización y Tierras Fiscales de Formosa) was authorized to act ex-officio when handling uncertain matters pertaining to land titles for communities, and was commissioned to survey the state-owned lands claimed by the Indigenous associations (Carrasco, 2000). Law 426 also created a new governmental agency for native communities (Instituto de Comunidades Aborígenes [ICA]), with one executive director for each of the three major ethnic groups and an additional non-Indigenous executive director appointed by the provincial administration. The main purpose of this agency was managing all the issues related to the implementation of the policies in the bill.

Thus, Law 426 secured some measure of self-determination for ethnic communities that in the 1980s were, almost ubiquitously across the region, conglomerates of different hunter-gatherer bands. Except for the mandate that Indigenous communities had to self-organize following the pre-existing model of civil associations, the Argentinean Law 426 followed closely the text of the Paraguayan Law 904 (Ley No. 904/81, 1981) for Indigenous communities, sanctioned three years earlier.

Law 426 in Argentina Compared to Law 904/81 for Indigenous Communities in Paraguay

The Statute of Indigenous Communities, also known as Law 904, sanctioned in 1981 by the regime of then President General Alfredo Stroessner (1954 to 1989), was called a watershed victory for the movement towards Indigenous people’s rights, which came to dominate every issue affecting Indigenous people in Paraguay (Duckworth, 2011; Renshaw, 2002). Its deeper significance, said René H. Horst

(2007) “. . . was the extent to which indigenous communities began to use it to focus their resistance” (p. 119).

Law 904 asserted land and cultural rights that were later included in the Integral Law for Aborigines in Formosa. In fact, the entire first chapter on general principles in the Argentinean law reproduces almost word by word the first chapter of the Paraguayan law, except that the Argentinean text refers to “aborigines” instead of “indigenous” people, and avoids defining an Indigenous community—which in the Paraguayan Law 904/81 (Ley No. 904/81, 1981, Chapter 1, Article 2) is defined as a group of extended families, a clan or group of clans with their own culture and system of authority, that speak their own language, and live together in their habitat; additionally, two or more communities with the same characteristics may encompass an ethnic or tribal group (*parcialidad*).

Significantly, however, the Argentinean legislators (a) made it clear that only state-owned lands would be granted to the Indigenous communities (in the Paraguayan law, the communities were entitled to the lands where they lived, even if those were privately owned by non-Indigenous settlers); (b) avoided replicating the Paraguayan model that relied on Indigenous leaders to adjudicate land rights—a model that had no safeguards to ensure accountability and representativeness; and (c) adopted the pre-existing model of civil association to grant collective land rights. Specifically, where the Paraguayan law (Ley No. 904/81, 1981, Chapter 1, Article 9) said that any person identified as Indigenous leader could request legal status for a community, the Argentinean law (Ley 426, 1984, Chapter 1, Article 7) spelled out that “caciques” and “delegates” could request legal status for their communities—something later operationalized with the model of civil association.

Thus, Indigenous communities in Paraguay could obtain legal status (*personería jurídica*) by registering their leaders in the National Register of Indigenous Communities held at the Instituto Nacional del Indígena (INDI), then a dependency of the Ministry of Defense. This process usually involved one visit to the community by INDI’s staff, during which the staff person collected information about the location and composition of the population, and organized a meeting to approve the names of the leaders. There were no limits on the number of leaders who could be nominated, although communities were usually represented by at least three or four individuals (Renshaw, 2002). These individuals then became the legal representatives, and the community could solicit legal status from the Office of the President of the nation, a step previous to obtaining collective land title. This title was inalienable, and could not be used as collateral for loans.

By ruling that an Indigenous community could only claim land rights through leaders registered by the newly created Instituto Paraguayo del Indígena (but retained the acronym INDI), the government, in fact, assured that these Indigenous leaders would establish friendly relations with state bureaucrats. “Some critical *indigenistas*,” said anthropologist Mario Blaser (2010), “thought that the state had in this way retained its capacity to promote leaders who, in order to obtain land, would comply with the state’s goal of integration” (p. 98). At the same time, various sectors of church-affiliated and civil society advocates seemed to compete with one another to gain the favor of Indigenous leaders in order to impose their own development agendas in the communities. This led to factionalisms, where different Indigenous leaders were working with separate non-governmental organizations or with different Christian missionaries, something that effectively expanded existing relations of political and economic dependence. Analyzing a similar process in the province of Formosa, anthropologist Gastón Gordillo

(2008) called the outcome of factionalisms competing for Indigenous political subjectivities as clientelization of ethnicity.

In the months after the protocols of the law (Decree 574/85) were published in the legislative journal of Formosa, the wording of Article 9 on governance of the civil association, especially the required 2-year minimum period of residence in the community for elected representatives, became a topic of contention among Indigenous people and their allies. As a result of political pressure and lobbying, the wording of the article was modified.

On January 4, 1986, a legal amendment to Article 9 of Decree 574/85 in Law 426 was published in the *Boletín Oficial*. According to this amendment, each Indigenous community loosely considered to be one village or one settlement should elect its delegates (one incumbent and one alternate) by simple majority, after counting the votes of members older than 18 years of age, gathered in assembly. The legal representatives should be of the same ethnic group as the people they represented. The representatives' terms lasted 1 year, though they could be re-elected. The residency requirement was removed. The amendment also stated that, if the representatives were already chiefs or caciques, they should hold their positions in the civil association for the duration of their lives. It said:

The legal representative of the community is the delegate or cacique as an alternate. The chieftainship does not have to go through annual elections, since it is a title role for life, an ancient Indigenous tradition. The delegates will be appointed for one year; can be re-elected; have to belong to the ethnic group and to the community they represent. (Decreto 574, 1985, Article 9; My translation from Spanish)

From the privileged position of a retrospective observer who was also working with the Western Toba at the time of the events, I contend that provincial lawmakers inserted this amendment to acknowledge people's ideas about traditional self-government, conceding some measure of Indigenous thought in an otherwise bureaucratic one-size-fits-all system of rules. Upholding the customary authority of chiefs in the governance of Indigenous civil associations seemed a good idea at the time. In fact, the inclusion of traditional chiefs in a policy designed to guarantee accountability and democratic representativeness unleashed unintended consequences. The communities have had to deal with that policy requirement ever since.

Indigenous Governance: Imagined and Real

Policymakers who drafted the law following the text of the Paraguayan Law 904/81 consulted with politicians, social workers, clergy, and anthropologists during the process of finalizing the protocols. They sanctioned a complex legal instrument designed to provide recognition and historical redress (*reconocimiento y reivindicación histórica*) for the Indigenous peoples living within the boundaries of the province. These elected officials and administrators, genuinely interested in re-examining the value of Indigenous cultures (*revalorización de la cultura indígena*), aimed at redressing injustice (*reparación de una antigua injusticia*). They were inspired by visions of self-reliance, autonomy, and self-determination for Indigenous communities that were widespread in Latin America at that time (Machuca, 1986).

For example, Guillermo Magrassi (1985, 1989), an engaged anthropologist who advised the Committee of 21, would often talk on radio and television about the importance of recovering *el pensamiento Indígena* (the Indigenous thought), a theoretical concept that could translate as the Indigenous understanding or thinking about reality. Magrassi (1985) advocated for a search into the soul of the nation to bring back the Indigenous knowledge, the suppressed collective consciousness that is “ours” (truly Argentine). He had the idea that:

It will be very difficult to build a country, even more difficult to build a nation, if we continue raising monuments only to those who came from afar. The roots are still outside the pot [. . .] whatever the origin of our individual ancestors, today our historical forebears as a people, a nation, can only be those who were already here when others arrived. (p. 5, my translation from Spanish)

Magrassi’s activism was inspired by the work of Argentinean philosopher Rodolfo Kusch (2010), an author often cited by local intellectuals during the 1970s and 1980s. Kusch’s view is distinctive in South America because it thoroughly considers Indigenous thinking as philosophy—that is, as a serious contribution to truth (Derbyshire, 2010). Other local authors such as Enrique Dussel (1973), Adolfo Colombes, Miguel Chase-Sardi, and those authors included in a compilation by Grünberg (1972) were equally known to activists and intellectuals.

There were few legal precedents for Law 426 in Argentina. The federal government had sanctioned a federal statute to protect Indigenous communities and give them land titles, and created in 1958 the directorate of Indigenous affairs (Dirección Nacional de Asuntos Indígenas [DNAI]); although, the procedures for transferring land remained extremely vague and tentative. Also in 1959, the country ratified the treaty of the Confederation of International Labor Organization (ILO) regarding Indigenous peoples’ rights (Stunnenberg, 1993).

Thus, with limited legal precedent for their actions, the provincial policymakers’ attempt at celebrating and protecting Indigenous cultures resulted in imposing on the communities the model for civil associations. Moreover, the policymakers introduced an ad hoc interpretation of Indigenous way of thinking in a model designed to provide checks-and-balances, and fair decision-making in volunteer non-commercial or non-governmental associations. By bringing caciques into the text of the law, they attached two different notions of authority—one ascribed to democratically elected delegates, and the other held by traditional leaders.

The Western Toba’s Journey to Self-Governance, 1985-1995

In late 1985, soon after the provincial administration—in compliance with Law 426—created Instituto de Comunidades Aborígenes (ICA), and commissioned Instituto Provincial de Colonización y Tierras Fiscales de Formosa to handle land titles for Indigenous associations, the surveyors began surveying the public lands in Western Formosa where the communities lived.

By then, the Western Toba had already started the process of self-organizing. In the early 1980s, a handful of Western Toba men—all bilingual in Spanish, experienced in dealing with labor contractors, government officials, and clergy affiliated to the local mission of the Anglican Church—had become

active in the movement that resulted in land rights for Indigenous peoples. These bilingual Western Toba, along with Eastern Toba, Pilagá, and Wichí participated in the meetings of the Committee of 21 conducted in the provincial capital (some 350 miles away from the villages). They would reach the town of Ingeniero Juárez walking, biking, riding in the back of tractor-trailers and trucks; then they would hitch rides in trucks or somehow pay for bus tickets to the capital. They were present at the memorable event that took place in front of the Legislature on July 11, 1984, and were recorded on video. Because of their active engagement and advanced knowledge of the content of the Bill, the Toba leaders were able to convene an assembly of the people in the communities in mid-May 1985. The leaders of the families living in the barrio at the outskirts of Ingeniero Juárez were invited to participate, but declined the invitation, saying that they would form an association of their own at a later time.

The Toba Create a Civil Association

To gain access to collective property title, the Toba created an organization that included all the communities—which by then numbered seven. They named their administrative body as general council (*consejo general*), and gave it by-laws (*estatuto orgánico*) written in collaboration with Luis de la Cruz, a trusted advisor then affiliated to the local Anglican Mission, a missionary church that supported native peoples in their quest for land rights in Argentina and Paraguay (De la Cruz, 1989; De la Cruz & Mendoza, 1989). The signatures of 212 adults appear in the original document or “Act of Constitution” of the first general council. The participating individuals (men and women) either wrote their names or affixed their fingerprints on the pages, ratifying the collective agreement.

According to the by-laws, the general council would consist of two delegates (one incumbent and one alternate) for each community, and two officers (secretary and treasurer) who were to be appointed from the pull of delegates. At the time, the Toba could not fully visualize incumbencies for the roles of secretary and treasurer, but they understood that councils had to have these types of officers. People in the villages would elect their delegates in a traditional way. Instead of counting individual votes (one person-one vote), they would reach consensus through concurrent and subsequent public discussions, taking into consideration each one's personal preferences and skills.

As stated in the by-laws, community delegates were to be confirmed during assemblies, and would hold their positions for life. If for any reason the delegates decided not to continue representing others, they would simply stop acting as representatives, and such a decision would not have diminished their esteem in the community. The people wanted to create a kind of self-governance that could “respect Toba way of thinking.” They chose for their association the name Comunidades Aborígenes Cacique Sombrero Negro Comlajepi Naleua, which can be loosely translated as “Indigenous communities of cacique Sombrero Negro that are in charge of this land.” In choosing that designation, the Toba wanted to convey an idea of custodianship rather than ownership, meaning that they were living on the land, but the true owners of that territory were non-human beings situated in the spiritual realm.

The main purpose of the general council was negotiating collective title of property on the land. The Toba claimed property rights over 100,000 hectares in northwest Formosa province on the right side of Pilcomayo River, and also claimed land ownership on the opposite side of the river, in an area situated in the Republic of Paraguay. The people were so focused on obtaining property title that they called this council the “land committee” (*comisión de tierras*).

During the organizing process, people would get together and remember old stories of inter-tribal raids, and violent encounters with the Argentinean, Bolivian, and Paraguayan armies. The elders recounted memories of seasonal treks, and long forgotten seasonal campsites. All of that affirmed their collective sense of belonging and their ethnic identity. Meanwhile, the families settled in the barrio near the town of Ingeniero Juárez—expecting to receive property title over a parcel of public land—had their own assembly, created by-laws, and named their association Comunidad Aborígen Comleec Barrio Toba—which loosely translates as “Indigenous community of us, the Toba people in the barrio.”

When the Western Toba (organized under the name of Comunidades Aborígenes Cacique Sombrero Negro Comlajepi Naleua) submitted their paperwork to the inspectorate of legal entities in the state capital, the administrators rejected part of their proposal. The form of governance they had chosen for themselves did not meet the requirements spelled out in Decree 574/85. Legal advisers with the inspectorate of legal entities told the Western Toba that they should elect at least three officers (president, secretary, and treasurer), and also elect delegates for each community, but instead of doing by consensus, they had to elect those who had received the majority of votes. These appointees would then be in charge of managing the internal affairs of the association during one year. After the representatives completed their term, the people would have to elect new officers for the same positions. Despite knowing that this form of governance was strange to the Indigenous experience, the administrators made it clear that if the Toba people wanted to obtain legal title to their land, they had to find a way to adjust to those rules.

In 1986, land surveyors with the agency for colonization of public lands were already surveying the land in Wichí and Toba communities in Western Formosa (Stechina, 2012). While the surveyors were measuring the terrain, members of the communities rushed to put together revised paperwork for the civil association. The agency for colonization of public lands, and the newly created Institute for Aboriginal Communities indicated that each Indigenous community that met the guidelines would be granted collective property title over 5,000 hectares of land. The likely prospect of securing shared ownership prompted extended families to fission even further away from the main villages into new locations. Early in 1987, the Toba convened a second general assembly in La Rinconada to fill out the positions required by the provincial administration, and also to acknowledge the existence of recently formed hamlets.

The people revised the by-laws. They re-elected delegates (one incumbent and one alternate) for each settlement. These delegates were to be members-at-large in the council. They retained the appointees for secretary and treasurer, but added to the general council the positions of president and cacique. The position of president was required by law. The administrative office dealing with legal entities could not accept an association without an office holder authorized to make decisions on behalf of the group. The Toba president would occupy the position for the period of one year, the same term duration as for secretary and treasurer. Furthermore, since caciques were also mentioned in the law, the assembly appointed a cacique or chief to avoid falling short of approval at the inspectorate. The people designated Emilio as overall cacique (*cacique general*). This position was “for life.”

With these organizational changes, the Toba people thought, their by-laws could qualify to form a civil association. Emilio had been an enthusiast supporter of the Committee of 21, traveling with the others to the capital city, and participating in meetings and public assemblies. At the time, he was helping the

land surveyors to locate markers that would define the boundaries of Toba land. Emilio was fluent in Spanish, held in great esteem by the Anglican missionaries. He self-identified as member of the Maingodipi band through his mother's line (the Toba trace descent bilaterally and practice uxorilocal residency) (Mendoza, 2002).

After long negotiations, and many trips back and forth between the communities and the provincial capital—travels and negotiations that almost wore out the confidence of the delegates— the Toba accomplished their goal. In May 1989, during a well-publicized official act, the seven communities were granted collective property title to 35,000 hectares of the land they had occupied since before the province was configured as an administrative jurisdiction in the country. This was a remarkable achievement for the Western Toba.

A few months later, the designated cacique resigned his position. Emilio's resignation was unexpected, although his nomination had been unusual since having a chief (cacique general) representing all the people was not in the most recent Indigenous tradition. As long as people could remember, the *jaliaganacá* of the past have been life-long leaders only of their own bands. Even cacique Sombrero Negro, the charismatic *jaliaganec* of the Kedocopi near La Rinconada, whose memory was honored in the name of the association, would have not represented all the Western Toba of his time.

According to the appointed cacique general, he was disappointed by the behavior of some members of the council during the long negotiation process. Emilio complained that some of his peers would “turn their backs to the people in the communities, and act for their own good.” He had also expected that his advice would be taken more into consideration than it actually was. Emilio said: “My uncle Quedoc [Sombrero Negro] told me once: the people will not respect you as a *jaliaganec* if you have not killed a man” (Mendoza, 2002, p. 91)

Nonetheless, once the charter for the association was approved by the provincial administration, the Toba found themselves in the situation of having to elect new officers periodically to fill out the spots included in their by-laws. In December 1989, the people met in assembly for the third time to elect delegates for recently formed hamlets. Some incumbent officers exchanged positions in the council. At the time, the Toba saw no real difference between the role of president, secretary, and treasurer. To fill out the position of cacique, the Toba picked Martin, the *jaliaganec* of the Piogodipi.

Martin embodied to an extent the traditional concept of authority. He had received spiritual companions from his father, a former *jaliaganec* of the Piogodipi band, and was a skilled hunter, considered honest, humble, and committed to the service of his people. However, all the individuals interviewed about the subject agreed that Martin had no influence outside his own village. When the other delegates were unable to attend important meetings at the provincial capital, Martin agreed to travel alone; although, as he said, he felt uncomfortable dealing with Argentinean officers and politicians, and felt awkward because he was not fluent in Spanish.

During this time, more families split from the main villages and formed small settlements on sites suitable for planting and keeping animals. The families' access to land was unrestricted. By the early 1990s, the number of settlements or communities doubled from the initial seven. The general council gathered in assembly for the fourth time to designate representatives for all the new communities.

Meanwhile, the people in the Toba barrio received property title on a parcel of land that had been previously occupied by Wichí bands. These Toba families had frequent interactions with administrators, social workers, health care workers, and town residents. Possibly due to their quotidian experiences, the Toba in the barrio were comfortable adopting a comparatively more hierarchical organization. Their association was managed by an executive council (president, secretary, and treasurer), but the president had the last word when consensus could not be reached. The officers were elected for a two-year term.

In December 1993, the general council met in La Rinconada. The people's assembly acknowledged the existence of 12 Toba communities and two other small temporary camps that had formed since the meeting of the assembly in December 1989. They incorporated in the council two delegates—chosen by the people in the places that they represented—for each one of those new communities. The people revised the by-laws of the association. To provide oversight for the treasurer, the Toba decided to include in the by-laws the role of account reviewer (*Revisor de Cuentas*). By this time, they had learned that the provincial government and the political parties viewed the officeholders of the general council as legitimate representatives of the association and were funnelling through those officeholders money and goods intended for the communities at large; so the people wanted to supervise the behavior of the officers by focusing on the treasurer. Three individuals from different villages were designated as account reviewers. At the same time, the assembly of the people decided to void the role of overall cacique. The Toba decided that their association did not need a life-long cacique after all. Martin, the cacique who had replaced Emilio, appeared relieved. He agreed to participate in the council as an alternate delegate on behalf of his village instead.

From 1993 to 1995, the Toba council remained so attached to the domain of land rights that people still called it the "land committee." During this period, the council made decisions concerning the following situations: (a) negotiating with a private company that was extracting lumber from their land without authorization, as if it still were public land, (b) coming to an agreement with a non-Indigenous neighbor who was asking for permission to pasture his cattle on Toba land during the rainy season, (c) expressing disapproval with the actions of a non-Indigenous neighbor who was taking timber from Toba land without authorization, and (d) negotiating with a non-governmental organization that was willing to give a grant to buy wire to fence the perimeter of the property that was most exposed to trespassing.

To address these and other situations affecting the business of the association, the decision-making process started in the villages. When a group of individuals felt moved or interested in something (for example, when a group of men wanted to ask for government funds to build corrals and to buy cattle, or women wanted to obtain vaccines for the sheep and goats), they meet to discuss their ideas in a central place, a designated place where people conducted meetings on days and times previously agreed upon by word-of-mouth. Community meetings were open to everyone. Although, in practice, only adults expressed their ideas and opinions aloud during the meetings. Young (unmarried) individuals would speak only if an adult requested their opinion. It was understood that decisions made at public meetings could only be changed by the same people gathered in another open meeting, where anyone could express an opinion. The meetings of the council followed the same dynamics as the local meetings. The council met at a designated place in the most populated Toba village on a day previously agreed upon.

A comparison of all the documents jointly produced by the Toba over the period 1984 to 1995 shows that the same individuals held different leadership positions in the general council. These documents

also provide evidence that the people began dispersing from the three main villages as soon as they became empowered by the prospect of land rights. The clusters of families who chose to live together in new hamlets were often related by kinship, either members of the same band, or members of bands that used to be allied.

Although the Toba initially managed the business of the association in a fairly egalitarian and consensual manner, people were expanding their views on the extent to which they would be willing to (a) delegate power onto representatives, and (b) entitle these representatives to make decisions on behalf of the group—thus implicitly accepting political inequality. People were also expanding the scope of tolerance for economic inequality, voicing less intense disapproval against those families who accumulated wealth after dealings with politicians and non-profit organizations, articulating consent for widespread socio-political processes that have been described by anthropologists across the region (Iñigo Carrera, 2012; Salamanca & Tola, 2008).

Since then, the Toba population has continued to grow and expand over their land. In the late 1990s, for example, the people numbered about 1,500 (Gordillo, 1999). In 2005, the number of delegates to the association grew to almost 30 (Córdoba & Fernández, 2006). A few years later, Córdoba (2008) reported on as many as 18 villages. By 2010, a public health report (Programa de Participación de Pueblos Indígenas, 2010) counted 1,766 individuals in the communities. They were settled in 22 villages (Spadafora, Gómez, & Matarrese, 2010). The people in Barrio Toba numbered 220. Tallying the people in all the settlements, 1,966 individuals self-identified as Toba in western Formosa in 2010.

Indigenous Civil Associations and Local Politics

In the 2010 demographic Census of Formosa, the Indigenous population accounted for 7.2 percent of the total population (38,039 individuals). So far the provincial administration has registered 193 Indigenous civil associations (116 Wichí, 50 Toba, and 26 Pilagá), and has granted to those associations property title on 300,000 hectares of land that were previously state-owned lands (Gobierno de la Provincia de Formosa, 2014). Most of the associations hold the land titles in collective property. The titles are legally unalienable, indefeasible, and immune to seizure and taxation (*inalienable, inembargable e imprescriptible*). Table 1 below shows how many Indigenous communities obtained land title in the Paraguayan Chaco and the Province of Formosa between 1981 and 1991, the period most relevant to this discussion. Table 1 also shows the estimated total land area (in hectares) received by the communities during that period.

Gordillo (2008) argued that the movement to grant land titles and welfare benefits to Indigenous communities created loyal clienteles among Indigenous people. The Justicialista Party has consistently captured the majority of democratic votes in the province since 1983, and has consolidated party hegemony among the Indigenous population, actually neutralizing many sources of conflict. Similarly, Sautu et al. (2006) defined as clientele the relationship between Indigenous leaders and the political apparatus of the Justicialista Party. The communities—implicitly or explicitly—participate in *quid pro quo* receiving favors, goods, and services in exchange for electoral votes and political support. This relationship, in fact, perpetuates the staying power of the political party. Indigenous people participate in the production and reproduction of clientelism—their criticisms of the government and their resistances to its policies are handled from within the party (Gordillo 2008).

Table 1. Number of Indigenous Communities that Obtained Land Title and Estimated Total Land Area (ha) Granted in the Paraguayan Chaco and the Argentinean Province of Formosa, 1981-1991

	Paraguay, Chaco Region	Argentina, Formosa Province	Total
Number of Indigenous communities	96	99	195
Number of Indigenous communities with collective land title	13	65	78
Total estimated land area (ha) granted	94,687	206,012	300,699

Note. Source: Adapted from Stunnenberg, 1993, Table 9.1, p. 219.

For example, discussing favoritism in the provincial administration, anthropologist Carlos Salamanca (2011) argued that several Eastern Toba and Pilagá communities denounced the modus operandi of the Dirección de Personerías Jurídicas (formerly inspectorate of legal entities). The bureaucracy of this agency almost guarantees that “friendly” associations would have their documents approved faster and more easily than associations that are viewed as “oppositional” to the partisan government.

Discussing the significant burden imposed on Indigenous groups wanting to obtain property title over land, anthropologists argue that civil associations are now the only form of Indigenous organization to which the provincial administrators would pay attention, effectively marginalizing those communities that are unable to self-organize. Elected positions required for civil associations—such as president, treasurer, and secretary—are superimposed and sometimes appear opposed to forms of Indigenous organization centered on kin ties, consensual decision-making, and charismatic leadership. Salamanca (2011) said, “. . . after several decades of experience, Indigenous people, in many cases, have combined their traditional forms of political action and decision-making with non-Indigenous practices and logics, and they even privilege the later over the first” (p. 31, my translation from Spanish). Civil associations are so ubiquitous that it is impossible to gain recognition for alternative forms of governance, such as federations or confederations. The Pilagá federation, for example, formed in 2003, has not been able to achieve the status of civil association, in part, because it is viewed as “unfriendly” and “uncooperative” by the party ruling the provincial administration (Matarrese, 2012). Smaller communities who have yet to access collective land title under the current policies are asking for a sweeping revision of the legal status requirement for Indigenous peoples (Stechina, 2012).

Conclusion

In 1983, the social and political climate in the province of Formosa, Argentina (located across the river from the Republic of Paraguay) was ripe for passing legislation acknowledging Indigenous peoples’ rights. Newly elected legislators, administrators at the governor’s office, Indigenous people and their

advocates, all agreed that it was time for Indigenous people to have property titles over land, and also access to education, healthcare, and welfare benefits otherwise available to citizens. Law 426, the Integral Law for Aborigines (*Ley Integral del Aborígen*) was published in *Boletín Oficial* on November 20, 1984, and the policymakers completed the protocols of Law 426 (Decree 574/85) on May 6th, 1985. It became the first legal instrument in Argentina addressing Indigenous peoples' rights in a coherent and forceful manner.

Preparing the law, provincial policymakers followed closely the text of the 1981 Paraguayan Law 904, the Statute of Indigenous Communities, sanctioned by the regime of President General Alfredo Stroessner. In the Paraguayan Law 904, an Indigenous community could obtain collective land title by registering its leaders with the Instituto Nacional del Indígena (INDI). These individuals then became the legal representatives and could request legal status (*personería jurídica*) for the community, a step previous to accessing land title. Individuals identified as leaders in the Paraguayan Chaco were given political power and much latitude for decision-making, a fact that the policymakers in Formosa may have wanted to avoid.

Nonetheless, to include some measure of customary or consuetudinary law (*derecho consuetudinario*) in the spirit of the new policies, provincial policymakers upheld “the Indigenous way of thinking” by granting collective property rights to the Indigenous communities. This type of property right was unprecedented in the legal system, so the policymakers found a way around the notion of collective property by using the pre-existent one-size-fits all model for civil associations. This model not only gave legal status (*personería jurídica*) to the communities, but it also fostered accountability and democratic representativeness in the governance of the association—two characteristics that may have been seen as advantageous and desirable. Yet still under pressure from Indigenous peoples and their allies, the provincial policymakers introduced an amendment to Article 9 of Decree 574/85 in Law 426, published in *Boletín Oficial* on January 4, 1986. This amendment eliminated the 2-year residency term for delegates, and inserted into the governance of civil associations the authority of life-long caciques. By modifying the model of governance for civil associations, well-meaning lawmakers created an incongruity difficult to disentangle. Indigenous groups in Formosa today continue to struggle to meet these legal requirements.

The Western Toba reacted immediately to take advantage of Law 426. In the fall of 1985, they convened an assembly in the communities, elaborated an Act of Constitution and by-laws, and chose a name for their association. However, the form of organization that they chose did not match all the requirements for civil associations. The Toba assembly, thus, met again in 1987, adjusted its by-laws to the actual requirements, and to avoid falling short of administrative approval (because caciques were included in the text of the law) they designated an overall cacique for the association.

Before long, the Toba realized the practical convenience of keeping the role of overall cacique separate from the type of self-governance they were trying to achieve, so they bypassed life-long caciques in executive positions of the council, focusing instead on providing additional supervision for the officeholders representing the communities. I argued that, by untying the authority of the *jaliaganacá*, the Toba showed pragmatism. They kept their customary leaders out of political dealings, as much as they have suppressed and held back the memory of stories of state terror and collective suffering (Gordillo, 2002) that would have hindered the forward-oriented entrepreneurship of the association.

Through political actions, the Western Toba built a resilient organization, characterized by anthropologists as the strongest in the area (Gordillo & Hirsch, 2010). Thus, the Toba case study underscores the unintended effects of policies that enmesh roles designed to provide representativeness and checks and balances in civil associations with individual roles originating in Indigenous cultures. This case also reminds us that land rights are so important to communities that they are willing to do what it takes to access those rights.

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