

Redefining the Concept of Democracy in the New Latin American Constitutionalism: Legal Pluralism and Communitarian Systems

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Introduction

The beginning of the twenty-first century (roughly, 2008 to 2018) witnessed profound changes in law and political culture in numerous Latin American countries. In many cases, the foundations of constitutional theory in Latin America have been questioned. For the first time, political systems began looking to democratic and popular movements for guidance in achieving social change. Countries heavily influenced by the Constitutionalism of European tradition (such as Bolivia and Ecuador), set on a new political-constitutional trajectory by expe-

riencing a political process of decolonization through a general recognition of communitarian values inherent in their indigenous traditions. This paper relies on case studies to argue that old European notions of constitutional law can be rejected and new versions of constitutional democracy and Constitutionalism can emerge. The theoretical issue that is addressed in this paper is the extent to which the constitutions of Latin American countries can be transformed into political visions that embrace a pluralistic vision of the state, judicial pluralism in law and communitarian democracy. Contemporary changes to the constitutions in Bolivia in 2009 and Ecuador in 2008 demonstrate that change is possible, although never easy. In these countries, change only occurred when normative tools were used to challenge the secular liberal-capitalist model, creating a new political theory that embraced the needs and values of the people living in these countries. In short, what was needed was a complete rejection of European colonizing theories that centered on elitism and the historical exclusion of local values. Challenging political ideas that enhanced inequality needed to occur in order to allow for social, political and legal change.

Thereafter, this paper will address three issues: (1) how a theoretical methodology of historical-critical analysis can reveal the distinctly liberal foundations of Nation States in Latin America (in South and Central America). This methodology will reveal the contradictory process

of the independence movements which are better described as the emergence of oligarchic practices, conservative forms of dominance and historical exclusions of indigenous populations, Afro-descendants communities and peasant masses; (2) how the examination of constitutional documents reveals the political foundations of what can be referred to as “a new Latin American constitutionalism”. A specific focus on the Bolivian institutional order will reveal how institutional innovations that broke with the Western constitutional tradition were achieved and how a formal recognition of another state organization occurred (that is, the plurinational state) – how pluralism can emerge as a unique political system; (3) finally, grounding politics and history with theory, by considering the written works of local academics in the context of the 2009 changes to the Bolivian constitution, it will be shown that currently, the European vision of liberal democratic representation is failing. What is emerging is a process of decolonization that introduces and legitimizes a model of communitarian democracy. This study will therefore reveal and conceptualize the changing nature of Latin American political society, as it moves away from old European notions of political control that are better described as colonialism.

The Dependent National-State: A Brief Historical Background

Modern Nation States in Latin America developed differently than European Nation States. The first ones did

not form and develop through the European model of politically ordered national societies¹ or through liberal economic policies². Numerous Latin American scholars have proven that Latin American Nation States began to form in the early part of the nineteenth century (Cardoso 1977; Rubenstein 1988; Garavaglia 2011; López-Alves 2003). Contradictory political ideologies and the rise of nationalist independence movements sought to oust the Luso-Hispanic colonial settlers and set Latin America societies on a unique trajectory (Kaplan 1983, 55; Cardoso 1977, 80; Rubinstein 1988, 07-11; Garavaglia 2011, 153-4; López-Alves 2003, 11-19). State formation in Latin America started with the independence of colonies and gradually consolidated independent political bodies through a complex process of national unification. There were numerous power struggles between liberals and conservatives, centralists and federalists, Catholics and lay people (Bruit 1985, 12). Eventually, bourgeoisie classes managed to consolidate power and impose their will on other social segments. National unification movements utilized their new found political strengths and established new forms of social stratifications that allowed them to find strength by oppressing all other groups who opposed them, setting the path for state-building in Latin America (Bruit 1985, 12). In further complicating the development of Nation States, Iberian bureaucratic colonial systems had a significant role in the formation of peripheral societies in the re-

1 Kelsen's Theory of Law.

2 Brief History of Neoliberalism.

gion (Kaplan 1983. See also Uricoechea 1978; Schwartz 1979). They administered governmental functions by centralizing all political, social and economic decisions: it was an “integral and participant element of production of those social relations that gave structure to the colonies.” (Bruit 1985, 11).

The Latin American model of state building then developed out of a model that saw local political elites succumb to the demands of the Spanish colonizers. Colonized land was exploited so that capital could be accumulated, thus legitimizing a new way of organizing civil society. This was done by implementing social changes in society that ignored the legitimate interests of indigenous peoples and other localized communities. Public space was ‘captured’ so as to ensure the interdependency between rural oligarchies and foreign bourgeoisies and to ensure the consensus of subordinates through policies aimed at attracting and building ‘clientelistic’ loyalties into a system of distribution of privileges and advantages.

The post-independence movements that later developed were built off a system that defined itself by the very constrictions that made it so unstable. An ‘idealized’ theory of a republican liberal State sought to encompass numerous political and institutional factors that could not be placed into a stable political paradigm. These complexities have led to numerous academic interpretations of political and economic domination in Latin

America's historicity of state building.³ In addition to the traditional Latin American experience, characterized by external dependency and inner centralism of the State, there are some paradoxes inherent in the formation process of certain countries in the region that must be acknowledged. In this respect, there was indeed a desire to create a liberal State which "ended up deteriorating in practice (...)", making it impossible to consolidate the classic European State model (Cardoso 1977, 80). Cardoso argued that behind the liberal formulation was an oligarchic structure expressed in the form of a "traditional power of authoritarian nature" (Cardoso 1977, 81). Therefore, the Latin American Nation State is either an abstract, homogenizing and arbitrary body resulting from social antagonisms, or a phenomenon produced by the deterministic set of economic structures, instrumentalizing the domination of a corporate segment of one class over another (Martner 1986, 142-153).

3 "The Oligarchic State", Torcuato di Tella, Gino Germani, Otavio Ianni, Francisco Weffort); "Capitalism Dependent State" (Fernando H. Cardoso, Enzo Faletto, Anibal Quijano etc.); "Underdeveloped Capitalist State" (Theotonio dos Santos, Rui M. Marini, André Gunder Frank etc.); "Pretorian or Military State" (Samuel Huntington, Alain Rousquié); "Patrimonialist or Bureaucratic-estamental State" (Raymundo Faoro, Simon Schwartzman) "Authoritarian-Bureaucratic State" (Guillermo O'Donnell, David Collier etc.); "Corporate State" (Alfred Stepan, Howard J. Wiarda, Philippe C. Schmitter); and "Plurinational State" (Alberto Acosta, Alvaro Garcia Linera, Catherine Walsh, Boaventura de S. Santos, etc.)

There is evidence to support the claim that there are some common historical developments that led to a common ‘peripheral Nation State’ across the region. Weffort indicates the ‘specificity’ of the dynamics of the building processes of some States and their necessary relationships with developments of the liberal-individualist Nation State tradition (Weffort 1980, 97-100, 107-113. See also dos Santos 1978, 108-109; Mazzeo 2015, 105-106). In examining the peripheral Nation State in Latin America, it can be observed that there are two models in the region that have guided the development of the building of national identities in fragile and disjointed societies in Central America and Brazil.

During the independence movements of the early nineteenth century, two case studies highlight how economic interests sought to create the Nation States that exist today. Central America is distinct from the contradictions that characterize the Latin American state model (particularly in South America sub-region) of Spanish colonial administration, especially when it comes to the way the crisis and decay of the colonial power occurred in this particular geopolitical space. Authors such as Rivas argue that the postcolonial process was peculiar because “... in Central America there were no independence wars. Civil wars did not occur before, but after the political act (of independence)– which was a pacific, elitist, and condescending one...” (Rivas 1977, 62). The State was built upon the fragments of colonial power after

several civil wars. In Central America, the State was not organized to maintain territorial integration but to start it. It was the result of a process of disintegration of the colonial administrative space. With the absence of mineral extraction and because of extensive poverty in the region, the state building project became a process of managing power, through which individuals and officials linked to the state (for instance priests, soldiers and bureaucrats) became extraordinarily rich, while the majority of the population were excluded from the wealth that was created.

Equally unique is the case of Brazil. During the period that elapsed between the power transfer from the Imperial Portuguese State to an independent Brazil in 1822, an 'independent' and 'sovereign' State formally imposed its power upon the people living within the territorial boundaries of the 'new Brazil.' These people were not represented nor did the State consider the interests of the general population. The Brazilian 'State' was truly a conservative elitist society and not one institutionally organized around a national identity (Pires 1986, 47-8). The imperial State encouraged the professionalization of bureaucratic social sectors, which were already trained in the traditions of mercantilism, patrimonialism and Portuguese absolutism (de Carvalho 1980, 177-9. See also Schwartz 1979). These people were 'socially recruited' from sectors linked to mining, trade and land ownership (Weffort 1980, 178). From its origins and

throughout Brazil's development, oligarchic 'elites' and landlords played an influential role. The State, being the all-powerful force, dominated all aspects of society. Brazil's development is based on two fundamental pillars: first, the rise of oligarchic elites, who built a bureaucracy of magistrates (justices) and law professionals during the Monarchic Empire (1822-1889); second, the establishment of a bureaucracy of civilian technocrats in alliance with military groups during the Republic (from 1889 onwards).

In building the 'new Brazil', economic elites incorporated the patrimonial and centralist system of the Lusitanian administration, resulting in a State with no real national identity and completely detached from the objectives of mainstream society, grass-roots organizations and peoples of African and indigenous offspring. The new State failed to encompass the cultural diversity that existed among the population. Despite genuine attempts of self-determination of indigenous and local communities, colonizing Lusitan powers ⁴ shifted real power to colonial elites by creating a monarchical system that transferred recourses to a stratified bureaucratic elite, formed by owners of slaves and land. This declining

⁴ The Portuguese powers in the colonial period aimed to utilize the trafficking and exploitation of slave labor, to develop an economic monoculture based on sugar cane, to administer politically through a centralizing and exclusionary patrimonialism, and to impose a Jesuit Christian culture of the "Contra-Reform". Wolkmer, 2018, p. 76-83.

system of aristocratic power of the Brazilian monarchy and the rise of local agricultural elites simultaneously advanced the independence of the country while consolidating the national project of those social segments comprised by property owners, bureaucrats benefited by the State and an internal bourgeoisie dependent on the foreign market.

The result was an unequal, inert and fragmented society, politically and economically divided, leading to events such as Independence (1822), the Proclamation of the Republic (1889), the Oligarchic Revolution (1930), etc., moments when shifts in the hegemonic, imperial and republican social strata emerged. However, the Brazilian peripheral National State maintained the paradigm of the European National State, being disconnected from much of society.

Moving into twentieth century Brazil, political dissent turned to constant conflicts, with the presence of military corporations and the increase in social inequality processes. A dissident bourgeois sector, a large number of excluded groups (due to the non-recognition of their native cultural, ethnic, and racial autonomy), and the fragmentation of political body into regional powers, led to the structuring of a peripheral National State (especially during the period after 1930). Power was projected from above as an attempt at unifying political project (Pires 1986, 51) that sought legitimacy through undemocrat-

ic practices while advancing a project of conservative modernization that was aimed towards a national unification of an oligarchic society (represented by white and slave-owner elites), thus causing the widespread discrimination and exclusion of culturally distinct social sectors, whether indigenous communities, or the majority presence of the Afro-descendant legacy.

Such experiences can be described as peripheral Nation States. When considered from a regional perspective, require an in-depth contextualization of political practices and instituted regulations of the centralizing traditions of Eurocentric colonialism that influenced its initial development. The historical absence of the excluded masses is a common characteristic that must be highlighted due to its prevalence amongst most Latin American countries, since it formed a general practice of concealment that lead to a culture of marginalization and segregation., preventing the development of truly democratic States that were representative of the Latin American multicultural societies.

To avoid falling into the classical model of reductionism proposed by liberal theorists, statist collectivism or authoritarian corporatism, it is necessary to think beyond the traditional models of State building, which were developed in the West in the seventeenth and eighteen centuries and cannot be applied to the Latin American experience. Political and legal principles that built on ideals

of rationalist Illuminism and liberal-individualistic ideas say little about the Latin American multicultural experience. As will be discussed in the next section, a different model of political-constitutional shaping will allow for a new look at Latin American State building, a reordering that is critical, decolonial and based on a 'new' Latin American constitutionalism, arguably more appropriate.

II. Legal Pluralism and the (re)foundation of the State

The first section of this paper demonstrated that the political, legal, economic, and social homogenization of States was formed by a particular version of Western modernity, which was based on a liberal idea of the Nation State. The 'liberal Nation State' first served the interests of monarchies and then of the bourgeois economic elites. In Latin America, this model served the whims of the dominant classes in the new colonial regimes. The driving force was the liberal-individualist idea of capital accumulation that fostered the expansion of a dependency capitalism (da Silva 2014, 131). Despite the successful imposition of Western liberal constitutionalism, some Latin American countries successfully resisted the liberal expansion into Latin America. The new constitutional design of the 1999 Venezuelan Constitution, the Ecuadorean Constitution of 2008 and the Bolivian Constitution of 2009 are examples of Nation States that departed from the European traditions. These constitu-

tional changes have proven to be significant in changing the social and legal dynamics of the old colonial regimes in the region. In short, they have created a new framework that can be described as 'New Latin American Constitutionalism' (Pastor and Dalmau 2012, 11-49).

This vision of 'New Latin American Constitutionalism' has been challenged by some (Gargarella 2015, 169-172; Santos 2010; Schavelzon 2012) and is rarely acknowledged in the international literature. However, new versions of constitutionalism in Latin America can clearly be seen when looked at from a structural perspective. Indeed, the very philosophical and political foundations of the colonial regimes are now being openly challenged. Today, the sociological and political interest groups that are shaping a new Latin America are distinctively different from the old political powers that formed a Western version of State-building in Latin America.

To truly understand the constitutional changes/innovations that are shaping a new Latin American version of State building, it is important to look beyond the actual constitutional text, its terminology and organization of State and government and focus instead on the different symbolic meanings that underpin legal reforms. Constitutional innovations can then be examined from a socio-legal and historical-political perspective. The benefit of this new approach is that it acknowledges the influence that social movements and indigenous com-

munities have in the new constitutional debates. Interdisciplinary approaches further capture the sociological, historical, and political momentum that gave rise to new constitutional theory.

Latin American countries are increasingly looking to reopen and redraft their constitutions, drawing heavily from new theories that are based on legal and political pluralism. For example, the Republic of Venezuela adopted its new constitution in 1999, which was anti-colonial in nature and prioritized political independence. The traditional liberal idea of rights did not fit in the new Venezuelan constitution, that was politically popular as it decentralized power and created new institutional structures that focused on the common good of people and society. The idea was to reform Venezuelan society. Article two of the new constitution confirmed political pluralism as a guiding value. This new constitutional experiment set Venezuela on a new political trajectory and paved the way for constitutional reform in Ecuador and Bolivia (Pisarello 2014, 112-4).

The new Ecuadorian constitution of 2008 can be considered another turning point in the Latin American experience as the new constitution further recognized the importance of legal pluralism and confirmed the importance of indigenous communities. Article 57 recognized the plurality of the State. Article 171 formally recognized the rights of indigenous people, stipulating the impor-

tance of respecting traditional lifestyles (Wolkmer and Wolkmer 2015, 42). Legal pluralism, as recognized in the Ecuadorian constitution, confirms the rights of indigenous peoples to coexistence and self-determination. The constitution must therefore recognize different conceptions of justice. The legal recognition of pluralism does not depend exclusively on the formal constitutionalizing of rights, but on the eradication of “power differences between the groups that come from different legal systems [...]” (Freire 2009, 27-54).

The new Bolivian constitution of 2009 is another example of a constitutional change that was the result of a constitutional process that built on a deeper understanding of anti-colonial resistance and the political struggles of numerous social movements. Indigenous and labor groups were motivated by the need to take back control of government and economic resources. Although these movements date back to the Aymara rebellion and the siege of the city of La Paz, performed by Tupac Katari in 1781 (see Thomson 2002), it wasn't until the early part of the twentieth century that a true independence movement could be realized. Independence was achieved by drafting a new constitution that reflected the need for decolonization and the significance of an independent Bolivia (Alcoreza 2013, 408). Some of the social and economic struggles that put Bolivia on a new path include the conflict over the privatization of water supplies in the department of Cochabamba in April

2000, over natural gas reserves (“the gas wars”) in the department of Tarija in October 2003, and the new constitutional debates that informed the text of the new Bolivian constitution.

The Bolivian constitution is more than the expression of anti-colonial indigenous resistance struggles. It also draws from principles of non-western Andean Philosophy known as cosmovision (Estermann 1998). This philosophical foundation is “(...) a thought centered on Andean harmony and pragmatics” (...) whose “rationality is organized and corresponds with principles (...) that develop in laws and practice (Ullauri 2015, 128). Estermann, who has called this same philosophy as ‘ecosophy’, emphasizes the holistic conception of life (Estermann 2013; Estermann 2015, 1998-9). In its political context, this theory is meant to express the relatedness of everything and the order which guarantees this energy flow (-cha) in the polar complementarity (step). The Andean approach provides a viable alternative to the capitalist model and requires constant growth. From a constitutional perspective, the defending principle is “living good” (*vivir bien*, or *buen vivir*). While the Constitution of Ecuador uses the quechua version: *sumac kawsay*, the new Constitution of the Plurinational State of Bolivia, uses the aimara term *suma qamaña* as a general term which would also include the Quechua version of *allin kawsay*. However, the latter term is not literally used in the Bolivian Constitution. It is mentioned in Article 8, paragraph

I, as *qamaña sum* and the Spanish translation of "living well" has been added. In the same paragraph, the Andean ethics trilogy was added (*ama qhilla, ama llulla, ama suwa*- "do not be lazy, do not lie, do not steal"), another expression in Quechua, to balance the monopolistic use of Aymara with *qamaña* type: *qhapaq ñan*, translated into Spanish as "noble path or life." (Estermann, 2013).

The explicit and implicit introduction of the principles of Andean philosophy are not just mere romantic acknowledgments or understandings of the indigenous traditions and cosmovisions. They demonstrate that Bolivia is already on a path of decolonization, leaving behind the historic uncritical reproduction of European liberal paradigms by strongly recognizing the subjectivity of its people. Thus, the Bolivian constitutional text mirrors deliberate political choices. For example, it denies the concept of the Republic, not because of its meaning in political science, but due to its meaning in the collective imagination of the Bolivian people, since for them it refers to a centralist, monocultural, homogenizing, and liberal State. The political significance that emerges from this symbolic use of language is key to understanding the popular appropriation of this feeling and potential transformative actions (Leonel Júnior 2014; Leonel Júnior 2018).

Among other novelties introduced by the Bolivian constitution is the contextualized model of "plurinational

State”. This new re-organization of State powers has been considered a (re) foundation of the State and has a significant relationship with the pluralistic understanding of social, political, and legal relations. Legal pluralism in the Bolivian constitution therefore involves a transition from a monistic understanding of law to a pluralistic one.

Key to understanding the new Bolivian political system is understanding Bolivia’s territorial structure. One of the main achievements of the new constitution is the transition to decentralized governance. The new territoriality/social pact provides for the following constitutional compromises: a) the pluralistic re-organization of the central State powers; and b) the four types of autonomies: departmental autonomy (art. 278); grass-root peasant and indigenous autonomy (arts. 290 – 297); regional autonomy (arts. 281-283) and municipal autonomy (art. 284-285) (Fernández 2009, 244).

The Plurinational State is therefore a new model of political organization that reaffirms and strengthens territorial autonomy in order to achieve the wellbeing of the populations historically excluded, by following the principles of the Andean philosophy. The preamble of the Bolivian constitution clearly States the basic principles of the Bolivian version of pluralism: “...We, the Bolivian people, of plural composition, from the depths of history, inspired by the struggles of the past, by the

anti-colonial indigenous uprising, and in independence, by the popular struggles of liberation, by the indigenous, social and labor marches, by the water and October wars, by the struggles for land and territory, construct a new State in memory of our martyrs... We have left the colonial, republican and neoliberal State in the past. We take on the historic challenge of collectively constructing a Unified Social State of Pluri-National Communitarian law, which includes and articulates the goal of advancing toward a democratic, productive, peace-loving and peaceful Bolivia, committed to the full development and free determination of peoples” (Bolivia 2009; Alba and Castro s/d).

Continuing with an analysis of the new Bolivian constitution, the first article further introduces the fundamental bases and model of the State: “Bolivia is constituted as a Unitary Social State of Pluri-National Communitarian Law (*Estado Unitario Social de Derecho Plurinacional Comunitario*) that is free, independent, sovereign, democratic, inter-cultural, decentralized and with autonomies. Bolivia is founded on plurality and on political, economic, juridical, cultural and linguistic pluralism in the integration process of the country” (Bolivia 2009; Teófilo 2014; Arkonada 2012). According to the above provision, the Bolivian Plurinational State is based on plurality and pluralism which manifest themselves as “legal pluralism” and eventually originated the notion of the Plurinational State.

Legal pluralism in Bolivia can also be seen in secondary legislation and in judicial decisions. The organization of territorial autonomy (Statute n° 031, 19 July 2010, called in Spanish: “*Ley Marco de Autonomías y Descentralización -Andrés Bólvares*”) and in the jurisprudence of the Plurinational Constitutional Tribunal, as seen in the case law related to the conflict of indigenous peasant jurisdictions, have given rise to new discussions on legal pluralism. In this regard, the dispute raised by the communities of Zongo (La Paz, Bolivia) has been emblematic.

The most ambitious project aimed at achieving a consolidation of legal pluralism in the context of the new constitutionalism, when compared to the previous State traditions in Latin America, was instituted by Bolivia in 2009. It implemented “a plurinational State not only in formality – through metaconcepts – but, materially, with the affirmation of indigenous autonomy (articles 289 et seq.), of legal pluralism (article 178), and of a system of indigenous jurisdiction, not subordinated in relation to the State law (articles 179, II, 192)” (Pastor and Dalmau 2010, 36-7). The ordinary jurisdiction described as “heavy colonial heritage” (VARGAS 2009) has now a wide and innovative catalog of rights of the Indian peoples (articles 30 et seq.), such as the election of its representatives through their own forms (article 211), and the creation of a Plurinational Constitutional Court with the presence of indigenous jurisdiction (article 179)” (Pastor and Dalmau 2010, 36-7).

The 2009 Bolivian Constitution became the leading force for the institutionalization of legal pluralism. Key to this movement was reforming the Bolivian State so that it recognized and included indigenous, anticolonial, and plurinational principles. The political process that represents the most authentic Pluralist Constitutionalism also values the strength of indigenous rights, the right of an intercultural education system, and the unprecedented version of legal equalitarianism. The colonial imposition of a uni-national state failed in destroying the roots and identities of the many indigenous peoples, who recognize themselves first as Quechua and Aymara, and later as Bolivians (Wolkmer and Wolkmer 2015, 42). In addition, the Bolivian Constitution achieved material results by clearly recognizing it and hierarchically equating the State law with indigenous and peasant Justice (Article 179, I, II, III).

Section II of the Bolivian constitution is where legal pluralism is truly realized: it recognizes that pluralism originates from the diversity that exists in society and codifies pluralism into State law. Due to countless polemic discussions generated by the constitutional text about judicial egalitarianism, the Bolivian legislator published Law n. 73 on the 29th of December, 2010 (*Ley de Deslinde Jurisdiccional*) in order to regulate dispositions of equal judicial function. However, it did not reach its legislative objective and ended up becoming an element of restric-

tion and limitation on the applicability of legal pluralism. Becoming an instrument of controversy, it was rejected by many sectors of the indigenous communities (Wolkmer and de Almeida 2013, 36)⁵.

The latter description of the Bolivian Plurinational State, which recognizes the existence of different nations and indigenous peoples within it, shows a portrait of an innovative alternative to the traditional liberal paradigm of the Nation State. Such changes are remarkable. Since colonial times, there have been conflicts between competing state interests. The Spanish colonizers attempted to quell such conflicts through the use of repressive laws that attempted to reorganize pre-Hispanic communities. While indigenous communities resisted, they were never able to overcome the repressive power of the State. The changes in the new Bolivian constitution represented a new era that was characterized by a new contextualization and reorganization of State power within a structure that absorbs and legitimates the “forgotten” and excluded indigenous communities. This was a major accomplishment for the resistance movements that unsuccessfully fought to reimagine their place and voices in State formation and in the nation building process.

Looking beyond the constitutional changes in Bolivia, some Latin American countries, such as Peru, Venezue-

⁵ See also BOLIVIA. Statute n° 031, 19 July 2010. Ley Marco de Autonomías y Descentralización “Andrés Ibáñez” (2010).

la, and Ecuador, have welcomed legal pluralism into different areas of public life. These experiments have had varying degrees of effectiveness. However, such changes are not immune to contradictions, distortions, and inefficiencies in their institutionalized processes (Wolkmer and Ferrazo 2016, 63). It should not be forgotten that the demand for a new legal order originated in the cultural, political, and legal plurality defined by autonomous communities. The Unity Pact brought together many popular organizations, such as indigenous groups and workers unions, to push for change. A common goal was the realization of legal pluralism, which can be defined as:

We understand as the coexistence, inside the Plurinational State, of the original and peasant legal system with the occidental legal system, on an equal footing, respect and coordination. Thus, legal pluralism is the normative core, founding of this new model of Plurinational State, politically and constitutionally institutionalized. (Pacto de Unidad. Garcés 2010, 71).

The recognition of the pluralist State set the stage for other advances in the new constitutional project, such as a new version of democracy, one that valued communitarian and autonomic powers.

III. Redefining Democracy: Communal Power and Pluralistic Society

Unlike the Western European tradition that values liberal democracy, Latin American versions of democracy

have embraced grass-roots initiatives that value customary democratic practices in communal societies. There are numerous collective groups with community narratives in Mexico, Guatemala, Ecuador, and Bolivia (Villoro 2006, 7).

Various autonomic communities form the structure of the Plurinational State. Self-government is key (Wolkmer and Melo 2013, 35; Fernández 2008). Article 11 of the third Chapter of the Bolivian constitution formalizes another version of communitarian democracy, specifically referencing the importance of equality between men and women. One of the great achievements of this project is that communitarian values are reflected in the electoral process (Wolkmer and Ferrazo 2014, 224). Such systems represent a substantial break from the past, moving away from the former oligarchic liberal democracy and hegemonic political representation. In Bolivia, change is achieved by embracing a new legal/political system that allows for “binding referendums and new mechanisms of popular participation and equal consensual democracy to include indigenous communities and their decision procedures” (Wolkmer and Fagundes 2011, 385; Linera 2006, 71-82).

This system is a victory to indigenous peoples who have been fighting to change the liberal representation model of the past that was ‘transplanted’ by criollo oligarchies of the Iberian metropolis into the Latin America colonies and was never really an authentic democracy. Instead, it was a patriarchal and segregationist. It was

a bourgeois representative democracy at the service of a white and elitist population, founded on a Eurocentric individualistic liberal conception that was so deeply embedded into the social constructions that even after the formal independence of the Latin-American States, those colonial structures remained practically unchanged. Despite this, the limits of liberal oligarchic democracy in their colonial political trajectory after independence must be acknowledged in order to understand the process of ‘reinterpretation’ of the political and legal concepts through the historical specificity of the Andean constitutional experiences.

This decolonial transitioning to a Plurinational State goes hand and hand with the new communitarian and pluralistic democracy, directly linked to the interests of indigenous and peasant populations, which opposes itself radically to ‘imported’ model of representative democracy (Wolkmer and Ferrazo 2014, 214). This liberal model was unable to fully overcome inequality and segregation in the Latin-American societies that permanently experienced populist dictatorships and other forms of authoritarian governments. In this sense, the Nation State hastily called ‘Latin American democracies’ are actually “oligarchies” and the term “democracy” does not match with the content of these political regimes, which were in fact, a succession of dictatorships experienced in the continent (Borón 2009, 27).

In fact, the new pluralist constitutionalism present in

the Bolivian Constitution of 2009 and its decentralizing and autonomic mechanisms seeks to overcome the limitations and perversions of liberal democracy and expand participatory practices, bringing and consolidating traditions of the grass-roots autonomic communities. Progress was achieved through referendums as they allow citizens to decide on issues of national importance. Citizens are able to present a bill directly to the legislature. People have the ability to revoke the mandate of a government official. Popular assemblies exist and are known as ‘cabildos’. Although the decisions made in these meetings do not automatically bind, the State is required to consider these directives. These examples serve as evidence of a viable system of participatory democracy in Bolivia (Leonel Júnior 2014).

Conclusion

Pluralistic societies, such as those found in Bolivia, demonstrate that a new model of constitutional democracy and legal pluralism can exist in Latin America. The significance of these new movements is that they put into praxis a new understanding and/or reframing of the concept of democracy. This new version of democracy is needed so that collectivities can practice autonomy while the State recognizes the aspirations of diverse national populations and their identities. The concept of communitarian democracy, understood as the administration of communal power, exercised directly by the

community, is, then, the result of a praxis and not just a “new” terminology; the product of direct engagement and participation of the population in constitutional debates and constituent processes; the proof that it is possible to transcend the limits of State legal centralism, representative liberal democracy, and capitalist economic rationality to empower collective subjects formerly excluded. On the other hand, such redefinition (and resignification) of democracy carried out by the Bolivian constitution paves the way for the establishment of a new version of communitarian democracy by other communities (Wolkmer and Ferrazzo 2014, 225).

This type of democracy also comprises the representative modality but with important particularities: “... however, unlike representative democracy, here, the representative does not monopolize the Law nor technically controls the autonomous ability to decide. Sovereignty is not delegated, it remains at its source: the social will... belongs to a collective entity that undertakes projects in common. The decision is exercised by collectivities through collective deliberation” (Patzí 2014).

A second characterizing factor that distinguishes the classic forms of representative democracy from communitarian democracy is the total untying of collectivities from the traditional political parties. Communal representatives “are elected directly, which means that deputies, departmental and municipal councilors are

elected by a mechanism of shifts and rotation, and not by political parties. This does mean the end for political liberalism or of representative democracy” in Latin America (Patzí 2014).

In short, due to the colonizing, elitist, and conservative legal traditions of Latin America, and regardless of what may be diagnosed and affirmed in the near future as to the institutional directions of countries such as Bolivia, which is subject to retraction processes, to the return of “internal colonialism” and to “deconstitutionalization”, it should not be denied or minimized that the advanced model of Latin American Pluralist Constitutionalism was formalized and enshrined for the first time by the Bolivian Constitution of 2009.

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