

Legal Pluralism and Ideology: The Recognition of the Indigenous Justice Administration in Bolivia through the "Indigenismo" and "Decolonisation" Discourses

Authors : Adriana Pereira Arteaga

Abstract : In many Latin American countries the transition towards legal pluralism - has developed as part of what is called Latin-American-Constitutionalism over the last thirty years. The aim of this paper is to discuss how legal pluralism in its current form in Bolivia may produce exclusion and violence. Legal sources and discourse analysis - as an approach to examine written language on discourse documentation- will be used to develop this paper. With the constitution of 2009, Bolivia was symbolically "re-founded" into a multi-nation state. This shift goes hand in hand with the "indigenista" and "decolonisation" ideologies developing since the early 20th century. Discourses based on these ideologies reflect the rejection of liberal and western premises on which the Bolivian republic was originally built after independence. According to the "indigenista" movements, the liberal nation-state generates institutions corresponding to a homogenous society. These liberal institutions not only ignore the Bolivian multi-nation reality, but also maintain the social structures originating from the colony times, based on prejudices against the indigenous. The described statements were elaborated through the image: the indigenous people humiliated by a cruel western system as highlighted by the constitution's preamble. This narrative had a considerable impact on the sensitivity of people and received great social support. Therefore the proposal for changing structures of the nation-state, is charged with an emancipatory message of restoring even the pre-Columbian order. An order at times romantically described as the perfect order. Legally this connotes a rejection of the positivistic national legal system based on individual rights and the promotion of constitutional recognition of indigenous justice administration. The pluralistic Constitution is supposed to promote tolerance and a peaceful coexistence among nations, so that the unity and integrity of the country could be maintained. In its current form, legal pluralism in Bolivia is justified on pre-existing rights contained for example in the International - Labour - Organization - Convention 169, but it is more developed on the described discursive constructions. Over time these discursive constructions created inconsistencies in terms of putting indigenous justice administration into practice: First, because legal pluralism has been more developed on level of political discourse, so a real interaction between the national and the indigenous jurisdiction cannot be observed. There are no clear coordination and cooperation mechanisms. Second, since the recently reformed constitution is based on deep sensitive experiences, little is said about the general legal principles on which a pluralistic administration of justice in Bolivia should be based. Third, basic rights, liberties, and constitutional guarantees are also affected by the antagonized image of the national justice administration. As a result, fundamental rights could be violated on a large scale because many indigenous justice administration practices run counter to these constitutional rules. These problems are not merely Bolivian but may also be encountered in other regional countries with similar backgrounds, like Ecuador.

Keywords : discourse, indigenous justice, legal pluralism, multi-nation

Conference Title : ICLS 2015 : International Conference on Law and Society

Conference Location : Montreal, Canada

Conference Dates : May 11-12, 2015