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Multiculturalism and Indigenous Rights in Latin America

Multiculturalidad y derechos indígenas en América Latina

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Resumen

El propósito de este trabajo es describir la multiculturalidad y su alcance en el constitucionalismo latinoamericano. Para lograr este objetivo fue necesario acoger una metodología cualitativa de revisión bibliográfica, adherida a un tipo de investigación descriptiva. A partir de allí se pudo constatar que el contenido de la multiculturalidad fue reinterpretado y adaptado a las realidades diversas regionales y consagrado en las constituciones directamente o a través de reformas. A pesar de las críticas dirigidas sobre todo al fundamento liberal del enfoque, sigue siendo una epistemología válida para sustentar la interpretación y aplicación del principio de diversidad étnica y cultural.

Palabras clave: Multiculturalidad; Diversidad cultural; Derechos culturales; Derechos indígenas.

Abstract

This paper aims to describe multiculturalism and its scope in some Latin American constitutions. We conducted a literature review using a qualitative descriptive research methodology to achieve this. On this basis, it was possible to determine that multiculturalism is both reinterpreted and adapted to the diverse regional realities and is incorporated into the constitutions either directly or through reforms. Despite the criticisms addressed mainly at the liberal foundation of this approach, it remains a valid epistemology to support the interpretation and application of the principle of ethnic and cultural diversity.

Keywords: Multiculturalism; Cultural diversity; Cultural rights; Indigenous rights.

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Introduction

The consolidation of constitutional state projects, based on European (France, England) and North American (United States) models and experiences, was built on pacts and consensus between elites and castes. This process would be repeated in almost all Latin American countries on the long road to forming homogeneous national state projects under the principle of equality (SAGREBELSKY, 2007). Based on this principle, it was decided not to maintain certain privileges granted to ethnic communities since doing so would give them preferential treatment, which would undermine equality and the national project.

This homogeneous vision of society was maintained for a long time until internal and external political and social processes overthrew the previous order and forged a new one: the constitutional one. Thus, the constitutional changes and transformations from the 1970s onwards were geared towards recognizing ethnic and cultural diversity as a fundamental principle (UPRIMNY, 2.11). However, there was still doubt about the epistemological foundation that would serve as a yardstick for interpreting and sustaining this principle. This doubt was dispelled above all by jurisprudence, where the constitutional courts specified that this support would be multiculturalism (as theory) and multiculturalism (as praxis) (LÓPEZ, 2016).

The following question is asked as a guide: What are multiculturalism's defining features and scope as a foundation of ethnic and cultural diversity in some Latin American constitutions? With the support of international human rights law, constitutions (directly or through constitutional reforms) recognized ethnic diversity. Constitutional courts interpreted This principle in light of multiculturalism and multiculturalism. This support drives, albeit from a liberal conception, processes of recognizing differentiated rights, particular citizenship, and protection that considers its particularities. These plans, of course, do not escape certain criticisms.

Based on these inputs, the general objective of this work is to describe the defining elements of multiculturalism and its presence in some Latin American constitutions. This can contribute to understanding the approach from the perspective of the principle of ethnic and cultural diversity while at the same time allowing us to delve into its importance in the interpretation and protection of ethnic rights, especially indigenous ones.

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Methodology

This makes it necessary to call for the support of a qualitative methodology to gain an approach to the subject of multiculturalism in terms of its characteristics, attributes, and qualities. The type of research is descriptive, and the technique is limited to bibliographical review, especially of constitutions and constitutional doctrines. The information was collected using bibliographic sheets, concept maps, and agenda notes. The analysis of these inputs required a deductive approach. The type of argumentation is based on this approach and the prevailing ordering of ideas.

The following thematic outline will follow: firstly, it is necessary to understand the origin, content, and scope of multiculturalism; secondly, to explain some of the criticisms that have been leveled against this approach, particularly its liberal conception; and finally, to examine the configuration of the multicultural constitution in the Latin American scenario.

1. Multiculturalism and the recognition of diversity

Since its appearance on the political scene, approximately in the 1970s in the United States and Canada, multiculturalism has been adopted to understand diverse realities in which peoples, groups, and collectivities with equally diverse interests meet at the same time and place. A few years later, this perspective expanded and penetrated other systems, especially in states where diversity is essential.

To explain the phenomenon of cultural diversity, the multicultural perspective first requires the legal recognition of differentiated collectivities. This recognition is closely connected with dignity, "where the term designates something equivalent to a person's interpretation of who they are and their fundamental defining characteristics as a human being" (TAYLOR, 1993, p. 43-44). Identity is forged in the interaction between the "moral" subject and society, subjects who mutually recognize each other in a dialogical interaction, which starts, in principle, from the consciousness of each society.

In this regard, McCarthy notes:

> As identity can only be achieved based on mutual recognition, individuation can only be understood as a socialization process. The moral subject of praxis is inconceivable if it is abstracted from communicative relationships with

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> others. Conversely, social interaction is *ipso* moral interaction; potentially, it is a dialogical relationship " established between the actors on the always precarious basis of mutual recognition". (...). Therefore, *interaction*, as a category designed to understand the processes of social evolution, does not immediately refer to intersubjectivity free of coercion but to the history of its repression and reconstruction: to the dialectics of ethical life (1998, p. 56-57).

Recognition can reinforce identity, make it socially known, or degenerate it and take it to other spheres, not specifically those of minority cultures. In this way, the absence of recognition and undue, imposed, and external recognition of the living culture of these collectivities damages their identity. Taylor points out that "false recognition or lack of recognition can cause harm; it can be a form of oppression that imprisons someone in a false, deformed, and reduced way of being" (1993, p. 44).

The challenge is to define the basis and type of recognition needed for cultural minorities in the constitutional state, specifically, and for this work, for ethnic minorities. So, what is the basis and type of recognition needed to develop the culture and rights of ethnic collectivities? Is a recognition needed whose foundation is the principle of equality (homogeneous recognition denies particular, concrete, and special identities), or the foundation be the principle of difference (heterogeneous recognition denies what is general, common, and universal)? The answer to these questions must consider that recognition, as Todorov says, is not simply the expression of deep philanthropy but a vital human need "that reaches all spheres of our existence" (1995, p. 19).

On the one hand, the principle of equality, based on a supposed universal dignity, affirms the need to recognize ethnic collectivities at the same level as the majority society because otherwise, discrimination would occur. For this reason, recognition must be carried out under universal principles common to all societies. However, for Fernando Arlettaz, this type of recognition also represents a significant advance in defense of diversity because "in contrast to an assimilationist policy, this egalitarian perspective does not tend to eliminate difference, but to make it publicly irrelevant. From this point of view, no one can claim special treatment from the public authorities because of their particular identity" (2014, p. 204).

As a result, recognition must be such, explains Arlettaz, as to diminish any possibility of cultural homogenization; the recognition needed is based on the principle of difference, which highlights the particular identities and specific features of ethnic collectivities. The author develops this idea in the following way:

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> An inductive definition would identify the minority as a group of people who, because of their physical or cultural characteristics, are different from others in the society where they live, receive unfair treatment, and consider themselves to be the object of collective discrimination. In general, this type of definition is based on the summation of three elements: the existence of objective differences (of race, language, religion, etc.), a subordinate situation of one of these groups concerning another or others, and an awareness of the difference and the subordinate position it implies (ARLETTAZ, 2014, p. 205).

According to the author, recognition from the point of view of difference requires an inductive approach that allows us to identify the elements that determine the differentiating features and characteristics to legitimize the defense of what is particular. This type of recognition would consider the specific and living culture of these collectivities, giving them a special social status. This allows them to be a cultural collective and not something else.

In this context, Will Kymlicka, in "La ciudadanía multicultural" (Multicultural Citizenship), points out the need to resolve these complexities around cultural minorities, "something that is often called the challenge of multiculturalism" (1996, p. 25). The protection of cultural collectivities is not achieved solely through the recognition of rights common to the whole of society, which is why this protection must consider "rights that are differentiated according to group". Kymlicka classifies these rights as polyethnic[1], special rights of representation,[2] and self-government[3].

Regarding these rights, in his doctoral thesis, Professor Camilo Borrero expresses the following:

> Thus, by way of example, the rights of representation can be granted as a result of concern for participatory democracy (under-valuing some minorities who cannot be heard in their political interests) or as a direct and necessary consequence of self-government: given this, no external body can unilaterally resolve matters affecting these minorities without securing their consent. At the same time, granting differentiated polyethnic rights to a group very quickly leads to debate about their relationship with individual rights, especially when their application leads to restrictions on the latter (as in the case of freedom of worship, gender equality, etc.) (BORRERO, 2014, p. 125).

The limitations imposed by the communities themselves about individual rights are what Kymlicka calls "internal restrictions", to differentiate them from the limitations imposed on "external" subjects (external restrictions). The first is established within

[1] These rights apply to immigrant groups, religious ethnic groups and minorities without a territory.
[2] The aim of these rights is to ensure the participation of groups in the organization and shaping of political power.
[3] The target groups are national indigenous, black and Afro-descendant communities, in particular.

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collectivities and are all those limitations that make it possible to ensure the very life of these collectivities, such as the prohibition of certain behaviors that threaten the collective. These restrictions are controlled within the same group.

Internal restrictions, in the words of Prof. Borrero, are "limitations on the fundamental rights of indigenous people, individually considered, by their communities, generally under the invocation of other fundamental rights of a collective nature, such as those of cultural diversity or ethnic survival" (2014, p. 236). In other words, internal restrictions are all those limitations established within the group, making it possible to ensure collective harmony.

On the other hand, external restrictions are all those preventive measures adopted in the face of the dangers posed by the presence of the hegemonic society. These restrictions are controlled from outside the group and have to do with defending its cultural existence (authenticity) from the perspective of the Western "other"; they are, therefore, mechanisms or "measures that the group seeks to protect its existence and its specific identity against other groups" (BORRERO, 2014, p. 125).

In the same vein, Professor Oscar López, faced with such restrictions, states:

> In practical terms, external protections guarantee discriminated communities that the state will intervene through affirmative action only when it is necessary to guarantee material equality. In the opposite direction, it will respect the autonomy of the people by refraining from intervening in the matters that fall to their traditional authorities while guaranteeing through the category of internal restrictions a minimum limit made up of the fundamental rights of each of their individuals (LÓPEZ, 2011, p. 165).

Now, bearing in mind the scope of these restrictions, it is appropriate to ask, in line with Hale (2002), what are the circumstances of time, manner, and place for the effective implementation of external protections, and what are the limits to internal restrictions, about which Kymlicka is silent? Defining the origin of external protections, as well as the limits of internal restrictions, is up to the state, says Hale. From this point of view, the determination of the fate of indigenous communities, whenever it is intended to intervene for protection purposes, ultimately falls to an external agent.

Starting from these limits and to guarantee respect for ethnic collectivities, Francisco Ibarra argues that the State must recognize differentiated rights, beginning with differentiated citizenship that channels the exercise of rights about hegemonic groups. In this sense, Ibarra says that "the objective is rather to create a state that offers equal basic freedoms and rights to all residents who share certain common cultural traits, while at

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the same time providing the opportunity to participate politically to all those who are subject to the same government, even when there are different cultural affiliations between them" (2007, p. 103). From a political point of view, this recognition translates into equal citizenship.

It should be noted that the recognition of differentiated rights requires, for their effective enjoyment, new models of democracy, participation, and citizenship, in which there is a full possibility of acting and interacting as true subjects of rights. This means that the same liberal concept of citizenship must be re-signified and adapted to the new political and social organization models. "Overcoming the challenge of multiculturalism depends, after all, on the possibilities open to everyone's full participation in the democratic process" (DENNINGER, 2007, p. 22).

1.2. Criticism of liberal multiculturalism

In the face of this form of recognition that multiculturalism (as a theory) preaches, various criticisms have been generated, all directed at the liberal foundation of such a conception. Kymlicka is aware of them, as we can see in the following lines:

> The theory of minority rights developed in *Multicultural Citizenship* has been criticized in many ways. Some argue it is insufficiently liberal and compromises universal liberal principles too much to accommodate particularist and often non-liberal sentiments, identities, and aspirations. Others argue that it is too tied to universal liberal values and is insufficiently sensitive to contextual factors and cultural differences (KYMLICKA, 2001, p. 50).

In "Las odiseas multiculturales," Kymlicka states that his critics consider "multiculturalism as the first step on a slippery slope that leads to racial and religious confrontation, the 'balkanization' of society, the suppression of civil and political liberties and the destruction of the democratic constitutional order" (2007, p. 150). One of the most profound criticisms is the conditions that multiculturalism imposes on cultural groups, in the sense of respecting and promoting them only to the extent that they accept and promote the values of liberalism. This approach, which is more interested in being than in diversity, cannot give full status to collectivities, thus denying them the opportunity to be autonomous and different.

Raz shares and develops this criticism further when he states that "liberal multiculturalism recognizes and respects those cultures because they serve true values,

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and to the extent that they do" (2001, p. 198). According to the author, the recognition that multiculturalism gives to cultures is external, interested in, and conditioned to cultures respecting the liberal values of the majority culture. Alavez Ruíz refutes this idea by pointing out that "the tendency of multiculturalism is not to meet the authentic demands of collectivities and individuals placed in a situation of inequality and domination, but how to ensure that these demands cease to be a threat to the liberal conception of society" (2014, p. 39). The consequence of this form of recognition is the neglect of the particularities that make up the social essence of these collectivities, a fact that delegitimizes such recognition.

This critical orientation is also found in Professor Daniel Bonilla, who, in his work "The Multicultural Constitution," states that the categories proposed by Kymlicka are limited to understanding the reality of minority cultures. Says the author:

> In short, the descriptive categories proposed by Kymlicka are too limited to understand the aspirations of minorities who do not have the same characteristics as national minorities or ethnic groups. They cannot capture the wide variety of minority groups around the world. On the other hand, their normative categories cannot offer fair responses to the demands of liberal communities or to the tensions within cultures in which liberal values coexist with traditional liberal values (BONILLA, 2006, p. 79).

In response to these criticisms, Kymlicka says that the experience of multiculturalism in the West says the opposite. Faced with the fact that multiculturalism is a threat both to the state and to the constitutional order, he replies that it does not negatively affect the welfare state or its equality or redistributive policies because, for example, states with strong multicultural policies do not show sustained changes compared to states that do not have them. Nor is the constitutional order of the states affected because the constitutions have adopted as their own the categories that multiculturalism predicts.

To demonstrate this, in "Minority Rights and the Welfare State", Banting and Kymlicka outline nine policies that multiculturalism has promoted and that states, especially Latin American states, have adopted:

1. Recognition of territorial rights and titles.
2. Recognition of self-government rights.
3. Historical defense of treaties and drafting of new treaties.
4. Recognition of cultural rights (language, hunting, and fishing).
5. Recognizing customary law.
6. Guarantee of representation-consultation in the central government.
7. Constitutional or legislative declaration of the distinctive status of indigenous peoples.

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8. Support and ratification of international instruments on indigenous rights.
9. Affirmative action (BANTING y KYMLICKA, 2007, p. 36).

Kymlicka refutes his argument by insisting that international intergovernmental organizations (IOs) in many cases "have considered liberal multiculturalism not as a valid option, but as a favorite option, or even the only legitimate one, and the best example of this is the EU and NATO's decision to insist on respect for minority rights as a condition for access to them" (KYMLICKA, 2007, p. 151). If international bodies (consensuses, organizations, institutions) have historically adopted a multicultural discourse, it is not coherent to say that these treaties and pronouncements are contrary to constitutional texts; on the contrary, these texts have been nourished by them, forming a constitutional block. This defense was not enough; the criticism persists...

Multiculturalism could not faithfully tolerate the customary nature of traditional communities and their values because although it promoted respect for non-liberal cultural communities, at the same time and with greater emphasis, it reinforced respect for liberal values within these communities, says Raz. Thus, Multiculturalism presents itself as a cautious hegemonic ideology that approaches cultures with respect for their identity. In Žižek's words, multiculturalism is respectful of "the identity of the Other, seeing this as a closed 'authentic' community, towards which he, the multiculturalist, maintains a distance that is made possible thanks to his privileged universal position" (1998, p. 172). This universal position allows him to keep his distance from every culture, thus showing himself to be neutral.

From what Žižek says, López extracts two results: the affirmation of difference as a value in itself and the domestication of difference. As a value, multiculturalism insists on defending and promoting difference from the point of view of respect; as a formula for domestication (praxis), multiculturalism instrumentalizes difference for market purposes. As Hale says, through neoliberal multiculturalism, some protagonists in politics and economics reinforce cultural differences "while preserving the prerogative to discern between cultural rights consistent with the ideal of democratic, liberal pluralism, and cultural rights antagonistic. In doing so, they push forward a universalist ethic that constitutes a defense of the same neoliberal capitalist order" (HALE, 2002, p. 295, quoted by LÓPEZ, 2011, p 171).

In Hale's view, multiculturalism in its neoliberal version does not oppose indigenous demands and struggles; rather, it promotes and supports them, but only

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insofar as they do not oppose its interests; otherwise, it will repress them with all its might through its institutions. This is precisely an example of the domestication of difference. In this respect, Gnecco (2011) points out that such domestication is done through specialized knowledge - such as law and anthropology - which, in most cases, produces harmful effects but also represents some advantages. The function of this "authentic knowledge" is to seek a sense of tranquillity and well-being due to recognition. Still, as Hale said, in reality, multiculturalism hides its true intentions: the reproduction of capitalism and the neutralization of any element that represents a danger to this end. With these very well-developed strategies, multiculturalism manages to penetrate the very lives of indigenous communities without them noticing any threat or danger.

Despite all this criticism, Prof. Oscar López points out "that multiculturalism is present, and most importantly, acting, in discursive practices, in the design of public policies, in court rulings, in advertising campaigns, in marketing, in tourist strategies, in museum guides and installations, in these and other places" (2016, p. 232). In short, in the face of criticism, as Prof. Camilo Borrero rightly says: "we would have to conclude that multicultural theses are more strengthened than annulled" (2014, p. 161).

1.3. The Multicultural Constitution in Latin America.

According to Cueva (2018), most Latin American countries have no social processes for consolidating free citizenship that could lead to real processes for recognizing and protecting ethnic rights. For this reason, the enshrinement of diversity in the first Latin American constitutions was partial and biased. "Some early constitutions were even silent about the indigenous presence" (CLAVERO, quoted by ARIZA and RODRÍGUEZ, 2018, p. 21-22).

However, when the world's social conditions changed due to new discourses on the right to difference, mainly as a reaction to the tragedy of the two world wars, new international instruments began to warn of the need to open up spaces for diversity, differences, and multiculturalism. This diversity, considered a constitutional principle, mainly sought to strengthen the assumptions of recognition for peoples, communities, and nationalities that had traditionally been excluded.

The principle applicable to the new constitutional models during the last decades of the 20th century was "difference". This principle is understood as an instrumental

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means of questioning the traditional Eurocentric legal universalism derived from bourgeois liberal rationalism to lay the foundations for constitutionalism, which is much more inclusive of the discourses of recognizing differences and inequalities. This type of constitutionalism "does not intend to limit itself to the observation of factual evidence, the existence of multiculturalism as a public and social reality, but also, and above all, intends to examine its consequences in the field of law" (SIERRA, 2010, p. 16).

According to Gros, from the 1970s onwards, there was a break in the concept of nation due to the recognition of a heterogeneous society, which accepts the existence of minority groups and collectivities. "At the same time, this recognition generated a resignification of the concept of nation, by making it's content something heterogeneous, by recognizing the cosmovision, identity and organization" of ethnic collectives (ZEBALLOSF-CUATHIN, 2022, p. 233). In this way, " the model of a nation of citizens has added the recognition of ethnic and cultural diversity, that is to say of collectivities not reducible to the individual, but subsumed in the idea of the nation" (SÁNCHEZ, 1998, p. 23). At the same time, this allowed for the recognition of collective rights, which must be accompanied by a collective awareness of their history of oppression and, at the same time, a sense of belonging to the nation.

At this time, movements and organizations' constant and persevering work made indigenous communities protagonists in the public debate on their rights. Catalina Botero points out that it was "only until a little over two decades ago, and after a real cultural tragedy in America, when the struggle of indigenous peoples for the recognition of their dignity and their differentiated rights began to bear important fruit in the legal world" (2003, p. 48). This idea is complemented by Balanta, who explains that the "achievements of these movements, based on their proclamations of demand, are translated into the enshrinement of their most prominent postulates in multicultural norms of constitutional rank and international conventions" (2019, p. 240). The rights recognized in this way are openly related to a multicultural tolerance policy, in which respect for different ways of life is a fundamental element. "This approach has taken precedence in recognizing the rights of indigenous and Afro-descendant peoples in Latin America, nationally and internationally" (RODRÍGUEZ, 2013, p. 83).

In line with Balanta and Rodríguez's arguments, Uprimny states that such recognition is not aimed at strengthening the homogenization that the nation-state had pushed for. Still, it intends to recognize the differences and cultural pluralism inherent in

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diverse societies. "Many constitutions then began to define their nations as multiethnic and pluricultural and established the promotion of diversity as a constitutional principle, which is why we are facing a kind of constitutionalism of diversity" (UPRIMNY, 2011, p. 111-112).

This multicultural constitutionalism[4] began with the Guatemalan Constitution of 1985, gradually extending to other geographies: "Nicaragua (1987), Brazil (1988), Colombia (1991), Paraguay (1992), Peru (1993), Argentina (1994), Mexico (1994), Venezuela (1999) and, above all, Ecuador (2008) and Bolivia (2009)" (Rodríguez and Baquero, 2016, p. 29). When constitutions were not abolished, the strategy of updating them was adopted, through which important reforms were introduced, especially about human rights of an ethnic nature.

He also explains the evolution of multicultural constitutionalism in six stages. The first is the "concealment" of rights; the second is international recognition but without guarantees for their protection (1939-1964); the third is the stage of recognition in international treaties and conventions with guarantees for their protection (1965-1971); the fourth stage is formal constitutional recognition without guarantees for its protection (1972-1990); the fifth stage is constitutional recognition with guarantees for its protection (1991-2007); the last stage is "new rights", which began with the constitutions of Ecuador (2008) and Bolivia (2009) (UPRIMNY, 2011).

In the concealment stage, Latin American constitutions were not concerned with ethnic diversity formally or symbolically. The Chilean case is a good example of this. The doctrine classifies this period of negation into four stages or historical events:

> The first manifestation of rejection was observed during the military campaign, euphemistically called the "pacification of Araucanía", a period during which the Chilean army invaded the ancestral indigenous territory (1880-1883), leaving the Mapuche people in a condition of subordination and oppression. A second period emerged with the process of "Mapuche Radication" or forced settlement in "indigenous reserves" (1883-1930), in which the population was relocated under conditions of internal colonialism. A third historical denial process was associated with the events related to dividing communities and imposing the private property system. This project was led by political leaders, state agents, settlers, and dominant groups from

[4] This is how multiculturalism is established in Latin American constitutions: Argentina (arts. 22 and 75), Bolivia (arts. 13, 29 and 256), Brazil (arts. 5, No. 2 and 4), Colombia (arts. 44, 53, 93 and 94), Costa Rica (arts.7, 19, 31, 48 and 105), Cuba (arts. 11 and 12), Chile (arts. 5 and Transitory Provision No. 24), Ecuador (arts. 3, 10, 41, 57, 58, 171, 172, 329, 422, 424), El Salvador (arts. 28, 84 and 93), Guatemala (arts. 27, 46, 102 and 145), Honduras (art. 119), México (arts. 1, 11 y 18), Nicaragua (arts. 5 No. 6, 42 and 46), Panamá (arts. 4, 20 and 129), Paraguay (arts. 41, 142, 144 and 149), Perú (arts. 37, 140, 205, 56 and Transitory Provision No. 4), Puerto Rico (-) República Dominicana (arts. 46 and 74 No. 3) Uruguay (art. 46) and Venezuela (arts. 19, 23, 31, 78, 83 y 155).

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> the region who sought strategies to seize the lands legally granted by the state as indigenous reserves (...). The aim was to seek legal mechanisms to divide the indigenous communities under the pretext that the Mapuches would achieve progress and development as authentic Chileans. This strategy culminated in the legal imposition of the division of communities under Pinochet's military regime (1973-1990) (MILLAMÁN, 2014, p. 85-86).

At present, says Clavero, reality has not changed. The transition from dictatorship to democracy did nothing to improve the treatment of Mapuche indigenous communities. The author explains that this omission was partly because the newly inaugurated democratic Chilean state did not ratify ILO Convention 169 nor elevate indigenous rights to constitutional status, leaving indigenous recognition to the law. Today, "the Chilean case is usually singled out as the most reluctant to recognize the indigenous presence in the past and present constitutionally" (CLAVERO, 2007, p. 126).

This dark stage ends with the international recognition of ethnic rights, which will be enshrined in international treaties and conventions but without guarantees for their protection. Examples of these international instruments are (i) the Convention establishing the Inter-American Indian Institute; (ii) the Convention on Missions of January 29, 1953, signed between the Supreme Pontiff Pius VII and the President of the Republic of Colombia; (iii) Convention 64 of June 8, 1939, concerning the regulation of contracts of employment of indigenous workers; (iv) Convention 86 of June 19, 1947, concerning the maximum duration of contracts of employment of indigenous workers; (v) Convention 104 of June 1, 1955, concerning the abolition of penal sanctions for non-compliance with labor contracts by indigenous workers; (vi) Convention 105 of June 5, 1957, "concerning the abolition of forced labor" and; (vii) Convention 107 of June 26, 1957, "concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries".

The third stage is the recognition of ethnic rights in international treaties and conventions with guarantees for their protection. Luis Rodríguez-Piñero points out that in the face of the failure of states to fully guarantee the integrity of these forms of life, it was necessary to appeal to the international sphere of human rights (2004). The following are among the international instruments that have been concerned with the recognition of ethnic rights, especially indigenous rights, with guarantees for their protection and with a multicultural approach: i) International Convention on the Elimination of All Forms of Racial Discrimination, "adopted by the United Nations General Assembly by Resolution 2106 of December 21, 1965"; ii) International Covenant on Economic, Social and Cultural

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Rights, "adopted by the General Assembly in its resolution 2200 A (XXI) of December 16, 1966; and iii) International Covenant on Civil and Political Rights, "adopted by the General Assembly of the United Nations on December 16, 1966 and entered into force on March 23, 1976".

It complements this catalog iv) Convention 169 of 1969 on Indigenous and Tribal Peoples in Independent Countries, "adopted by the General Conference of the ILO"; v) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, "signed in Washington, D.C., March 3, 1973"; vi) the Constitutive Convention of the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean, "adopted in Madrid on July 24, 1992"; and vii) the United Nations Declaration on the Rights of Indigenous Peoples, "adopted by the United Nations General Assembly on September 13, 2007".

The fourth stage is formal constitutional recognition without guarantees for its protection (1972-1990). This constitutional trend, according to Botero, began in Panama and later spread to other constitutional states:

> In 1972, Panama and 1985, Guatemala were the states that inaugurated multicultural constitutionalism in the region. In its articles 119, 122, and 123, the Panamanian constitution enshrines the rights of consultation and participation of communities. It recognizes their right to dispose of a territory and, consequently, of the natural resources. In Guatemala, Articles 66, 67, 68, 69, and 70 of the Constitution [mention] the right to land of indigenous communities. Nicaragua joined the trend just a year after Guatemala. (...) In 1985, Brazil incorporated the new trend and included in its Constitution the recognition of the nation's ethnic diversity. The regulations in its Constitution mainly deal with the recognition and protection of the territorial rights of indigenous communities (BOTERO, 2003, p. 49-50).

The fifth stage is the constitutional recognition of rights with guarantees for their protection. At this stage, rights of ethnic value are elevated to constitutional status, as are the mechanisms and procedures for their effectiveness. For Casal, the configuration of the multicultural Constitution was at the dawn of the last decade of the last century:

> The multiethnic and multicultural character of the Republic of Bolivia was recognized in the 1994 constitutional reform, which also proclaimed rights for indigenous peoples. A similar orientation is found in the Peruvian Constitution 1993 but in much more timid terms. Greater breadth is seen in the Ecuadorian Constitution of 1996, especially in 1998, as well as in the Colombian Constitution of 1991 and the Venezuelan Constitution of 1999 (CASAL, 2010, p. 217-218).

In this period, constitutions began to enshrine rights, guarantees, and mechanisms to make them effective, separating them from the formal recognition of the

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previous stage. This stage is characterized by strong judicial activism, led internationally by the Inter-American Court of Human Rights and domestically by constitutional courts. Colombia inaugurated this constitutionalism since it separated itself from traditional constitutionalism and built new legal formulas, many of which were close to the interests of indigenous communities. The effect of these changes on Latin American states was indisputable because, from then on, new constitutions or constitutional reforms took this as a reference for their drafting.

Finally, the "new rights" stage began with the constitutions of Ecuador (2008) and Bolivia (2009). These charters enshrined rights and guarantees but also dared to recognize the rights of new subjects, such as the rights of nature, of "those who feel, but don't think," and of future generations. This recognition occurs alongside multiculturalism and multiethnicity and with an attachment to multinationalism and interculturalism as the foundations of diversity, as Uprimny points out.

> According to certain analysts, this radical orientation on the issue of nationality and the recognition of indigenous peoples makes the Bolivian and Ecuadorian Constitutions distinct and emerging constitutionalism, different from other recent transformations in Latin America since they go beyond the framework of liberal constitutionalism, even in its pluricultural and multi-ethnic version, as they move towards distinct constitutional forms that are plurinational, intercultural (Grijalva, 2009: 115-132) and experimental (Santos, 2010: 77 y 123) (UPRIMNY, 2011, p. 113).

The processes of constitutional legitimization, the direct participation of indigenous peoples in the drafting of the Constitution, and a reinterpretation of the concept of the nation gave way to the elaboration of the concept of a "Plurinational Constitution". This Charter recognizes the existence of different and autonomous nations, which remain united by the strength of their identity. Among these collectivities are indigenous nations and peoples, to whom the Constitution recognizes in a participatory way differentiated principles and rights, with guarantees for their protection (Tribunal Constitucional Plurinacional de Bolivia, 2013).

Likewise, this stage covers other epistemologies that can be considered complementary to multiculturalism, such as interculturalism and plurinationalism. Decoloniality and intersectionality are also included, which will be studied in another publication. Finally, it is necessary to point out that the challenge of facing diversity is enormous, which is why protection categories, techniques, and strategies must be adopted. In this respect, the judiciary has a clear commitment, especially to the constitutional courts.

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Conclusions

The constitution-making processes, constitutional changes, and the political participation and struggle of indigenous peoples and communities have given rise to a major legal change and break, which is organically visible in some of Latin America's current constitutions. There, values, principles, and human and fundamental rights were enshrined, forming a broad axiological catalog within which space was also made to recognize principles, rights, and guarantees of ethnic, especially indigenous, values.

Once this recognition had been achieved, the challenge was to interpret and apply these inputs appropriately to protect indigenous realities effectively. Some constitutions have adopted multiculturalism as an "ideal" approach to understanding ethnic and cultural diversity. However, the critical discussion revolved around the liberal foundation of multiculturalism, which affirms the need to recognize and respect diversity only if minority cultures respect the values of the majority culture and serve those interests. According to its critics, this type of recognition is considered one-sided, self-interested, and utilitarian.

Despite these criticisms and the emergence of other epistemologies, multiculturalism has been reinterpreted and adapted to the diverse realities of Latin America. It continues in norms, public policies, political debates, and constitutional jurisprudence. In these and other scenarios, multiculturalism remains a valid epistemology to support interpreting and applying the principle of ethnic and cultural diversity. There is no denying that from the point of view of indigenous peoples, this approach is external, which is why they have legitimized other approaches with greater strength, such as interculturality and plurinationality, among others.

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