

## INDIGENOUS SELF-GOVERNMENT: A COMPARATIVE STUDY BETWEEN BRAZIL AND BOLIVIA

### *AUTOGOVERNO INDÍGENA: UM ESTUDO COMPARADO ENTRE BRASIL E BOLÍVIA*

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#### **Abstract**

This paper aims to investigate if the Brazilian Constitution of 1988 guarantees the prerogative of self-government to indigenous communities, according to the canons of the new Latin American constitutionalism present in the Constitution of Bolivia. Then, a deductive and comparative study was carried out with documental and bibliographical analysis, utilizing descriptive statistics to perform comparative analyses. The results show that, when comparing the constitutional models of Brazil and Bolivia, it is possible to notice that in the Brazilian Constitution, the Western Eurocentrist paradigm affirms constitutional sovereignty

#### **Resumo**

*O objetivo deste trabalho é investigar se a Constituição de 1988 garante a prerrogativa do autogoverno às comunidades indígenas, segundo os cânones do novo constitucionalismo latino-americano presentes na Constituição da Bolívia. A investigação foi conduzida por método dedutivo e comparativo, análise documental e bibliográfica, estatística descritiva para análises comparativas. Os resultados mostram que, na comparação entre os modelos constitucionais do Brasil e da Bolívia, é possível notar que, naquele, o paradigma ocidental eurocentrista afirma a soberania constitucional e um sistema mono jurídico*



and a mono-juridical (hegemonic) system of Law. By contrast, the Bolivian archetype proposes to implement the self-government and self-determination of the indigenous communities. The Brazilian paradigm promotes an anti-indigenous policy, in favor of a capitalist economic model, demanding alternative ways of interpreting the Constitution to identify instruments that ensure the self-determination and autonomy of the native peoples in Brazil.

**Keywords:** constitutionalism; indigenous communities; self-government.

*(hegemônico) do Direito. Já o arquétipo boliviano se propõe a efetivar o autogoverno e a autodeterminação dos povos originários campestres. O paradigma brasileiro promove uma política anti-indígena, em prol de um modelo econômico capitalista, a exigir formas alternativas de interpretar a Constituição e identificar instrumentos que garantam a autodeterminação e autonomia dos povos originários no Brasil.*

**Palavras-chave:** autogoverno; constitucionalismo; povos indígenas.

## Introduction

Constitutionalism refers to the various theoretical-practical or practical-theoretical movements that generate Constitutions, that is, the normative framework that defines the organization of the State, the exercise and limits of political power, and also establishes the people's fundamental rights and guarantees. These movements occur in the European revolutionary context of the eighteenth century, challenging political absolutism and limiting power, but they are also present in the effervescent Latin America of the late twentieth and early twenty-first centuries, in insurgent contexts, such as the Bolivian case.

In fact, in some countries from the South, formerly integrated into the colonial-exploitative regime, popular mobilizations took place in search of structural changes. Led by Indigenous peoples, these movements questioned the persistent and hegemonic exploitative economic model, and at the same time demanded the preservation of their territories, cultures, and ancestral values.

Mainly due to these struggles, some countries, instead of following the European constitutional model (representative democracy, neoliberal economy, and legal unity), adopted new axiological parameters to prepare their Constitution by prioritizing, among other factors, the ideals of popular ascension, community democracy, plurinational State, and Indigenous autonomy. For this reason, this movement has been called the new Latin American constitutionalism, as it is conceived based on Indigenous values and realities, dissociating itself from the traditional Euro-American conception and valuing the people who already inhabited

the continent before colonization.

Thus, this article makes a thematic and historical-geographical selection to identify the principles of this constitutionalism, especially those present in the 2009 Bolivian Constitution, and associate them with the 1988 Brazilian Constitution, focusing on the treatment towards the Indigenous population in terms of recognizing their autonomy in the political field, that is, self-government for matters internal to the community.

Certainly, the 1988 Constitution reserves a specific chapter with two articles (231 and 232) for the Indigenous issue, providing that these peoples must be recognized for their social organization, customs, languages, beliefs, and traditions, in addition to their original rights to the territories they traditionally occupy. Furthermore, these territories are not their property, but of the Union, which is responsible for demarcating, protecting, and ensuring all their assets is respected. The Constitution does not expressly provide for autonomous Indigenous jurisdiction, nor does it reserve seats for this population in parliaments.

In Bolivia, rural Indigenous people, a category corresponding to Brazilian Indigenous people, represent most of the population. The ancestral domain that these nations and peoples have over their territories is recognized, and the Constitution guarantees them free determination, consistent with the right to autonomy and self-government. Furthermore, their participation in state bodies and institutions is guaranteed by a constitutional provision, so much so that, in the elections, the electorate must comply with the proportionality of this population.

Thus, the main objective of this work is to examine whether the 1988 Brazilian Constitution guarantees self-government to Indigenous communities according to the principles of the new Latin American constitutionalism, especially the model designed in the 2009 Bolivian Constitution. The Bolivian Constitution was chosen as a verification parameter for this study since it represents a landmark of the so-called new Latin American constitutionalism, breaking with the pattern of a modern Western European State by incorporating new institutions, such as legal pluralism.

In turn, the specific study objectives are to analyze the Brazilian Constitution aspects on this topic, Constitution and pluralism; understand the meaning of the new Latin American constitutionalism and its materialization in the Bolivian Constitution and constitutional models; and draw up a comparative table between Brazil and Bolivia regarding Indigenous self-government.

For this purpose, the study used deductive and comparative methods, with documentary and bibliographic analysis, exploratory and quantitative-qualitative

approach, and descriptive statistics for comparative analyses, resulting in a text structured into three central sections connected to each other. In the first section, the contribution of the new Latin American constitutionalism to the production of Constitutions and plural States is examined. In the second section, we analyze the way in which this proposal materializes in the Bolivian Constitution. Finally, in the third section, we compare between the first and the second sections regarding the subject of research, thus revealing the fundamental results of the analysis.

### **I Constitution and pluralism: contribution of the new Latin American constitutionalism**

According to Canotilho (2003), constitutionalism refers to movements that lead to Constitutions, in their modern sense, that is, which work as instrument for State organization, limitation of political power, and provision for fundamental rights and guarantees. For Canotilho (2003), constitutionalism is the theory (or ideology) that raises the principle of limited government, which reveals itself to be a specific technique of limiting power with guaranteed purposes centered on the European revolutionary context of the eighteenth century, when absolutism was questioned at political, philosophical, and legal levels.

As stated by Bonavides (2007), the formation of the modern State in Europe is accompanied by constitutional movements. Movements in which the ideology of political-social organization of the hegemonic and hierarchical State appears in the Constitution (Magalhães; Rabelo; Teixeira, 2019), thus promoting the structuring dimensions of power and establishing its legal limits towards social guarantees (Canotilho, 2002).

The analysis by Lassalle (1998) found that the action of real power factors leads to the adoption of the Constitution, whose essence represents the structuring of these factors that govern the State. According to Magalhães, Rabelo and Teixeira (2019), the fact is that the European liberal contractarian movement represented a rupture in the feudal political-social structure and established the hegemonic pattern of the modern colonial European Constitution.

Euro-American constitutionalism is, therefore, a bourgeois liberal movement whose purpose was to guarantee the formation of the unitary State, with commercial freedom and private property, in addition to providing protection against abuse of power (Bonavides, 2007; Silva, 2022).

The European liberal constitutionalist model affirms constitutional sovereignty and a monistic (hegemonic) system of Law, instead of a coordinated and pluralistic model (Magalhães, 2018). Thus, the State presents an omnipotent model of concentrating political and government power in the territory, without asserting a coordination of orders (Costa, 2017). Besides, the modern State is characterized by a legal specificity that privileged commercial relations supported by freedom and individuality of the subject of law, promoted by the bourgeois class (Mascaro, 2013).

However, constitutionalism was not restricted to nineteenth-century Europe. In fact, it can manifest itself at any time and place. This is the case in Latin America, especially in the Andean countries in late twentieth and early twenty-first centuries. Bello (2018) affirms that constitutionalism in Latin America presents innovative characteristics in relation to the paradigm of the northern hemisphere. While in the European vision the centrality of constitutions resides in the dignity of the human person and in the Enlightenment anthropocentric and rationalist thinking, in the Andean archetype the centrality is located in the ancestral epistemological reference of *Pachamama*, in the principle of *Buen Vivir* [Good Living], in biocentrism, and in the intimate relationship between human and nature.

Through this new paradigm, constitutions result from intense popular mobilization, and their texts include the historical agendas of social movements, in addition to the recognition of legal pluralism, collective subjects, and the incorporation of the different groups that form societies (Nóbrega, 2019). In other words, constitutionalism in Latin America is the result of political and social mobilizations, as Bello (2016, free translation) explains:

[...] constituent conventions, refunding projects, and the conception of the State in terms of Pluricultural and Multinational State, institutional organization, catalogs of fundamental rights, epistemological and axiological references (*Pachamama* and *Bien Vivir*), special Indigenous jurisdiction, autonomy of traditional peoples, protection to indigenous territories and natural resources.

In the case of Bolivia, they foresee a “*Estado Unitario Social de Derecho Plurinacional Comunitario, libre, independiente, soberano, democrático, intercultural, descentralizado y con autonomías*”, founded “[...] *en la pluralidad y el pluralismo político, económico, jurídico, cultural y lingüístico, dentro del proceso integrador del país*”<sup>2</sup> (Bolivia, 2009).

1 In free translation: “Unitary Social State of Plurinational Community Law, free, independent, sovereign, democratic, intercultural, decentralized, and with autonomy”.

2 In free translation: “In political, economic, legal, cultural and linguistic plurality and pluralism,

Latin America was colonized by a successful European project, a process in which there was intense extraction of natural resources, territorial occupation, and land use, besides decimation and enslavement of Indigenous peoples. To legitimize its conquest, the Eurocentric and mercantile capitalist model of colonization was based on a false social evolutionary premise of superiority, grounded on concepts of race, religion, and civilization (Quijano, 2005; Ribeiro, 2015). This political and legal stance resulted in the invisibilization of Latin American peoples—such as the diversity of Indigenous peoples—in political participation and in the acquisition of rights. Therefore, once the European model prevailed, the process of independence and the establishment of constitutions in Latin America took place by institutions with a unitary standard, which distanced the Indigenous peoples from democratic and republican participation (Nóbrega, 2019).

In this way, the modernity movement promoted by the European colonizer is bold in its denial of diversity and in its appreciation of superiority and the individual to the detriment of equality and collectivity (Quijano, 2005; Ribeiro, 2015). In effect, the narrative within the dominator's binary system is that of homogenization of values, standards, religion, and behavior to enable the spread of a hegemonic and centralizing colonization project. In summary, it is possible to highlight some core points of the modern colonizing State's project: (i) existence of a hegemonic group to the detriment of the subordinated and excluded; (ii) uniformity of the modern dichotomy, so those who are different are persecuted, expelled, imprisoned, enslaved, and killed, and (iii) binary narrative of "us" (superior, modern, and civilized) against "them" (Indigenous people, savages, barbarians, and pagans), which is based on the narcissistic logic "I am superior because I am not inferior, I am European (civilized) because I am not a savage, an Indigenous person, a barbarian" (Magalhães, 2018, p. 40-41, adapted).

Understanding the logic of the modern (hegemonic) dichotomy, represented in the oppressive narrative of "us" against "them", is fundamental to overcoming the standardized colonial heritage, which separates, hides, and excludes those who are different (Magalhães, 2018). According to Costa (2017), the legitimacy of this logic was created via legal, religious, and scientific institutions of the modern State. In fact, the first constitutional movements of the nineteenth century in Latin America, led by the local bourgeoisie, favored the maintenance of a State derived from the European model of structuring power. In this sense, the State reproduces a Eurocentric policy, which privileges the capital relations established by the colonizers (Gargarella, 2010; Valença, 2018).

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within the scope of the country's integration process".

From this perspective, the new Latin American constitutionalism can be understood as a legal, philosophical, and social movement that seeks to break with the hegemonic modern State's values, based on the superiority and hierarchization of the colonizing binary logic (Gargarella, 2010; González, 2015; Bello, 2018; Magalhães, 2018; Nóbrega, 2019). In this way, proclaiming a pluralist State is not only recognizing diversity, but also affirming that there is no hegemonic and superior standard (Magalhães; Rabelo; Teixeira, 2019). Thus, we can effectively think about removing the invisibilization that Western law has installed; a law that has perpetuated the colonial legacy of exploitation since different peoples are only symbolically treated as equal (Lyra Filho, 1982). Latin American constitutionalism operates from a perspective of legal and political order that presents a coordination of autonomous orders and not a hierarchically superior order, as presented by the Euro-American model (González, 2015).

The new Latin American constitutionalism presents its singularity in its bold popular mobilization linked to social movements that seek to dissociate the marginalization inflicted on Indigenous peoples due to colonial heritage. In essence, the Andean archetype aims at social well-being, with the ancestral axiological recognition of *Pachamama* and the principles of *Bien Vivir* and the appreciation of the local (Latin American) human relationship with nature (Bello, 2018).

These principles, currently defended by the Andean peoples in the plurinational states of Bolivia and Ecuador—such as the ethics of *Bien Vivir*—rise to the level of a philosophy based on the epistemological logic of the South, which translates into resistance to the modern hegemonic conception of development. While the modern State's colonial thinking attributes accelerated economic development to an individualistic and hierarchical perspective of placing nature as a resource to be extracted, the decolonial Andean logic criticizes the capitalist model and recognizes that the human being is part of nature and not separated from it. Thus, as people degrades the environment, the self-degradation of the human being takes places (Magalhães; Rabelo; Teixeira, 2019).

Decoloniality and the deconstruction of the colonial superiority thinking materialize when questioning the instruments that provide legality for such actions in society, such as Law itself (Lyra Filho, 1982). The new Latin American constitutionalism, in recognizing the people's diversity and autonomy, declares that there is no hegemonic standard to be adopted by the State, which results in a perspective of assuming peoples' autonomy and legal pluralism (González, 2015).

Therefore, the Euro-American model exists based on a normative standard that homogenizes the subject of law and represses real social, ethnic, cultural,

racial, and gender differences. This affects the construction of a Western-model State and the perspective of one language, one territory, and one kind of people (Nóbrega, 2019). From another perspective, the new Latin American constitutionalism manifests itself based on the recognition of collective subjects and the group diversity. In other words, based on the inclusion of the peoples' diversity in the State's political machine (Gargarella, 2010). Therein lies its greatest contribution.

## **2 A path to be followed: the materialization of the Latin American constitutionalism in the Constitution of Bolivia**

In the twenty-first century, the hegemonic neoliberal policy of Euro-American states has produced harmful social effects on the well-being of significant portions of South American people and, in response, progressive speeches and actions have emerged on the continent. Notably, the “progressive” terminology alludes to rulers opposed to the hegemonic standard, who identify with the political left and rose in politics aiming to contain the deleterious effects that the globalization of neoliberal politics caused in their countries (Santos, 2016).

Still according to Santos (2016), it is possible to identify within these governments the figures of Hugo Chávez, in Venezuela (1998); Evo Morales, in Bolivia (2005); Luiz Inácio Lula da Silva, in Brazil (2002); Néstor Kirchner, in Argentina (2003); Rafael Correa, in Ecuador (2006), and Fernando Lugo, in Paraguay (2008).

In Latin America, the neoliberal model of economic development, with extractive policies of natural resources exports and maintenance of Indigenous people marginalization, is unsustainable to the ecological balance, contributing to a civilization crisis (Escrivão Filho, 2016; Silva, 2022). In this context, the lack of Indigenous peoples' political emancipation, as well as economic and social dissatisfaction in the history of Bolivia, is similar to other Latin American countries.

However, a large part of Bolivia's inhabitants are descendants of Indigenous populations (Cunha, 2012) and compound the subordinate popular economic class that forms the State. In the nineteenth century, since the country's independence, the Indigenous population was thrown into marginalization and the devaluation of their culture, which, according to Valença (2018), led to constant popular dissatisfaction.

In the twentieth century, with the change from conservative elites to liberal ones, the Bolivian State managed to achieve a certain stability, which lasts for



some decades. Valença (2018) states that the scenario only presented an economic and social change following the armed conflict between Bolivia and Paraguay. These are constitutive moments that reveal the elites' lack of commitment to the State, as they are more concerned with meeting the interests of the capitalist market (Zavaleta, 2008).

Additionally, the traditional parties dissolve and opposing ideological parties emerge, such as the Revolutionary Nationalist Movement (Valença, 2018). In 1952, Bolivia went through the so-called National Revolution, responsible for mobilizing a large popular mass that was fragmented, culminating in the seizure of the State and which became a striking reference in its Constitution to this day. This popular uprising was dissipated with the military coup of 1964, in which a dictatorship was established. Santos (2016) affirms that the return of a Democratic government only occurred in 1982.

The economic crisis that was plaguing Latin American countries generated intense popular dissatisfaction and triggered several movements that led to the dissolution of dictatorial models after 1980. In reality, States began to adopt democratic political regimes, in addition to recognizing plurality and combating social inequalities. In this sense, it is possible to cite, according to Nóbrega (2019), the constitutions of Brazil (1988), Colombia (1991), Mexico (1992), Peru (1993), Bolivia (1994), Argentina (1994), Ecuador (1998), and Venezuela (1999).

In Bolivia, the legacy of a nationalist project installed by the military government, riddled with economic, social, and environmental problems, left the population increasingly dispossessed. Inflation, exchange rate depreciation, and the increase in external debt are typical problems of centralizing administrations in Latin America. Thus, inherited by Siles Zuazo (1982-1985) and Paz Estenssoro (1985-1989), these governments were established, in parallel, with the use of neoliberal policies (Valença, 2018).

The collapse of neoliberal politics in Bolivia was achieved when dictator Hugo Banzer was elected in 1997. His government was marked by American political influence against coca, provoking a strong reaction from the subordinate classes and projecting the figure of Evo Morales into popular leadership, in defense of ancestral practices, cultural self-determination, and nationalism (Ayma, 2014). One of the moments of greatest popular dissatisfaction occurred in the so-called Water War (1999-2000), in Cochabamba. After the Bolivian government made a commitment to privatize the Cochabamba water system, in agreement with the World Bank for a forgiveness of US\$ 600 million, the popular revolt gained greater dimension. Furthermore, paying for the use of water breaks with

the Andean community way of life with nature, violating the ancestral conception of *Pachamama* and *Bien Vivir* (Santos, 2016).

In this context of popular mobilization, there was the rise of Evo Morales and the *Movimento Al Socialismo* (MAS), with the growing popular dissatisfaction that occupied Bolivia. Largely because of this, Evo Morales was elected president in 2005, with 54% of the votes. Upon assuming the Presidency, Morales began the political fight for a new Constitution, which materialized in 2009. Thus, Bolivia proclaimed itself a Unitary State of Plurinational Community Law, free, independent, sovereign, intercultural, decentralized, and endowed with autonomy<sup>3</sup>.

For Valença (2018), the Bolivian reality was seen, in part, as the result of a colonialist heritage, promoted by neoliberal capitalism, through the hegemonic policy of hierarchization and superiority (Magalhães; Rabelo; Teixeira, 2019). This archetype promoted the marginalization and exploitation of Indigenous peoples (Nóbrega, 2019). In this sense, the new Bolivian Constitution has a proposal to break with the colonial legacy of violence<sup>4</sup>; the MAS did not seek to equalize Bolivia to Europe, but rather to implement a Latin American singularity, guaranteeing social rights against the hegemonic Western standard by the recognition and dignity of the Andean peoples, which is represented in the Andean philosophy of well-being, such as *Bien Vivir* and in relation to *Pachamama*.

According to Magalhães, Rabelo and Teixeira (2019), the new Bolivian constitutionalism breaks with the unitary, hierarchical, and monistic hegemonic pattern. The new Constitution is based on ethnocultural plurality and legal pluralism, recognizing the existence of pre-colonial and rural Indigenous peoples<sup>5</sup>. This inclusion of cultural and linguistic differences represented a fissure in the

3 “Art. 1. Bolivia is constituted as a Social Unitary State of Plurinational Community Law, free, independent, sovereign, democratic, intercultural, decentralized and with autonomy. Bolivia is founded on plurality and political, economic, legal, cultural, and linguistic pluralism, within the integration process of the country” (Bolivia, 2009, free translation).

4 “Preamble. [...] We have left the colonial, republican and neo-liberal State in the past. We take on the historic challenge of collectively constructing a Unified Social State of Plurinational 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 the peoples. We women and men, through the Constituent Assembly and with power originating from the people, demonstrate our commitment to the unity and integrity of the country. We found Bolivia anew, fulfilling the mandate of our people, with the strength of our Pachamama and with gratefulness to God. [...]” (Bolivia, 2009, free translation).

5 “Art. 2. Given the precolonial existence of the rural Indigenous nations and peoples and their ancestral domain over their territories, their self-determination is guaranteed within the framework of the unity of the State, which consists of their right to autonomy, self-government, their culture, the recognition of their institutions and the consolidation of their territorial entities, in accordance with this Constitution and the law” (Bolivia, 2009, free translation).

unifying understanding of hegemonic culture and Western civilization, implemented by the colonizer, according to which there should be a sole language and only one kind of people (Nóbrega, 2019). Thus, Bolivia begins to recognize the right to autonomy and self-determination of rural peoples, as well as the concepts of self-government and its own legal institutions.

Original Indigenous autonomy consists of self-government in the local territory, with political and legal freedom (arts. 289 to 296). Therefore, there is a system of coordination of political and legal autonomy with regional autonomy (arts. 280 to 292)<sup>6</sup> and rural Indigenous autonomy. Regional autonomy is constituted by an assembly with deliberative, normative-administrative, and supervisory powers. The members of this assembly are representatives elected by the municipalities. The rural Indigenous peoples, in turn, will be responsible for drafting their own statutes, rules, and procedures, following the respective constitutional law.

The new form of government and structure of the State breaks with the hierarchical and mono-legal model, and the ordinary jurisdiction and the rural jurisdiction of Indigenous peoples are recognized in the new Constitution, in equal hierarchy (art. 179, I and II)<sup>7</sup>, the latter being exercised by its own authorities, thus guaranteeing legal autonomy (art. 190)<sup>8</sup>.

Bolivia is organized institutionally and legally through the valuation of different societies within the State, and to this end the judiciary is elected based on criteria of plurality, with representation of the ordinary and original rural system (art. 197)<sup>9</sup>. All this to guarantee the peoples' autonomy and legal plurality,

6 "Art. 281. The government of each regional autonomy will be constituted by a Regional Assembly with deliberative, regulatory-administrative, and supervisory power, within the scope of its authority, and an executive body. [...] Art. 289. Rural Indigenous autonomy consists of self-government as an exercise of free determination of rural Indigenous nations and peoples, whose population shares territory, culture, history, languages, and legal, political, social, and economic organization or institutions. [...] Art. 292. Each rural indigenous autonomy will prepare its Statute, according to its norms and own procedures, and in accordance with the Constitution and the Law" (Bolívia, 2009, free translation).

7 "Art. 179. I. The judicial function is singular. Ordinary jurisdiction is exercised by the Supreme Court of Justice, the departmental courts of justice, sentencing courts and judges; the agri-environmental jurisdiction by the Court and agri-environmental judges; the rural Indigenous jurisdiction exercised by its own authorities; there will be specialized jurisdictions regulated by law. II. Ordinary jurisdiction and the rural indigenous jurisdiction will enjoy equal hierarchy" (Bolívia, 2009, free translation).

8 "Art. 190. I. The rural Indigenous nations and peoples will exercise their jurisdictional and administrative functions through their authorities, and will apply their principles, cultural values, norms, and own procedures" (Bolívia, 2009, free translation).

9 "Art. 197. The Plurinational Constitutional Court will be made up of Magistrates elected with plurinationality criteria, with representation of the ordinary system and the rural Indigenous system (Bolívia, 2009, free translation).

redefining the current constitutional conception. Finally, it is possible to practice the so-called legal self-government, which embraces the characteristics of shifting local administrative decision-making competence and creating political and legal structures of self-government (González, 2015). This is, therefore, the framework of Latin American constitutionalism in Bolivia.

### 3 Constitutional models: comparing Brazil and Bolivia and the role of self-government

The constitutions of Brazil and Bolivia present, in their respective preambles, a set of principles considered indispensable for a dignified life, such as the fundamental rights to equality, solidarity, freedom, and equity. In this regard, it is worth highlighting that the Euro-American model is based on fundamental rights centered on the human person's dignity. The Latin American model is audacious in the epistemology of the South: *Bien Vivir* and *Pachamama*, both with similarities to guarantee people's well-being. The axiological perspectives and strategies in the pursuit of this mission differ greatly.

One of the ways to analyze social well-being, in a concrete manner in each constitutional model, consists of measuring parameters that relate health, education, and standard of living (GDP) of a nation, such as the Human Development Index (HDI) and the Inequality-adjusted Human Development Index (IHDI). In this sense, the United Nations Development Program (UNDP) has reports and databases for human development.

However, the HDI is a method subject to criticism, considering that, among other reasons, it is not indicative of real human progress or social inequalities. GDP, in turn, does not correspond to the real distribution of wealth in a society. In this sense, since 2010 new indices have been added, such as the IHDI, a method that, in addition to considering aspects such as health, education, and income among the country's population, discounts the average value of each social dimension according to their level of economic inequality. Therefore, the IHDI is an average level of human development, sensitive to the population inequality distribution. In other words, the difference between the HDI and the IHDI is a measure of the variation in human development due to inequality.

**Table 1.** Comparison of IHDI between Brazil and Bolivia from the new 2009 Bolivia constitutionalism

Year	Brazil	Bolivia
2010	0.529	0.413
2011	0.528	0.442
2012	0.535	0.444
2013	0.549	0.482
2014	0.557	0.492
2015	0.563	0.494
2016	0.572	0.515
2017	0.579	0.527
2018	0.575	0.542
2019	0.57	0.546

Source: adapted from PNUD (2022).

The last data provided by UNDP was from 2019, and it is possible to note that Brazil presented IHDI of 0.570, higher than that of Bolivia, which was of 0.546. However, when these values are compared based on the new Latin American constitutionalism from 2010 to 2019, Brazil presents growth rate of 8%, and in Bolivia the growth rate was of 32%.

An alteration to these values also resulted from the constitutive process and the constitutional model adopted by Bolivia as of 2009. The new Constitution, to an important extent, consolidated a series of actions and behaviors directed at the Bolivian people's internal interests.

Valença (2018, p. 90; free translation) points out that this relationship is based on the fact that, in this context, "a re-signification of the Bolivian economic matrix has occurred". Leaving the exploitative model of mines, gas and food products directed at exports, efforts began to be made to serve the domestic market thanks to government control over strategic sectors (mining, communication, transportation, and food products), with a view to boosting the community economy (Valença, 2018). According to Garcia-Linera (2013 as qtd. in Valença, 2018, p. 91), in a five-year interval, financial income jumped from US\$ 1.5 billion to more than US\$ 9 billion, which enabled implementation of public policies in social area.

In parallel to the economic impulse, the new constitutional model is directed by the people plurality, manifested in the Indigenous peoples' autonomy

and self-government, breaking with the Euro-American constitutional model (Valença, 2018). Indigenous peoples' self-government and self-determination are forms that allow preserving and exercising the rights of a pluralist State (González, 2015; Postero; Tockman, 2020).

In this way, Brazil adopts a Western constitutional model, strongly influenced by international standards, such as International Labour Organization (ILO) Convention No. 169 (Organização Internacional do Trabalho, 2011), which deals with the Indigenous and tribal peoples, as well as the United Nations Declaration on the Rights of Indigenous Peoples (Nações Unidas, 2008)<sup>10</sup>. In accordance with art. 26, the State must, through these instruments, recognize the Indigenous peoples, their freedom to manifest culturally and politically, and the right to possess the land they originally occupied (Nações Unidas, 2008).

Meanwhile, as highlighted in such UN declaration as to the definition of self-determination and self-government (arts. 3 and 4), none of these concepts change the hierarchical, sovereign, and monistic idea of the State (art. 46). Thus, the State must establish representative institutions for Indigenous peoples, capable of guaranteeing their rights<sup>11</sup>.

In contrast to the traditional Western constitutional model, Latin American constitutionalism operates from a perspective of breaking the superior and sovereign legal-political order of the modern State (Magalhães; Rabelo; Teixeira, 2019). Thus, the State should be grounded on a system of coordination of autonomous orders (González, 2015). In Latin America, the social movement is not linked to the native Indigenous people's self-determination to the construction of a new State. On the contrary, the starting point was to claim the right to the self-determination within the legal and political limits of the new Constitution.

This perspective is fundamental, because it implies the creation of the Indigenous peoples' political and administrative autonomy in their territory.

10 Art. 3 Indigenous peoples have the right to self-determination. Due to that right they freely determine their political status and pursue their economic, social, and cultural development. Art. 4 Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions (Nações Unidas, 2008, p.7).

11 Provisional Measure No. 1.154, of January 1, 2023, establishes the basic organization of the Presidency of the Republic and the Ministries (Brasil, 2023). Thus, aiming at native Indigenous people inclusion, item XXIV of art. 17, establishes, in an unprecedented way, the creation of the of Indigenous Peoples Ministry, a fundamental milestone, given that Indigenous affairs were represented by other ministries, such as Agriculture, thus linking Indigenous organizations, such as the *Fundação Nacional dos Povos Indígenas* (FUNAI – National Indigenous People Foundation) or the former *Serviço de Proteção ao Índio e Localização de Trabalhadores Nacionais* (SPILNT – Indian Protection and National Workers Localization Service).

According to González (2015), this autonomy will only be effective if the State is able to guarantee two fundamental elements: individual right, synthesized by its own exercise of territorial jurisdictional power; and access to institutional right to achieve self-government. Finally, there is a constitutional combination of Indigenous rights and institutions with administrative policies of territorial competence.

Some discrepancies are evident when comparing the Constitution of Brazil (1988), based on a Euro-American model, with the Constitution of Bolivia (2009), conceived based on the Latin-American model. In fact, Brazil has the principle of peoples' self-determination, but it is restricted to the context of relations with foreign nations. Regarding Indigenous communities, despite the Constitution guaranteeing the recognition of the communities, culture, and rights over the territories they originally occupied (arts. 231 and 232), it does not guarantee autonomy in legal or political institutions or the self-government. In the Constitution of Bolivia (2009), the rural Indigenous groups' autonomy takes place in the exercise of self-government and the system of coordination of autonomous orders with the State, through the very legal, political, social, and economic institutes of the Indigenous peoples (arts. 289 to 296).

From this perspective, when thinking about Indigenous autonomy to control the territory, including the use of natural resources and airspace, among other things, it is reasonable to assume that, for such a right to be conquered, it depends on representation in the composition of the powers of the State or political institutions (González, 2015). The rights of an ethnic group are self-determined and guaranteed with territorial jurisdiction, recognized by the State itself. In this sense, the fundamental criterion that characterizes the capacity to self-determine is an internal territorial policy conducted by the ethnic group itself with legal autonomy and recognized by the State (Postero; Tockman, 2020). Given this scenario, it is possible to practice the so-called self-governing right, in relation to which it is possible to synthesize the following attributes: transfer of decision-making competence to local administration, and creation of political and legal structures of self-government and delimited territory with guaranteed right to the use of natural resources (González, 2015).

Although the 1988 Brazilian Constitution recognizes the Indigenous communities, organizations, and cultures, the government is absent in guaranteeing conservation and compliance with the Indigenous peoples' rights. The increase in conflicts and invasions of Indigenous territories in Brazil has once again generated discussion about protecting these communities' rights.

In this respect, it is worth mentioning the 2021 report entitled *Violência*

*contra os povos indígenas no Brasil* [Violence against Indigenous peoples in Brazil], carried out by the Indigenist Missionary Council (CIMI), which reported 1,294 cases of violence against the Indigenous peoples' heritage. Of these, 871 are related to omissions and defaults in the regularization of land, 118 refer to cases of territorial rights conflicts, and 305 to invasions of Indigenous territories with illegal exploitation of natural resources and damage to heritage. The quantity is three times greater than in 2018, and none of the Indigenous territories was demarcated during the period from 2019 to 2022. There are 1,393 Indigenous territories registered in Brazil, and 871 (63%) of them are not regularized (Conselho Indigenista Missionário, 2022).

Most of the conflicts on indigenous territories are associated with illegal extraction of wood and forest resources, deforestation, farmer invasions, illegal mining, and extraction of minerals (Conselho Indigenista Missionário, 2022; Silva, 2022), which has led to a serious violation of constitutional determinations. In this sense, the Brazilian reality seems to reveal a denial of the generalist and abstract standards of remote Euro-American constitutionalism, even more so of the auspicious Andean archetype. Therefore, one evidences a big difference between the Brazilian and Bolivian models.

### Final considerations

When comparing the Brazilian and Bolivian constitutional models, one notes that in Brazil there is an absence of self-government in Indigenous communities due to the connection to the normative structures of the Euro-American model. In Bolivia, in turn, the institutions inherent to the postulate of Indigenous self-government are grounded on the new Latin American constitutionalism.

In fact, the classical constitutional framework affirms the sovereignty of the unitary State and a monistic (hegemonic) system of Law, while Bolívia admits a pluralist State model, with a coordinated system of legal-political orders, promoting a fissure in a paradigm based only on Western values. Nevertheless, the Constitution of neighboring country imposes on the State the task of guaranteeing the effectiveness of the rural native Indigenous peoples' self-determination.

Furthermore, by associating the constitutional models of these two countries with the development issue, it is confirmed that Bolivia shows IHDI growth four times higher when compared to Brazil. It is also evident that inserting instruments of peoples' self-determination principles in the Constitution of Bolívia has contributed to the Indigenous peoples' development and well-being, especially



because they represent a significant fraction of that country's population.

It is true that the 1988 Brazilian Constitution recognizes the international principles of protection to Indigenous communities and their culture (arts. 231 to 232), influenced by ILO Convention No. 169 on Indigenous peoples and tribes and the United Nations Declaration on the Rights of Indigenous Peoples. Nevertheless, the Brazilian constitutional text is not incisive and does not refer to these peoples' self-determination, given that it is not mentioned in an assertive manner, thus delaying the effectiveness of this important civilizational postulate. In this respect, there was not progress.

The proposal of the Constitution of Bolivia (2009) is very different due to the fact it breaks with the vision of superiority and hegemony and allows a coordinated system between legal, political, social, and economic institutes of the rural Indigenous peoples, recognizing these peoples' self-government and self-determination (arts. 289 to 296). Thus, it can be said that there was some progress. In this way, the organized society should fight so that the institutions that are below the Constitution manage to optimize the Andean nation's historical conquest.

Consequently, the piece of research that supported this work makes it possible to show that the model adopted by Brazil has, in truth, favored an anti-Indigenous policy. The facts demonstrate this. In the economic field, the country did not overcome the exploitation and uncontrolled capitalist accumulation matrix. In the political sphere, there is negligence in relation to the Indigenous peoples' autonomy and political representation.

On that note, taking as a reference the period from 2019 to 2022, for example, these communities' agenda was separated from that of the Indigenous peoples, when being conducted to the Ministry of Agriculture and Livestock, with a marked influence from exports agriculture, historically contrary to the demarcation of land and in favor of the expansion of agribusiness. The essence of this political direction is evidenced by the fact that 62% of the demarcations of Indigenous territories are still pending and that none of them was demarcated during the aforementioned period.

Regarding this issue, if Brazil continues to deny a formal alteration to the Constitution that contemplates the Bolivian paradigm of Indigenous self-government, we will need to think of alternative interpretations, in order to identify instruments that can—based on the phenomenon of constitutional mutation—minimally guarantee the Brazilian Indigenous peoples' self-determination and autonomy, at risk of causing their physical and cultural extermination.

In this context, the creation of the Ministry of Indigenous Peoples, which

took place in 2023, represents a positive development for Brazilian society, especially because now this body is responsible for implementing public policies aimed at these peoples' interests, victims of a historic sociocultural exclusion which refers to the crime of genocide.

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